

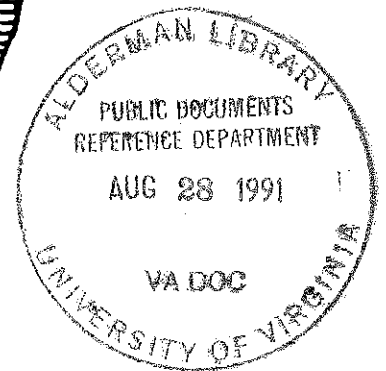
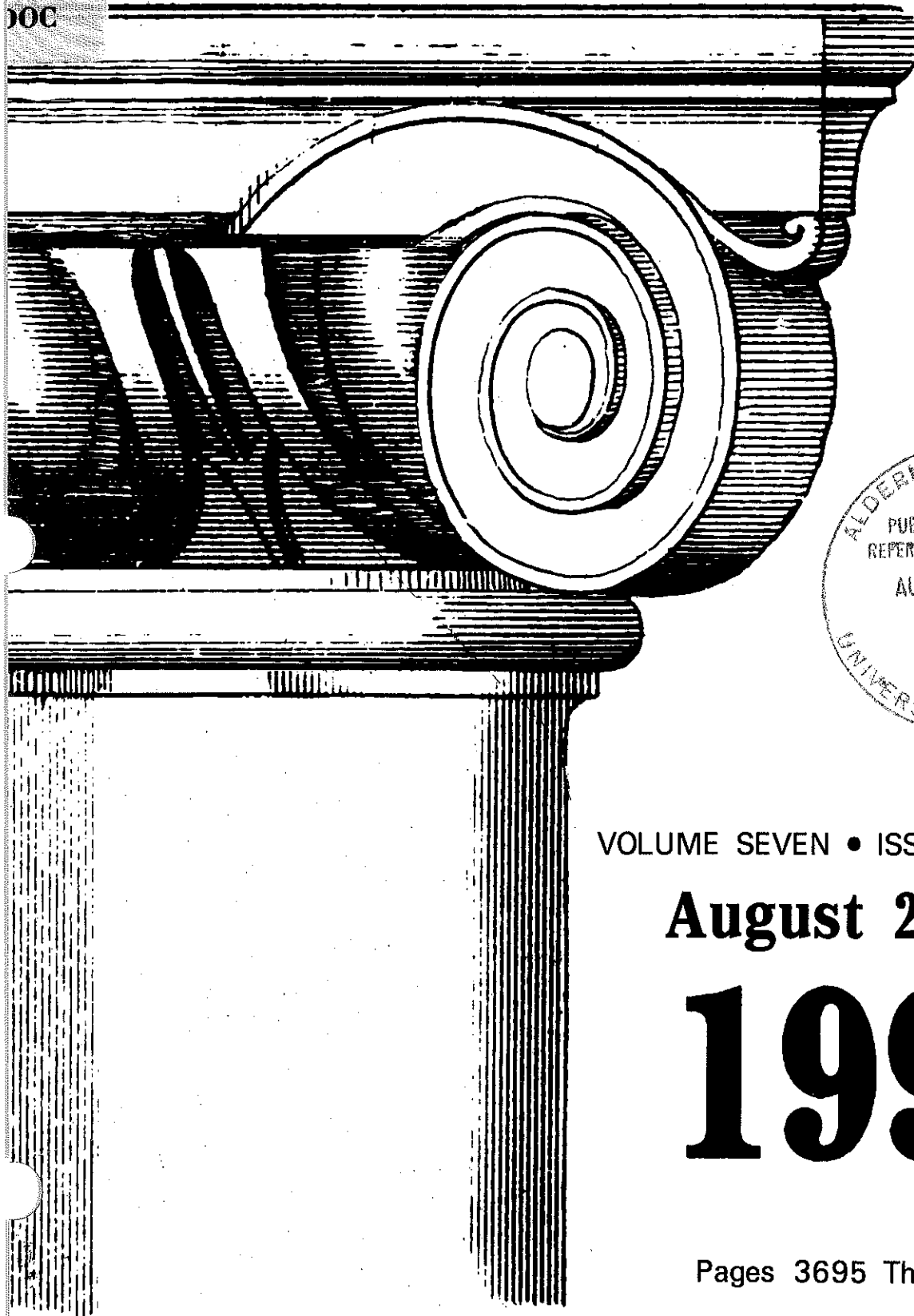
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THE VIRGINIA REGISTER

OF REGULATIONS

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VOLUME SEVEN • ISSUE TWENTY-FOUR

August 26, 1991

1991

Pages 3695 Through 3984

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 Register* 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.

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

VIRGINIA REGISTER OF REGULATIONS

PUBLICATION DEADLINES AND SCHEDULES

July 1991 through September 1992

MATERIAL SUBMITTED BY
Noon Wednesday

PUBLICATION DATE

June 26	July 15
July 10	July 29
July 24	Aug. 12
Aug. 7	Aug. 26
Aug. 21	Sept. 9
Sept. 4	Sept. 23
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Volume 8 - 1991-92

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Oct. 2	Oct. 21
Oct. 16	Nov. 4
Oct. 30	Nov. 18
Nov. 13	Dec. 2
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PROPOSED REGULATIONS

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Symbol Key

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

ALCOHOLIC BEVERAGE CONTROL BOARD

Title of Regulations:

VR 125-01-1. Procedural Rules for the Conduct of Hearings before the Board and Its Hearing Officers and the Adoption Amendment 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: § 4-7(1), 4-11, 4-36, 4-69, 4-69.2 4-72.1, 4-98.14, 4-103(b) and 9-6.14:1 et seq. of the Code of Virginia.

Public Hearing Date: October 30, 1991 - 10 a.m.

(See Calendar of Events section for additional information)

Summary:

Numerous regulations are being amended, repealed or promulgated, some of which relate to (i) streamlining the rulemaking procedures; (ii) allowing individuals of legal drinking age to place mail orders for alcoholic beverages with Virginia retail licensees; (iii) permitting alcoholic beverage advertising on certain antique vehicles for promotional purposes and on billboards located within facilities used primarily for professional or semiprofessional sporting events; (iv) increasing the wholesale value limit of novelty and specialty items which may be given away; (v) allowing manufacturers of alcoholic beverages to sponsor an entire season of athletic and sporting events; (vi) permitting wholesalers to deliver and merchandise wine and beer on Sundays; (vii) standardizing minimum monthly food sale requirements for retail licenses; (viii) allowing manufacturers, bottlers and wholesalers of alcoholic beverages to place public safety advertisements in college student publications; (ix) permitting retail licensees to use electronic fund transfers to pay wholesale licensees for purchases of alcoholic beverages or beverages; (x) clarifying that the placement of alcoholic beverages in containers of ice near cash registers, doors and public display areas by off-premises licensees is an enticement to purchase alcoholic beverages; (xi) making interior advertising less restrictive for on-premises licensees; and (xii) expanding the types of businesses eligible for off-premises wine and beer licenses by creating a new category which does not require minimum monthly food sales requirements.

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

PART I.

HEARINGS BEFORE HEARING OFFICERS.

§ 1.1. Appearance.

A. Any interested party who would be aggrieved by a decision of the board upon any application or in a disciplinary proceeding may appear and be heard in person, or by duly authorized representative, and produce under oath evidence relevant and material to the matters in issue. Upon due notice a hearing may be conducted by telephone as provided in Part IV.

B. The interested parties will be expected to appear or be represented at the place and on the date of hearing or on the dates to which the hearing may be continued.

C. If an interested party fails to appear at a hearing, the hearing officer may proceed in his absence and render a decision.

§ 1.2. Argument.

Oral or written argument, or both, may be submitted to and limited by the hearing officer. Oral argument is to be included in the stenographic report of the hearing.

§ 1.3. Attorneys/representation.

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

§ 1.4. Communications.

Communications regarding hearings before hearing officers upon licenses and applications for licenses should be addressed to the Director, Division of Hearings.

§ 1.5. Complaints.

The board in its discretion and for good cause shown

Proposed Regulations

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

§ 1.6. Continuances.

Motions to continue a hearing will be granted as in actions at law. Requests for continuances should be addressed to the Director, Division of Hearings, or the hearing officer who will preside over the hearing.

§ 1.7. Decisions.

A. Initial decisions.

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

1. A statement of the hearing officer's findings of fact and conclusions, as well as the reasons or bases therefor, upon all the material issues of fact, law or discretion presented on the record, and
2. The appropriate rule, order, sanction, relief or denial thereof as to each such issue.

B. Summary decisions.

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

C. Notice.

At the conclusion of any hearing, the hearing officer shall advise interested parties that the initial decision will be reduced to writing and the notice of such decision, along with notice of the right to appeal to the board, will be mailed to them or their representative and filed with the board in due course. (See Part II, § 2.1 for Appeals).

D. Prompt filing.

The initial decision shall be reduced to writing, mailed to interest parties, and filed with the board as promptly as possible after the conclusion of the hearing or the expiration of the time allowed for the receipt of additional evidence.

E. Request for early or immediate decision.

Where the initial decision is deemed to be acceptable, an interested party may file, either orally before the hearing officer or in writing, a waiver of his right of appeal to the board and request early or immediate

implementation of the initial decision. The board or hearing officer may grant the request for early or immediate implementation of the decision by causing issuance or surrender of the license and prompt entry of the appropriate order.

F. Timely review.

The board shall review the initial decision and may render a proposed decision, which may adopt, modify or reject the initial decision unless immediate implementation is ordered. In any event, the board shall issue notice of any proposed decision, along with notice of right to appeal, within the time provided for appeals as stated in Part II, § 2.1.

§ 1.8. Docket.

Cases will be placed upon the docket in the order in which they mature except that, for good cause shown or for reasons appearing to the board or to the Director, Division of Hearings, the order may be varied.

§ 1.9. Evidence.

A. Generally.

All relevant and material evidence shall be received, except that:

1. The rules relating to privileged communications and privileged topics shall be observed; and
2. Secondary evidence of the contents of a document shall be received only if the original is not readily available. In deciding whether a document is readily available the hearing officer shall balance the importance of the evidence against the difficulty of obtaining it, and the more important the evidence the more effort should be made to have the original document produced.

B. Cross-examination.

Subject to the provisions of subsection A of this section, any interested party shall have the right to cross-examine adverse witnesses and any agent or subordinate of the board whose report is in evidence and to submit rebuttal evidence except that:

1. Where the interested party is represented by counsel, only counsel shall exercise the right of cross-examination;
2. Where there is more than one interested party, only counsel or other representatives of such parties shall exercise the right of cross-examination; and
3. Where there is more than one group of interested parties present for the same purpose, only counsel or other representative of such groups shall exercise the

right of cross-examination. If the hearing officer deems it necessary, in order to expedite the proceedings, a merger of such groups shall be arranged.

C. Cumulative testimony.

The introduction of evidence which is cumulative, corroborative or collateral shall be avoided. The hearing officer may limit the testimony of any witness which is judged to be cumulative, corroborative or collateral; provided, however, the interested party offering such testimony may make a short avowal of the testimony which would be given and, if the witness asserts that such avowal is true, this avowal shall be made a part of the stenographic report.

D. Subpoenas, depositions and request for admissions.

Subpoenas, depositions de bene esse and requests for admissions may be taken, directed and issued in accordance with § 4.7(j) and § 9-6.14:13 of the Code of Virginia.

E. Stenographic report.

All evidence, stipulations and argument in the stenographic report which are relevant to the matters in issue shall be deemed to have been introduced for the consideration of the board.

F. Stipulations.

Insofar as possible, interested parties will be expected to stipulate as to any facts involved. Such stipulations shall be made a part of the stenographic report.

§ 1.10. Hearings.

A. Hearings before the hearing officer shall be held, insofar as practicable, at the county seat of the county in which the establishment of the applicant or licensee is located, or, if the establishment be located within the corporate limits of any city then in such city. However, if it be located in a county or city within a metropolitan area in which the board maintains a hearing room in a district office, such hearings may be held in such hearing room. Notwithstanding the above, hearing officers may conduct hearings at locations convenient to the greatest numbers of persons in order to expedite the hearing process.

B. Any person hindering the orderly conduct or decorum of a hearing shall be subject to penalty provided by law.

§ 1.11. Hearing officers.

A. Hearing officers are charged with the duty of conducting fair and impartial hearings and of maintaining order in a form and manner consistent with the dignity of the board.

B. Each hearing officer shall have authority, subject to the published rules of the board and within its powers, to:

1. Administer oaths and affirmations;
2. Issue subpoenas as authorized by law;
3. Rule upon offers of proof and receive relevant and material evidence;
4. Take or cause depositions and interrogatories to be taken, directed and issued;
5. Examine witnesses and otherwise regulate the course of the hearing;
6. Hold conferences for the settlement or simplification of issues by consent of interested parties;
7. Dispose of procedural requests and similar matters;
8. Amend the issues or add new issues provided the applicant or licensee expressly waives notice thereof. Such waiver shall be made a part of the stenographic report of the hearing;
9. Submit initial decisions to the board and to other interested parties or their representatives; and
10. Take any other action authorized by the rules of the board.

§ 1.12. Interested parties.

As used in this regulation, interested parties shall mean the following persons:

1. The applicant;
2. The licensee;

Where in this regulation reference is made to "licensee," the term likewise shall be applicable to a permittee or a designated manager to the extent this regulation is not inconsistent with the statutes and regulations relating to such persons.

3. Persons who would be aggrieved by a decision of the board; and

4. For purposes of appeal pursuant to Part II, § 2.1, interested parties shall be only those persons who appeared at and asserted an interest in the hearing before a hearing officer.

Where in these regulations reference is made to "licensee," the term likewise shall be applicable to a permittee or a designated manager to the extent that these regulations are not inconsistent with the statutes and regulations relating to such persons.

Proposed Regulations

§ 1.13. Motions or requests.

Motions or requests for ruling made prior to the hearing before a hearing officer shall be in writing, addressed to the Director, Division of Hearings, and shall state with reasonable certainty the ground therefor. Argument upon such motions or requests will not be heard without special leave granted by the hearing officer who will preside over the hearing.

§ 1.14. Notice of hearings.

Interested parties shall be afforded reasonable notice of a pending hearing. The notice shall state the time, place and issues involved.

§ 1.15. Consent settlement.

A. Generally.

Disciplinary cases may be resolved by consent settlement if the nature of the proceeding and public interest permit. In appropriate cases, the chief hearing officer will extend an offer of consent settlement, conditioned upon approval by the board, to the licensee. The chief hearing officer is precluded from presiding over any case in which an offer of consent settlement has been extended.

B. Who may accept.

The licensee or his attorney may accept an offer of consent settlement. If the licensee is a corporation, only an attorney or an officer, director or majority stockholder of the corporation may accept an offer of consent settlement. Settlement shall be conditioned upon approval by the board.

C. How to accept.

The licensee must return the properly executed consent order along with the payment in full of any monetary penalty within 15 calendar days from the date of mailing by the board. Failure to respond within the time period will result in a withdrawal of the offer by the agency and a formal hearing will be held on the date specified in the notice of hearing.

D. Effect of acceptance.

Upon approval by the board, acceptance of the consent settlement offer shall constitute an admission of the alleged violation of the A.B.C. laws or regulations, and will result in a waiver of the right to a formal hearing and the right to appeal or otherwise contest the charges. The offer of consent settlement is not negotiable; however, the licensee is not precluded from submitting an offer in compromise under § 1.16 of this part.

E. Approval by the board.

The board shall review all proposed settlements. Only after approval by the board shall a settlement be deemed final. The board may reject any proposed settlement which is contrary to law or policy or which, in its sole discretion, is not appropriate.

F. Record.

Unaccepted offers of consent settlement will become a part of the record only after completion of the hearing process.

§ 1.16. Offers in compromise.

Following notice of a disciplinary proceeding a licensee may be afforded opportunity for the submission of an offer in compromise in lieu of suspension or in addition thereto, or in lieu of revocation of his license, where in the discretion of the board, the nature of the proceeding and the public interest permit. Such offer should be addressed to the Secretary to the Board. Upon approval by the board, acceptance of the offer in compromise shall constitute an admission of the alleged violation of the A.B.C. laws or regulations, and shall result in a waiver of the right to a formal hearing and the right to appeal or otherwise contest the charges. The reason for the acceptance of such an offer shall be made a part of the record of the proceeding. Unless good cause be shown, continuances for purposes of considering an offer in compromise will not be granted, nor will a decision be rendered prior to a hearing if received within three days of the scheduled hearing date, nor will more than two offers be entertained during the proceeding. Further, no offers shall be considered by the board if received more than 15 calendar days after the date of mailing of the initial decision or the proposed decision, whichever is later. An offer may be made at the appeal hearing, but none shall be considered after the conclusion of such hearing. The board may waive any provision of this section for good cause shown.

§ 1.17. Record.

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

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

§ 1.18. Rehearings.

A rehearing before a hearing officer shall not be held in any matter unless it be affirmatively shown that relevant and material evidence, which ought to produce an opposite result on rehearing, is available, is not merely cumulative, corroborative or collateral, and could not have been discovered before the original hearing by the use of

ordinary diligence; provided, however, that the board, in its discretion, may cause a rehearing to be held before a hearing officer in the absence of the foregoing conditions, as provided in Part II, § 2.6.

§ 1.19. Self-incrimination.

If any witness subpoenaed at the instance of the board shall testify in a hearing before a hearing officer on complaints against a licensee of the board as to any violation in which the witness, as a licensee or an applicant, has participated, such testimony shall in no case be used against him nor shall the board take any administrative action against him as to the offense to which he testifies.

§ 1.20. Subpoenas.

Upon request of any interested party, the Director, Division of Hearings, or a hearing officer is authorized to issue subpoenas requiring the attendance of witnesses and the production of records, memoranda, papers and other documents at a hearing before a hearing officer.

§ 1.21. Witnesses.

A. Interested parties shall arrange to have their witnesses present at the time and place designated for the hearing.

B. Upon request of any party entitled to cross-examine witnesses, as set forth in § 1.9 B of this regulation, the hearing officer may separate the witnesses, including agents of the board.

C. A person attending as a witness, under a summons issued at the instance of the board to testify in a hearing, shall be entitled to the same allowance for expenses and compensation as witnesses for the Commonwealth in criminal cases.

PART II. HEARINGS BEFORE THE BOARD.

§ 2.1. Appeals.

A. An interested party may appeal to the board an adverse initial decision, including the findings of fact and the conclusions, of a hearing officer or a proposed decision, or any portion thereof, of the board provided a request therefor in writing is received within 10 days after the date of mailing of the initial decision or the proposed decision, whichever is later.

B. At his option, an interested party may submit written exceptions to the initial or proposed decision within the 10-day period and waive further hearing proceedings.

C. If an interested party fails to appear at a hearing, the board may proceed in his absence and render a decision.

§ 2.2. Attorneys; representation.

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

§ 2.3. Communications.

Communications regarding appeal hearings upon licenses and applications for licenses should be addressed to the secretary of the board.

§ 2.4. Continuances.

Continuances will be granted as in actions at law. Requests for continuances of appeal hearings should be addressed to the secretary of the board.

§ 2.5. Decision of the board.

The final decision of the board, together with any written opinion, should be transmitted to each interested party or to his representative.

§ 2.6. Evidence.

A. Generally.

Subject to the exceptions permitted in this section, and to any stipulations agreed to by all interested parties, all evidence should be introduced at hearings before hearing officers.

B. Additional evidence.

Should the board determine at an appeal hearing, either upon motion or otherwise, that it is necessary or desirable that additional evidence be taken, the board may:

1. Direct that a hearing officer fix a time and place for the taking of such evidence within the limits prescribed by the board and in accordance with Part I, § 1.18;

2. Upon unanimous agreement of the board members permit the introduction of after-discovered or new evidence at the appeal hearing.

If the initial decision indicates that the qualifications of the establishment of an applicant or licensee are such as to cast substantial doubt upon the eligibility of the place for a license, evidence may be received at the appeal hearing limited to the issue involved and to the period of time subsequent to the date of the hearing before the

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hearing officer.

C. Board examination.

Any board member may examine a witness upon any question relevant to the matters in issue.

D. Cross-examination.

The right to cross-examine and the submission of rebuttal evidence as provided in Part I, § 1.9 shall be allowed in any appeal hearing where the introduction of additional evidence is permitted.

§ 2.7. Hearings.

Hearings before the board in the absence of notice to the contrary will be held in the office of the board, Virginia A.B.C. Building, 2901 Hermitage Road, Richmond, Virginia.

§ 2.8. Motions or requests.

Motions or requests for rulings, made after a hearing before a hearing officer and prior to an appeal hearing before the board, shall be in writing, addressed to the Secretary to the Board, and shall state with reasonable certainty the grounds therefor. Argument upon such motions or requests will not be heard without special leave granted by the board.

§ 2.9. Notice of hearing.

Reasonable notice of the time and place of an appeal hearing shall be given to each interested party who appeared at the initial hearing or his representative.

§ 2.10. Record.

A. The record of the hearing before the hearing officer, including the initial decision, and the transcript of testimony, argument and exhibits together with all papers and requests filed in the proceeding before the board, shall constitute the exclusive record for the final decision of the board.

B. Upon due application made to the Secretary to the Board, copies of the record, including the decision of the board and any opinion setting forth the reasons for the decision shall be made available to parties entitled thereto at a rate established by the board.

§ 2.11. Rehearings and reconsideration.

The board may, in its discretion for good cause shown, grant a rehearing or reconsideration on written petition of an interested party addressed to the Secretary to the Board and received within 30 days after the date of the final decision of the board. The petition shall contain a full and clear statement of the facts pertaining to the grievance, the grounds in support thereof, and a statement

of the relief desired. The board may grant such at any time on its own initiative for good cause shown.

§ 2.12. Scope of hearing.

A. Except as provided in Part II § 2.6, the appeal hearing shall be limited to the record made before the hearing officer.

B. The provisions of Part I of this regulation shall be applicable to proceedings held under this part II except to the extent such provisions are inconsistent herewith.

PART III.

WINE AND BEER FRANCHISE ACT ACTS .

§ 3.1. ~~Complaint~~ Complaints .

Complaints shall be referred in writing to the secretary ~~to~~ of the board. The secretary's office, in consultation with the Deputy for Regulation, will determine if reasonable cause exists to believe a violation of the Wine or Beer Franchise Acts, Chapters 2.1 ~~and~~ (§ 4-118.3 *et seq.*) or 2.3 (§ 4-118.42 *et seq.*) of Title 4, of the Code of Virginia, has occurred, and, if so, a hearing on the complaint will be scheduled in due course. If no reasonable cause is found to exist, the complainant will be informed of the reason for that decision and given the opportunity to request a hearing as provided by statute.

§ 3.2. Hearings.

Hearings will be conducted in accordance with the provisions of Part I of this regulation. Further, the board and the hearing officers designated by it may require an accounting to be submitted by each party in determining an award of costs and attorneys' fees.

§ 3.3. Appeals.

The decision of the hearing officer may be appealed to the board as provided in Part II, § 2.1 of this regulation. Appeals shall be conducted in accordance with the provisions of Part II of this regulation.

§ 3.4. Hearings on notification of price increases.

Upon receipt from a winery, brewery or wine or beer importer of a request for notice of a price increase less than 30 days in advance, a hearing will be scheduled before the board, not a hearing officer, as soon as practicable with five days' notice to all parties which include at a minimum all the wholesalers selling the winery or brewery's product. There will be no continuances granted and the board must rule within 24 hours of the hearing.

§ 3.5. Discovery, prehearing procedures and production at hearings.

A. Introduction.

The rules in this section shall apply in all proceedings under the Beer and Wine Franchise Acts, Chapters 2.1 (§4-118.3 *et seq.*) and 2.3 (§ 4-118.42 *et seq.*) of Title 4 of the Code of Virginia, including arbitration proceedings when necessary pursuant to the Code of Virginia §§ 4-118.10 and 4-118.50 of the Code of Virginia .

No provision of any of the rules in this section shall affect the practice of taking evidence at a hearing, but such practice, including that of generally taking evidence *ore tenus* only at hearings before hearing officers, shall continue unaffected hereby.

B. Definitions.

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

“Board” means the Virginia Alcoholic Beverage Control Board and the officers, agents and employees of the board, including the secretary and the hearing officer(s), unless otherwise specified or unless the context requires otherwise.

“Commencement” of proceedings under this Part III of VR 125-01-1 means the date of the board’s notice to the complainant(s) and the respondent(s), pursuant to § 3.1, that reasonable cause exists to believe that there has been a violation of either the Wine or Beer Franchise Acts.

“Manufacturer” means a winery or brewery, as those terms are defined in §§ 4-118.43 and 4-118.4, respectively, of the Code of Virginia.

“Person” means a winery, brewery, importer or wholesaler, as well as those entities designated as “persons,” within the meaning of §§ 4-118.43 and 4-118.4 of the Code of Virginia.

“Secretary” means the Secretary of the Virginia Alcoholic Beverage Control Board.

C. General provisions governing discovery.

1. Discovery methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; and requests for admission. Unless the board orders otherwise under ~~paragraph subdivision~~ 3 of this subsection or ~~paragraph subdivision~~ 1 of subsection P, the frequency of use of these methods is not limited.

2. Scope of discovery. Unless otherwise limited by order of the board in accordance with this § 3.5, the scope of discovery is as follows:

a. In general. Parties may obtain discovery

regarding any matter, not privileged, which is relevant to the subject matter involved in the pending proceeding, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

b. Applicability. Discovery as provided under this § 3.5 shall apply to all proceedings or hearings of Wine or Beer Franchise Act cases while pending before hearing officers or arbitrators. Discovery under this section shall not be authorized during the course of appeals to the board, unless the board has first granted leave to proceed with additional discovery.

c. Hearing preparation: materials. Subject to the provisions of subdivision 2 d of this subsection E , a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision 2 a of this subsection E and prepared in anticipation of litigation or for the hearing by or for another party or by or for that other party’s representative (including his attorney, consultant, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the board shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the proceeding or its subject matter previously made by that party. For purposes of this ~~paragraph subdivision~~ , a statement previously made is (i) a written statement signed or otherwise adopted or approved by the person making it, or (ii) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

d. Hearing preparation: experts; costs. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision 2 a of this subsection E and acquired or developed in anticipation of litigation or for the hearing, may be obtained only as follows:

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(1) (i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at the hearing, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion; (ii) upon motion, the board may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision 2 d (3) of this subsection C, concerning fees and expenses as the board may deem appropriate.

(2) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for the hearing and who is not expected to be called as a witness at the hearing, only upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(3) Unless manifest injustice would result, (i) the board shall require that the party seeking discovery pay the expert a reasonable fee for time spent and his expenses incurred in responding to discovery under subdivisions d(1)(ii) and d(2) of this subsection C; and (ii) with respect to discovery obtained under subdivision d(1)(ii) of this subsection C the board may require, and with respect to discovery obtained under subdivision d(2) of this subsection C the board shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

3. Protective orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the board may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (i) that the discovery not be had; (ii) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (iii) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (iv) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (v) that discovery be conducted with no one present except persons designated by the board; (vi) that a deposition after being sealed be opened only by order of the board; (vii) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (viii) that the parties simultaneously file specified documents or information enclosed in sealed envelopes

to be opened as directed by the board.

If the motion for a protective order is denied in whole or in part, the board may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of subdivision 1 d of subsection O apply to the award of expenses incurred in relation to the motion.

4. Sequence and timing of discovery. Unless the board upon motion, or pursuant to subsection N of this section, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

5. Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired except as follows:

a. A party is under a duty seasonably to supplement his response with respect to any question directly addressed to (i) the identity and location of persons having knowledge of discoverable matters, and (ii) the identity of each person expected to be called as an expert witness at a hearing, the subject matter on which he is expected to testify, and the substance of his testimony.

b. A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which (i) he knows that the response was incorrect when made, or (ii) he knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

c. A duty to supplement responses may be imposed by order of the board, agreement of the parties, or at any time prior to the hearing through new requests for supplementation of prior responses.

6. Service under this part. Except for the service of the notice required under subdivision D 1 b of this § 3-5 section, any notice or document required or permitted to be served under this § 3-5 section by one party upon another shall be served as provided in Rule 1:12 of the Rules of the Supreme Court of Virginia. Any notice or document required or permitted to be served under this § 3-5 section by the board upon one or more parties shall be served as provided in §§ 1.7, 1.14, 2.5 or 2.9 of Parts I and II of VR 125-01-1.

7. Filing. Any request for discovery under this § 3-5 section and the responses thereto, if any, shall be filed

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with the secretary of the board except as otherwise herein provided.

(Ref: Rule 4:1, Rules of Virginia Supreme Court.)

D. Depositions before proceeding or pending appeal.

1. Before proceeding.

a. **Petition.** A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable before the board under this section may file a verified petition before the board. The petition shall be entitled in the name of the petitioner and shall show: (i) that the petitioner expects to be a party to a proceeding under Part III of these regulations *this part* but is presently unable to bring it or cause it to be brought; (ii) the subject matter of the expected action and his interest therein; (iii) the facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it; (iv) the names or a description of the persons he expects will be adverse parties and their addresses so far as known; and (v) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

b. **Notice and service.** The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the board, at a time and place named therein, for the order described in the petition. At least 21 days before the date of hearing the notice shall be served in the manner provided in §§ 1.14 or 2.9 of Parts I and II of VR 125-01-1; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the board may make such order as is just for service by publication or otherwise.

c. **Order and examination.** If the board is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with § 3-5 *this section*. The attendance of witnesses may be compelled by subpoena, and the board may make orders of the characters provided for by subsection M of this § 3-5 *section*.

d. **Cost.** The cost of such depositions shall be paid by the petitioner, except that the other parties in

interest who produce witnesses on their behalf or who make use of witnesses produced by others shall pay their proportionate part of the cost of the transcribed testimony and evidence taken or given on behalf of each of such parties.

e. **Filing.** The depositions shall be certified as prescribed in subsection G of this § 3-5 *section* and then returned to and filed by the secretary.

f. **Use of deposition.** If a deposition to perpetuate testimony is taken under these provisions or if, although not so taken, it would be admissible in evidence in the courts of the state in which it is taken, it may be used in any proceeding involving the same subject matter subsequently brought before the board pursuant to Part III of these regulations in accordance with the provisions of subsection C of § 3-5 *this section*.

2. **Pending appeal.** If an appeal has been taken from a ruling of the board or before the taking of an appeal if any time therefor has not expired and for good cause shown, the board may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings. In such case the party who desires to perpetuate the testimony may make a motion before the board for leave to take the depositions, upon the same notice and service thereof as if the proceeding was pending therein. The motion shall show (i) the names and addresses of persons to be examined and the substance of the testimony which he expects to elicit from each; and (ii) the reasons for perpetuating their testimony. If the board finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make orders of the character provided for by subsection M of § 3-5 *this section* and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in this § 3-5 *section* for depositions taken in pending actions.

3. **Perpetuation of testimony.** This subsection D provides the exclusive procedure to perpetuate testimony before the board.

(Ref: Rule 4:2, Rules of Virginia Supreme Court.)

E. Persons before whom depositions may be taken.

1. **Within this Commonwealth.** Within this Commonwealth depositions under this § 3-5 *section* may be taken before any person authorized by law to administer oaths, and if certified by his hand may be received without proof of the signature to such certificate.

2. **Within the United States.** In any other state of the United States or within any territory or insular possession subject to the dominion of the United States, depositions under this § 3-5 *section* may be

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taken before any officer authorized to take depositions in the jurisdiction wherein the witness may be, or before any commissioner appointed by the Governor of this Commonwealth.

3. No commission necessary. No commission by the Governor of this Commonwealth shall be necessary to take a deposition under this § 3-5 section whether within or without this Commonwealth.

4. In foreign countries. In a foreign state or country depositions under this § 3-5 section shall be taken (i) before any American minister plenipotentiary, charge d'affaires, secretary of embassy or legation, consul general, consul, vice-consul, or commercial agent of the United States in a foreign country, or any other representative of the United States therein, including commissioned officers of the armed services of the United States, or (ii) before the mayor, or other magistrate of any city, town or corporation in such country, or any notary therein.

5. Certificate when deposition taken outside Commonwealth. Any person before whom a deposition under this § 3-5 section is taken outside this Commonwealth shall certify the same with his official seal annexed; and, if he has none, the genuineness of his signature shall be authenticated by some officer of the same state or country, under his official seal, except that no seal shall be required of a commissioned officer of the armed services of the United States, but his signature shall be authenticated by the commanding officer of the military installation or ship to which he is assigned.

(Ref: Rule 4:3, Rules of Virginia Supreme Court.)

F. Stipulations regarding discovery.

Unless the board orders otherwise, the parties may by written stipulation (i) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions and (ii) modify the procedures provided by these rules for other methods of discovery. Such stipulations shall be filed with the deposition.

(Ref: Rule 4:4, Rules of Virginia Supreme Court.)

G. Depositions upon oral examination.

1. When depositions may be taken. Twenty-one days after commencement of the proceeding, any party may take the testimony of any person, including a party, by deposition upon oral examination. The attendance of witnesses may be compelled by subpoena. The deposition of a person confined in prison may be taken only by leave of the board upon such terms as the board prescribes, subject to any authorization and limitations that may be imposed by any court within the Commonwealth.

2. Notice of examination. General requirements; special notice; nonstenographic recording; production of documents and things; deposition of organization.

a. A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the proceeding. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

b. (Reserved)

c. The board may for cause shown enlarge or shorten the time for taking the deposition.

d. (Reserved)

e. The notice to a party deponent may be accompanied by a request made in compliance with subsection M of this § 3-5 section for the production of documents and tangible things at the taking of the deposition. The procedure of subsection M of this § 3-5 section shall apply to the request.

f. A party may in his notice name as the deponent a public or private corporation or a partnership or association or governmental agency and designate with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision 2 f does not preclude taking a deposition by any other procedure authorized in this § 3-5 section .

g. The parties may stipulate in writing or the board may on motion order that a deposition be taken by telephone. A deposition taken by telephone shall be taken before an appropriate officer in the locality where the deponent is present to answer questions propounded to him.

3. Examination and cross-examination; record of examination; oath; objections. Examination and cross-examination of witnesses may proceed as permitted at the hearing. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of

the witness. The testimony shall be taken stenographically or recorded by any other means authorized by this § 3-5 section . If requested by one of the parties, the testimony shall be transcribed.

All objections made at time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examinations, parties may serve written questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

4. Motion to terminate or limit examination. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the board may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in ~~subsection~~ subdivision C 3 of § 3-5 this section . If the order made terminates the examination, it shall be resumed thereafter only upon the order of the board. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of ~~subsection~~ subdivision O 1 d apply to the award of expenses incurred in relation to the motion.

5. Submission to witness; changes; signing. When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in forms or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 21 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under ~~subsection~~ subdivision J 4 d of this § 3-5 section the board holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

6. Certification and filing by officer; exhibits; copies; notice of filing.

a. The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then lodge it with the attorney for the party who initiated the taking of the deposition, notifying the secretary of the board and all parties of such action. Depositions taken pursuant to this subsection G or subsection H shall not be filed with the secretary until the board so directs, either on its own initiative or upon the request of any party prior to or during the hearing.

Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (i) the person producing the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and (ii) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the board, pending final disposition of the case.

b. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

c. The party taking the deposition shall give prompt notice of its filing to all other parties.

7. Failure to attend or to serve subpoena; expenses.

a. If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the board may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

b. If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the board may order the party giving the notice to pay to such other party the reasonable expenses incurred

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by him and his attorney in attending, including reasonable attorney's fees.
(Ref: Rule 4:5, Rules of Virginia Supreme Court.)

H. Deposition upon written questions.

1. Serving questions; notice. Twenty-one days after commencement of the proceeding, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena. The deposition of a person confined in prison may be taken only by leave of the board upon such terms as the board prescribes subject to any authorization and limitations that may be required or imposed by any court within the Commonwealth.

A party desiring to take the deposition upon written questions shall serve them upon every other party with a notice stating that (i) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and (ii) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of ~~subsection~~ *subdivision G 2 f of § 3-5 this section* .

Within 21 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The board may for cause shown enlarge or shorten the time.

2. Officer to take responses and prepare record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by subdivisions 3, 4 and 5 of subsection G of § 3-5 *this section* , to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by him.

3. Notice of filing. When the deposition is filed, the party taking it shall promptly give notice thereof to all other parties.
(Ref: Rule 4:6, Rules of Virginia Supreme Court.)

I. Limitation on depositions.

No party shall take the deposition of more than five witnesses for any purpose without leave of the board for

good cause shown.

(Ref: Rule 4:6A, Rules of Virginia Supreme Court.)

J. Use of depositions in proceedings under the Beer and Wine Franchise Acts.

1. Use of depositions. At the hearing or upon the hearing of a motion, or during an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

a. (Reserved)

b. Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

c. The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under subdivision 2 f of subsection G or subdivision 1 of subsection H of this § 3-5 *section* to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

d. The deposition of a witness, whether or not a party, may be used by any party for any purpose if the board finds: (i) that the witness is dead; or (ii) that the witness is at a greater distance than 100 miles from the place of hearing, or is out of this Commonwealth, unless it appears that the absence of the witness was procured by the party offering the deposition; or (iii) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (iv) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (v) that the witness is a judge, or is in any public office or service the duties of which prevent his attending hearings before the board provided, however, that if the deponent is subject to the jurisdiction of the board, the board may, upon a showing of good cause or sua sponte, order him to attend and to testify *ore tenus*; or (vi) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally, to allow the deposition to be used.

e. If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any

party may introduce any other parts.

f. No deposition shall be read in any proceeding against a person under a disability unless it be taken in the presence of the guardian ad litem appointed or attorney serving pursuant to § 8.01-9 of the Code of Virginia, or upon questions agreed on by the guardian or attorney before the taking.

g. In any proceeding, the fact that a deposition has not been offered in evidence prior to an interlocutory decree or order shall not prevent its thereafter being so offered except as to matters ruled upon in such interlocutory decree or order, provided, however, that such deposition may be read as to matters ruled upon in such interlocutory decree or order if the principles applicable to after-discovered evidence would permit its introduction.

Substitution of parties does not affect the right to use depositions previously taken; and when there are pending before the board several proceedings between the same parties, depending upon the same facts, or involving the same matter of controversy, in whole or in part, a deposition taken in one of such proceedings, upon notice to the same party or parties, may be read in all, so far as it is applicable and relevant to the issue; and, when an action in any court of the United States or of this or any other state has been dismissed and a proceeding before the board involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the one action may be used in a proceeding before the board as if originally taken therefor.

2. Objections to admissibility. Subject to the provisions of subdivision 4 c of *this subsection J of § 2-5*, objection may be made at the hearing to receive in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witnesses were then present and testifying.

3. Effect of taking or using depositions. A party does not make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition under subdivision 1 c of this subsection J. At the hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

4. Effect of errors and irregularities in depositions.

a. As to notice. All errors and irregularities in the

notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

b. As to disqualification of officer. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

c. As to taking of deposition.

(1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions and answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(3) Objections to the form of written questions submitted under subsection H of § 3-5 *this section* are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within five days after service of the last questions authorized.

d. As to completion and return of deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed or otherwise dealt with by the officer under subsections G and H of § 3-5 *this section* are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

5. (Reserved)

6. Record. Depositions shall become a part of the record only to the extent that they are offered in evidence.

(Ref: Rule 4:7, Rules of Virginia Supreme Court.)

K. Audio-visual depositions.

1. When depositions may be taken by audio-visual means. Any depositions permitted under these rules may be taken by audio-visual means as authorized by

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and when taken in compliance with law.

2. Use of clock. Every audio-visual deposition shall be timed by means of a timing device, which shall record hours, minutes and seconds which shall appear in the picture at all times during the taking of the deposition.

3. Editing. No audio-visual deposition shall be edited except pursuant to a stipulation of the parties or pursuant to order of the board and only as and to the extent directed in such order.

4. Written transcript. If an appeal is taken in the case, the appellant shall cause to be prepared and filed with the secretary a written transcript of that portion of an audio-visual deposition made a part of the record at the hearing to the extent germane to an issue on appeal. The appellee may designate additional portions to be so prepared by the appellant and filed.

5. Use. An audio-visual deposition may be used only as provided in subsection J of § 3-5 *this section* .

6. Submission, etc. The provisions of ~~subsection subdivision~~ G 5 shall not apply to an audio-visual deposition. The other provisions of subsection G of § 3-5 *this section* shall be applicable to the extent practicable.

(Ref: Rule 4:7A, Rules of Virginia Supreme Court.)

L. Interrogatories to parties.

1. Availability; procedures for use. Upon the commencement of any proceedings under this part III , any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party.

2. Form. The party serving the interrogatories shall leave sufficient space between each interrogatory so as to permit the party answering the interrogatories to make a photocopy of the interrogatories and to insert the answers between each interrogatory. The party answering the interrogatories shall use a photocopy to insert answers and shall precede the answer with the word "Answer." In the event the space which is left to fully answer any interrogatory is insufficient, the party answering shall insert the words, "see supplemental sheet" and shall proceed to answer the interrogatory fully on a separate sheet or sheets of paper containing the heading "Supplemental Sheet" and identify the answers by reference to the number of the interrogatory. The party answering the interrogatories shall prepare a separate sheet containing the necessary oath to the answers, which shall be attached to the answers filed with the court to the copies sent to all parties and shall contain a

certificate of service.

3. Filing. The interrogatories and answers and objections thereto shall not be filed in the office of the secretary unless the board directs their filing on its own initiative or upon the request of any party prior to or during the hearing. For the purpose of any consideration of the sufficiency of any answer or any other question concerning the interrogatories, answers or objections, copies of those documents shall be made available to the board by counsel.

4. Answers. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 21 days after the service of the interrogatories. The board may allow a shorter or longer time. The party submitting the interrogatories may move for an order under subdivision 1 of subsection O 1 with respect to any objection to or other failure to answer an interrogatory.

5. Scope; use. Interrogatories may relate to any matters which can be inquired into under subdivision 2 of subsection C 2 , and the answers may be used to the extent permitted by the rules of evidence. Only such interrogatories and the answers thereto as are offered in evidence shall become a part of the record.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the board may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or other later time.

6. Option to produce business records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

7. Limitation on interrogatories. No party shall serve upon any other party, at any one time or

cumulatively, more than 30 written interrogatories, including all parts and subparts without leave of the board for good cause shown.

(Ref: Rule 4:8, Rules of Virginia Supreme Court.)

M. Production of documents and things and entry on land for inspection and other purposes; production at the hearing.

1. Scope. Any party may serve on any other party a request (i) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, any tangible things which constitute or contain matters within the scope of subdivision 2 of subsection C and which are in the possession, custody, or control of the party upon whom the request is served; or (ii) to produce any such documents to the board at the time of the hearing; or (iii) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection, surveying, and photographing the property or any designated object or operation thereon, within the scope of subdivision 2 of subsection C 2 of § 3-5 this section .

When the physical condition or value of a party's plant, equipment, inventory or other tangible asset is in controversy, the board, upon motion of an adverse party, may order a party to submit same to physical inventory or examination by one or more representatives of the moving party named in the order and employed by the moving party. The order may be made only by agreement or on motion for relevance shown and upon notice to all parties, and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

2. Procedure. The request may, without leave of the board, except as provided in subdivision 4 of this subsection M , be served after commencement of the proceeding. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, period and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 21 days after the service of the request. The board may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for

objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under subdivision 1 of subsection O 1 with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

3. Production by a person not a party. Upon written request therefor filed with the secretary by counsel of record for any party or by a party having no counsel in any pending case, with a certificate that a copy thereof has been mailed or delivered to counsel of record and to parties having no counsel, the secretary shall, subject to subdivision 4 of this subsection M , issue a person not a party therein a subpoena which shall command the person to whom it is directed, or someone acting on his behalf, to produce the documents and tangible things (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form) designated and described in said request, and to permit the party filing such request, or someone acting in his behalf, to inspect and copy any tangible things which constitute or contain matters within the scope of subdivision 2 of subsection C 2 which are in the possession, custody or control of such person to whom the subpoena is directed, at a time and place and for the period specified in the subpoena; but, the board, upon written motion promptly made by the person so required to produce, or by the party against whom such production is sought, may (i) quash or modify the subpoena if it is unreasonable and oppressive or (ii) condition denial of the motion to quash or modify upon the advancement by the party in whose behalf the subpoena is issued of the reasonable cost of producing the documents and tangible things so designated and described.

Documents subpoenaed pursuant to this subdivision 3 of subsection M shall be returnable only to the office of the secretary unless counsel of record agree in writing filed with the secretary as to a reasonable alternative place for such return. Upon request of any party in interest, or his attorney, the secretary shall permit the withdrawal of such documents by such party or his attorney for such reasonable period of time as will permit his inspection, photocopying, or copying thereof.

4. Certain officials. No request to produce made pursuant to subdivision 2 of this subsection M, above, shall be served, and no subpoena provided for in subdivision 3 of this subsection M, above, shall issue, until prior order of the board is obtained when the party upon whom the request is to be served or the person to whom the subpoena is to be directed is the Governor, Lieutenant Governor, or Attorney General of this Commonwealth, or a judge of any court thereof;

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the President or Vice President of the United States; any member of the President's Cabinet; any ambassador or consul; or any military officer on active duty holding the rank of admiral or general.

5. Proceedings on failure or refusal to comply. If a party fails or refuses to obey an order made under subdivision 2 of this subsection M, the board may proceed as provided by subsection O.

6. Filing. Requests to a party pursuant to subdivisions 1 and 2 of this subsection M shall not be filed in the office of the secretary unless requested in a particular case by the board or by any party prior to or during the hearing.

(Ref: Rule 4:9, Rules of Virginia Supreme Court.)

N. Requests for admission.

1. Request for admission. Upon commencement of any proceedings under this part III, a party may serve upon any other party a written request for the admission, for purposes of the pending proceeding only, of the truth of any matters within the scope of subdivision 2 of subsection C 2 set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 21 days after service of the request, or within such shorter or longer time as the board may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for hearing may not, on that ground alone, object to the request; he may, subject to the provisions of subdivision 3 of subsection O 3, deny the matter or set forth reasons why he cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the board determines that an objection is justified, it shall order that an answer be served. If the board determines that an answer does not comply with the requirements of this subsection N, it may order either that the matter is admitted or that an amended answer be served. The board may, in lieu of these orders, determine that final disposition of the request be made at a prehearing conference or at a designated time prior to the hearing. The provisions of subdivision 1 d of subsection O apply to the award of expenses incurred in relation to the motion.

2. Effect of admission. Any matter admitted under this rule is conclusively established unless the board on motion permits withdrawal or amendment of the admission. Subject to the provisions of subsection P governing amendment of a prehearing order, the board may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the board that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending proceeding only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

3. Filing. Requests for admissions and answers or objections shall be served and filed as provided in subsection L.

4. Part of record. Only such requests for admissions and the answers thereto as are offered in evidence shall become a part of the record.

(Ref: Rule 4:11, Rules of Virginia Supreme Court.)

O. Failure to make discovery: sanctions.

1. Motion for order compelling discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply to the board for an order compelling discovery as follows:

a. (Reserved)

b. Motion. If a deponent fails to answer a question propounded or submitted under subsections G and H, or a corporation or other entity fails to make a designation under subdivision 2 f of subsection G and subdivision 1 of subsection H, or a party fails to answer an interrogatory submitted under subsection L, or if a party, in response to a request for inspection submitted under subsection M, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order

compelling inspection in accordance with the request. When taking a deposition or oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

If the board denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to subdivision 3 of subsection C.

c. Evasive or incomplete answer. For purposes of this subsection an evasive or incomplete answer is to be treated as a failure to answer.

d. Award of expenses of motion. If the motion is granted and the board finds that the party whose conduct necessitated the motion acted in bad faith, the board shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees.

If the motion is denied and the board finds that the moving party acted in bad faith in making the motion, the board shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees.

If the motion is granted in part and denied in part, the board may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

2. Failure to comply with order.

a. Suspension or revocation of licenses, monetary penalties. Failure to comply with any order of the board under this § 3.5 (Discovery) shall constitute grounds for action by the board under § 4-37 A(1)(b) of the Code of Virginia.

b. Sanctions by the board. If a party or an officer, director, or managing agent of a party or a person designated under subdivision 2 f of subsection G or subdivision 1 of subsection H to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision 1 of this subsection, the board may make such orders in regard to the failure as are just, and among others the following:

(1) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the proceeding in accordance with the claim of the

party obtaining the order;

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the proceeding or any part thereof, or rendering a judgment or decision by default against the disobedient party.

In lieu of any of the foregoing orders or in addition thereto, if the board finds that a party acted in bad faith in failing to obey an order to provide or permit discovery, the board shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure.

3. Expenses on failure to admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under subsection N, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the board for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The board shall make the order if it finds that the party failing to admit acted in bad faith. A party will not be found to have acted in bad faith if the board finds that (i) the request was held objectionable pursuant to subdivision 1 of subsection N, or (ii) the admission sought was of no substantial importance, or (iii) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or (iv) there was other good reason for the failure to admit.

4. Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection. If a party or an officer, director or managing agent of a party or a person designated under subdivision 2 f of subsection G or subdivision 1 of subsection H to testify on behalf of a party fails (i) to appear before the officer who is to take his deposition, after being served with a proper notice, or (ii) to serve answers or objections to interrogatories submitted under subsection L, after proper service of the interrogatories, or (iii) to serve a written response to the request for inspection submitted under subsection M, after proper service of the request, the board on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under subdivisions 2 b(1), 2 b(2) and 2 b(3) of this subsection O. In lieu of any order or in addition thereto, if the board finds that a party in bad faith failed to act, the board shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including

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attorney's fees, caused by the failure, unless the board finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subsection may not be excused merely on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by subdivision 3 of subsection C.

(Ref: Rule 4:12, Rules of Virginia Supreme Court.)

P. Prehearing procedure; formulating issues.

1. The hearing officer(s) or the board, may in his or its discretion direct the attorneys for the parties to appear before such hearing officer(s) or the board for a conference to consider;

- a. A determination or clarification of the issues;
- b. A plan and schedule of discovery;
- c. Any limitations on the scope and methods of discovery, including deadlines for the completions of discovery;
- d. The necessity or desirability of amendments to the pleadings;
- e. The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, as well as obtaining stipulations as to the evidence;
- f. The limitation of the number of expert witnesses;
- g. The possibility of filing bills of particulars and grounds of defense by the respective parties; and
- h. Such other matters as may aid in the disposition of the action.

2. The hearing officer(s) or the board, shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the hearing to prevent manifest injustice.

(Ref: Rule 4:13, Rules of Virginia Supreme Court.)

Q. Disposition of discovery material.

Any discovery material not admitted in evidence filed in the secretary's office may be destroyed by the secretary after one year after entry of the final order or decision. But if the proceeding is the subject of an appeal, such material shall not be destroyed until the lapse of one year after receipt of the decision or mandate on appeal or the

entry of any final judgment or decree thereafter.

R. Interlocutory appeals to the board.

If any party to a proceeding under Part III of VR 125-01-1 is aggrieved by a decision or order of the hearing officer(s) relating to discovery or other matters contained in this section, such aggrieved party may appeal such interlocutory decision or order to the board pursuant to VR 125-01-1, Part III, § 2.1.

(Ref: Rule 4:14, Rules of Virginia Supreme Court.)

PART IV. TELEPHONE HEARINGS.

§ 4.1. Applicability.

The board and its hearing officers may conduct hearings by telephone only when the applicant/licensee expressly waives the in-person hearing. The board will determine whether or not certain hearings might practically be conducted by telephone. The provisions of Part I shall apply only to Part IV where applicable.

§ 4.2. Appearance.

The interested parties will be expected to be available by telephone at the time set for the hearing and may produce, under oath, evidence relevant and material to the matters in issue. The board will arrange for telephone conference calls at its expense.

§ 4.3. Argument.

Oral or written argument may be submitted to and limited by the hearing officer. Oral argument is to be included in the stenographic report of the hearing. Written argument, if any, must be submitted to the hearing officer and other interested parties in advance of the hearing.

§ 4.4. Documentary evidence.

Documentary evidence, which an interested party desires to be considered by the hearing officer, must be submitted to the hearing officer and other interested parties in advance of the hearing.

§ 4.5. Hearings.

A. Telephone hearings will usually originate from the central office of the board in Richmond, Virginia, but may originate from other locations. Interested parties may participate from the location of their choice where a telephone is available. If an interested party is not available by telephone at the time set for the hearing, the hearing may be conducted in his absence.

B. If at any time during a telephone hearing the hearing officer determines that the issues are so complex that a fair and impartial hearing cannot be accomplished, the hearing officer shall adjourn the telephone hearing and

reconvene an in-person hearing as soon as practicable.

§ 4.6. Notice of hearing.

Interested parties shall be afforded reasonable notice of a pending hearing. The notice shall state the time, issues involved, and the telephone number where the applicant/licensee can be reached.

§ 4.7. Witnesses.

Interested parties shall arrange to have their witnesses present at the time designated for the telephone hearing, or should supply a telephone number where the witnesses can be reached, if different from that of the interested party.

PART V. PUBLIC PARTICIPATION GUIDELINES FOR ADOPTION OR AMENDMENT OF REGULATIONS.

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

A. Applicability.

These guidelines shall apply to all regulations subject to the Administrative Process Act which are administered by the Department of Alcoholic Beverage Control, *except as provided in subsection G of this section*. They shall not apply to regulations adopted on an emergency basis.

B. Initiation of rulemaking (Step 1).

The board shall publish notice of the commencement or initiation of any rulemaking process. Rulemaking procedures may be initiated at any time by the Alcoholic Beverage Control Board but shall be initiated at least once each calendar year. *At the commencement of any rulemaking process, the board may invite proposals for regulations or regulation changes from any interested person or may limit the process to selected proposals. All initial proposals to be considered shall be in the form of a written petition for the adoption, amendment or repeal of any regulation may be. Petitions shall be filed with the Alcoholic Beverage Control Board at board within any time by any group or individual: limitation as may be specified by the board. A petition may be submitted at any time, by any person, but it shall be at the board's discretion to initiate the rulemaking procedures as a result of such petition or petitions. Any petition not considered may be deferred until the next rulemaking process. The Each petition shall contain the following information, if available:*

1. Name of petitioner;
2. Petitioner's mailing address and telephone number;
3. ~~Recommended~~ General description of proposal, with

recommendations for adoption, amendment or repeal of specific regulation(s);

4. Why is change needed? What problem is it meant to address?;

5. What is the anticipated effect of not making the change?;

6. Estimated costs or savings, or both, to regulated entities, the public, or others incurred by this change as compared to current regulations;

7. Who is affected by recommended change? How affected?;

8. ~~Supporting documents.~~ Draft language; and

9. Supporting documents.

The board may also consider any other request for regulatory change at its discretion.

C. Rule-making procedures Notices - in general .

1. *Mailing list.* The secretary to the board in conjunction with the deputy director for regulation shall prepare a general mailing list of those persons and organizations who have demonstrated an interest in specific regulations in the past through the filing of petitions, written comments or attendance at public hearings. The mailing list will be updated at least every two years, and a current copy will be on file in the office of the secretary to the board. Periodically, but not less than every two years, the board shall publish in the Virginia Register, in a newspaper published at Richmond and of general circulation in the City of Richmond, and in such other newspapers in Virginia as the board may determine, a request that any individual or organization interested in participating in the development of specific rules and regulations so notify the board. Any persons or organizations identified in this process will be placed on the general mailing list.

2. When developing a regulation proposed by citizens or on its initiative, the board shall prepare a Notice of Intended Regulatory Action, which shall include: Notice to listed persons. Each person on the general mailing list shall be sent, by U.S. mail, a copy of all notices pertaining to rulemaking for the board as are published in the Virginia Register. In lieu of such copy, the board may notify those on the mailing list of the publication of the notice and, if lengthy, offer to forward a copy upon payment of reasonable costs for copying and mailing.

D. Initial requirement for public comment; participation in regulation development; ad hoc panels; public meetings (Step 2).

Proposed Regulations

1. Notice of Intended Regulatory Action. The board shall solicit comments, data, views and argument from the public as to each regulation proposal and shall encourage participation of interested persons in the development of regulations and draft language. As to each petition or proposal, the board shall publish a Notice of Intended Regulatory Action. The notice shall specify the date, time and place of any public meeting to consider the proposals, either with or without an ad hoc advisory panel, and shall contain the following information:

- a. Subject of the proposed action;
- b. Identification of the entities that will be affected;
- c. Discussion of the purpose of the proposed action and the issues involved;
- d. Listing of applicable laws or regulations;
- e. Name of individual, group or entity proposing regulation;
- f. Request for comments, data, views or argument from interested parties, either at the public meeting or in writing orally or in writing, to the board or its specially designated subordinate;
- g. Notification of date, time and place of the any scheduled public meeting on the proposal; and
- h. Name, address and telephone number of staff person to be contacted for further information.

2. The board shall disseminate the Notice of Intended Regulatory Action to the public via:

- a. Distribution by mail to persons on General Mailing List.
- b. a. Publication in the Virginia Register of Regulations;
- b. Distribution by mail to persons on the general mailing list pursuant to subsection C; and
- c. Press release to media throughout the Commonwealth if a public meeting is scheduled.

3. The board shall may form an ad hoc advisory panel consisting of persons selected from the general mailing list to consider regulation proposals to make recommendations on the proposed regulation and formulate draft language, assist in development of draft language, and provide such advice as the board may request. The board may direct the panel to participate in a public meeting to consider regulation proposals.

4. The board shall may conduct a regulation

development public meeting to receive views and comments and answer questions of the public. The meeting will be held at least 30 days following publication of the notice. It normally will be held in Richmond, but if the proposed regulation will apply only to a particular area of the Commonwealth, the meeting will be held in the area affected.

6. After consideration of the public input and the report of the advisory panel, the board shall prepare a final proposed draft regulation and initiate the proceedings required by the Administrative Process Act.

E. Notice of public hearing and publication of proposals pursuant to § 9-6.14:7.1 C of the Virginia Administrative Process Act (Step 3).

1. The board shall consider the comments, recommendations, reports and other input from the public, industry and other interested persons received during the initial steps of public participation in the regulation development process, including comments, views, data and argument received during any public meeting, before publishing a final proposed draft regulation and initiating the proceedings required by the Administrative Process Act.

2. The board shall comply with the notice, publication and other requirements of § 9-6.14:7.1, and final proposed drafts to adopt, amend or repeal regulations, together with any other required statements, shall be published in the Virginia Register, in a newspaper published and of general circulation in the City of Richmond, and in such other newspapers in Virginia as the board may determine. In addition, the board shall comply with the provisions of subdivision C 2 above. Such notice shall solicit comments, views, data and argument from the public and shall specify the date, time and place of any scheduled public hearing to consider adoption of such regulation proposals.

F. Public hearing (Step 4).

When required by applicable law, the board shall conduct a public hearing to consider adoption of all proposed regulations. At such hearing, the board may receive and consider such additional written and verbal comment as it deems appropriate prior to any final vote.

G. Notwithstanding the foregoing provisions, the board may elect to dispense with any required public participation or other required procedure to the extent authorized by the Virginia Administrative Process Act, § 9-6.14:1 et seq. of the Code of Virginia.

VR 125-01-2. Advertising.

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

Proposed Regulations

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, of the board 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 or for the benefits of any permittee or licensee does not constitute advertising.

B. Cooperative advertising.

There shall be no cooperative advertising as between a producer, manufacturer, bottler, importer or wholesaler and a retailer of alcoholic beverages, except as may be authorized by regulation of the board pursuant to § 4-79.1 of the Code of Virginia. The term "cooperative advertising" shall mean the payment or credit, directly or indirectly, by any manufacturer, bottler, importer or wholesaler whether licensed in this Commonwealth or not to a retailer for all or any portion of advertising done by the retailer.

C. 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. C. Beverages and cider.

Advertising of beverages and cider, as defined in §§ 4-99 and 4-27, respectively, of the Code of Virginia, shall conform with the requirements for advertising beer.

E. D. Exceptions.

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

F. E. General restrictions.

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

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

4. Is false or misleading in any material respect, or implies that the product has a curative or therapeutic effect, or is disparaging of a competitor's product;

5. Implies or indicates, directly or indirectly, that the product is government endorsed by the use of flags, seals or other insignia or otherwise;

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

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

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

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

8. Constitutes or contains an offer to pay or provide anything of value conditioned on the purchase of alcoholic beverages or beverages, except for coupons as provided in § 9 of this regulation.

§ 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: Retail licensees may advertise any brand or brands of alcoholic beverages inside their licensed establishment and use any form of advertising materials within the same, subject to the following provisions:

1. The use of advertising materials consisting of anything other than printed matter appearing on paper, 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, 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

Proposed Regulations

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;

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

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

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

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

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

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

h. Point-of-sale entry blanks relating to contests and sweepstakes may be made provided by beer and wine wholesalers to retail licensees for use on retail premises if such items are offered to all retail licensees equally and the wholesaler has obtained the consent, which may be a continuing consent, of each retailer or his representative. Wholesale licensees in Virginia may not put entry blanks on the package at the wholesale premises and entry blanks may not be shipped in the case to retailers;

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

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

1. Retail on-premises and on-and-off-premises licensees may use:

a. Any nonpermanent advertising material which is neither designed as, nor functions as, permanent point-of-sale advertising material including, but not limited to, nonmechanical advertising material consisting of printed matter appearing on paper, cardboard or plastic stock with a value not in excess of \$5.00 at wholesale. Such advertising material may be obtained by such retailers from any source, including manufacturers, bottlers or wholesalers of alcoholic beverages who may sell, lend, buy for or give to such retailers such advertising materials.

b. Any permanent advertising material which is designed or manufactured to serve as permanent point-of-sale including, but not limited to, mechanical devices, illuminated devices, and service items such as placemats, coasters and glasses, and which has a value in excess of \$5.00 at wholesale. Such advertising material may be obtained by such retailers from any source, including manufacturers, bottlers or wholesalers of alcoholic beverages. If such materials are obtained from any manufacturer, bottler or wholesaler, then such materials must be purchased at the normal wholesale price.

2. Retail off-premises licensees may use any nonpermanent advertising material which is neither designed as, nor functions as permanent point-of-sale including, but not limited to nonmechanical advertising material consisting of printed matter appearing on paper, cardboard or plastic stock and which has a nominal value not in excess of \$5.00 at wholesale.

Such advertising material may be obtained by such retailers from any source, including manufacturers, bottlers or wholesalers of alcoholic beverages who may sell, lend, buy for or give to such retailers such advertising materials.

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

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circumstances otherwise prohibited by law, nor may any retailer induce, attempt to induce, or consent to any such supplier of alcoholic beverages furnishing such retailer any such advertising.

D. 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.

C. Any advertising materials provided for herein, which may have been obtained by any retail licensee from any manufacturer, bottler or wholesaler of alcoholic beverages, may be installed in the interior of the licensed establishment by any such manufacturer, bottler or wholesaler using any normal and customary installation materials, provided no such materials are installed or displayed in exterior windows or within the interior of the retail establishment in such a manner that such advertising materials may be viewed from the exterior of the retail premises. With the consent of the retail licensee, which consent may be a continuing consent, wholesalers may make or affix retail prices on these materials.

D. Every retail on-premises and on-and off-premises licensee and who, pursuant to subdivision B 1 b above, obtains from any manufacturer, bottler or wholesaler of alcoholic beverages any permanent advertising material which is designed or manufactured to serve as permanent point-of-sale shall keep a complete, accurate and separate record of all such material obtained. Such records shall show: (i) the name and address of the manufacturer, bottler or wholesaler from whom obtained; (ii) the date furnished; (iii) the item furnished; and (iv) the price charged therefor. All such records, invoices and accounts shall be kept by each such licensee at the place designed in the license for a period of two years and shall be available for inspection and copying by any member of the board or its agents at any time during business hours.

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

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

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

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

b. No more than two signs, which must be directional in nature, not farther than 1/2 mile from the licensed establishment limited in dimension to 64 square feet with advertising limited to brand names;

c. If the establishment is a winery also holding a winery 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, which shall include any antique vehicles bearing original or restored alcoholic beverage advertising used for promotional purposes. Additionally, any person whether licensed in this Commonwealth or not, may use and display antique vehicles bearing original or restored alcoholic beverage advertising.

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

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

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

c. No advertising of alcoholic beverages may be displayed in exterior windows or within the interior of the retail establishment in such a manner that such advertising materials may be viewed from the exterior of the retail premises, except on table menus or newspaper tear sheets.

3. Manufacturers, wholesalers and retailers may engage in billboard advertising within stadia, coliseums or racetracks that are used primarily for professional or semiprofessional athletic or sporting events.

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

A. Generally.

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

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

B. Further requirements and conditions:

1. All alcoholic beverage advertising shall include the name and address (street address optional) of the responsible advertiser;
2. 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; *Advertising placed by a manufacturer, bottler or wholesaler in trade publications of associations of retail licensees or college publications shall not constitute cooperative advertising;*
3. Advertisements of beer, wine and mixed beverages are not allowed in college student publications unless in reference to a dining establishment, except as provided below. A "college student publication" is defined as any college or university publication that is prepared, edited or published primarily by students at such institution, is sanctioned as a curricular or extra-curricular activity by such institution and which is distributed or intended to be distributed primarily to persons under 21 years of age.

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

4. Advertisements of beer, wine and mixed beverages

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

5. Notwithstanding the provisions of this or any other regulation of the board pertaining to advertising, a manufacturer, bottler or wholesaler of alcoholic beverages may place an advertisement in a college student publication or other publication not of general circulation which is distributed or intended to be distributed primarily to persons under 21 years of age which has a message relating solely to and promoting public health, safety and welfare, including, but not limited to, moderation and responsible drinking messages, anti-drug use messages and driving under the influence warnings. Such advertisement may contain the name, logo and address of the sponsoring industry member, provided such recognition is at the bottom of and subordinate to the message, occupies no more than 20% of the advertising space, and contains no reference to or pictures of the sponsor's brand or brands, mixed drinks, or exterior signs. Any public service advertisement involving alcoholic beverages or beverages shall contain a statement specifying the legal drinking age in the Commonwealth.

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

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

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. Any written, printed or graphic advertisement shall be in lettering or type size sufficient to be conspicuous and readily legible.*

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2. Prohibited statements statement. 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.

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 as defined in § 4 B 3 of this regulation nor in newspapers, programs or other written or pictorial matter primarily relating to intercollegiate athletic events.

§ 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~~ \$5.00 in wholesale value may be given away;

2. Manufacturers, importers, bottlers, brokers, wholesalers or their representatives may give items not in excess of ~~\$2.00~~ \$5.00 in wholesale value, limited to one item per retailer and one item per employee, per visit, which may not be displayed on the licensed premises. Neither manufacturers, importers, bottlers, brokers, wholesalers or their representatives may give such items to patrons on the premises of retail licensees;

3. Items in excess of ~~\$2.00~~ \$5.00 in wholesale value may be donated by distilleries, wineries and breweries only to participants or entrants in connection with the sponsorship of conservation and environmental programs, professional, semi-professional or amateur athletic and sporting events subject to the limitations of § 10 of VR 125-01-2, and for events of a charitable or cultural nature;

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

5. Wearing apparel shall be in adult sizes;

6. Point-of-sale order blanks, relating to novelty and specialty items, may be provided by beer and wine wholesalers to retail licensees for use on their premises, if done for all retail licensees equally and after obtaining the consent, which may be a continuing consent, of each retailer or his representative. Wholesale licensees in Virginia 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 alcoholic beverages and beverages~~ in closed containers with informational signs provided such merchandise is not sold or given away except as permitted in VR 125-01-7, § 10;

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

3. Distribution of novelty and specialty items bearing ~~wine and beer alcoholic beverage and beverage~~ advertising not in excess of ~~\$2.00~~ \$5.00 in wholesale value.

§ 8. Advertising; film presentations.

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

1. Presentations made only to bona fide private groups, associations or organizations upon request; and

2. Presentations essentially educational in nature.

§ 9. Advertising; coupons.

A. Definitions.

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

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

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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 provide coupon pads to retailers for use by retailers on their premises, if done for all retail licensees equally and after obtaining the consent, which may be a continuing consent, of each retailer or his representative. Wholesale 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 *their own discount or refund* coupons on wine and beer sold for off-premises consumption only. Retail licensees may offer *such* coupons in the print media, at the point-of-sale or by direct mail to consumers. ~~Coupons offered by retail licensees shall appear in an advertisement with nonalcoholic merchandise and conform in size and content to the advertising of such merchandise.~~

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

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

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

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

A. Generally.

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

B. Restrictions and conditions:

1. ~~Programs and events~~ Any *sponsorship* on a college, high school or younger age level ~~are~~ *is* prohibited;

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

3. Awards or contributions of alcoholic beverages are prohibited;

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

5. A charitable event is one held for the specific purpose of raising funds for a charitable organization which is exempt from federal and state taxes;

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

7. Advertising materials as defined in VR 125-01-3 § 8 F, table tents as defined in VR 125-01-3 § 8 G and canisters are permitted;

8. ~~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;~~

9. ~~8.~~ 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

~~10.~~ 9. Manufacturers may sponsor public events and wholesalers may only cosponsor charitable events.

VR 125-01-3. Tied House.

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

A. Permitted acts.

For the purpose of maintaining the freshness of the stock and the integrity of the products sold by him, a

wholesaler may perform ; ~~except on Sundays~~, the following services for a retailer upon consent, which may be a continuing consent, of the retailer:

1. Rotate, repack and rearrange wine or beer in a display (shelves, coolers, cold boxes, and the like, and floor displays in a sales area);
2. Restock beer and wine;
3. Rotate, repack, rearrange and add to his own stocks of wine or beer in a storeroom space assigned to him by the retailer;
4. Transfer beer and wine between storerooms, between displays, and between storerooms and displays; and
5. Create or build original displays using wine or ~~mal~~ ~~beverage~~ beer 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. *Products that a manufacturer discontinues nationally may be returned and money refunded;*
 - d. Resaleable draft beer or beverages may be returned and money refunded;
 - e. Products in the possession of a retail licensee

whose license is terminated by operation of law, voluntary surrender or order of the board may be returned and money refunded upon permit issued by the board;

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

f. ~~g.~~ Beer wine may be exchanged on an identical quantity, brand or package basis for quality control purposes. *Any such exchange shall be documented by the word "exchange" on the proper invoice.*

~~§ 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.~~ § 2. 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

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beverages, or beverages.

§ 4. § 3. 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. § 4. Certain transactions to be for cash; "cash" defined; checks and money orders; *electronic fund transfers*; records and reports by sellers; payments to the board.

A. Generally.

Sales of wine, beer or beverages between wholesale and retail licensees of the board shall be for cash paid and collected at the time of or prior to delivery, and each ~~except where payment is to be made by electronic fund transfer as hereinafter provided.~~ Each invoice covering such a sale or any other sale shall be signed by the purchaser at the time of delivery and shall specify the manner of payment .

B. "Cash" defined.

"Cash," as used in this section, shall include (i) legal tender of the United States, (ii) a money order issued by a duly licensed firm authorized to engage in such business in Virginia ~~or~~ (iii) a valid check drawn upon a bank account in the name of the licensee or permittee or in the trade name of the licensee or permittee making the purchase , or (iv) an *electronic fund transfer*, initiated pursuant to subsection D of this section , from a bank account in the name, or trade name, of the retail licensee making a purchase from a wholesaler or the board .

C. Checks ~~and~~ , money orders and *electronic fund transfers* .

If a check ~~or~~ , money order or *electronic fund transfer* is used, the following provisions apply:

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

2. If nonalcoholic merchandise is also sold to the retailer, the check ~~or~~ , money order or *electronic fund transfer* may be in an amount no larger than the total purchase price of the alcoholic beverages and

nonalcoholic beverage merchandise. A separate invoice shall be used for the nonalcoholic merchandise and a copy of it shall be attached to the copies of the alcoholic beverage invoices which are retained in the records of the wholesaler and the retailer.

D. *Electronic fund transfers*.

If an *electronic fund transfer* is used for payment by a licensed retailer or a permittee for any purchase from a wholesaler or the board, the following provisions shall apply:

1. Prior to an *electronic fund transfer*, the retail licensee shall enter into a written agreement with the wholesaler specifying the terms and conditions for an *electronic fund transfer* in payment for the delivery of wine, beer or beverages to that retail licensee. The *electronic fund transfer* shall be initiated no later than one business day after delivery and the wholesaler's account shall be credited by the retailer's bank no later than the following business day. The *electronic fund transfer* agreement shall incorporate the requirements of this subdivision, but this subdivision shall not preclude an agreement with more restrictive provisions. For purposes of this subdivision, the term "business day" shall mean a business day of the respective bank.

2. The wholesaler must generate an invoice covering the sale of wine, beer or beverages and shall specify that payment is to be made by *electronic fund transfer*. Each invoice must be signed by the purchaser at the time of delivery.

3. Nothing in this subsection shall be construed to require that the board or any licensee must accept payment by *electronic fund transfer*.

~~D. Reports~~ E. Records and reports by seller.

Wholesalers shall maintain on their licensed premises records of all invalid checks received from retail licensees for the payment of wine, beer or beverages, as well as any stop payment order, insufficient fund report and evidence of any untimely or incomplete *electronic fund transfer*. Further, wholesalers shall report to the board ~~on~~ or before the 15th day of each month any instances of invalid checks and incomplete or untimely *electronic fund transfers* 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. F. Payments to the board.

Payments to the board for the following items shall be for cash, as ~~herein~~ defined in subsection B of this section :

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. *Beer and beverage excise taxes pursuant to Chapter 4 (§ 4-127 et seq.) of Title 4 of the Code of Virginia;*
4. 5. Registration and certification fees collected pursuant to these regulations;
5. 6. Monetary penalties and costs imposed on licensees and permittees by the board; and
6. 7. Forms provided to licensees and permittees at cost by the board.

~~§ 6.~~ § 5. 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.	\$.02
Bottles having a capacity of more than 12 oz. but not more than 32 oz.	\$.04
Cardboard, fibre or composition cases other than for 1 1/8-or 2 1/4-gallon kegs	\$.02
Cardboard, fibre or composition cases for 1 1/8-or 2 1/4-gallon kegs	\$.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.~~ § 6. 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

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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 this regulation may include educational programs regarding wine, beer or beverages to for mixed beverage licensees, but shall not include the promotion of, or educational programs related to, distilled spirits or the use thereof in mixed drinks unless a distilled spirits solicitor's permit has been obtained in addition to a solicitor's permit .

E. For the purposes of this regulation, the soliciting or promoting of wine, 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: § 7. Inducements to retailers; tapping equipment; bottle or can openers; banquet licensees; paper, cardboard or plastic advertising materials; clip-ons and table tents.

A. Beer tapping equipment.

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

1. Draft beer knobs, containing advertising matter which shall include the brand name and may further include only trademarks, housemarks and slogans and shall not include any illuminating devices or be otherwise adorned with mechanical devices which are not essential in the dispensing of draft beer; and

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

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

d. Draft boxes; and

e. Refrigeration equipment or components thereof.

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

B. Wine tapping equipment.

Any manufacturer, bottler or wholesaler may sell to any retailer and install in the retailer's establishment tapping accessories such as standards, faucets, rods, vents, taps, tap standards, hoses, cold plates, washers, couplings, gas gauges, vent tongues, shanks, and check valves, if the tapping accessories are sold at a price not less than the cost of the industry member who initially purchased them, and if the price is collected within 30 days of the date of sale.

Wine tapping equipment shall not include the following:

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

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

D. Bottle or can openers.

Any manufacturer, bottler or wholesaler of wine or beer may sell or give to any retailer, bottle or can openers upon which advertising matter regarding alcoholic beverages may appear, provided the wholesale value of any such openers given to a retailer by any individual manufacturer, bottler or wholesaler does not exceed ~~\$2.00~~ \$5.00 . Openers in excess of ~~\$2.00~~ \$5.00 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

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regarding wine or beer may appear.

F. 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, any nonmechanical advertising materials consisting of printed matter appearing on paper, cardboard or plastic stock *and which has a wholesale value not in excess of \$5.00* . 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 *provided no such advertising materials are installed or displayed in exterior windows or within the interior of the retail establishment in such a manner that such advertising materials may be viewed from the exterior of the retail premises* . With the consent of the retail licensee, which 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;~~

3. ~~If any such paper, cardboard or plastic advertising materials require assembly, the size limitations set forth above in 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. Clip-ons and table tents.

Any manufacturer, bottler or wholesaler of wine, beer or distilled spirits may sell, lend, buy for or give to any retail licensee clip-ons and table tents containing the listing of not more than four wines, 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: § 8. Routine business entertainment; definition; permitted activities; conditions.

A. Generally.

Nothing in this regulation shall prohibit a wholesaler or manufacturer of alcoholic beverages licensed in Virginia 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

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providing of property or any other thing of value to retail licensees;

4. Routine business entertainment that requires overnight stay is prohibited;

5. No more than \$200 may be spent per 24-hour period on any employee of any retail licensee, including a self-employed sole proprietor, or, if the licensee is a partnership, or any partner or employee thereof, or if the licensee is a corporation, on any corporate officer, director, shareholder of 10% or more of the stock or other employee, such as a buyer. Expenditures attributable to the spouse of any such employee, partnership or stockholder, and the like, shall not be included within the foregoing restrictions;

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

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

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

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. Intoxicated; or
3. An interdicted person.

B. Prohibited consumption.

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

§ 2. Determination of legal age of purchaser.

A. In determining whether a licensee, or his employee or agent, has reason to believe that a purchaser is not of

legal age, the board will consider, but is not limited to, the following factors:

1. Whether an ordinary and prudent person would have reason to doubt that the purchaser is of legal age based on the general appearance, facial characteristics, behavior and manner of the purchaser; and

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

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

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

§ 3. Restricted hours; exceptions.

A. Generally.

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

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

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

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

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

B. Exceptions:

1. Club licensees: No restrictions at any time;

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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.

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

1. Spirits sold by the drink as mixed beverages or in original closed containers must have been purchased under the mixed beverage restaurant license upon purchase forms provided by the board;
2. Delivery of sales of mixed beverages and spirits in original closed containers shall be made only in the bedroom of the registered guest or to the sponsoring group in the private room of a scheduled function. This section shall not be construed to prohibit a licensee catering a scheduled private function from delivering mixed beverage drinks to guests in attendance at such function;
3. Receipts from the sale of mixed beverages and spirits sold in original closed containers, as well as other alcoholic beverages and beverages, shall be included in the gross receipts from sales of all such merchandise made by the licensee; and
4. Complete and accurate records of sales of mixed beverages and sales of spirits in original closed containers to registered guests in bedrooms and to sponsors of scheduled private functions in private rooms shall be kept separate and apart from records of all mixed beverage sales.

D. Employment of minors.

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

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

§ 7. Restrictions on construction, arrangement and lighting

of rooms and seating of licensees.

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

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

No retail licensee shall entreat, urge or entice any patron of his establishment to purchase any alcoholic beverage or beverage; nor shall such licensee allow any other person to so entreat, urge or entice a patron upon his licensed premises. *Entreating, urging or enticing shall include, but not be limited to, making alcoholic beverages placed in containers of ice which are visible, located in public display areas and available on a self-service basis available to patrons of retail establishments licensed for off-premises sales only.* 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

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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 ~~\$2,500~~ \$2,000
 Inventory (cost) ~~\$2,500~~ \$2,000

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

Monthly sales \$2,000
 Inventory (cost) \$2,000

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

Monthly sales \$2,000
 Inventory (cost) \$2,000

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

5. *"Specialty shop."* 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:

Monthly sales \$1,000
 Inventory (cost) \$1,000

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

Monthly sales ~~\$1,500~~ \$1,000
 Inventory (cost) ~~\$1,500~~ \$1,000

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

Monthly sales \$1,000
 Inventory (cost) \$1,000

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

Monthly sales ~~\$750~~ \$1,000
 Inventory (cost) ~~\$750~~ \$1,000

C. Exceptions.

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

D. Further conditions.

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

1. The extent to which sales of required commodities

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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. *The facilities shall be such that patrons may purchase food prepared on the premises for consumption on the premises at substantially all times that alcoholic beverages are offered for sale therein. The seating capacity of such room or area shall be included in determining eligibility qualifications for a mixed beverage restaurant.*

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

3. *"Meals."* In determining what constitutes a "meal"

as the term is used in this section, the board may consider the following factors, among others:

a. The assortment of foods commonly offered for sale;

b. The method and extent of preparation and service required; and

c. The extent to which the food served would be considered a principal meal of the day as distinguished from a snack.

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

a. The business hours observed as compared with similar type businesses;

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

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

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

B. Wine and beer. Retail on- or on-and off-premises licenses may be granted to persons operating the following types of establishments provided 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 \$2,000

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

Monthly sales \$3,000 \$2,000

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

Monthly sales \$3,000 \$2,000

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

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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 \$2,000

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

Monthly sales \$1,800 \$2,000

3. "Hotel." See subdivision B 3;

Monthly sales \$1,800 \$2,000

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

D. Mixed beverage licenses.

The following shall apply to mixed beverage licenses where appropriate:

1. "Bona fide, full-service restaurant." An established place of business where meals with substantial entrees are habitually sold to persons and which has adequate facilities and sufficient employees for cooking, preparing and serving such meals for consumption at tables in dining rooms 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 \$4,000 of which at least \$3,000 \$2,000 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 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. 4. "Outside terraces or patios." An outside terrace or patio, the location, equipment and facilities of which have been approved by the board may be approved as a "dining room" 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 . A location adjacent to a public sidewalk, street or alley will not be approved where direct access is permitted from such sidewalk, street or alley by more than one well-defined entrance therefrom. The seating capacity of an outside terrace or patio if used regularly by those operations which are seasonal in nature, shall be included in determining eligibility qualifications. For purposes of this subdivision, the term "seasonal operations" is defined as an establishment that voluntarily surrenders its license to the board for part of its license year.

6. 5. "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; For purposes of qualifications, a counter shall be considered a table if provided with seating for customers and designed to accommodate the serving of food and refreshments.

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

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

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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 wine having an alcoholic content of more than 14% by volume but not more than 21%.

B. Qualifications.

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

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

A. Applications.

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

1. A certified copy of the charter, articles of association or constitution;
2. A copy of the bylaws;
3. A list of the officers and directors showing names, addresses, ages and business employment;

4. The average number of members for the preceding 12 months. Only natural persons may be members of clubs; and

5. A financial statement for the latest calendar or fiscal year of the club, and a brief summary of the financial condition as of the end of the month next preceding the date of application.

B. Qualifications.

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

1. The club's objectives and its compliance with the objectives;
2. The club's qualification for tax exempt status from federal and state income taxes; and
3. The club's permitted use of club premises by nonmembers, including reciprocal arrangements.

C. Nonmember use.

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

1. A licensed club may allow nonmembers, who would otherwise qualify for a banquet or banquet special events license, to use club premises, where the privileges of the club license are exercised, 12 times per calendar year for public events held at the licensed premises, such events allowing nonmembers to attend and participate in the event at the licensed premises;

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

3. Notwithstanding subdivisions C 1 and C 2 above, a licensed club may allow its premises to be used no more than a total of 12 times per calendar year by organizations or groups who obtain banquet or banquet special events licenses.

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

D. 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. 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.

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 prepare and sign an annual financial statement on forms prescribed by the board. The statement may be on a calendar year or fiscal year basis, but shall be consistent with any established tax year of the club. The statement must be prepared and available for inspection on the club premises no later than 120 days next following the last day of the respective calendar or fiscal year, and each such statement must be maintained on the premises for a period of three consecutive years. In addition, each club holding a mixed beverage license shall be required to prepare and timely submit the mixed beverage annual review report required by VR 125-01-7 § 9 C.

§ 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;

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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~~ \$4,000 per month and who has complied with the requirements of the local governing body concerning sanitation, health, construction or equipment and who has obtained all local permits or licenses which may be required to conduct such a catering business.

B. Privileges.

The license authorizes the following:

1. The purchase of spirits, vermouth and wine produced by farm wineries from the board;
2. The purchase of wine and cider from licensed wholesalers or farm wineries or the purchase of beer or 3.2 beverages from licensed wholesalers;
3. The retail sale of alcoholic beverages or mixed beverages to persons who sponsor the private gatherings or special events described in subsection A

or directly to persons in attendance at such events. No banquet or mixed beverage special events license is required in either case; and

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

C. Restrictions and conditions.

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

1. Alcoholic beverages may be sold only for on-premises consumption to persons in attendance at the gathering or event;
2. The records required to be kept by § 9 of VR 125-01-7 shall be maintained by caterers. If the caterer also holds other alcoholic beverages licenses, he shall maintain the records relating to his caterer's business separately from the records relating to any other license. Additionally, the records shall include the date, time and place of the event and the name and address of the sponsoring person or group of each event catered;
3. The annual gross receipts from the sale of food cooked and prepared for service at gatherings and events referred to in this regulation and nonalcoholic beverages served there shall amount to at least 45% of the gross receipts from the sale of mixed beverages and food;
4. The caterer shall notify the board in writing at least 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 ;
2. Having as its premises a fire or rescue squad station regularly occupied by such fire department or rescue squad ; and
3. Being duly recognized by the governing body of the city, county or town in which it is located.

B. Privileges.

The license authorizes the following:

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

C. Restrictions and conditions.

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

1. Alcoholic beverages cannot be sold or purchased by the licensee;
2. Alcoholic beverages cannot be sold or charged for in any way by the person, association, corporation or other entity permitted to use the premises;
3. The private affair referred to in subdivision B 1 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;

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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.

§ 20. Specialty stores; wine and beer off-premises licenses; conditions; records; inspections.

Pursuant to the provisions of § 4-25 A 13 of the Code of Virginia, the board may grant retail wine and beer off-premises licenses to persons operating (i) an historical site or museum specialty store or (ii) a handcrafts specialty store.

An historical site or museum specialty store shall be defined as any bona fide retail store selling, predominately, gifts, souvenirs and specialty items of an historical nature or relating to the history of the site or any exhibits (i) located on the premises or grounds of a registered national, state or local historic building or site and which is open to the public on a regular basis or (ii) which is located within the premises of a museum which is open to the public on a regular basis, provided in either case that such store is located with a permanent structure where stock is displayed and offered for sale and which has facilities to properly secure any stock of wine or beer.

A handcrafts specialty store shall be defined as any bona fide retail store selling, predominately, handmade arts, collectibles, crafts or other handmade products which is open to the public on a regular basis, provided that such store is located within a permanent structure where stock is displayed and offered for sale and which facility may be properly secured when closed.

The board may consider the purpose, characteristics, nature, and operation of the applicant establishment in determining whether it shall be considered as a specialty store within the meaning of this section.

Specialty store retail licenses, pursuant to this regulation, shall be granted only to persons who have places of business which have been in operation for no less than 12

months next preceding the filing of the application.

A specialty store retail license shall authorize the licensee to sell at retail alcoholic beverages which have been purchased from and received at the establishment from wholesale licensees of the board, to sell such alcoholic beverages only in closed packages for consumption off the premises, to sell such alcoholic beverages only within the interior premises of the store, and to deliver or ship the same to purchasers thereof in accordance with Title 4 of the Code of Virginia and regulations of the board. No chilled alcoholic beverages may be sold under the privileges of the specialty store retail license.

In granting licenses under the provisions of this regulation, the board may impose restrictions and conditions upon purchases and sales of wine and beer in accordance with this regulation or as may be deemed reasonable by the board to ensure that the distribution of alcoholic beverages is orderly, lawful and only incidental to the principal business of the licensee. In no event may the sale of such alcoholic beverages exceed 25% of total annual gross sales at the establishment.

Every person licensed to sell alcoholic beverages under the provisions of this regulation shall comply with VR 125-01-7 § 9.

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

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

VR 125-01-06. 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 for orders on forms prescribed by the board and provided at cost if supplied by the board.

B. Wholesale wine distributors.

Wholesale wine distributors shall comply with the following procedures:

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

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

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

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

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

board, and in compliance with the instructions on the forms.

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

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§ 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 exercise of license privileges .

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.

A. In addition to complying with the requirements of subdivisions 7 and 10 of § 4-25 A of the Code of Virginia, pertaining to beer and wine importer licenses, holders of beer and wine importer licenses must comply with the provisions of § 4-25 D in order to exercise the privileges of such licenses. The board shall approve such forms as are necessary to facilitate compliance with § 4-25 D. Any document executed by, or on behalf of, brand owners for the purpose of designating beer or wine importer licensees as the authorized representative of such brand owner must be signed by a person authorized by the brand owner to do so. If such person is not an employee of the brand owner, then such document must be accompanied by a written power of attorney which provides that the person executing the document on behalf of the brand owner is:

the attorney-in-fact of the brand owner and has full power and authority from the brand owner to execute the required statements on its behalf. The board may approve a limited power of attorney form in order to effectuate the aforesaid provision.

B. When filing the list required by § 4-25 D of the Code of Virginia of all wholesale licensees authorized by a beer or wine importer to distribute brands of beer or wine in the Commonwealth, beer and wine importer licensees shall comply with the provisions of the Beer and Wine Franchise Acts pertaining to designation of sales territories in the case of wholesale beer licensees and designations of primary areas of responsibility in the case of wholesale wine licensees.

C. In the event that, subsequent to the filing of the brand owner's authorization for a licensed importer to import any brand of beer or wine, the importer makes arrangements to sell and deliver or ship additional brands of beer or wine into this Commonwealth, the privileges of its license shall not extend to such additional brands until the licensee complies with the requirements of § 4-25 D of the Code of Virginia and the provisions of this section in relation to each such additional brand. Likewise, if the brand owner who has previously authorized a licensed importer to import one or more of its brands of beer or wine into this Commonwealth should, subsequent thereto, withdraw from the importer its authority to import such brand, it shall be incumbent upon such importer to make a supplemental filing of its brand owner authorizing documents indicating the deletion of any such brand(s) of beer or wine.

§ 7. Beer and beverage excise taxes.

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

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

2. A manufacturer, bottler or wholesaler of beer or beverages may request in writing a waiver of the surety and the bond by the board. The board may withdraw such waiver at any time for failure to comply with the provisions of §§ 4-128, 4-129 and 4-131 of the Code of Virginia.

B. Shipment of beer and beverages to installations of the

armed forces.

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

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

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

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

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

D. Rate of interest.

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

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

A. Generally.

This regulation applies to the solicitation, directly or

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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: reflecting all expenses incurred by him in connection with the solicitation of the sale of his employer's products and shall, upon request, furnish the board with a copy of such records.

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 item per retailer per brand and one item per employee, per visit) which may not be displayed on the licensed premises; distribute novelty and specialty items bearing distilled spirits advertising not in excess of ~~\$2.00~~ \$5.00 in wholesale value (one item per retailer per brand and one item per employee, per visit) which may not be displayed on the licensed premises; and provide film or video presentations of distilled spirits which are essentially educational to licensees and their employees only, and not for display or viewing by customers;

2. Provide to a mixed beverage licensee sample servings from packages 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;

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

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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~~ \$5.00 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. 8. 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. 9. 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. 10. Engage in solicitation of distilled spirits other than as authorized by law.~~

F. Refusal, suspension or revocation of permits.

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

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

~~§ 9. Sunday deliveries by wholesalers prohibited; exceptions.~~

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

COMMONWEALTH OF VIRGINIA



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ALCOHOLIC BEVERAGE CONTROL BOARD

TO: WINE OR BEER IMPORTERS

SUBJECT: SECTION 6 OF VR125-01-6
 SECTION 4-25.D., CODE OF VIRGINIA

The 1991 session of the General Assembly amended certain provisions of the ABC Act that, when viewed in conjunction with Board Regulations, requires the following information of all importers which own the brand(s) to be imported.

- A list of the brands of wine or beer being brought into Virginia.

For those importers which are not the owner of the brand, the following information is required and the forms, with instructions, are enclosed.

1) Importer Designation and Authorization Form (Attachment A)

Written authorization by the brand owner for the importer to sell and deliver or ship the individual brands into Virginia, as well as to give written authorization for the importer to establish written agreements of a definite duration on behalf of the brand owner, as its authorized representative, with each wholesale licensee to whom the importer sells any brand owned by the brand owner.

2) Designation of Authorized Distributor Form (Attachment B)

A current list of all wholesale licensees recognized by the importer as the authorized representative of the brand owner to distribute such brand(s) within Virginia.

An instruction sheet for the forms is attached.

NOTE: Additionally, any applicant which is also a wholesale licensee need not file either the importer designation (Attachment A) or authorized distributor (Attachment B) forms in relation to any brand owner with which the applicant has a direct commercial relationship in its capacity as a wholesale licensee; however, if the applicant acts as a master distributor in which it appoints a sub-distributor with the authorization and direction of the brand owner, then the applicant must complete and execute the aforementioned forms.

SPECIAL INSTRUCTIONS FOR APPLICANTS FOR ISSUANCE
 OR RENEWAL OF WINE OR BEER IMPORTER'S LICENSES

These instructions pertain to the Importer Designation and Authorization Form and the Designation of Authorization Distributor Form which must be completed and filed by any applicant for issuance or renewal of a wine or beer importer's license who proposes to import any brand of beer or wine of which the applicant is not the owner. If the applicant proposes to import brands of which it is the owner, the Importer Designation and Authorization Form and the Designation of Authorized Distributor Form are not applicable and should not be filed.

I. Importer Designation and Authorization Form (Attachment A)

The applicant must arrange to have the owner or its Attorney-in-fact, of each brand it proposes to import into the Commonwealth complete this form which is to be filed with the applicant's application for issuance or renewal of its importer's license. The applicant's importer license privileges will be effective only as to those brands which the applicant owns or, in the case of brands owned by other parties, for which it files this form. A separate Importer Designation and Authorization Form must be filed by the applicant for each brand owner for whom the importer serves as an authorized representative in the Commonwealth.

II. Designation of Authorized Distributor Form (Attachment B)

This form must be completed and filed by the applicant for issuance or renewal of an importer's license. In this form, the applicant is stating the identity of all designated distributors who are authorized by the applicant, as the brand owner's authorized representative, to distribute the brand owner's products in Virginia. Therefore, a separate Designation of Authorized Distributor Form must be filed by the applicant for each brand owner whom it represents.

In the event that changes occur in the list of designated distributors filed by the applicant, the applicant should file a supplemental Designation of Authorization Distributor Form (Attachment B) which clearly indicates any changes in the list of authorized distributors. The applicant is cautioned, however, that any changes in its network of authorized distributors in Virginia will need to be undertaken in a manner consistent with the Beer Franchise Act and/or the Wine Franchise Act, as the case may be.

III. Supplemental and/or Subsequent Form Filings

Both of the forms covered by these instructions (i.e., the Importer Designation and Authorization Form [Attachment A] and the Designation of Authorized Distributor Form [Attachment B]) are effective until subsequently rescinded or modified, as the case may be. Therefore, they are one-time filings and need not be filed annually on the date of subsequent renewals of the applicant's importer's license. Nevertheless, brand owners are free to add to or delete from the list of brands which the importer is authorized to sell and deliver or ship into Virginia. In the event that the brand owner takes such action the importer shall cause a supplemental Importer Designation and Authorization Form (Attachment A) to be filed which reflects any such additions or deletions to the list of brands it is authorized to import. The importer should take care to check the appropriate box on the form indicating that it is an amendment to an original authorization.

Designation of Authorized Distributor Form

The undersigned, which is applying for issuance or renewal of an importer's license to sell and deliver or ship the brands of beer and/or wine listed in paragraph I of the attached Importer Designation and Authorization Form, hereby authorizes the Virginia Alcoholic Beverage Control Board this list of wholesale licensees which are authorized by the undersigned, as the authorized representative of _____ (Name of Brand Owner), to distribute each brand within the Commonwealth of Virginia.

Date: _____

Name of Applicant for Importer's License

Signature of Person Executing Form and Title or Position

Designated Territory or Primary Area of Responsibility

Name of Designated Distributor	Address of Designated Distributor	Signature of Person Executing Form and Title or Position	Designated Territory or Primary Area of Responsibility
(1) _____	_____	_____	_____
(2) _____	_____	_____	_____
(3) _____	_____	_____	_____
(4) _____	_____	_____	_____
(5) _____	_____	_____	_____
(6) _____	_____	_____	_____
(7) _____	_____	_____	_____
(8) _____	_____	_____	_____
(9) _____	_____	_____	_____
(10) _____	_____	_____	_____

(Use Supplemental Sheet if Necessary)

ATTACHMENT A

Importer Designation and Authorization Form

I. _____ (Name of Brand Owner) is the lawful owner of the brands of beer and/or wine listed in paragraph II and, as the brand owner, hereby authorizes:

 (Name and address of applicant for importer's license)

to sell and deliver or ship the same brands of wine and/or beer into the Commonwealth of Virginia pursuant to, and in compliance with, the relevant statutes and regulations of the Commonwealth which govern beer or wine importer licenses.

II. The brands which the applicant named in paragraph I is authorized to sell and deliver or ship into Virginia are as follows:

 (Name of brands)

III. The above named applicant is hereby designated the authorized representative of _____ (Name of Brand Owner) for the purpose of establishing written agreements, of a definite duration and within the meaning of the Beer Franchise Act, § 4-118.3, et seq., of the Code of Virginia and/or the Wine Franchise Act, § 4-118.42, et seq., of the Code of Virginia, with each wholesale licensee of the Virginia Alcoholic Beverage Control Board to whom the above named importer sells any brand of beer or wine listed in paragraph II.

IV. Please check the applicable statement, below:

This is an original authorization from the undersigned brand owner for the brands identified in paragraph II.

This is an amendment to an original authorization, adding or deleting brands which the above named applicant or importer is authorized by the undersigned brand owner to import into Virginia.

Signed by:

 Name of Brand Owner

 Signature of Person Executing Form and Title

Date: _____

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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 alcohol.

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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 an establishment where food is prepared on the premises. The board may refuse to issue or may suspend or revoke such a permit for any reason that it may refuse to issue, suspend or revoke a license.

B. Purchases.

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. Distilled spirits shall be purchased from ABC retail stores. Wine and beer may be purchased from retail licensees when the permittee does not hold any retail on- or off-premises licenses. A permittee possessing a retail on- or off- premises license must purchase its wine and beer from a wholesaler. However, a permittee who only has an on- or on- and off-premises beer license may purchase its wine from a retail licensee.

C. Records.

Permittees shall keep complete and accurate records of their purchases of alcoholic beverages and beverages at the permittee's place of business for two years. The records shall be available for inspection and copying by

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any member of the board or its agents at any time during business hours.

C. D. Restrictions.

Alcoholic beverages purchased for culinary purposes shall not be sold or used for any other purpose ; ~~nor shall the permit authorize the possession of any other alcoholic beverages . They shall be stored in a place designated for the purpose upon the premises of at the permittee permittee's place of business , 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; 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 Permits for owners persons 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 Any person who contracts with or engages a licensed distiller or fruit distiller to manufacture distilled spirits out of from grain fruit, fruit products or other substances lawfully grown or lawfully produced by such person may remove the finished product only upon shall obtain a board permit issued by the board, which before withdrawing the distilled spirits from the distillery's premises. The permit shall accompany the shipment at all times. The application for the permit shall include the following:~~

1. The name, address and license number (if any) of the consignee;
2. The kind and quantity in gallons of alcoholic beverages; and
3. The name of the company employed to transport the shipment.

B. Limitations on permits.

~~Permits shall be issued only for (i) distilled spirits shipments to the board, (ii) for sale sales and shipments to a lawful consignee outside of Virginia the Commonwealth under a bona fide written contract therefor , and for the withdrawal of or (iii) shipments of distilled spirits samples for the owner's use to the person growing or producing the substance distilled . Samples shall be packaged in containers of one pint or 500 375 or 750 milliliters and the words "Sample-Not for Sale ." shall be printed in letters of reasonable size on the label.~~

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

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.

Proposed Regulations

D. "Sale" and "sell."

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

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

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

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

F. Reports.

Any changes in the officers, directors or shareholders owning 10% or more of the outstanding capital stock of a corporation shall be reported to the board within 30 days; provided, however, that corporations or their wholly owned 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 1

Proposed Regulations

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.

Proposed Regulations

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

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

A. Location.

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

B. Special privileges.

"Meals" need not be "full meals," but shall at least constitute "light lunches," and the gross receipts from the ~~sales thereof~~ *sale of food and nonalcoholic beverages at such establishment* 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 food.

C. Taxes on licenses.

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

§ 14. Definitions and requirements for beverage 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;

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.

Proposed Regulations

§ 16. Alcoholic Beverage Control Board.

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

A. No more than 25% of the fruits, fruit juices or other agricultural products used by the farm winery licensee shall be grown or produced outside this state, 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. A farm winery license limits retail sales to the premises of the winery and to two additional retail establishments which need not be located on the premises. These two additional retail outlets may be moved throughout the state as long as advance board approval is obtained for the location, equipment and facilities of each remote outlet.

DEPARTMENT OF LABOR AND INDUSTRY

Title of Regulation: VR 415-01-81. Regulations Governing the Employment of Minors on Farms, in Gardens and in Orchards.

Statutory Authority: §§ 40.1-6(3), 40.1-100 A 9, and 40.1-114 of the Code of Virginia.

Public Hearing Date: January 14, 1992 - 7 p.m.
(See Calendar of Events section for additional information)

Summary:

The purpose of this regulation is to protect minors working on farms in Virginia. Minors under 16 years of age are prohibited from working in certain hazardous occupations.

Exemptions are provided for minors at least 14 years of age to operate tractors or machines if they are enrolled in recognized training programs.

The regulation also restricts the hours of work a minor may be employed, and requires the employer to keep records of time worked by minors. In most respects this regulation is substantively the same as the parallel federal law.

VR 415-01-81. Regulations Governing the Employment of Minors on Farms, in Gardens and in Orchards.

§ 1. Definitions.

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

"Employ" means to put to work, use or service, or to engage the services of, and shall include to permit or suffer to work.

"To permit or suffer to work" means to knowingly allow by failure to stop or to protest, as well as to employ by oral or written contract, by any person having authority over a minor in connection with the services being performed. As used in this regulation the term "employ" is broader than the common-law concept of employment and must be interpreted broadly in the light of the mischief to be corrected. Neither the technical relationship between the parties nor the fact that the minor is unsupervised or receives no compensation is controlling in determining whether an employer-employee relationship exists for the purpose of this regulation.

"Employer" means an individual, partnership, association, corporation, legal representative, receiver, trustee, or trustee in bankruptcy doing business in or operating within this Commonwealth who employs another to work for wages, salaries, or on commission and shall include any similar entity acting directly or indirectly in the interest of an employer in relation to an employee. For purposes of this regulation, it shall not include the Government of the United States, the Commonwealth of Virginia or any of its agencies, institutions, or political subdivisions or any public body.

"Farms, gardens, and orchards" means farming in all its branches and includes the cultivation and tillage of soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticulture commodities, the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market. The child labor provisions shall apply in any of these areas of agriculture regardless of farm size or the number of man-days of farm labor used on that farm.

"School hours" means those periods when the school attended by a minor is in regular session, and does not include hours before and after school, Saturdays and Sundays, holidays, or school vacations, including summer vacations. If the minor does not attend school, "school hours" shall mean the school hours of the school district in which the minor is currently living.

§ 2. Scope and application.

Proposed Regulations

This regulation is promulgated pursuant to § 40.1-6(3) and § 40.1-100 A (9) of the Code of Virginia, and supplements existing Child Labor Laws (Chapter 5 (§ 40.1-78 et seq.) of Title 40.1 of the Code of Virginia) relating to the employment of minors on farms, in gardens and in orchards.

§ 3. Other applicable law.

A. Under § 40.1-78 of the Code of Virginia, no child under age 14 is permitted to work on farms, in gardens or in orchards, with the following exceptions:

1. Any child may be employed by his parent or a person standing in place of his parent on farms, in gardens or in orchards owned or operated by such parent or person.

2. A child 12 or 13 years of age may be employed outside school hours on farms, in gardens or in orchards with the consent of his parent or a person standing in place of his parent.

B. Children employed on farms, in gardens or in orchards are not required to obtain employment certificates (work permits).

C. No person shall employ, suffer, or permit a child to work in any gainful occupation that exposes such child to a recognized hazard capable of causing serious physical harm or death to such child.

D. Any person who employs, procures, or, permits a child under his control to be employed in violation of the Child Labor Laws is subject to a civil monetary penalty not to exceed \$1000 per violation.

E. Section 40.1-103 of the Code of Virginia, pertaining to cruelty and injuries to children, and § 40.1-100.2 of the Code of Virginia, pertaining to sexually explicit visual material, provide for criminal penalties and are applicable to the employment of minors on farms, in gardens and in orchards.

§ 4. Hazardous occupations.

This section identifies the occupations on farms, in gardens, and in orchards which are particularly hazardous for minors under 16 years of age. No employer shall employ, suffer, or permit a minor under 16 years of age to work in any of the following occupations, deemed to be particularly hazardous, except as provided in § 5 of this regulation:

1. Operating a tractor of over 20 PTO horsepower, or connecting or disconnecting an implement or any of its parts to or from such a tractor.

2. Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the

operation) any of the following machines:

a. Corn picker, cotton picker, grain combine, hay mover, forage harvester, hay baler, potato digger, or mobile pea viner;

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

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

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

a. Trencher or earth moving equipment;

b. Forklift;

c. Potato combine; or

d. Power-driven circular, band, or chain saw.

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

a. Bull, boar, or stud horse maintained for breeding purposes, or

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

5. Felling, bucking, skidding, loading, or unloading timber with butt diameter of more than six inches.

6. Working from a ladder or scaffold (painting, repairing, or building structures, pruning trees, picking fruit, etc.) at a height of over 20 feet.

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

8. Working inside the following:

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

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

c. A manure pit; or

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

9. Handling or applying (including cleaning o

decontaminating equipment, disposal or return of empty containers, or serving as a flagman for aircraft applying) agricultural chemicals identified by the word "poison" and the "skull and crossbones" on the label; or identified by the word "warning" on the label.

10. Handling or using a blasting agent, including but not limited to, dynamite, black powder, sensitized ammonium nitrate, blasting caps, and primer cord.

11. Transporting, transferring, or applying anhydrous ammonia.

§ 5. Exemptions to hazardous occupations.

This section provides exemptions to the restrictions on hazardous occupations on farms, in gardens and in orchards set forth in § 4 of this regulation.

A. A minor employed by a parent or a person standing in place of a parent on farms, in gardens or in orchards owned or operated by such parent or person is exempt from § 4 of this regulation.

B. Minors 14 and 15 years of age are exempted from the occupations listed in subsections A through F of § 4 provided the minor is enrolled in a regular school work-training program pursuant to a written agreement which provides:

1. That the work of the child is incidental to his training, will be intermittent and for short periods of time, and will be under the direct and close supervision of a competent and experienced person;

2. That safety instruction will be given by the school and correlated with on-the-job training given by the employer;

3. That a schedule of organized and progressive work processes to be performed has been prepared.

The written agreement shall state the name of the minor to be employed and must be signed by the employer and the coordinator of schools having jurisdiction. Copies of such agreement must be retained by the school and the employer, and a copy must be filed with the Department of Labor and Industry. The written agreement may be revoked by the Commissioner of Labor and Industry at any time that it shall appear that reasonable precautions for the safety of the minor have not been observed.

C. Minors 14 and 15 years of age who are enrolled in the 4-H Federal Extension Service Training Program, and who hold certificates of completion of either the tractor operation or machine operation program, may work in the occupations for which they have been trained. These certificates are valid for hazardous occupations covered by subsections A and B of § 4 of this regulation. Farmers employing minors who have completed this program must

keep a copy of the certificates of completion on file with the minor's records.

D. Minors 14 and 15 years of age who hold certificates of completion of either the tractor operation or machine operation program of the U.S. Office of Education Vocational Agricultural Training Program may work in the occupations for which they have been trained. These certificates are valid for hazardous occupations covered by subsections A and B of § 4 of this regulation. Farmers employing minors who have completed this program must keep a copy of the certificate of completion on file with the minor's records.

§ 6. Hours of work.

A. No minor under 16 years of age shall be employed, permitted or suffered to work in any occupation on farms, in gardens or in orchards during the hours that school is in session, except as provided in subsection B of this section.

B. No hours of work restrictions shall apply to a child employed by his parent or a person standing in place of his parent on farms, in gardens or in orchards owned or operated by such parent or person.

C. No child under 16 years of age shall be employed or permitted to work on farms, in gardens or in orchards for more than 5 hours continuously without an interval of at least 30 minutes for a lunch period, and no period of less than 30 minutes shall be deemed to interrupt a continuous period of work.

§ 7. Record-keeping requirements.

A. Every employer who employs any minor under 16 years of age on farms, in gardens or in orchards shall maintain records containing the following information about each such minor:

1. Full legal name.

2. Date of birth.

3. The minor's residence while employed. If the minor's permanent address is elsewhere, both addresses shall be maintained.

4. A time book or time cards or other appropriate records for such minor employees which shall show the beginning and ending time of work each day together with the amount designated as a free-from-duty meal period.

B. Every employer who employs a minor 12 or 13 years of age outside of school hours on farms, in gardens or in orchards with the consent of the child's parent or person standing in place of a parent must obtain such consent in writing and retain such documentation on the premises.

Proposed Regulations

C. All records required to be maintained by this section shall be kept on the premises for a period of 36 months from the employee's most recent date of employment.

D. This section shall not apply to a parent, or a person standing in place of a parent, employing his child on farms, in gardens or in orchards owned and operated by such parent or person.

FINAL REGULATIONS

For information concerning Final Regulations, see information page.

Symbol Key

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

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Pesticide Control Board

Title of Regulation: VR 115-04-03. Rules and Regulations for Enforcement of the Virginia Pesticide Law.

Statutory Authority: § 3.1-249.30 of the Code of Virginia.

Effective Date: September 25, 1991.

NOTICE: As provided in § 9-6.14:22 of the Code of Virginia, this regulation is not being republished. The regulation was adopted as it was proposed in 7:11 V.A.R. 1579-1593 February 25, 1991.

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Pesticide Control Board

Title of Regulation: VR 115-04-23. Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act.

Statutory Authority: § 3.1-249.30 of the Code of Virginia.

Effective Date: September 25, 1991.

Summary:

The Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act sets standards of certification for persons specified by statute who use or supervise the use of pesticides in Virginia (including but not limited to farmers using restricted-use pesticides on their own land and persons who apply pesticides commercially, but excluding persons who use nonrestricted-use pesticides in and around their own homes). This regulation will help to assure that these persons subject to the regulation are adequately trained and competent to use pesticides, an important element in any effort to ensure that pesticides are used in a manner consistent with public health, public safety, and the well-being of the environment.

The regulation includes, among other things, standards for training and testing of registered technicians, a classification of pesticide applicator newly created under the Pesticide Control Act, and standards for training and testing of private applicators and commercial applicators, classifications of pesticide applicators that exist at present under VR 115-04-03,

Rules and Regulations for Enforcement of the Virginia Pesticide Law.

The regulation sets standards of financial responsibility for those who apply pesticides commercially who are not subject to the present business-license regulation. (Licensed pesticide businesses are required to meet certain measures of financial responsibility under a regulation already in effect.)

The regulation requires those subject to its requirements to report pesticide spills.

Finally, the regulation is intended to supersede four related but different sections of VR 115-04-03.

VR 115-04-23. Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act.

PART 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. An asterisk or double asterisk following a definition indicates that the definition has been taken from the Virginia Pesticide Control Act, Article 1 or Article 4 respectively, Chapter 14.1 of Title 3.1, of the Code of Virginia.

"Accident" means an unexpected, undesirable event, involving the use or presence of a pesticide, that adversely affects man or the environment.

"Act" means the Virginia Pesticide Control Act.

"Adjuvant" means any substance added to a pesticide formulation to enhance the effect of the active ingredient.

"Agricultural commodity" means any plant or part thereof, or animal, or animal product, produced by a person, including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, nurserymen, wood treaters not for hire, or other comparable persons, primarily for sale, consumption, propagation, or other use by man or animals.*

"Board" means the Pesticide Control Board.*

"Board approved training" means a course which

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includes, at a minimum, study and review of all the material contained in the most current edition used in Virginia of (i) the basic pesticide applicator certification training core manual, and (ii) the certification training manual for each specific category pertaining to the type of pesticide application to be done.

“Chemigation” means the application of any pesticide through an irrigation system.

“Certificate” means the document issued to a certified applicator or registered technician who has completed all the requirements of Article 3 (§ 3.1-249.51 et seq.) of Chapter 14.1 of the Code of Virginia.

“Certification” or “certified” means the recognition granted by the Pesticide Control Board to an applicator upon satisfactory completion of board approved requirements.*

“Commercial applicator” means any applicator who has completed the requirements as determined by the board, including appropriate training and time in service, to apply for a certification, and who uses or supervises the use of any pesticide for any purpose or on any property other than as provided in the definition of private applicator.*

“Commercial applicator not for hire” means any commercial applicator who uses or supervises the use of pesticides as part of his job duties only on property owned or leased by him or his employer. This definition shall also apply to governmental employees who use or supervise the use of pesticides [, whether on property owned or leased by them or their employers or not,] in the performance of their official duties.

“Commissioner” means the Commissioner of Agriculture and Consumer Services.*

“Competent person” means a person who, if applying pesticides commercially, has met the requirements for and holds a valid certification as a registered technician.

“Department” means the Department of Agriculture and Consumer Services.*

“Drift” means the drifting or movement of pesticide by air currents or diffusion onto property beyond the boundaries of the target area to be treated with pesticide, other than by pesticide overspray. In the absence of evidence of pesticide overspray, the application of pesticide beyond the boundaries of the target area shall be considered to be the result of drift.

“EPA” means the United States Environmental Protection Agency.

“Fumigant” means any substance which by itself or in combination with any other substance emits or liberates a gas or gases, fumes or vapors, which gas or gases, fumes or vapors, when liberated and used, will destroy vermin,

rodents, insects, and other pests, and are usually lethal, poisonous, noxious, or dangerous to human life.

“Fungicide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi or plant disease.*

“Herbicide” means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed.*

“Incident” means a definite and separate occurrence or event, involving the use or presence of a pesticide, that adversely affects man or the environment.

“Insecticide” means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insects which may be present in any environment whatsoever.*

“Knowledge” means the possession and comprehension of pertinent facts, together with the ability to use them in dealing with specific problems and situations within the pesticide context.

“Label” means the written, printed, or graphic matter on, or attached to, the pesticide or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any, of the pesticide or device.*

“Labeling” means all labels and other written, printed, or graphic matter (i) upon the pesticide or device or any of its containers or wrappers, (ii) accompanying the pesticide or device at any time, or (iii) to which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the agricultural experiment station, the Virginia Polytechnic Institute and State University, the Department of Agriculture and Consumer Services, the State Board of Health, or similar federal institutions or other official agencies of the Commonwealth or other states when such states are authorized by law to conduct research in the field of pesticides.*

[“Licensed” or “licensee” means those businesses which, when meeting the requirements established by the Pesticide Control Board, are issued a license to engage in the sale, storage, distribution, recommend the use, or application of pesticides in Virginia in exchange for compensation.*]

“Marine antifoulant paint” means any compound, coating, paint or treatment applied or used for the purpose of controlling freshwater or marine fouling organisms on vessels.**

“Nontarget organism” means any living organism, including but not limited to animals, insects, and plants, other than the one against which the pesticide is intended

to be applied.

"Pesticide" means: (i) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, or other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the commissioner shall declare to be a pest; (ii) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and (iii) any substance which is intended to become an active ingredient thereof.*

["Pesticide business" means any person engaged in the business of distributing, applying or recommending the use of a product, storing, selling, or offering for sale pesticides for distribution directly to the user. The term "pesticide business" does not include wood treaters not for hire or businesses exempted by regulations adopted by the board.*]

"Pesticide overspray" means the application of pesticide onto property beyond the boundaries of the target area to be treated, by the failure to control the direct flow or application of pesticide from the application equipment, under surrounding conditions of use and application, so as to confine the pesticide to the target area.

"Private applicator" means an applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.*

"Reentry interval" as noted on the pesticide label means the amount of time which must elapse between the time of a pesticide application and the time when it is safe for a person to enter the treated area [without label-required personal protective equipment].

"Registered technician" means an individual who renders services similar to those of a certified commercial applicator, but who has not completed all the training or time in service requirements to be eligible for examination for certification as a commercial applicator and is limited to application of general use pesticides. However, if he applies restricted use pesticides he shall do so only under the direct supervision of a certified commercial applicator.*

["Repeat violation" means another violation following the first violation of the same provision of the Virginia Pesticide Control Act or FIFRA, or regulations adopted pursuant thereto, committed within a three-year period commencing with the date of official notification of the first violation of the provision.]

"Restricted use pesticide" or "pesticide classified for restricted use" means any pesticide classified for restricted

use by the administrator of the EPA under the provisions of § 3(d)(1)(C) of the Federal Insecticide Fungicide and Rodenticide Act, as amended.*

"Rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal which the commissioner shall declare to be a pest.*

"Synergism" means the interaction of two or more active ingredients in a pesticide formulation which produce a total pesticidal effect that is greater than the sum of the ingredients.

"Tributyltin compounds" means any compound having three normal butyl groups attached to a tin atom and with or without an anion such as chloride, fluoride, or oxide.**

"Under the direct supervision of" means the act or process whereby the application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator who is responsible for the actions of that person.*

"Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.*

"Vessel" means every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on the water, whether self-propelled or otherwise, and includes barges and tugs.**

PART II. CERTIFICATION OF PESTICIDE APPLICATORS IN GENERAL; CLASSES OF PESTICIDE APPLICATOR.

§ 2.1. General conditions of certification.

A. No person who has been [convicted of a violation of any federal, state, or local] found to have a history of repeat violations of federal or state] pesticide laws or who has had his certification or pesticide business license revoked within the two-year period immediately prior to application for certification in Virginia may be granted certification as a pesticide applicator in Virginia. [The application for certification is not automatically denied if the individual has repeat violations. The individual seeking certification who has repeat violations in Virginia or another state, may come before the board and show why he should be granted certification.]

B. No person may be certified as a pesticide applicator by the commissioner or his duly authorized agent unless he:

1. Completes board approved training administered by the department, the Virginia Cooperative Extension

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Service, [~~or another public agency~~ public agencies] qualified to administer such training, [~~or by a~~] private business [~~firm~~ qualified firms, universities, trade associations, or other organizations approved by the board] to administer such training; and

2. Passes the required board approved written examinations, except as provided in § 2.3 B of this regulation, to be administered by the commissioner or his duly authorized agents at locations authorized by the commissioner. Proof of training shall consist of a statement, signed by a qualified officer of the agency or firm administering the training, that the applicant has completed the training course.

C. Individuals, employees, or representatives of governmental agencies (including but not limited to federal employees under 40 CFR Part 171) who use or supervise the use of pesticides in the performance of their official duties shall meet the requirements of this regulation and be certified as commercial applicators [or registered technicians] pursuant to this regulation. The certification of such individuals, employees, or representatives shall be valid only when applying or supervising the application of pesticides in the performance of their official duties.

D. Applicants who fail to achieve a passing score on their first attempt at examination are eligible to be reexamined for the same category after 10 days from the date of the first examination. Applicants who fail on the second attempt, or any subsequent attempt, shall wait 30 days from the date of the last examination before being reexamined in the same category. Applicants requesting reexamination shall resubmit a completed application form to the commissioner, and pay the nonrefundable applicator certificate fee again, if not fee exempt.

E. If the commissioner or his duly authorized agent finds the applicant meets the qualifications established by the board to apply pesticides in any of the categories he has applied for, and, if the applicant applying for a certificate to engage in aerial application of pesticides has met all of the requirements of the Federal Aviation Administration, the state Department of Aviation, and any other applicable federal or state laws or regulations to operate the equipment described in the application, the commissioner or his duly authorized agent shall issue a certificate for categories in which the applicant is qualified. The commissioner or his duly authorized agent may limit the certification of the applicant to the use of certain pesticides, or to certain areas, or to certain types of equipment if the applicant has limited qualifications. If a certificate is not issued as applied for, the commissioner or his duly authorized agent shall, within 30 days, inform the applicant in writing of the reasons therefor.

F. A commercial or private applicator or registered technician may request a duplicate of the certification card if the applicator's or technician's card has been lost, stolen, mutilated or destroyed. The department will issue a duplicate card to the applicator or technician upon

payment of the costs of duplication.

[G. No applicant for certification may engage in the activity for which he is requesting such certification, except under conditions of supervised training required by this regulation, until the certification shall have been issued by the commissioner.]

§ 2.2. Certification of commercial applicators.

A. Persons who meet at least one of the following requirements shall be eligible to apply for certification as a commercial applicator.

1. Any person who (i) currently holds a valid registered technician certification issued by the commissioner or his duly authorized agent, and (ii) has [~~held this certification~~ worked as a registered technician] for at least one year; [and or]

[~~2. Any resident of Virginia who holds a current valid pesticide applicator certification in any state with which Virginia has a reciprocal certification agreement; or~~

~~3. Any person whose education, training, or experience in pesticide-related fields provides sufficient practical knowledge of proper pesticide use, in the opinion of the commissioner or his duly authorized agent.~~

2. Any person who has had at least one year of education, training, or experience in a pesticide-related field which provides at least the equivalent practical knowledge of proper pesticide use required of a registered technician.]

B. Except for a commercial applicator not for hire, no person may be certified as a commercial applicator unless that person [~~first (4) obtains, or is employed by~~ shall (i) obtain a valid pesticide business license, or secure employment with] a business that has first obtained, a valid pesticide business license issued pursuant to regulations promulgated by the board; and (ii) complies with the training and certification requirements of the board [~~unless such person is acting under the direct, on site, supervision of a certified applicator~~].

C. Any person applying for certification as a commercial applicator shall submit to the commissioner or his duly authorized agent a completed application form accompanied by the fee established by the board. [~~The application form shall contain all the information required by the Act and any other information required by the commissioner.~~]

D. Except as provided in § 8.1 of this regulation for reciprocal certification, applicants for a commercial applicator certificate shall, within 90 days after submitting an application and paying the fee, report to an authorized testing location to take two or more written examinations: (i) an examination to determine the level of basic

knowledge, as specified in subsections A and B of § 4.1 of this regulation, required for all categories of pesticide application, and (ii) one or more examinations to determine the specific knowledge as specified in § 4.2 required for the pesticide application [~~category categories~~] specified in § 3.1 of this regulation.

E. A written examination to determine the level of basic knowledge, as specified in subsection D of this section, shall not be required of persons who apply for certification in the Marine Antifoulant Paints category; however, an examination to determine the specific knowledge for this category is required.

§ 2.3. Certification of private applicators.

A. Except as provided in 2.3 B of this regulation, each applicant for a private applicator's certificate shall apply to the commissioner by reporting to an authorized testing location and taking an examination for each certification category, specified in § 3.2 of this regulation, applicable to his operation. The completed examination or examinations, when forwarded by the test proctor to the department for scoring, shall serve as the application for certification. [~~The applicant shall submit evidence of having received the necessary board approved training at the time he makes application, and shall also submit any other information required by the commissioner, including a statement of qualifications and proposed operations. The applicant shall attest on the application that he has completed board approved training at the time he makes application, and shall also submit any other information required by the commissioner, including, but not limited to, a statement of qualifications and proposed operations.~~]

B. A person unable to read and understand a label shall not be certified as a private pesticide applicator; however, the board may grant a waiver of this literacy requirement upon recommendation of a department pesticide investigator, and the appropriate Virginia Cooperative Extension Service agent. Such a recommendation shall be based upon personal knowledge of the individual's competence to apply a restricted use pesticide on his own property. Waivers shall be confined to a specific pesticide to be applied for a specific use.

§ 2.4. Certification of registered technicians.

A. Any person who [~~(+) has applied pesticides under the direct, on site, supervision of a certified commercial pesticide applicator for a minimum of 40 hours during the six-month period previous to applying for certification, and (ii) has received board approved training, shall be eligible to apply for certification as a registered technician (i) has received on-the-job training in the safe and proper application of pesticides under the direct, on site supervision of a certified commercial applicator for at least 40 hours during the six-month period previous to applying for certification; and (ii) has received board approved training, shall be eligible to apply for certification as a registered technician. Board approved~~

training may be included as part of the 40 hours of on-the-job training] .

B. Any person applying for certification as a registered technician shall submit to the commissioner or his duly authorized agent a completed application form, accompanied by the fee specified by the board. [~~The application form shall contain all the information required by the Act and any other information required by the commissioner.~~]

C. Applicants for certification as a registered technician shall, within 90 days after submitting an application and paying the fee, report to an authorized testing location to take a written registered technician examination.

D. Certified commercial applicators may apply to the commissioner or his duly authorized agent for authorization to proctor the written registered technician examination for persons in their employ who are applying for registered technician certification. Authorized proctors may administer the examination, grade the examination, and notify the commissioner or his duly authorized agent of the grade received by the applicant. A commercial applicator desiring authorization to proctor the examination shall apply to the commissioner or his duly authorized agent in writing. Any commercial applicator authorized to proctor the examination shall safeguard examination materials and follow testing procedures. Failure to safeguard examination materials or follow testing procedures shall result in revocation of authority to proctor the registered technician examination.

§ 2.5. Exemptions.

The provisions of this regulation shall not apply to the following:

1. Persons conducting research, either in the laboratory or in field plots of 1/4 acre or less in size for each pesticide being tested; and
2. Doctors of medicine and doctors of veterinary medicine applying pesticides as drugs or medication during the normal course of their practices. Doctors of veterinary medicine engaged in the business of applying pesticides for hire, publicizing themselves as pesticide applicators, or [~~engaged in large-scale use of pesticides are subject to the normal certification requirements of the agricultural animal pest control category otherwise engaged in the use of pesticides other than as drugs or medication during the normal course of their practice are subject to the certification requirements of the agricultural animal pest control category~~] .
3. Providers of janitorial, cleaning, or sanitizing services if the providers use no pesticides other than nonrestricted use sanitizers, disinfectants, and germicides.

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PART III. CATEGORIES OF PESTICIDE APPLICATOR CERTIFICATION.

§ 3.1. Categories for commercial applicator certification.

A. Applicants for certification as a commercial applicator, in order to recommend, apply or supervise the application of pesticides, shall be certified in one or more of the following categories or subcategories, and may use pesticides commercially only in those categories (or, if not certified fully in the category, in the appropriate subcategory) in which they are certified.

1. Agricultural pest control.

a. **Agricultural plant pest control.** This subcategory is for commercial applicator applicants who will be using or supervising the use of pesticides (i) in production of agricultural crops including, but not limited to, tobacco, peanuts, cotton, food and feed grains, soybeans and forage, vegetables, small fruits, tree fruits, nuts and Christmas trees; [and or] (ii) on grasslands and noncrop agricultural lands.

b. **Agricultural animal pest control.** This subcategory is for commercial applicator applicants who will be using or supervising the use of pesticides on agriculturally related animals including, but not limited to, beef cattle, dairy cattle, swine, sheep, horses, goats, [and] poultry [; and livestock] ; and to places on or in which such animals are confined for control of pests directly affecting such animals.

c. **Fumigation of soil and agricultural products.** This subcategory is for commercial applicator applicants who will be using or supervising the use of pesticides for soil fumigation in production of an agricultural commodity and the application of pesticides for fumigation of agricultural products. Certification in this subcategory requires concurrent certification in the agricultural plant pest control category.

d. **Chemigation.** This subcategory is for commercial applicator applicants who will be using or supervising the use of pesticides through an irrigation system. Certification in this subcategory requires concurrent certification in the agricultural plant pest control category.

2. **Forest pest control.** This category is for commercial applicator applicants who will be using or supervising the use of pesticides in forests, forest nurseries, and [forest seed-producing areas seed orchards].

3. Ornamental and turf pest control.

a. **Ornamental pest control - outdoor.** This subcategory is for commercial applicator applicants who will be using or supervising the use of

pesticides in the maintenance and production of ornamental trees, shrubs, and flowers out-of-doors.

b. **Ornamental pest control - indoor.** This subcategory is for commercial applicator applicants who will be using or supervising the use of pesticides in the maintenance and production of ornamental plants indoors.

c. **Turf pest control.** This subcategory is for commercial applicator applicants who will be using or supervising the use of pesticides in the production and maintenance of turf, including, but not limited to, turf in golf courses, residential lawns, parks, and cemeteries.

4. **Seed treatment [(excluding fumigation)] .** This category is for commercial applicator applicants who will be using or supervising the use of pesticides on seeds.

5. Aquatic pest control.

a. **Aquatic pest control - general.** This subcategory is for commercial applicator applicants who will be using or supervising the use of pesticides in or on standing or running water, for the express purpose of controlling pests (this excludes applicators engaged in public health related activities included in subdivision 8 of this subsection, "public health pest control").

b. **Marine antifoulant paints.** This subcategory is for commercial applicator applicants who will be using or supervising the use of marine antifoulant paints containing tributyltin or other pesticides.

6. **Right-of-way pest control.** This category is for commercial applicator applicants who will be using or supervising the use of pesticides in the maintenance of public rights-of-way for roads, electric power lines, telephone lines, pipelines, and railways; and in the maintenance of fence lines, structural perimeters or other similar areas.

7. Industrial, institutional, structural, and health-related pest control.

a. **General pest control (excluding fumigation).** This subcategory is for commercial applicator applicants who will be using or supervising the use of pesticides to control household type pests, [and other] pests that inhabit or infest structures, stored products, and residential food preparation areas [, and pests capable of infesting or contaminating foods and foodstuffs at any stage of processing facilities] . This category shall not include control of wood-destroying pests.

b. **Wood-destroying pest control (excluding fumigation).** This subcategory is for commercial

applicator applicants who will be using or supervising the use of pesticides to control organisms that destroy structures made of wood.

[e. Food processing pest control (excluding fumigation). This subcategory is for commercial applicator applicants who will be using or supervising the use of pesticides to control pests capable of infesting or contaminating foods and foodstuffs at any stage of processing in food processing facilities.

[d c] . Fumigation. This subcategory is for commercial applicator applicants who will be using or supervising the use of fumigant-type pesticides.

[e d] . Vertebrate pest control (excluding structural invaders). This subcategory is for commercial applicator applicants who will be using or supervising the use of pesticides to control vertebrate pest animals.

8. Public health pest control. This category is for commercial applicator applicants who will be using or supervising the use of pesticides for the management and control of pests having medical and public health significance. Included in this category are federal, state, and local governmental employees involved in public health pest control programs.

9. Regulatory pest control. This category is for federal, state, and local governmental employee applicants who will be using or supervising the use of pesticides in the control of regulated pests.

10. Demonstration and research pest control. This category is for commercial applicator applicants, to include federal, state, and local governmental employees, who will be demonstrating the proper use and techniques of application of pesticides, or who will be supervising such demonstration. It also includes applicants who will be conducting field pesticide research on plots greater than 1/4 acre for each pesticide being tested. [Applicants who will be conducting research shall, in addition to being certified in this category, become certified in one or more of the categories, listed in this section, appropriate to the type of pesticide application being performed.]

11. Aerial pesticide application. This category is for commercial applicator applicants who will be using or supervising the use of any pesticide applied by fixed- or rotary-wing aircraft. In addition to certification in this category, certification is also required in one or more of the categories listed in this section appropriate to the type of pesticide application being performed.

12. Wood preservation and wood product treatment. This category is for commercial applicator applicants

who will be using or supervising the use of pesticides at treating plants and sawmills for preservative treatment of wood and wood products by pressure, dipping, soaking, and diffusion processes to protect them from damage by insects, fungi, marine borers, and weather.

[13. Pesticide storage and distribution (excluding application). This category is for commercial applicator applicants who only store, display, and distribute pesticides in the operation of a pesticide sales, distribution, or warehousing business. Certification in this category does not permit the application of restricted use pesticides except under the direct supervision of a commercial applicator authorized by this regulation to supervise the application of the restricted use pesticide.]

B. A commercial applicator certified in one category and seeking initial certification in one or more additional categories shall meet the certification requirements of each of the new categories in which he desires certification. Except as provided in § 5.3 of this regulation, a previously certified commercial applicator shall not be required to be examined in knowledge of the general standards listed in § 4.1 B if, in the process of receiving certification in another category, the applicator took and passed an examination covering these standards.

§ 3.2. Categories for private applicator certification.

Applicants for certification as a private applicator, in order to apply or supervise application of restricted use pesticides, shall be certified in one or more of the following categories:

1. Agricultural pest control. This category is for private applicator applicants who will be using or supervising the use of restricted use pesticides (i) in production of agricultural crops, including, but not limited to, tobacco, peanuts, cotton, feed grains, soybeans, forage crops, vegetables, small fruits, tree fruits and nuts, [forest products,] as well as on grasslands and noncrop agricultural lands; (ii) on animals including, but not limited to, beef cattle, dairy cattle, swine, sheep, horses, goats, [and] poultry [; and livestock] ; (iii) in places on or in which animals are confined; and (iv) for the management or control of vertebrate pests of agricultural crops and livestock animals.

2. Nursery/greenhouse pest control. This category is for private applicator applicants who will be using or supervising the use of restricted use pesticides to control pests in tree, shrub, ornamental plant, and flower nurseries; and in greenhouses used for propagating and growing plants including, but not limited to, vegetables, shrubs, house plants, and flowers.

3. Fumigation of soil and agricultural products. This

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category is for private applicator applicants who will be using or supervising the use of restricted use pesticides for soil fumigation in production of an agricultural commodity and the application of restricted use pesticides for fumigation of agricultural products. Certification in this category requires concurrent certification in either the agricultural pest control or the nursery/greenhouse pest control category of this section, or both, as dictated by the work to be performed.

4. *Chemigation.* This category is for private applicator applicants who will be using or supervising the use of restricted use pesticides through an irrigation system. Certification in this category requires concurrent certification in either the agricultural pest control or the nursery/greenhouse pest control category of this section, or both, as dictated by the work to be performed.

5. *Aerial pesticide application.* This category is for private applicator applicants who will be using or supervising the use of any pesticide applied by fixed- or rotary-wing aircraft in the production, or in the support of production, of agricultural crops. Certification in this category requires concurrent certification in either the agricultural pest control or the nursery/greenhouse pest control category of this section, or both, as dictated by the work to be performed.

6. *Limited certificate - single product/single use.* This category is for private applicator applicants who are seeking authorization to apply a single restricted use pesticide for a single identified purpose. This category is intended for limited use under special or emergency circumstances as identified by the board on a case by case basis.

7. *Single product certification.* This category is for private applicator applicants who are seeking authorization to apply a single identified restricted use product, or related restricted use products with the same active ingredient and with a similar formulation and use. This category is intended for limited use under special or emergency circumstances as identified by the board.

PART IV. CERTIFICATION STANDARDS FOR PESTICIDE APPLICATORS.

§ 4.1. Certification standards for private and commercial applicator.

A. Determination of knowledge and qualifications.

Knowledge and qualifications in the use and handling of pesticides to prevent unreasonable adverse effects on man and the environment shall be determined on the basis of written examinations administered by the commissioner or

his duly authorized agents and, as appropriate, performance testing based upon standards set forth below. This examination and testing shall include the general standards applicable to all categories, and the additional standards specifically identified for each category or subcategory (if any) in which an applicator is to be certified. All private and commercial applicators engaged in aerial application of pesticides in any category shall furnish evidence of compliance with applicable regulations enforced by the Federal Aviation Administration and by the Virginia Department of Aviation.

B. General standards for all categories of private and commercial applicator.

All applicants for certification as a private or commercial applicator shall demonstrate knowledge of the principles and practices of pest control and safe use of pesticides as prescribed herein. Knowledge shall be determined by the administration of examinations appropriate to the particular category or subcategory of certification desired by the applicant.

1. Label and labeling comprehension.

a. The concept that labels and labeling are legal documents and the directions they contain shall be followed;

b. The general purpose, format, and terminology of pesticide labels and labeling;

c. Understanding directions for use, storage and disposal; precautionary statements; significance of the signal words "caution," "warning," and "danger"; and other information including terms and symbols commonly appearing on pesticide labels;

d. Understanding the meanings of product or brand name, common name, and chemical name;

e. Understanding the meaning of the term "restricted use" pesticide;

f. Understanding the need for use consistent with the label; and

g. Understanding the requirements for personal protection and avoiding environmental risk.

2. Safety factors.

a. Recognition and understanding of the acute toxicity of pesticides to humans and their common exposure routes; concept of risk as a function of toxicity and exposure to a pesticide;

b. Common types and causes of pesticide accidents;

c. Selection, use, and care of personal clothing and protective equipment; personal hygiene required;

- d. Recognition of common symptoms of pesticide poisoning; practical treatment, including first aid, and other procedures to be followed in the case of a pesticide accident;
 - e. Reentry intervals and restrictions, and worker protection in or near pesticide-treated areas; and
 - f. Proper identification, storage, transporting, handling, mixing procedures, and disposal methods for excess pesticides, pesticide waste, and used pesticide containers, including precautions to be taken to prevent children from gaining access to pesticides and pesticide containers.
3. Environmental risk. The environmental consequences of the use and misuse of pesticides as may be influenced by such factors as:
- a. Weather and other climatic conditions affecting pesticide applications;
 - b. Types of terrain, soil, or other substrata;
 - c. Drift, runoff as a function of drainage patterns, and aquatic contamination;
 - d. Presence of fish, wildlife, and other nontarget organisms and potential accumulation in the food chain;
 - e. Potential for groundwater contamination;
 - f. The presence of endangered and protected species;
 - g. Pesticide transportation, mixing, handling, application, and disposal including container disposal; and
 - h. Spill prevention and control.
4. Pest identification and biology.
- a. Common features of pests and the characteristics of the damage they cause;
 - b. Recognition of pests and the physical characteristics that distinguish one pest from another; and
 - c. Pest development and biology as it may be relevant to identification and methods of control; stage of life cycle when pests are most vulnerable.
5. Pesticide products and chemical control.
- a. Types of pesticides, formulations and adjuvants; characteristics, advantages, disadvantages, and main uses of typical formulations; factors in choosing the correct pesticide and method of application;
 - b. Compatibility, synergism, persistence, and animal and plant toxicity of the products;
 - c. Hazards and residues associated with use;
 - d. Factors that influence efficacy of a pesticide;
 - e. Concept of pesticide resistance; and
 - f. Pest control strategies.
6. Equipment selection and maintenance.
- a. Types of equipment and advantages and limitations of each type;
 - b. Factors in choosing the most appropriate equipment for applicable situations, including chemigation; and
 - c. Proper care [and ,] maintenance, calibration [,] and use [of all equipment to ensure safe and effective operation] .
7. Calibration and calculation.
- a. Dilution of concentrate formulations in accordance with label directions;
 - b. Calculation of area or volume to be treated;
 - c. Factors involved in calibration of equipment; and
 - d. Adjusting nozzle output by changing pressure, speed of applicator, or nozzle tip.
8. Application techniques.
- a. Procedure used to calculate and apply various formulations of pesticide solutions and gases, and a knowledge of which techniques to use in a given situation;
 - b. Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and
 - c. Prevention of drift and pesticide contamination of the environment.
9. Applicator related laws and regulations.
- a. Applicable state and federal laws and regulations;
 - b. Responsibility of certified applicator to use a pesticide in a manner consistent with its label or labeling, and to supervise any noncertified employee who is assigned to use a pesticide; and
 - c. Applicator liability and penalties.

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C. General standards for registered technician.

All applicants for certification as a registered technician shall demonstrate practical knowledge of the principles and practices of pest control and safe use of pesticides. Testing shall be based on problems and situations in the following areas:

1. Federal and Commonwealth of Virginia pesticide laws and regulations;
2. How to read and interpret a pesticide label;
3. Handling of accidents and incidents;
4. Proper methods of storing, mixing/loading, transporting, handling, applying, and disposing of pesticides;
5. Safety and health, including proper use of personal protective equipment; [and]
6. Potential adverse effects caused by various climatic or environmental conditions, such as drift from the target area, pesticide run-off, groundwater [and drinking water] contamination, and hazard to endangered species [; and]
- [7. Recognition of common pests and general pest biology.]

§ 4.2. Specific standards of knowledge and qualifications for each category of commercial applicator. All applicants for certification as a commercial applicator are required to demonstrate skills and knowledge specific to their desired certification category, in addition to the general pesticide knowledge standards set forth in subsection B of § 4.1 of this regulation. The specific standards of knowledge set forth below are applicable to the commercial applicator categories and subcategories of certification set forth in § 3.1 of this regulation.

1. Agricultural pest control.

a. Agricultural plant pest control. Applicants shall demonstrate knowledge of (i) crops grown in the Commonwealth, and the specific pests of those crops on which applicators may be using pesticides; (ii) soil and water problems, preharvest intervals, reentry intervals, phytotoxicity; and (iii) potential for environmental contamination, injury to nontarget organisms, and community problems caused by the use of pesticides in agricultural areas.

b. Agricultural animal pest control. Applicants who will be applying pesticides directly to animals, or to places on or in which animals are confined, shall demonstrate knowledge of (i) such animals and their associated pests; (ii) specific pesticide toxicity and residue potential; and (iii) the potential hazards associated with formulation, application techniques,

age of animals, stress on the animals, and extent of treatment.

c. Fumigation of soil and agricultural products. Applicants shall demonstrate knowledge of the (i) use of personal protective clothing and equipment for fumigation; (ii) general safety procedures, including posting, reentry, and aeration; (iii) accident procedures; and (iv) application techniques appropriate to various situations.

d. Chemigation. Applicants shall demonstrate knowledge of the (i) equipment associated with applying pesticides through an irrigation system, including calibration techniques and use of [anti-back flow/check valve an approved backflow prevention assembly] to prevent contamination of water supplies; (ii) labeling requirements of products registered for chemigation, including posting requirements; and (iii) appropriate use of personal protective equipment associated with this type of application.

2. Forest pest control. Applicants shall demonstrate knowledge of the (i) types of forests, forest nurseries, and seed orchards in the Commonwealth and the pests to be controlled; (ii) cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications; (iii) nontarget organisms present and their vulnerability to the pesticides to be applied; (iv) control methods which will minimize the possibility of secondary problems such as unintended effects on wildlife; and (v) proper use of specialized equipment, especially as it may relate to weather and adjacent land use.

3. Ornamental and turf pest control.

a. Ornamental pest control - outdoor. Applicants shall demonstrate knowledge of (i) pesticide problems associated with the outdoor production and maintenance of ornamental trees, shrubs, and other landscape plants; (ii) potential phytotoxicity; (iii) problems associated with drift, and pesticide persistence beyond the intended period of pest control; and (iv) methods of application that shall minimize hazards to humans, pets, and other domestic animals.

b. Ornamental pest control - indoor. Applicants shall demonstrate knowledge of (i) pesticide problems associated with the production and maintenance of ornamental plants indoors; (ii) potential phytotoxicity; (iii) problems associated with drift in an indoor environment; and (iv) application methods that minimize hazards to humans and pets.

c. Turf pest control. Applicants shall demonstrate knowledge of (i) pesticide problems associated with the production and maintenance of turfgrass in landscapes, golf courses, residential lawn

cemeteries, parks, sod farms, and other areas; (ii) problems associated with drift and leaching from the target area; (iii) potential phytotoxicity; and (iv) methods of application that minimize hazards to humans, pets, and domestic animals.

4. Seed treatment [(excluding fumigation)]. Applicants shall demonstrate knowledge of the (i) types of seeds commonly used in the Commonwealth that require chemical protection against pests, (ii) required seed coloration and special labeling, (iii) carriers and surface active agents that influence pesticide adherence to seeds, and that may affect germination, (iv) hazards associated with handling, sorting, mixing, and misuse of treated seed, including the introduction of treated seed into food and feed channels, and (v) proper disposal of unused treated seeds.

5. Aquatic pest control.

a. Aquatic pest control - general. Applicants shall demonstrate knowledge of the (i) secondary effects of improper application rates, incorrect formulations, and faulty application of pesticides; (ii) various water use situations and the potential of downstream effects; (iii) potential pesticide effects on plants, fish, birds, beneficial insects, and other organisms that may be present in aquatic environments; and (iv) principles of limited area application.

b. Marine antifoulant paints. Applicants shall demonstrate knowledge of secondary effects of improper application rates, incorrect formulations, and faulty application of pesticides incorporated into paints.

6. Right-of-way pest control. Applicants shall demonstrate knowledge of (i) a wide variety of environments, including aquatic, in which right-of-way pesticide applications are made; (ii) problems with runoff, drift, and excessive foliage destruction, as well as the ability to recognize target organisms; (iii) the mode of action of herbicides and the need for containment of these pesticides within the right-of-way area; and (iv) the impact of their application activities in adjacent areas and communities.

7. Industrial, institutional, structural and health related pest control. In general, applicants shall demonstrate knowledge of the (i) variety of pests in this category including pest life cycles, formulations appropriate for control, and methods of application that avoid contamination of food and habitat, and exposure of people and pets; (ii) specific factors which may lead to a hazardous condition for humans and pets, including continuous exposure in the various situations cited in this category; and (iii) relevant environmental conditions.

Category 7 is divided into subcategories as set forth

below. Applicants who will specialize in one or more subcategories shall demonstrate knowledge in those subcategories.

a. General pest control (excluding fumigation). Applicants shall demonstrate knowledge of (i) household pests, including, but not limited to cockroaches, ants, silverfish, spiders, food- and fabric-destroying insects, rats, bats, and other pests that invade or infest structures, stored products, and residential food preparation areas; (ii) [~~conditions conducive to pest infestations and selection of appropriate control procedures for each situation; and (iii) hazards involved with pesticide usage~~] the pests capable of infesting or contaminating foods and foodstuffs at any stage of processing in the food manufacturing and processing areas of operations including but not limited to flour mills, bakeries, bottling plants, dairies, canneries, meat packing plants, supermarkets, convenience stores, rest homes, hospitals, ships, vehicles, restaurants, cafeterias, and snack bars; (iii) conditions conducive to infestations and selection of appropriate control procedures, other than fumigation for each situation; and (iv) hazards associated with pesticides in food manufacturing and processing] .

b. Wood-destroying pest control (excluding fumigation). Applicants shall demonstrate knowledge of (i) organisms that destroy structures made of wood including but not limited to beetles, termites, and fungi, and conditions conducive to infestation; (ii) selection, calibration, and use of appropriate control procedures including rodding and trenching, topical application of pesticides and local injection of specially labeled liquid or pressurized aerosol pesticides into infested wood, such as poles, pilings, and railroad cross ties; and (iii) hazards involved in the handling and use of these pesticides and the appropriate application equipment to be used.

[~~e. Food processing pest control (excluding fumigation). Applicants shall demonstrate knowledge of (i) the pests capable of infesting or contaminating foods and foodstuffs at any stage processing in the food manufacturing and processing areas of operations including but not limited to flour mills, bakeries, bottling plants, dairies, canneries, meat packing plants, supermarkets, convenience stores, rest homes, hospitals, ships, vehicles, restaurants, cafeterias, and snack bars; (ii) conditions conducive to infestations and selection of appropriate control procedures, other than fumigation, for each situation; and (iii) hazards associated with pesticides in food manufacturing and processing.]~~

[~~d. c.] Fumigation. Applicants shall demonstrate knowledge of the (i) conditions requiring the application of fumigants, and selection of the most appropriate fumigation methods to use; (ii) equipment used in fumigation, including, but not~~

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limited to application, monitoring, testing, calculating, and personal protective devices; (iii) release, distribution, and maintenance of the correct fumigant concentrations for the product being used and structure being fumigated under differing conditions; and (iv) hazards involved in the use of fumigants.

[e. d.] Vertebrate pest control (excluding structural invaders). Applicants shall demonstrate knowledge of (i) vertebrate pest animals, including birds, and of the conditions conducive to infestation and damage; (ii) federal and state laws and regulations governing the control of migratory birds, and protected or endangered animals; (iii) methods of control of pest animals, and effects of such control on nontarget organisms; (iv) other potential effects on the environment, and (v) hazards involved with pesticide usage.

8. Public health pest control. Applicants shall demonstrate knowledge of (i) disease vectors and appropriate control programs; (ii) various environments where public health pest control programs are conducted, including, but not limited to, streams, wetlands, forested areas, municipal garbage dumps, vacant lots, and buildings; (iii) the importance and use of nonchemical control methods including, but not limited to, sanitation, proper waste disposal, and drainage; and (iv) all regulatory requirements, precautions and warnings for reentry into areas treated with pesticides.

9. Regulatory pest control. Applicants shall demonstrate knowledge of (i) regulated pests, applicable laws relating to quarantine and other regulation of pests; (ii) potential impact on the environment of pesticides used in programs for the suppression and eradication of regulated pests; and (iii) factors that influence the introduction, spread, and population dynamics of regulated pests.

10. Demonstration and research pest control. Applicants who will be demonstrating, by actual use or application, the safe and effective use of pesticides to other applicators and the public shall meet comprehensive standards reflecting a broad spectrum of pesticide uses. The applicant shall possess knowledge of (i) problems, pests, and pest population levels occurring in each demonstration situation; (ii) pesticide-organism interactions and the importance of integrating pesticide use with other control methods; (iii) all the requirements set forth in subsections A and B of [§ 2-4 § 4.1] of this regulation; and (iv) all the specific standards required for categories 1 through 8, 11 and 12 of this section as the standards relate to the applicant's particular intended activities.

11. Aerial pesticide application. Applicants shall demonstrate knowledge of (i) equipment calibration and maintenance; (ii) how to avoid problems

associated with aerial application, such as drift and injury to nontarget organisms; and (iii) the appropriate type of aerial application to be performed through their additional certification in one or more of the categories listed in this section.

12. Wood preservation and wood product treatment. Applicants shall demonstrate knowledge of (i) the conditions for which preservative treatment of wood is used; (ii) the health and environmental hazards associated with wood treating procedures; (iii) the need for informing purchasers of precautions for handling, use, and disposal of treated wood products; and (iv) all applicable treating and testing equipment.

~~13. Pesticide storage and distribution (excluding application). This category is designated for the certification of those persons who store, display, and distribute pesticides in the operation of a pesticide sales, distribution, or warehousing business. Persons certified in this category shall not be permitted to apply restricted use pesticides, except under the direct supervision of a commercial applicator authorized by this regulation to supervise the application of the restricted use pesticide. Applicants for certification in this category shall demonstrate knowledge of (i) the safe and proper handling of pesticides; (ii) potential environmental hazards; (iii) containment of spills; and (iv) the disposal of pesticide-related hazardous waste.~~

[D. The standards listed under subsection C of this section shall not apply for purposes of these regulations to persons conducting laboratory research involving pesticides.]

§ 4.3. Specific standards of knowledge and qualifications for certification of private applicators.

All applicants for certification as a private applicator shall demonstrate knowledge of the use of restricted use pesticides specific to their desired certification. These specific standards are in addition to the general standards set forth in subsection B of § 4.1 of this regulation. The specific standards of knowledge set forth below are applicable to categories of certification specified in § 3.2 of this regulation.

1. Agricultural pest control. Applicants shall demonstrate knowledge of (i) crops grown in the Commonwealth and the specific pests of those crops on which they may be using restricted use pesticides; (ii) relevant soil and water problems; (iii) preharvest and reentry intervals; (iv) phytotoxicity, potential injury to nontarget organisms, and potential for environmental contamination; (v) animals, their associated pests, and specific pesticide toxicity and residue potential; (vi) the potential hazards associated with such factors as formulation, application technique, age of animals, stress on animals, and extent of treatment; (vii) vertebrate pest animals, including birds, and the conditions conducive to infestation and

damage; (viii) methods of control of pest animals, effects of such control on nontarget organisms and other potential effects on the environment; and (ix) the hazards involved with pesticide usage.

2. Nursery/greenhouse pest control. Applicants shall demonstrate knowledge of (i) commodities grown in nurseries and greenhouses, such as trees, vegetables, shrubs, plantings, and flowers; (ii) the pests associated with these commodities; (iii) phytotoxicity, drift, reentry intervals, preharvest intervals; and (iv) the use of protective equipment.

3. Fumigation of soil and agricultural products. Applicants shall demonstrate knowledge of (i) the use of personal protective equipment for fumigation and of general safety procedures, including posting, reentry, and aeration; and (ii) safety precautions and application techniques appropriate to various situations and conditions under which fumigants are applied.

4. Chemigation. Applicants shall demonstrate knowledge of (i) equipment associated with chemigation, including calibration techniques and use of [anti-back flow/check valve an approved backflow prevention assembly] to prevent contamination of water supplies; (ii) labeling requirements of products registered for chemigation, including posting requirements; and (iii) the appropriate use of personal protective equipment associated with this type of application.

5. Aerial pesticide application. Applicants shall demonstrate knowledge of (i) the agricultural crops grown, as well as grasslands and noncrop agricultural lands, and the specific pests of those crops on which they may be using pesticides; (ii) soil and water problems; (iii) equipment calibration and maintenance; (iv) preharvest intervals; (v) reentry intervals; (vi) phytotoxicity; (vii) prevention of drift; and (viii) potential for environmental contamination and injury to nontarget organisms.

6. Limited certificate - single product/single use. This category is intended for limited use under special or emergency circumstances as identified by the board where there exists a need to use a single identified restricted use product for a single designated purpose. The applicant shall demonstrate practical knowledge of (i) the safe handling and application of the identified product; and (ii) the environmental risks relative to its usage.

7. Single product certification. This category is intended for use under special or emergency circumstances as identified by the board. The applicant shall demonstrate practical knowledge of (i) the safe handling and application of the identified product or products; and (ii) the environmental risks relative to usage.

PART V.

[~~RE~~CERTIFICATION RENEWAL OF CERTIFICATION]; RENEWAL OF CERTIFICATES.

§ 5.1. [~~Recertification~~ Renewal of certification].

A. Any private or commercial pesticide applicator, or registered technician, who desires to renew his certification shall do so biennially under the category or subcategory for which he is certified, subject to presentation of proof of completion of a board approved recertification course. Recertification of commercial applicators and registered technicians is also contingent upon receipt of the required annual certificate fee.

B. To obtain recertification each applicator [or registered technician] shall either (i) furnish satisfactory evidence of completion of educational courses, programs, or seminars, approved by the board, relating to the applicator's certification, and submit a completed application for recertification form; or (ii) be reexamined in basic pesticide safety as well as in the categories desired for recertification.

C. [~~The maximum accumulation of recertification credit which can be earned from attending board approved recertification courses is four years. No person may accumulate more than four years' worth of credit by attending board-approved recertification courses.]~~

D. Upon the expiration of his certification, an applicator's certificate shall become invalid.

E. The commissioner or his duly authorized agent shall, within 30 days after receiving the application for recertification, inform the applicant in writing of his decision regarding recertification.

§ 5.2. Renewal of certificates.

A. All pesticide applicators and registered technicians who desire to renew their certificates shall do so by submitting an application for renewal within the period of time, and accompanied by the appropriate fee, if any, prescribed in regulations [~~promulgated by the board governing fees governing fees promulgated by the board~~].

B. Commercial pesticide applicator and registered technician certificates shall be renewed annually.

C. Private pesticide applicator certificates shall be renewed biennially.

D. Any pesticide applicator or registered technician who fails to renew an expired certificate within 60 days after its expiration, and who desires to reinstate the certificate, shall be reexamined.

§ 5.3. Reexamination.

A. Reexamination or special examination shall be

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required by the board of any commercial applicator or registered technician under the following circumstances:

1. The commercial applicator's or registered technician's certificate has been suspended, revoked, or modified pursuant to Part V of this regulation;
2. Significant technological developments have occurred requiring additional knowledge relating to the category or subcategory for which the applicator or registered technician has been certified;
3. Additional standards established by the EPA require reexamination or special examination;
4. The applicator or registered technician wishes to apply for a different category of certification; or
5. Regulations of the board require reexamination or special examination.

PART VI.

SUSPENSION AND REVOCATION OF CERTIFICATES; DENIAL OF CERTIFICATION

§ 6.1. Summary suspension by commissioner.

A. The commissioner may summarily suspend the certificate of any person without a hearing if he finds there is a substantial danger, or threat of a substantial danger, to the public health, safety, or the environment which warrants the summary suspension. The commissioner or his duly authorized agent shall institute proceedings for a hearing simultaneously with the summary suspension, and the hearing shall be scheduled for a date within a reasonable time [, not to exceed five working days] after the date of the summary suspension.

B. No person whose certificate has been suspended may engage in the activity for which he has been certified.

§ 6.2. Revocation of a certificate by the board

Any of the violative acts listed under § 3.1-249.63 C of the Code of Virginia shall constitute grounds for revocation by the board of a certificate.

§ 6.3. Denial of certification by the commissioner.

[A.] No person may be granted certification until he (i) submits the information required on the application form; (ii) completes the necessary board approved training; (iii) passes the necessary written examination or examinations; and (iv) complies in every other respect with all the relevant certification requirements required by this regulation.

[B. No applicant for certification may engage in the activity for which he is requesting such certification until the certification shall have been issued by the commissioner.]

PART VII. REPORTING OF PESTICIDE ACCIDENTS, INCIDENTS, OR LOSS.

§ 7.1. Reporting of pesticide accidents and incidents.

A. A commercial or private applicator or registered technician shall report to the department any pesticide accident or incident in which he is involved that constitutes a threat to any person, to public health or safety, or to the environment [due to loss or damage, or imminent loss or damage, as a result of the use or presence of any pesticide] . The accident or incident shall be reported whether or not a restricted use pesticide is involved. The applicator shall make the initial notification to the department's Office of Pesticide Management by telephone within [a reasonable time, not to exceed] 48 hours after the accident or incident occurrence [, should circumstances prevent immediate notification] . The applicator shall be responsible for preparing a full written report of the accident or incident which shall be due in the Office of Pesticide Management within 10 days after the initial notification.

B. In cases where the accident or incident involves a discharge or spillage of pesticide, the applicator shall contact the department for guidance to determine whether the discharged or spilled amount is a reportable quantity [as set forth in the guidelines established pursuant to the Resource Conservation and Recovery Act (RCRA). The applicator shall make the initial notification to the department's Office of Pesticide Management by telephone within a reasonable time, not to exceed 48 hours after the accident or incident occurrence, should circumstances prevent immediate notification. The applicator shall be responsible for preparing a full written report of the accident or incident which shall be due in the Office of Pesticide Management within 10 days after the initial notification] . [If this is so, the applicator shall also notify the National Response Center at 1-800-424-8802. If, for any reason, the applicator is unable to reach the department for assistance, he shall call the National Response Center. In no way does this notification release the applicator from notifying other state agencies if such a discharge is a reportable quantity.]

PART VIII. RECIPROCAL AGREEMENT.

§ 8.1. Issuance of a certificate on a reciprocal basis.

A. A person who is certified either in another state by meeting the examination requirements of that state, or by a federal agency, substantially in accordance with these regulations, may make written application to the commissioner or his duly authorized agent for issuance of a certificate on a reciprocal basis without examination, in accordance with § 3.1-249.57 of the Code of Virginia. Along with his written application, an applicant shall either (i) present an original certificate issued by the state of origin or issued by a federal agency, or (ii) request that the

state of origin or federal agency send an attested copy of the applicant's certification directly to the commissioner or his duly authorized agent. The applicant shall either include a document granting power of attorney to a resident of Virginia to receive process or provide proof that the applicant has appointed a registered agent under the laws of the commonwealth. Reciprocal certification shall not be granted based on reciprocal certification issued in another state.

B. Any certificate issued on a reciprocal basis may be suspended in the same manner and on the same grounds as a Virginia certificate pursuant to the provisions of Chapter 14.1 (§ 3.1-249.27 et seq.) of Title 3.1 of the Code of Virginia and this regulation. A certificate issued on a reciprocal basis may also be suspended if the nonresident's original certificate or federal certification is suspended or revoked.

PART IX. RECORD KEEPING.

§ 9.1. General record keeping requirements for commercial applicators not for hire.

A. Commercial applicators not for hire, being exempt from the pesticide business license requirement of the board and the record keeping requirements under this license, are required to maintain pesticide application records as prescribed in this regulation. These records shall be maintained by the commercial applicator not for hire for a period of two years.

B. Records governed by this regulation shall, upon written request, be made available for inspection by the commissioner or his duly authorized agent during normal business hours. Records not readily available shall be submitted to the commissioner or his duly authorized agent within 72 hours if so requested in writing.

C. Persons possessing records governed by this part shall fully comply with the requirements contained in § 8 of the Federal Insecticide, Fungicide, and Rodenticide Act and regulations adopted pursuant thereto.

§ 9.2. Specific record keeping requirements for commercial applicators not for hire.

A. Commercial applicators not for hire shall maintain a record of each restricted use pesticide applied. Each record shall contain the:

[1. Name, address, and telephone number of the customer, and address or location, if different, of the site of application;

1. Name of the property owner, address or location, and, as applicable, phone number, of the site of application;]

2. Name and certification number (or certification

number of the supervising certified applicator) of the person making the application;

3. Day, month, and year of application;

4. Type of plants, crop, animals, or sites treated and principal pests to be controlled;

5. Acreage, area, or number of plants or animals treated;

6. Brand name or common product name of pesticide used;

7. EPA registration number;

8. Amounts of pesticide concentrate and amount of diluent used, by weight or volume, in mixture applied; and

9. Type of application equipment used.

PART X. EVIDENCE OF FINANCIAL RESPONSIBILITY.

§ 10.1. Evidence of financial responsibility required of commercial applicators not for hire.

A. Commercial applicators not for hire, being exempt from the business license requirement of the board and the financial responsibility required under this license, shall furnish evidence of financial responsibility, consisting either of (i) a surety bond to the benefit of the board from a person authorized to do business in Virginia; (ii) a liability insurance policy from a person authorized to do business in Virginia, or a certification thereof, protecting persons who may suffer legal damages as a result of the use of any pesticide by the applicant; or (iii) a plan of self-insurance which meets the requirements set forth below and is approved by the board.

B. If the evidence of financial responsibility consists of a surety bond, the bond shall be in an amount specified in subsection E of this section, and shall cover liability arising out of handling, storage, application, use or misuse, or disposal of any pesticide; the bond shall also cover liability relating to completed operations.

C. If the evidence of financial responsibility consists of a liability insurance policy, the following conditions shall be met:

1. The certificate of insurance shall include the name of the insurance company, policy number, insurance amount, type of coverage afforded, any exclusions relating to damage arising from the use of pesticides, and expiration date of the policy. The policy shall cover liability arising out of the handling, storage, application, use or misuse, or disposal of any pesticide; the policy shall also cover liability relating to completed operations;

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2. The policy shall be in an amount specified in subsection E of this section; and

3. The licensee shall forward a current certificate of insurance to the board at each insurance renewal date.

D. If the evidence of financial responsibility consists of a plan of self-insurance, the following conditions shall be met:

1. The self-insurer shall submit a written proposal of self-insurance to the board for approval. The proposal shall include a master self-insurance and security agreement and a balance sheet and income statement which reflects the actual financial condition of the applicant, if self-employed, or his employer's business, if not, as of the last complete calendar or fiscal year preceding the date of the proposal. These documents shall be certified by a certified public accountant.

2. The self-insurer shall post collateral with the board in the amount of at least \$400,000. The collateral shall consist of the following: negotiable instruments of the United States government; escrow deposits established for the sole purpose of providing security for self-insurance purposes; irrevocable letters of credit; or other security approved upon petition to the board.

3. If the self-insurer is unable to fulfill his obligations under the Act, he may petition the board to release the collateral posted. If such a withdrawal is necessary, the self-insurer shall replace the security within 72 hours after the time of withdrawal in order to retain his certificate as a self-insurer.

4. A certificate of self-insurance, to be issued by the board, shall be renewed annually following appropriate review by the board. If his financial responsibility furnished no longer complies with this section of the regulation, the self-insurer shall immediately provide other evidence of financial responsibility that complies with the requirements of this regulation.

E. The amount of financial responsibility required by this section shall be a minimum of (i) \$200,000 for property damage, subject to a \$1,000 deductible provision in the case of persons holding liability insurance policies, and \$200,000 for personal injury; or (ii) a combined single limit of \$400,000 with a \$1,000 deductible. The board may require additional evidence of financial responsibility based upon annual gross revenue of the applicant, if self-employed, or his employer's business, if not, and an assessment of the risks of the applicant or his employer's business to persons, property, and the environment. The applicant shall maintain at least the minimum coverage at all times, and shall notify the board at least 10 days prior to any reduction or cancellation of such financial responsibility by the surety or insurer. If the deductible of an applicant is greater than \$1,000, evidence of financial responsibility shall be furnished to the board to satisfy the

difference between the applicator's deductible and the \$1,000 deductible. This evidence may consist of a financial statement or a personal bond.



VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
 P.O. Box 525
 Richmond, Virginia 23204-0525



APPLICATION FOR COMMERCIAL PESTICIDE APPLICATOR CERTIFICATE

In accordance with Section 3.1-249.52 of the Virginia Pesticide Control Act, and regulations adopted thereunder, application is hereby made for CERTIFICATION as a COMMERCIAL PESTICIDE APPLICATOR in Virginia.

Certificate fee is \$35.00 annually. Make check payable to: Treasurer of Virginia. Mail application and check to the above address. FEDERAL, STATE, AND LOCAL GOVERNMENT EMPLOYEES ARE EXEMPT FROM PAYING FEE.

Certificates expire on June 30 each year. Certificates must be renewed before May 1 each year to avoid payment of a 20 percent penalty.

Please type or print the following information:

CERTIFICATION APPLIED FOR IN THESE CATEGORIES (see reverse):

CAT. NO.	TITLE	CAT. NO.	TITLE

NAME OF APPLICANT: _____
(Last) (First) (M.I.)

SOCIAL SECURITY NUMBER: _____

STREET/RFD: _____ CITY: _____

COUNTY: _____ STATE: _____ ZIP CODE: _____

GOVERNMENT EMPLOYEE? YES NO

EMPLOYED BY (COMPANY, NAME OR GOVT. AGENCY): _____

BUSINESS LICENSE NO.: _____ BUSINESS PHONE: _____

NAME/TITLE OF SUPERVISOR: _____

I certify that I have been trained in the specific skills necessary to properly apply pesticides in the performance of my job, and I agree to abide by all laws, rules and regulations governing pesticide usage in Virginia.

(Signature of Applicant) DATE: _____

AMOUNT TO REMIT: \$35.00
 VDACS ACCT. 356-02-00556
 FOR DEPARTMENTAL USE ONLY
 ComAppl Certificate No.: _____
 Date of Issue: _____
 Input to Database by: _____
 VDACS-07111

COMMERCIAL PESTICIDE APPLICATOR CATEGORIES

Cat.No.	Category Title	Computer Code No.
1-A	Agricultural Pest Control - Plant	01
1-B	Agricultural Pest Control - Animal	11
1-C	Agricultural Pest Control - Fumigation	17
1-D	Agricultural Pest Control - Chemigation	18
2	Forest Pest Control	02
3-A	Ornamental Pest Control - Outdoor	03
3-B	Ornamental Pest Control - Indoor	19
3-C	Turf Pest Control	20
4	Seed Treatment	04
5-A	Aquatic Pest Control - General	05
5-B	Marine Antifoulant Paints	16
6	Right-Of-Way Pest Control	06
7-A	General Pest Control (Including Food Processing)	12
7-B	Wood Destroying Pest Control	13
7-C	Fumigation	14
7-D	Vertebrate Pest Control	15
8	Public Health Pest Control	08
9	Regulatory Pest Control	09
10	Demonstration and Research Pest Control	10
11	Aerial Pesticide Application	11
12	Wood Preservation and Wood Product Treatment	07



VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
 P.O. Box 526
 Richmond, Virginia 23204-0526



VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
 P.O. Box 526
 Richmond, Virginia 23204-0526



APPLICATION FOR RECIPROCAL PESTICIDE APPLICATOR CERTIFICATE

APPLICATION FOR COMMERCIAL PESTICIDE REGISTERED TECHNICIAN CERTIFICATE

In accordance with Section 3.1-249.52 of the Virginia Pesticide Control Act, and regulations adopted thereunder, application is hereby made for CERTIFICATION as a REGISTERED TECHNICIAN. Registered Technicians may apply general use pesticides unsupervised, and restricted-use pesticides under the supervision of a Certified Commercial Applicator.

Certificate fee is \$15.00 annually. Make check payable to: Treasurer of Virginia. Mail application and check to the above address. FEDERAL, STATE, AND LOCAL GOVERNMENT EMPLOYEES ARE EXEMPT FROM PAYING FEE.

Certificates expire on June 30 each year. Certificates must be renewed before May 1 each year to avoid payment of a 20 percent penalty.

Please type or print the following information:

NAME OF APPLICANT: _____
 (Last) (First) (M.I.)

SOCIAL SECURITY NUMBER: _____

STREET/RFD: _____ CITY: _____

COUNTY: _____ STATE: _____ ZIP CODE: _____

GOVERNMENT EMPLOYEE? YES NO

EMPLOYED BY (COMPANY NAME OR GOVT. AGENCY): _____

BUSINESS LICENSE NO.: _____ BUSINESS PHONE: _____

NAME OF CERT. COMMERCIAL APPLICATOR SUPERVISOR: _____ CERT. NUMBER: _____

APPROVED TRAINING RECEIVED (LIST CATEGORIES): _____

I certify that I have been trained in the specific skills necessary to properly apply pesticides in the performance of my job, and I agree to abide by all laws, rules and regulations governing pesticide usage.

I certify that this applicant has successfully completed a training course, approved by the Pesticide Control Board, specific to the pesticide application requirements of his/her job.

Signature of Applicant: _____

Signature of Supervisor: _____

DATE: _____

DATE: _____

FOR DEPARTMENTAL USE ONLY
 Rec'd Date: _____
 AMOUNT TO REMIT: \$15.00
 VDAC'S ACCT. 159-01-02437

In accordance with Section 3.1-249.57 of the Virginia Pesticide Control Act, application is hereby made for CERTIFICATION as a COMMERCIAL PESTICIDE APPLICATOR under the Reciprocal Agreement between the Commonwealth of Virginia and the State of _____
 Certificates expire on June 30 each year. Certificates must be renewed before May 1 each year to avoid payment of a 20 percent penalty.

Certificate fee is \$35.00 annually. Make check payable to: Treasurer of Virginia. Mail application and check to the above address. FEDERAL, STATE, AND LOCAL GOVERNMENT EMPLOYEES ARE EXEMPT FROM PAYING FEE.

Please type or print the following information:

CERTIFICATION APPLIED FOR IN THESE CATEGORIES (see reverse):

CAT. NO.	TITLE	CAT. NO.	TITLE
_____	_____	_____	_____
_____	_____	_____	_____

SOCIAL SECURITY NUMBER: _____

NAME OF APPLICANT: _____
 (Last) (First) (M.I.)

STREET/RFD: _____ CITY: _____

COUNTY: _____ STATE: _____ ZIP CODE: _____

GOVERNMENT EMPLOYEE? YES NO

EMPLOYED BY (COMPANY NAME OR GOVT. AGENCY): _____

BUSINESS LICENSE NO.: _____ BUSINESS PHONE: _____

NAME/TITLE OF SUPERVISOR: _____

I certify that I have been trained in the specific skills necessary to properly apply pesticides in the performance of my job, and I agree to abide by all laws, rules and regulations governing pesticide usage in Virginia.

Signature of Applicant: _____

DATE: _____

FOR DEPARTMENTAL USE ONLY
 Rec'd Date: _____
 AMOUNT TO REMIT: \$35.00
 VDAC'S ACCT. 256-01-02765

***** CERTIFICATE OF INSURANCE *****

To the Virginia Department of Agriculture and Consumer Services:

I hereby certify that Policy # _____ provides coverage, in the form of a general liability policy, for liability that may result from the operation of a pesticide business, and for liability relating to completed operations (for businesses that apply pesticides). This policy is in a minimum of:

\$ _____ for property damage, and \$ _____ for bodily injury; OR
 \$ _____ combined single limit for property damage and bodily injury.
 \$ _____ deductible amount (see reverse for deductible requirements)

Exclusions (please specify): _____

This policy has been issued to:

(Name of Insured) _____ (Address) _____

(Trading As, or D.B.A.) _____ (Address) _____

Policy term: Effective date: _____ Expiration date: _____

In the event of cancellation, the insurer agrees to advise the VDACS Office of Pesticide Management, by written notice, at least 10 days prior to the effective date of cancellation.

(Insurance Company Providing Coverage) _____

(Agency Issuing Policy) _____ (Company Seal or Stamp) _____

(Street) _____ (City) _____ (State) _____ Zip _____

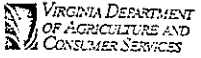
X _____ (Signature - Authorized Representative) _____ (Date of Certificate) _____

For acceptance by the Virginia Department of Agriculture and Consumer Services, this form must be properly completed, validated and signed by the issuing insurance agency.

Return to: Office of Pesticide Management
 Virginia Department of Agriculture and Consumer Services
 P.O. Box 1193
 Richmond, Virginia 23209

COMMERCIAL PESTICIDE APPLICATOR CATEGORIES

Cat.No.	Category Title	Insurer Code No.
1-A	Agricultural Pest Control - Plant	01
1-B	Agricultural Pest Control - Animal	11
1-C	Agricultural Pest Control - Fumigation	17
1-D	Agricultural Pest Control - Chemigation	18
2	Forest Pest Control	02
3-A	Ornamental Pest Control - Outdoor	19
3-B	Ornamental Pest Control - Indoor	19
3-C	Turf Pest Control	23
4	Seed Treatment	04
5-A	Aquatic Pest Control - General	15
5-B	Marine Antifoulant Paints	16
6	Right-Of-Way Pest Control	06
7-A	General Pest Control (Including Food Processing)	12
7-B	Wood Destroying Pest Control	13
7-C	Fumigation	14
7-D	Vertebrate Pest Control	14
8	Public Health Pest Control	08
9	Regulatory Pest Control	09
10	Demonstration and Research Pest Control	10
11	Aerial Pesticide Application	11
12	Wood Preservation and Wood Products Treatment	12



VIRGINIA

APPLICATION FOR RECERTIFICATION

I, _____, holder of Pesticide Applicator (PRINT Name As It Appears On Certificate)

Certificate # _____, hereby certify that I have attended and participated in the following approved training program and make application for recertification credit as a Commercial Pesticide Applicator in Category #(s) _____

(Category Description(s)) _____

This Course has been approved for recertification credit in Category(s) _____

Course Approval Number(s) _____

Name of Training Program: _____

Date(s) of Attendance: _____

**If the address on your Certificate is not correct, please provide the correct address below:

This Certification of attendance and participation is witnessed by my signature hereto affixed and I further acknowledge that the use of fraud or misrepresentation in making of this Application for Recertification is a violation of Section 3-12-9.3.3 of the Virginia Pesticide Control Act.

(Signature of Applicator) _____

(Signature of Principal Instructor) _____

Complete and return to:

Office of Pesticide Management
Virginia Department of Agriculture & Consumer Services
P. O. Box 1163
Richmond, VA 23209

12-Oct-89

EVIDENCE OF FINANCIAL RESPONSIBILITY REQUIRED OF

A LICENSED PESTICIDE BUSINESS

DEFINITION: "Pesticide business" means any person engaged in the business of distributing, applying or recommending the use of a product, storing, selling, or offering for sale pesticides for distribution directly to the user. The term "pesticide business" does not include wood treaters not for hire or businesses exempted by regulations adopted by the Virginia Pesticide Control Board.

Prior to being issued a pesticide business license, a business shall furnish evidence of financial responsibility consisting either of (1) a surety bond to the benefit of the Pesticide Control Board; (2) a liability insurance policy, or certification thereof, protecting persons who may suffer legal damages as a result of the use of any pesticides by the applicant; or (3) a plan of self-insurance which meets the requirements of the Pesticide Control Board. Such financial responsibility need not apply to damages or injury to agricultural crops, plants or property being worked upon by the applicant.

Minimum Insurance Requirements

\$200,000 for bodily injury, and \$200,000 for property damage subject to a \$1,000 deductible; OR

\$400,000 combined single limit, with a \$1,000 deductible.

If the deductible is greater than \$1,000, further evidence of financial responsibility must be furnished to satisfy the difference between the deductible in the policy and the maximum allowed deductible. This evidence may consist of a financial statement (certified by a CPA), or a personal bond.

The business licensee shall maintain at least the minimum coverage at all times during the license period, and shall provide a current certificate of insurance to the Office of Pesticide Management at each insurance renewal date.

Note - This certificate is for use only in providing proof of liability insurance coverage.

Revised form - This form supersedes all previous certificate of insurance forms issued by the ADACS Office of Pesticide Management.



VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
Division of Product and Industry Regulation
Office of Pesticide Management
P. O. Box 1163, Room 408, Richmond, VA 23209

POWER OF ATTORNEY

The following is for use by non-Virginia residents in designating an agent upon whom service of process (summons to court, etc.) may be had in the event of any suit against such non-resident person. You, as a non-resident pesticide applicator, may designate either the Secretary of the Commonwealth of Virginia as that agent or a duly appointed resident agent by completing and filing the following information.

Please complete and file in duplicate. Enclose with this form, a check for \$3.00 made payable to the SECRETARY OF THE COMMONWEALTH and mail to the above address.

KNOWN ALL MEN BY THESE PRESENTS: THAT (applicant's name and address) residing at

does hereby make, constitute, and appoint of (name and address of agent) OR

does hereby make, constitute and appoint the SECRETARY OF THE COMMONWEALTH OF VIRGINIA, and his successor or successors in office to be the true and lawful agent and attorney-in-fact upon whom all legal processes against said non-resident person may be served; and the said person hereby stipulates and agrees that any lawful process against the said person which is duly served on said agent and attorney-in-fact shall be of the same legal force and validity as if served on said person.

IN WITNESS WHEREOF the said person has executed and subscribed this Power of Attorney in duplicate this day of 19

ATTEST: (Applicant's Signature) (Witness's Signature)

State of City (or County) of

I, a Notary Public in and for the State and city or county aforesaid, hereby certify that (Applicant's Name)

and (Witness's Name) whose names are signed to the

foregoing Power of Attorney, have acknowledged the same before me in my city or county aforesaid. Given under my hand and official seal this

day of 19

Notary Public:

My Commission Expires:

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STATE AIR POLLUTION CONTROL BOARD

REGISTRAR'S NOTICE: This regulation is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 2 of the Code of Virginia, which excludes regulations that establish or prescribe agency organization, internal practice or procedures, including delegations of authority. The Department of Air Pollution Control will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: VR 120-01. Regulations for the Control and Abatement of Air Pollution: Delegation of Authority (Appendix F).

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

Effective Date: October 1, 1991.

Summary:

The regulation amends provisions covering delegation of authority (Appendix F) and are summarized below:

The amendments revise the delegation of authority from the board to the department (i) to change certain subsection designations as reflected in recent changes to Rules 4-3 and 5-3; and (ii) to add to the provisions covering exemptions from delegation to the department the approval of amendments to any policy or procedure approved by the board, except as may be provided by the board in the affected policy or procedure.

VR 120-01. Regulations for the Control and Abatement of Air Pollution: Delegation of Authority (Appendix F).

I. Restrictions upon delegation of authority.

The delegation of authority specified within this appendix is subject to the following restrictions:

A. The board reserves the right to exercise its authority in any of the following delegated powers should it choose to do so.

B. A party significantly affected by any decision of the executive director may request that the board exercise its authority for direct consideration of the issue. The request shall be filed within 30 days after the decision is rendered and shall contain reasons for the request.

C. The submittal of the request by itself shall not constitute a stay of decision. A stay of decision shall be sought through appropriate legal channels.

II. Substance of delegation of authority.

A. The executive director is delegated the authority to

act within the scope of the Virginia Air Pollution Control Law and these regulations and for the board when it is not in session except for the authority to:

1. Control and regulate the internal affairs of the board;
2. Approve proposed regulations for public comment and adopt final regulations;
3. Grant variances to regulations;
4. Issue orders and special orders, except for consent orders and emergency special orders;
5. Determine significant ambient air concentrations under §§ 120-04-0304 ~~D E~~ and 120-05-0304 ~~D E~~;
6. Approve amendments to any policy or procedure approved by the board, except as may be provided therein;
- 6- 7. Appoint persons to the State Advisory Board on Air Pollution;
- 7- 8. Create local air pollution control districts and appoint representatives; and
- 8- 9. Approve local ordinances.

B. The board may exercise its authority for direct consideration of permit applications in cases where one or more of the following issues is involved in the evaluation of the application: (i) the stationary source generates public concern relating to air quality issues; (ii) the stationary source is precedent setting; or (iii) the stationary source is a major stationary source or major modification expected to impact on any nonattainment area or class I area.

C. The executive director shall notify the board chairman of permit applications falling within the categories specified in subsection B of this section and the board chairman shall advise the executive director of those permits the board wishes to consider directly.

D. The executive director has final authority to adjudicate contested decisions of subordinates delegated powers by him prior to appeal of such decisions to the circuit court or consideration by the board.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

Title of Regulation: VR 173-02-01. Chesapeake Bay Preservation Area Designation and Management Regulations.

Statutory Authority: §§ 10.1-2103 and 10.1-2107 of the Code of Virginia.

Effective Date: October 1, 1991.

Summary:

These regulations are adopted by the Chesapeake Bay Local Assistance Board in accordance with provisions of §§ 10.1-2103 and 10.1-2107 of the Code of Virginia. The regulations are divided into six parts dealing with (i) introductory matters, (ii) local government requirements, (iii) Chesapeake Bay Preservation Area criteria, (iv) land use and development performance criteria, (v) implementation, assistance, and determination of consistency, and (vi) enforcement.

Amendments to these regulations clarify the definition of "public roads" and establish conditions which they must satisfy to cross preservation areas called Resource Protection Areas, establish a specific date of subdivision for exempting lots that cannot comply with buffer area and reserve septic system drainfield requirements, compress deadlines for adoption of local programs pursuant to the Act, and change the effective date in order to supersede emergency regulations (VR 173-02-01.1) which are currently in effect. The emergency regulations already incorporate the compression of local program adoption deadlines and the buffer and reserve drainfield effective date proposed.

In addition, minor editorial, form or style changes have been made to correct grammar and punctuation. None of these changes affect the content or intent of the regulations.

VR 173-02-01. Chesapeake Bay Preservation Area Designation and Management Regulations.

PART I. INTRODUCTION.

§ 1.1. Application.

The board is charged with the development of regulations which establish criteria that will provide for the protection of water quality, and that also will accommodate economic development. All counties, cities, and towns in Tidewater Virginia shall comply with these regulations. Other local governments not in Tidewater Virginia may use the criteria and conform their ordinances as provided in these regulations to protect the quality of state waters in accordance with § 10.1-2110 of the Code of Virginia.

§ 1.2. Authority for regulations.

These regulations are issued under the authority of §§ 10.1-2103 and 10.1-2107 of Chapter 21 of Title 10.1 of the Code of Virginia (the Chesapeake Bay Preservation Act, hereinafter "the Act").

§ 1.3. Purpose of regulations.

The purpose of these regulations is to protect and improve the water quality of the Chesapeake Bay, its tributaries, and other state waters by minimizing the effects of human activity upon these waters and implementing the Act, which provides for the definition and protection of certain lands called Chesapeake Bay Preservation Areas, which if improperly used or developed may result in substantial damage to the water quality of the Chesapeake Bay and its tributaries.

These regulations establish the criteria that counties, cities, and towns (hereinafter "local governments") shall use to determine the extent of the Chesapeake Bay Preservation Areas within their jurisdictions. These regulations establish criteria for use by local governments in granting, denying, or modifying requests to rezone, subdivide, or to use and develop land in Chesapeake Bay Preservation Areas. These regulations identify the requirements for changes which local governments shall incorporate into their comprehensive plans, zoning ordinances, and subdivision ordinances to protect the quality of state waters pursuant to §§ 10.1-2109 and 10.1-2111 of the Act.

§ 1.4. Definitions.

The following words and terms used in these regulations have the following meanings, unless the context clearly indicates otherwise. In addition, some terms not defined herein are defined in § 10.1-2101 of the Act.

"Act" means the Chesapeake Bay Preservation Act found in Chapter 21 (§ 10.1-2100 et seq.) of Title 10.1 of the Code of Virginia.

"Best management practice" means a practice, or combination of practices, that is determined by a state or designated area wide planning agency to be the most effective, practicable means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals.

"Board" means the Chesapeake Bay Local Assistance Board.

"Buffer area" means an area of natural or established vegetation managed to protect other components of a Resource Protection Area and state waters from significant degradation due to land disturbances.

"Chesapeake Bay Preservation Area" means any land designated by a local government pursuant to Part III of these regulations and § 10.1-2107 of the Act. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area.

"Department" means the Chesapeake Bay Local Assistance Department.

"Development" means the construction or substantial alteration of residential, commercial, industrial,

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institutional, recreation, transportation, or utility facilities or structures.

"Director" means the Executive Director of the Chesapeake Bay Local Assistance Department.

"Floodplain" means all lands that would be inundated by flood water as a result of a storm event of a 100-year return interval.

"Highly erodible soils" means soils (excluding vegetation) with an erodibility index (EI) from sheet and rill erosion equal to or greater than eight. The erodibility index for any soil is defined as the product of the formula $RKLS/T$, as defined by the "Food Security Act (F.S.A.) Manual" of August, 1988 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Soil Conservation Service, where K is the soil susceptibility to water erosion in the surface layer; R is the rainfall and runoff; LS is the combined effects of slope length and steepness; and T is the soil loss tolerance.

"Highly permeable soils" means soils with a given potential to transmit water through the soil profile. Highly permeable soils are identified as any soil having a permeability equal to or greater than six inches of water movement per hour in any part of the soil profile to a depth of 72 inches (permeability groups "rapid" and "very rapid") as found in the "National Soils Handbook" of July, 1983 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Soil Conservation Service.

"Impervious cover" means a surface composed of any material that significantly impedes or prevents natural infiltration of water into the soil. Impervious surfaces include, but are not limited to, roofs, buildings, streets, parking areas, and any concrete, asphalt, or compacted gravel surface.

"Infill" means utilization of vacant land in previously developed areas.

"Intensely Developed Areas" means those areas designated by the local government pursuant to § 3.4 of these regulations.

"Local governments" means counties, cities, and towns. These regulations apply to local governments in Tidewater Virginia, as defined in § 10.1-2101 of the Act, but the provisions of these regulations may be used by other local governments.

"Local program" means the measures by which a local government complies with the Act and regulations.

"Local program adoption date" means the date a local government meets the requirements of subsections A and B of § 2.2 of Part II.

"Nontidal wetlands" means those wetlands other than tidal wetlands that are inundated or saturated by surface

or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to § 404 of the federal Clean Water Act, in 33 C.F.R. 328.3b, dated November 13, 1986.

"Plan of development" means any process for site plan review in local zoning and land development regulations designed to ensure compliance with § 10.1-2109 of the Act and these regulations, prior to issuance of a building permit.

"Public road" means a publicly-owned road designed and constructed in accordance with [~~polities; procedures~~ and criteria of water quality protection criteria at least as stringent as requirements applicable to] the Virginia Department of Transportation, including regulations promulgated pursuant to (i) the Erosion and Sediment Control Law (§ 10.1-560 et seq. of the Code of Virginia) and (ii) The Virginia Stormwater Management Act (§ 10.1-603 et seq. of the Code of Virginia). This definition includes those roads where the Virginia Department of Transportation exercises direct supervision over the design or construction activities, or both [, and cases where secondary roads are constructed or maintained, or both, by a local government in accordance with the standards of that local government].

"Redevelopment" means the process of developing land, that is or has been previously developed.

"Resource Management Area" means that component of the Chesapeake Bay Preservation Area that is not classified as the Resource Protection Area.

"Resource Protection Area" means that component of the Chesapeake Bay Preservation Area comprised of lands at or near the shoreline that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation to the quality of state waters.

"Substantial alteration" means expansion or modification of a building or development which would result in a disturbance of land exceeding an area of 2,500 square feet in the Resource Management Area only.

"Tidal shore" or "shore" means land contiguous to a tidal body of water between the mean low water level and the mean high water level.

"Tidal wetlands" means vegetated and nonvegetated wetlands as defined in § 62.1-13.2 of the Code of Virginia.

"Tidewater Virginia" means those jurisdictions named in § 10.1-2101 of the Act.

"Tributary stream" means any perennial stream that is so depicted on the most recent U.S. Geological Survey

7-1/2 minute topographic quadrangle map (scale 1:24,000).

"Use" means an activity on the land other than development including, but not limited to, agriculture, horticulture, and silviculture.

"Water-dependent facility" means a development of land that cannot exist outside of the Resource Protection Area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include, but are not limited to (i) ports; (ii) the intake and outfall structures of power plants, water treatment plants, sewage treatment plants, and storm sewers; (iii) marinas and other boat docking structures; (iv) beaches and other public water-oriented recreation areas [; ;] and (v) fisheries or other marine resources facilities.

PART II. LOCAL GOVERNMENT PROGRAMS.

§ 2.1. Local program development.

Local governments shall develop measures (hereinafter called "local programs") necessary to comply with the Act and regulations. Counties and towns are encouraged to cooperate in the development of their local programs. In conjunction with other state water quality programs, local programs shall encourage and promote: (i) protection of existing high quality state waters and restoration of all other state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them; (ii) safeguarding the clean waters of the Commonwealth from pollution; (iii) prevention of any increase in pollution; (iv) reduction of existing pollution; and (v) promotion of water resource conservation in order to provide for the health, safety and welfare of the present and future citizens of the Commonwealth.

§ 2.2. Elements of program.

Local programs shall contain the elements listed below. Local governments shall adopt elements A and B concurrently and no later than 12 months after the adoption date of these regulations. Elements C through G shall also be in place within 24 12 months after the adoption date.

A. A map delineating Chesapeake Bay Preservation Areas.

B. Performance criteria applying in Chesapeake Bay Preservation Areas that employ the requirements in Part IV.

C. A comprehensive plan or revision that incorporates the protection of Chesapeake Bay Preservation Areas and of the quality of state waters.

D. A zoning ordinance or revision that (i) incorporates

measures to protect the quality of state waters in Chesapeake Bay Preservation Areas, and (ii) requires compliance with all criteria set forth in Part IV.

E. A subdivision ordinance or revision that (i) incorporates measures to protect the quality of state waters in Chesapeake Bay Preservation Areas, and (ii) assures that all subdivisions in Chesapeake Bay Preservation Areas comply with the criteria set forth in Part IV.

F. An erosion and sediment control ordinance or revision that requires compliance with the criteria in Part IV.

G. A plan of development process prior to the issuance of a building permit to assure that use and development of land in Chesapeake Bay Preservation Areas is accomplished in a manner that protects the quality of state waters.

PART III. CHESAPEAKE BAY PRESERVATION AREA DESIGNATION CRITERIA.

§ 3.1. Purpose.

The criteria in this part provide direction for local government designation of the ecological and geographic extent of Chesapeake Bay Preservation Areas. Chesapeake Bay Preservation Areas are divided into Resource Protection Areas and Resource Management Areas that are subject to the criteria in Part IV and the requirements in Part V. In addition, the criteria in this part provide guidance for local government identification of areas suitable for redevelopment that are subject to the redevelopment criteria in Part IV.

§ 3.2. Resource Protection Areas.

A. Resource Protection Areas shall consist of sensitive lands at or near the shoreline that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may cause significant degradation to the quality of state waters. In their natural condition, these lands provide for the removal, reduction, or assimilation of sediments, nutrients, and potentially harmful or toxic substances in runoff entering the Bay and its tributaries, and minimize the adverse effects of human activities on state waters and aquatic resources.

B. The Resource Protection Area shall include:

1. Tidal wetlands;
2. Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or tributary streams;
3. Tidal shores;

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4. Such other lands under the provisions of subsection A of § 3.2 of this part necessary to protect the quality of state waters;

5. A buffer area not less than 100 feet in width located adjacent to and landward of the components listed in subdivisions 1 through 4 above, and along both sides of any tributary stream. The full buffer area shall be designated as the landward component of the Resource Protection Area notwithstanding the presence of permitted uses or equivalent measures in compliance with Part IV of these regulations. Designation of this area shall not be subject to reduction unless based on reliable site-specific information as provided in subsection B of § 4.1, and subsections C and E of § 5.6 of these regulations.

§ 3.3. Resource Management Areas.

A. Resource Management Areas shall include land types that, if improperly used or developed, have a potential for causing significant water quality degradation or for diminishing the functional value of the Resource Protection Area.

B. A Resource Management Area shall be provided contiguous to the entire inland boundary of the Resource Protection Area. The following land categories shall be considered for inclusion in the Resource Management Area:

1. Floodplains;
2. Highly erodible soils, including steep slopes;
3. Highly permeable soils;
4. Nontidal wetlands not included in the Resource Protection Area;
5. Such other lands under the provisions of subsection A of § 3.3 of this part necessary to protect the quality of state waters.

C. Resource Management Areas shall encompass a land area large enough to provide significant water quality protection through the employment of the criteria in Part IV and the requirements in Parts II and V.

§ 3.4. Intensely Developed Areas.

At their option, local governments may designate Intensely Developed Areas as an overlay of Chesapeake Bay Preservation Areas within their jurisdictions. For the purposes of these regulations, Intensely Developed Areas shall serve as redevelopment areas in which development is concentrated as of the local program adoption date. Areas so designated shall comply with the performance criteria for redevelopment in Part IV.

Local governments exercising this option shall examine

the pattern of residential, commercial, industrial, and institutional development within Chesapeake Bay Preservation Areas. Areas of existing development and infill sites where little of the natural environment remains may be designated as Intensely Developed Areas provided at least one of the following conditions [~~exist~~ exists]:

A. Development has severely altered the natural state of the area such that it has more than 50% impervious surface;

B. Public sewer and water is constructed and currently serves the area by the effective date. This condition does not include areas planned for public sewer and water;

C. Housing density is equal to or greater than four dwelling units per acre.

PART IV. LAND USE AND DEVELOPMENT PERFORMANCE CRITERIA.

§ 4.1. Purpose.

The purpose of this part is to achieve the goals of the Act and § 2.1 of these regulations by establishing criteria to implement the following objectives: prevent a net increase in nonpoint source pollution from new development, achieve a 10% reduction in nonpoint source pollution from redevelopment, and achieve a 40% reduction in

In order to achieve these goals and objectives, these criteria establish performance standards to minimize erosion and sedimentation potential, reduce land application of nutrients and toxics, maximize rainwater infiltration, and ensure the long-term performance of the measures employed.

A. These criteria become mandatory upon the local program adoption date. They are supplemental to the various planning and zoning concepts employed by local governments in granting, denying, or modifying requests to rezone, subdivide, or to use and develop land in Chesapeake Bay Preservation Areas.

B. Local governments may exercise judgment in determining site-specific boundaries of Chesapeake Bay Preservation Area components and in making determinations of the application of these regulations, based on more reliable or specific information gathered from actual field evaluations of the parcel, in accordance with plan of development requirements in Part V.

§ 4.2. General performance criteria.

It must be demonstrated to the satisfaction of local governments that any use, development, or redevelopment of land in Chesapeake Bay Preservation Areas meets the following performance criteria:

1. No more land shall be disturbed than is necessary to provide for the desired use or development [; .]

2. Indigenous vegetation shall be preserved to the maximum extent possible consistent with the use and development allowed [; .]

3. Where the best management practices utilized require regular or periodic maintenance in order to continue their functions, such maintenance shall be ensured by the local government through a maintenance agreement with the owner or developer or some other mechanism that achieves an equivalent objective [; .]

4. All development exceeding 2,500 square feet of land disturbance shall be accomplished through a plan of development review process consistent with § 15.1-491 (h) of the Code of Virginia [; .]

5. Land development shall minimize impervious cover consistent with the use or development allowed [; .]

6. Any land disturbing activity that exceeds an area of 2,500 square feet (including construction of all single family houses, septic tanks and drainfields, but otherwise as defined in § 10.1-560 of the Code of Virginia) shall comply with the requirements of the local erosion and sediment control ordinance [; .]

7. On-site sewage treatment systems not requiring a Virginia Pollutant Discharge Elimination System (VPDES) permit shall:

a. Have pump-out accomplished for all such systems at least once every five years;

b. For new construction, provide a reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site. This reserve sewage disposal site requirement shall not apply to any lot or parcel recorded prior to the effective date of these regulations, and which October 1, 1989, if the lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site, as determined by the local health department. Building shall be prohibited on the area of all sewage disposal sites until the structure is served by public sewer or an on-site sewage treatment system which operates under a permit issued by the State Water Control Board. All sewage disposal site records shall be administered to provide adequate notice and enforcement.

8. Stormwater management criteria which accomplish the goals and objectives of these regulations shall apply. For development, the post-development nonpoint source pollution runoff load shall not exceed the pre-development load based upon average land cover conditions. Redevelopment of any site not currently served by water quality best management practices

shall achieve at least a 10% reduction of nonpoint source pollution in runoff compared to the existing runoff load from the site. Post-development runoff from any site to be redeveloped that is currently served by water quality best management practices shall not exceed the existing load of nonpoint source pollution in surface runoff.

a. The following stormwater management options shall be considered to comply with this subsection of these regulations:

(1) Incorporation on the site of best management practices that achieve the required control;

(2) Compliance with a locally adopted regional stormwater management program incorporating pro-rata share payments pursuant to the authority provided in § 15.1-466(j) of the Code of Virginia that results in achievement of equivalent water quality protection;

(3) Compliance with a state or locally implemented program of stormwater discharge permits pursuant to § 402(p) of the federal Clean Water Act, as set forth in 40 C.F.R. Parts 122, 123, 124, and 504, dated December 7, 1988;

(4) For a redevelopment site that is completely impervious as currently developed, restoring a minimum 20% of the site to vegetated open space.

b. Any maintenance, alteration, use, or improvement to an existing structure which does not degrade the quality of surface water discharge, as determined by the local government, may be exempted from the requirements of this subsection.

c. Stormwater management criteria for redevelopment shall apply to any redevelopment, whether or not it is located within an Intensely Developed Area designated by a local government.

9. Land upon which agricultural activities are being conducted, including but not limited to crop production, pasture, and dairy and feedlot operations, shall have a soil and water quality conservation plan. Such a plan shall be based upon the Field Office Technical Guide of the U.S. Department of Agriculture Soil Conservation Service and accomplish water quality protection consistent with the Act and these regulations. Such a plan will be approved by the local Soil and Water Conservation District by January 1, 1995.

The board will request the Department of Conservation and Recreation to evaluate the existing state and federal agricultural conservation programs for effectiveness in providing water quality protection. In the event that, by July 1, 1991, the Department of Conservation and Recreation finds that the

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implementation of the existing agricultural conservation programs is inadequate to protect water quality consistent with the Act and these regulations, the board will consider the promulgation of regulations to provide more effective protection of water quality from agricultural activities and may require implementation of best management practices on agricultural lands within the Chesapeake Bay Preservation Areas.

10. Silvicultural activities in Chesapeake Bay Preservation Areas are exempt from these regulations provided that silvicultural operations adhere to water quality protection procedures prescribed by the Department of Forestry in its "Best Management Practices Handbook for Forestry Operations." The Department of Forestry will oversee and document installation of best management practices and will monitor instream impacts of forestry operations in Chesapeake Bay Preservation Areas. In the event that, by July 1, 1991, the Department of Forestry programs are unable to demonstrate equivalent protection of water quality consistent with the Act and these regulations, the Department of Forestry will revise its programs to assure consistency of results and may require implementation of best management practices.

11. Local governments shall require evidence of all wetlands permits required by law prior to authorizing grading or other on-site activities to begin.

§ 4.3. Performance criteria for Resource Protection Areas.

The following criteria shall apply specifically within Resource Protection Areas and supplement the general performance criteria in § 4.2 of this part.

A. Allowable development.

A water quality impact assessment shall be required for any proposed development in accordance with Part V. Land development may be allowed only if it (i) is water dependent or (ii) constitutes redevelopment.

1. A new or expanded water-dependent facility may be allowed provided that:

- a. It does not conflict with the comprehensive plan;
- b. It complies with the performance criteria set forth in this part;
- c. Any non-water-dependent component is located outside of Resource Protection Areas;
- d. Access will be provided with the minimum disturbance necessary. Where possible, a single point of access will be provided.

2. Redevelopment shall conform to applicable stormwater management and erosion and sediment

control criteria in this part.

3. Roads and driveways not exempt under subdivision 1 of subsection B of § 4.5 of these regulations may be constructed in or across Resource Protection Areas if each of the following conditions is met:

a. The local government makes a finding that there are no reasonable alternatives to aligning the road or driveway in or across the Resource Protection Area [;]

b. The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize (i) encroachment in the Resource Protection Area and (ii) adverse effects on water quality [;]

c. The design and construction of the road or driveway satisfy all applicable criteria of these regulations, including submission of a water quality impact assessment [;]

d. The local government reviews the plan for the road or driveway proposed in or across the Resource Protection Area in coordination with local government site plan, subdivision, and plan of development approvals.

B. Buffer area requirements.

To minimize the adverse effects of human activities on the other components of the Resource Protection Area, state waters, and aquatic life, a [~~100 feet~~ 100-foot] buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained if present and established where it does not exist. The [~~100 feet~~ 100-foot] buffer area shall be deemed to achieve a 75% reduction of sediments and a 40% reduction of nutrients. Except as noted in this subsection, a combination of a buffer area not less than 50 feet in width and appropriate best management practices located landward of the buffer area which collectively achieve water quality protection, pollutant removal, and water resource conservation at least the equivalent of the [~~100 feet~~ 100-foot] buffer area may be employed in lieu of the [~~100 feet~~ 100-foot] buffer. The following additional performance criteria shall apply:

1. In order to maintain the functional value of the buffer area, indigenous vegetation may be removed only to provide for reasonable sight lines, access paths, general woodlot management, and best management practices, as follows:

a. Trees may be pruned or removed as necessary to provide for sight lines and vistas, provided that where removed [;] they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff.

b. Any path shall be constructed and surfaced so as to effectively control erosion.

c. Dead, diseased, or dying trees or shrubbery may be removed at the discretion of the landowner, and silvicultural thinning may be conducted based upon the recommendation of a professional forester or arborist.

d. For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements.

2. When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded prior to the effective date of these regulations *October 1, 1989*, modifications to the width of the buffer area may be allowed in accordance with the following criteria:

a. Modifications to the buffer area shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities.

b. Where possible, an area equal to the area encroaching the buffer area shall be established elsewhere on the lot or parcel in a way to maximize water quality protection.

c. In no case shall the reduced portion of the buffer area be less than 50 feet in width.

3. Redevelopment within Intensely Developed Areas may be exempt from the requirements of this subsection. However, while the immediate establishment of the buffer area may be impractical, local governments shall give consideration to implementing measures that would establish the buffer in these areas over time in order to maximize water quality protection, pollutant removal, and water resource conservation.

4. On agricultural lands the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and noxious weeds (such as Johnson grass, kudzu, and multiflora rose) from invading the buffer area. The agricultural buffer area may be reduced as follows:

a. To a minimum width of 50 feet when the adjacent land is enrolled in a federal, state, or [~~locally funded~~ *locally-funded*] agricultural best management practices program, and the program is being implemented, provided that the combination of the reduced buffer area and the best management practices [~~achieve~~ *achieves*] water quality

protection, pollutant removal, and water resource conservation at least the equivalent of the [~~100 feet~~ *100-foot*] buffer area;

b. To a minimum width of 25 feet when a soil and water quality conservation plan, as approved by the local Soil and Water Conservation District, has been implemented on the adjacent land, provided that the portion of the plan being implemented for the Chesapeake Bay Preservation Area achieves water quality protection at least the equivalent of that provided by the [~~100 feet~~ *100-foot*] buffer area in the opinion of the local Soil and Water Conservation District Board. Such plan shall be based upon the Field Office Technical Guide of the U.S. Department of Agriculture Soil Conservation Service and accomplish water quality protection consistent with the Act and these regulations;

c. The buffer area is not required for agricultural drainage ditches if the adjacent agricultural land has in place best management practices in accordance with a conservation plan approved by the local Soil and Water Conservation District.

§ 4.4. Local program development.

Local governments shall incorporate the criteria in this part into their comprehensive plans, zoning ordinances, subdivision ordinances, and such other police and zoning powers as may be appropriate, in accordance with §§ 10.1-2111 and 10.1-2108 of the Act and Part V of these regulations. The criteria may be employed in conjunction with other planning and zoning concepts to protect the quality of state waters.

§ 4.5. Administrative waivers and exemptions.

A. Nonconforming use and development waivers.

1. Local governments may permit the continued use, but not necessarily the expansion, of any structure in existence on the date of local program adoption. Local governments may establish an administrative review procedure to waive or modify the criteria of this part for structures on legal nonconforming lots or parcels provided that:

a. There will be no net increase in nonpoint source pollutant load;

b. Any development or land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements of this part.

2. It is not the intent of these regulations to prevent the reconstruction of pre-existing structures within Chesapeake Bay Preservation Areas from occurring as a result of casualty loss unless otherwise restricted by local government ordinances.

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B. Public utilities, railroads, and facilities exemptions.

1. Construction, installation, operation, and maintenance of electric, gas, and telephone transmission lines, railroads, and public roads and their appurtenant structures in accordance with [(i)] *regulations promulgated pursuant to [(i)] the Erosion and Sediment Control Law (§ 10.1-560 et seq. of the Code of Virginia) and [(ii)] the Stormwater Management Act (§ 10.1-603.1 et seq. of the Code of Virginia), [or (ii)] an erosion and sediment control plan and a stormwater management plan approved by the Virginia Soil and Water Conservation Board Department of Conservation and Recreation, [or (iii)] local water quality protection criteria at least as stringent as the above state requirements] will be deemed to constitute compliance with these regulations. *The exemption of public roads is further conditioned on the following:**

a. Optimization of the road alignment and design, consistent with other applicable requirements, to prevent or otherwise minimize (i) encroachment in the Resource Protection Area and (ii) adverse effects on water quality;

b. Local governments may choose to exempt (i) all public roads as defined in § 1.4 of these regulations, or (ii) only those public roads constructed by the Virginia Department of Transportation.

2. Construction, installation, and maintenance of water, sewer, and local gas lines shall be exempt from the criteria in this part provided that:

a. To the degree possible, the location of such utilities and facilities should be outside Resource Protection Areas;

b. No more land shall be disturbed than is necessary to provide for the desired utility installation;

c. All such construction, installation, and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal permits and designed and conducted in a manner that protects water quality;

d. Any land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements of this part.

C. Exemptions in Resource Protection Areas.

The following land disturbances in Resource Protection Areas may be exempt from the criteria of this part provided that they comply with subdivisions 1 and 2 below of this subsection: (i) water wells; (ii) passive recreation facilities such as boardwalks, trails, and pathways; and (iii) historic preservation and archaeological activities.

1. Local governments shall establish administrative procedures to review such exemptions.

2. Any land disturbance exceeding an area of 2,500 square feet shall comply with the erosion and sediment control requirements of this part.

§ 4.6. Exceptions to the criteria.

Exceptions to the requirements of these regulations may be granted, provided that: (i) exceptions to the criteria shall be the minimum necessary to afford relief, and (ii) reasonable and appropriate conditions upon any exception granted shall be imposed as necessary so that the purpose and intent of the Act [is are] preserved. Local governments shall design an appropriate process or processes for the administration of exceptions, in accordance with Part V.

PART V. IMPLEMENTATION, ASSISTANCE, AND DETERMINATION OF CONSISTENCY.

§ 5.1. Purpose.

The purpose of this part is to assist local governments in the timely preparation of local programs to implement the Act, and to establish guidelines for determining local program consistency with the Act.

§ 5.2. Local assistance manual.

A. The department will prepare a manual to provide guidance to assist local governments in the preparation of local programs in order to implement the Act and these regulations. The manual will be updated periodically to reflect the most current planning and zoning techniques and effective best management practices. The manual will be made available to the public.

B. The manual will recommend a schedule for the completion of local program elements and their submission to the board for its information, to ensure timely achievement of the requirements of the Act and timely receipt of assistance. The board will consider compliance with the schedule in allocating financial and technical assistance. Those elements of the manual necessary to assist local governments in meeting the ~~first year~~ requirements of *subsections A and B of § 2.2* will be completed by the effective date of these regulations.

C. The manual is for the purpose of guidance only and is not mandatory.

§ 5.3. Board to establish liaison.

The board will establish liaison with each local government to assist that local government in developing and implementing its local program, in obtaining technical and financial assistance, and in complying with the Act and regulations.

§ 5.4. Planning district comments.

Local governments are encouraged to enlist the assistance and comments of regional planning district agencies early in the development of their local programs.

§ 5.5. Designation of Chesapeake Bay Preservation Areas.

A. The designation of Chesapeake Bay Preservation Areas as an element of the local program should:

1. Utilizing existing data and mapping resources, identify and describe tidal wetlands, nontidal wetlands, tidal shores, tributary streams, [~~flood plains~~ floodplains], highly erodible soils including steep slopes, highly permeable areas, and other sensitive environmental resources as necessary to comply with Part III [; ;]
2. Determine, based upon the identification and description, the extent of Chesapeake Bay Preservation Areas within the local jurisdiction [; ;]
3. Prepare an appropriate map or maps delineating Chesapeake Bay Preservation Areas [; ;]
4. Prepare amendments to local ordinances which incorporate the performance criteria of Part IV or the model ordinance prepared by the board.

B. Review by the board.

The board will review a proposed program within 60 days. If it is consistent with the Act, the board will schedule a conference with the local government to determine what additional technical and financial assistance may be needed and available to accomplish the proposed program. If not consistent, the board will notify the local government and recommend specific changes.

C. Adoption of ~~first year program designation and performance criteria~~.

After being advised of program consistency, local governments shall hold a public hearing, delineate Chesapeake Bay Preservation Areas on an appropriate map or maps, and adopt the performance criteria. Copies of the adopted program documents and subsequent changes thereto [; ;] shall be provided to the board.

§ 5.6. Preparation and submission of management program.

Local governments must adopt the full management program, including any revisions to comprehensive plans, zoning ordinances, subdivision ordinances, and other local authorities necessary to implement the Act, within 24 12 months of the adoption date of these regulations. Prior to adoption, local governments may submit any proposed revisions to the board for comments. Guidelines are provided below for local government use in preparing

local programs and the board's use in determining local program consistency.

A. Comprehensive plans.

Local governments shall review and revise their comprehensive plans, as necessary, for compliance with § 10.1-2109 of the Act. As a minimum, the comprehensive plan or plan component should consist of the following basic elements: (i) a summary of data collection and analysis; (ii) a policy discussion; (iii) a land use plan map; (iv) implementing measures, including specific objectives and a time frame for accomplishment.

1. Local governments should establish an information base from which to make policy choices about future land use and development that will protect the quality of state waters. This element of the plan should be based upon the following:

- a. Information used to designate Chesapeake Bay Preservation Areas;
- b. Other marine resources;
- c. Shoreline erosion problems and location of erosion control structures;
- d. Conflicts between existing and proposed land uses and water quality protection;
- e. A map or map series [; ;] accurately representing the above information.

2. As part of the comprehensive plan, local governments should clearly indicate local policy on land use issues relative to water quality protection. Local governments should ensure consistency among the policies developed.

a. Local governments should discuss each component of Chesapeake Bay Preservation Areas in relation to the types of land uses considered appropriate and consistent with the goals and objectives of the Act, these regulations, and their local programs.

b. As a minimum, local governments should prepare policy statements for inclusion in the plan on the following issues:

- (1) Physical constraints to development, including soil limitations, with an explicit discussion of soil suitability for septic tank use;
- (2) Protection of potable water supply, including groundwater resources;
- (3) Relationship of land use to commercial and recreational fisheries;
- (4) Appropriate density for docks and piers;

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(5) Public and private access to waterfront areas and effect on water quality;

(6) Existing pollution sources;

(7) Potential water quality improvement through the redevelopment of Intensely Developed Areas.

c. For each of the policy issues listed above, the plan should contain a discussion of the scope and importance of the issue, alternative policies considered, the policy adopted by the local government for that issue, and a description of how the local policy will be implemented.

d. Within the policy discussion, local governments should address consistency between the plan and all adopted land use, public services, land use value taxation ordinances and policies, and capital improvement plans and budgets.

B. Zoning ordinances.

Local governments shall review and revise their zoning ordinances, as necessary, to comply with § 10.1-2109 of the Act. The ordinances should:

1. Make provisions for the protection of the quality of state waters;
2. Incorporate either explicitly or by direct reference [;] the performance criteria in Part IV;
3. Be consistent with the comprehensive plan within Chesapeake Bay Preservation Areas.

C. Plan of development review.

Local governments shall make provisions as necessary to ensure that any development of land within Chesapeake Bay Preservation Areas must be accomplished through a plan of development procedure pursuant to § 15.1-491(h) of the Code of Virginia to ensure compliance with the Act and regulations. Any exemptions from those review requirements shall be established and administered in a manner that ensures compliance with these regulations.

D. Subdivision ordinances.

Local governments shall review and revise their subdivision ordinances, as necessary, to comply with § 10.1-2109 of the Act. The ordinances should:

1. Include language to ensure the integrity of Chesapeake Bay Preservation Areas;
2. Incorporate, either explicitly or by direct reference, the performance criteria of Part IV.

E. Water quality impact assessment.

A water quality impact assessment shall be required for any proposed development within the Resource Protection Area consistent with Part IV and for any other development in Chesapeake Bay Preservation Areas that may warrant such assessment because of the unique characteristics of the site or intensity of the proposed use or development.

1. The purpose of the water quality impact assessment is to identify the impacts of proposed development on water quality and lands in Resource Protection Areas consistent with the goals and objectives of the Act, these regulations, and [~~their~~] local programs, and to determine specific measures for mitigation of those impacts. The specific content and procedures for the water quality impact assessment shall be established by local governments. Local governments should notify the board of all development requiring such assessment. Upon request, the board will provide review and comment on any water quality impact assessment within 90 days, in accordance with advisory state review requirements of § 10.1-2112 of the Act.

2. The assessment shall be of sufficient specificity to demonstrate compliance with the criteria of the local program.

F. Review by the board.

The board will review any proposed management program within 90 days. If it is consistent with the Act, the board will schedule a conference with the local government to determine what additional technical and financial assistance may be needed and available to accomplish the long-term aspects of the local program. If the program or any part thereof is not consistent, the board will notify the local government in writing stating the reasons for a determination of inconsistency and recommending specific changes. Copies of the adopted program documents and subsequent changes thereto shall be provided to the board.

§ 5.7. Certification of local program.

Upon request, the board will certify that a local program complies with the Act and regulations.

PART VI. ENFORCEMENT.

§ 6.1. Applicability.

The Act requires that the board ensure that local governments comply with the Act and regulations and that their comprehensive plans, zoning ordinances, and subdivision ordinances are in accordance with the Act. To satisfy these requirements, the board has adopted these regulations and will monitor each local government's compliance with the Act and regulations.

§ 6.2. Administrative proceedings.

Section 10.1-2103.8 of the Act provides that the board shall ensure that local government comprehensive plans, subdivision ordinances, and zoning ordinances are in accordance with the provisions of the Act, and that it shall determine such compliance in accordance with the provisions of the Administrative Process Act. When the board determines to decide such compliance, it will give the subject local government at least 15 days notice of its right to appear before the board at a time and place specified for the presentation of factual data, argument, and proof as provided by § 9-6.14.11. The board will provide a copy of its decision to the local government. If any deficiencies are found, the board will establish a schedule for the local government to come into compliance.

§ 6.3. Legal proceedings.

Section 10.1-2103.10 of the Act provides that the board shall take administrative and legal actions to ensure compliance by local governments with the provisions of the Act. Before taking legal action against a local government to ensure compliance, the board shall, unless it finds extraordinary circumstances, give the local government at least 15 days notice of the time and place at which it will decide whether or not to take legal action. If it finds extraordinary circumstances, the board may proceed directly to request the Attorney General to enforce compliance with the Act and regulations. Administrative actions will be taken pursuant to § 6.2.

§ 6.4. Adoption date.

The adoption date of these regulations shall be November 15, 1990.

§ 6.5. Effective date.

The effective date of these regulations shall be the date of expiration of Emergency Chesapeake Bay Preservation Area Designation and Management Regulations (VR 173-02-01.1, effective when signed and filed with the Virginia Registrar of Regulations) October 1, 1991, at which date they shall supersede the Emergency Chesapeake Bay Preservation Area Designation and Management Regulations (VR 173-02-01.1) .

DEPARTMENT OF HEALTH (STATE BOARD OF)

REGISTRAR'S NOTICE: This regulation is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14.4.1 C 1 of the Code of Virginia, which excludes agency orders or regulations fixing rates or prices. The Department of Health will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: VR 355-39-01. Regulations Governing Eligibility Standards and Charges for Medical Care Services (Schedule of Charges Only).

Statutory Authority: § 32.1-12 of the Code of Virginia.

Effective Date: October 1, 1991.

Summary:

This regulation change is being sought to modify the Virginia Department of Health's schedule of charges. Visit charges will be increased to new Medicaid maximum reimbursement levels which go into effect October 1. Activities of Daily Living charges are being increased because Medicaid reimbursement will increase for this service. The basis for dental charges is being changed to allow a more complete charge schedule. Since Medicaid does not pay for dental services to adults, there is no Medicaid charge schedule on which to base adult services.

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STATE HEALTH DEPARTMENT
CHARGES AND PAYMENT REQUIREMENTS BY INCOME LEVELS
EFFECTIVE AUGUST 1, 1991
EXCEPT FOR NORTHERN VIRGINIA - CHART 1

By the provisions of the "Regulations Governing Eligibility Standards and Charges for Medical Care Services," promulgated by the authority of the Board of Health in accordance with § 32.1-12 of the Code of Virginia, listed below are the charges for medical care services, stating the maximum required payments to be made by patients toward their charges, according to income levels.

MEDICAL CARE SERVICES(1)	MAXIMUM CHARGES PER VISIT/SERVICES(2)	INCOME LEVEL	INCOME LEVEL	INCOME LEVEL	INCOME LEVEL	INCOME LEVEL	INCOME LEVEL
		A (0%)	B (10%)	C (25%)	D (50%)	E (75%)	F (100%)
MATERNITY/GYNECOLOGY(3)							
New Patient, Comprehensive Visit	\$ 25.75	\$.00	\$ 2.50	\$ 6.50	\$ 12.75	\$ 19.25	\$ 25.75
Established Patient, Comprehensive Visit	\$ 30.00	\$.00	\$ 3.00	\$ 7.50	\$ 15.00	\$ 22.50	\$ 30.00
Postpartum Visit	\$ 28.00	\$.00	\$ 2.75	\$ 7.00	\$ 14.00	\$ 21.00	\$ 28.00
Maternity Care Coordination(4)							
Risk Screening	\$ 10.00	\$.00	\$ 1.00	\$ 2.50	\$ 5.00	\$ 7.50	\$ 10.00
Maternity Assessment	\$ 25.00	\$.00	\$ 2.50	\$ 6.25	\$ 12.50	\$ 18.75	\$ 25.00
Maternity Follow-up x 11 months	\$ 40.00 per month	\$.00	\$ 4.00	\$ 10.00	\$ 20.00	\$ 30.00	\$ 40.00
Nutritional Services							
Original Assessment	\$ 20.00	\$.00	\$.80	\$.00	\$.00	\$ 15.00	\$ 20.00
Follow-up	\$ 10.00 per encounter	\$.00	\$.80	\$.00	\$.00	\$ 7.50	\$ 10.00
Group Education	\$ 6.00 per class or session \$ 36.00 maximum	\$.00	\$.60	\$ 1.50	\$ 3.00	\$ 4.50	\$ 6.00
Homecare Services	\$ 33.00 per visit or \$ 8.00 per hour, not to exceed 4 hours	\$.00	\$ 3.30	\$ 8.25	\$ 16.50	\$ 24.75	\$ 33.00
PEDIATRIC/HELL BABY(5)							
New Patient, Comprehensive Visit	\$ 37.00	\$.00	\$ 3.75	\$ 9.25	\$ 18.50	\$ 27.75	\$ 37.00
Established Patient, Comprehensive Visit	\$ 50.00	\$.00	\$ 5.00	\$ 12.50	\$ 25.00	\$ 37.50	\$ 50.00
Follow-up/Problem Visit	\$ 26.75	\$.00	\$ 2.60	\$ 6.25	\$ 12.50	\$ 18.75	\$ 26.75
Follow-up/Problem Visit	\$ 45.00	\$.00	\$ 4.50	\$ 11.25	\$ 22.50	\$ 33.75	\$ 45.00
Follow-up/Problem Visit	\$ 23.00	\$.00	\$ 2.25	\$ 5.75	\$ 11.50	\$ 17.25	\$ 23.00
Brief Visit	\$ 27.00	\$.00	\$ 2.70	\$ 6.75	\$ 13.50	\$ 20.25	\$ 27.00
Brief Visit	\$ 15.00	\$.00	\$ 1.50	\$ 3.75	\$ 7.50	\$ 11.25	\$ 15.00
ESST Visits(6)							
Infant Care Coordination(4)							
Risk Screening	\$ 10.00	\$.00	\$ 1.00	\$ 2.50	\$ 5.00	\$ 7.50	\$ 10.00
Infant Assessment	\$ 25.00	\$.00	\$ 2.50	\$ 6.25	\$ 12.50	\$ 18.75	\$ 25.00
Follow-up x 24 months	\$ 40.00 per month	\$.00	\$ 4.00	\$ 10.00	\$ 20.00	\$ 30.00	\$ 40.00
FAMILY PLANNING(7)							
Initial/Annual Visit	\$ 50.00	\$.00	\$ 5.00	\$ 12.50	\$ 25.00	\$ 37.50	\$ 50.00
Follow-up/Problem Visit	\$ 20.00	\$.00	\$ 2.00	\$ 5.00	\$ 10.00	\$ 15.00	\$ 20.00

STATE HEALTH DEPARTMENT
CHARGES AND PAYMENT REQUIREMENTS BY INCOME LEVELS
EFFECTIVE AUGUST 1, 1991
EXCEPT FOR NORTHERN VIRGINIA - CHART 1

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MEDICAL CARE SERVICES(1)	MAXIMUM CHARGES PER VISIT/SERVICES(2)	INCOME LEVEL	INCOME LEVEL	INCOME LEVEL	INCOME LEVEL	INCOME LEVEL	INCOME LEVEL
		A (0%)	B (10%)	C (25%)	D (50%)	E (75%)	F (100%)
GENERAL MEDICAL (includes gynecology)(8)							
New Patient, Comprehensive Visit	\$ 37.00	\$.00	\$ 3.75	\$ 9.25	\$ 18.50	\$ 27.75	\$ 37.00
Established Patient, Comprehensive Visit	\$ 50.00	\$.00	\$ 5.00	\$ 12.50	\$ 25.00	\$ 37.50	\$ 50.00
Follow-up/Problem Visit	\$ 26.75	\$.00	\$ 2.60	\$ 6.25	\$ 12.50	\$ 18.75	\$ 26.75
Follow-up/Problem Visit	\$ 45.00	\$.00	\$ 4.50	\$ 11.25	\$ 22.50	\$ 33.75	\$ 45.00
Follow-up/Problem Visit	\$ 23.00	\$.00	\$ 2.25	\$ 5.75	\$ 11.50	\$ 17.25	\$ 23.00
Brief Visit	\$ 27.00	\$.00	\$ 2.70	\$ 6.75	\$ 13.50	\$ 20.25	\$ 27.00
Brief Visit	\$ 15.00	\$.00	\$ 1.50	\$ 3.75	\$ 7.50	\$ 11.25	\$ 15.00
Brief Visit	\$ 19.00	\$.00	\$ 1.90	\$ 4.75	\$ 9.50	\$ 14.25	\$ 19.00
Colposcopy Services							
Colposcopy	\$ 90.00	\$.00	\$ 9.00	\$ 22.50	\$ 45.00	\$ 67.50	\$ 90.00
Colposcopy With Biopsy	\$ 130.00	\$.00	\$ 13.00	\$ 32.50	\$ 65.00	\$ 97.50	\$ 130.00
DIAGNOSTIC SERVICES(9)							
SPECIAL SERVICES WITHOUT ELIGIBILITY(10)							
Acupuncture	\$ 7.00						
Administration of Prescribed Frequency Testing	FREE						
Medication and/or Nonroutine Immunizations PLUS: Cost of Vaccine when furnished by Health Department	\$ 3.50						
Blood Pressure Check	FREE						
PID/Tuberculin Testing	\$ 3.15						
Radiological Examination (Chest)	\$ 18.00						
Activities of Daily Living(11)	\$ 4.00 x 1.00 per hour						
Cholesterol Screening and Counseling	\$ 5.00						
Medical Record Copying	\$.50 per page						
ELIGIBILITY IS REQUIRED ON THE FOLLOWING:							
Pharmacy Professional Fee	\$ 4.40	\$.00	\$.50	\$ 1.00	\$ 2.25	\$ 3.25	\$ 4.40
PLUS: Cost of Drugs or Vaccine		0%	10%	25%	50%	75%	100%
Other X-ray Services(12)							
Other Laboratory Services(13)							
OTHER SERVICES							
Children's Specialty Services (Annual)	\$ 120.00	\$.00	\$ 12.00	\$ 30.00	\$ 60.00	\$ 90.00	\$ 120.00

Final Regulations

STATE HEALTH DEPARTMENT
CHARGES AND PAYMENT REQUIREMENTS BY INCOME LEVELS
EFFECTIVE AUGUST OCTOBER 1, 1991
EXCEPT FOR NORTHERN VIRGINIA - CHART I

By the provisions of the "Regulations Governing Eligibility Standards and Charges for Medical Care Services," promulgated by the authority of the Board of Health in accordance with § 32.1-12 of the Code of Virginia, listed below are the charges for medical care services, stating the minimum required payments to be made by patients toward their charges, according to income levels.

MEDICAL CARE SERVICES(1)	MAXIMUM CHARGES PER VISIT/SERVICE(2)	INCOME LEVEL A (0%)	INCOME LEVEL B (10%)	INCOME LEVEL C (25%)	INCOME LEVEL D (50%)	INCOME LEVEL E (75%)	INCOME LEVEL F (100%)
PHYSICIAN SERVICES(3)							
CHILD DEVELOPMENT SERVICES (according to Physicians' Current Procedural Terminology)							
Medical Services							
initiated, new patient	\$ 72.00	\$.00	\$ 2.70	\$ 5.50	\$ 11.00	\$ 16.50	\$ 22.00
established patient	\$ 17.00	\$.00	\$ 1.70	\$ 3.25	\$ 6.50	\$ 9.75	\$ 13.00
intermediate, new patient	\$ 21.00	\$.00	\$ 2.40	\$ 4.75	\$ 9.50	\$ 14.25	\$ 19.00
established patient	\$ 19.00	\$.00	\$ 1.90	\$ 3.75	\$ 7.50	\$ 11.25	\$ 15.00
comprehensive, new patient	\$ 32.00	\$.00	\$ 3.70	\$ 7.25	\$ 14.50	\$ 21.75	\$ 29.00
established patient	\$ 20.00	\$.00	\$ 2.00	\$ 4.00	\$ 8.00	\$ 12.00	\$ 16.00
initial consultation, Intern.	\$ 21.00	\$.00	\$ 2.10	\$ 4.25	\$ 8.50	\$ 12.75	\$ 17.00
follow-up consultation, Intern.	\$ 10.50	\$.00	\$ 1.05	\$ 2.10	\$ 4.25	\$ 6.35	\$ 8.50
Pharmacological Management	\$ 8.50	\$.00	\$.85	\$ 1.70	\$ 3.40	\$ 5.10	\$ 6.80
Developmental Screening	\$ 8.50	\$.00	\$.85	\$ 1.70	\$ 3.40	\$ 5.10	\$ 6.80
Health Education	\$ 10.50	\$.00	\$ 1.05	\$ 2.10	\$ 4.25	\$ 6.35	\$ 8.50
Mental Health Services							
Psychological Evaluation per hr.	\$ 105.00	\$.00	\$ 10.50	\$ 21.00	\$ 42.00	\$ 63.00	\$ 84.00
Psycho-social Assessment	\$ 30.00	\$.00	\$ 3.00	\$ 6.00	\$ 12.00	\$ 18.00	\$ 24.00
Individual Psychotherapy per 1/2 hour	\$ 15.75	\$.00	\$ 1.60	\$ 3.20	\$ 6.40	\$ 9.60	\$ 12.80
Family Psychotherapy	\$ 10.50	\$.00	\$ 1.05	\$ 2.10	\$ 4.25	\$ 6.35	\$ 8.50
Group Psychotherapy	\$ 10.50	\$.00	\$ 1.05	\$ 2.10	\$ 4.25	\$ 6.35	\$ 8.50
Multifamily Psychotherapy	\$ 10.50	\$.00	\$ 1.05	\$ 2.10	\$ 4.25	\$ 6.35	\$ 8.50
Educational Services							
Educational Diagnostic Evaluation	-HC-	-----SERVICE PROVIDED FREE STATEWIDE-----					
School Visit/Consultation	-HC-	-----SERVICE PROVIDED FREE STATEWIDE-----					
Classroom Observation	-HC-	-----SERVICE PROVIDED FREE STATEWIDE-----					
Case Management Services							
Interdisciplinary Medical Conference	\$ 26.00	\$.00	\$ 2.60	\$ 5.20	\$ 10.40	\$ 15.60	\$ 20.80
Medical Conference with Patient and/or Family	\$ 27.00	\$.00	\$ 2.70	\$ 5.40	\$ 10.80	\$ 16.20	\$ 21.60
Other Case Management Activity	-HC-	-----SERVICE PROVIDED FREE STATEWIDE-----					
Progress Review	-HC-	-----SERVICE PROVIDED FREE STATEWIDE-----					

STATE HEALTH DEPARTMENT
CHARGES AND PAYMENT REQUIREMENTS BY INCOME LEVELS
EFFECTIVE AUGUST OCTOBER 1, 1991
NORTHERN VIRGINIA - CHART II

By the provisions of the "Regulations Governing Eligibility Standards and Charges for Medical Care Services," promulgated by the authority of the Board of Health in accordance with § 32.1-12 of the Code of Virginia, listed below are the charges for medical care services, stating the minimum required payments to be made by patients toward their charges, according to income levels.

MEDICAL CARE SERVICES(1)	MAXIMUM CHARGES PER VISIT/SERVICE(2)	INCOME LEVEL A (0%)	INCOME LEVEL B (10%)	INCOME LEVEL C (25%)	INCOME LEVEL D (50%)	INCOME LEVEL E (75%)	INCOME LEVEL F (100%)
OBSTETRIC/GYN(3)(4)							
Postpartum Visit	\$ 24.75	\$.00	\$ 2.40	\$ 4.80	\$ 9.60	\$ 14.40	\$ 19.20
	\$ 23.00	\$.00	\$ 2.30	\$ 4.60	\$ 9.20	\$ 13.80	\$ 18.40
	\$ 42.00	\$.00	\$ 4.20	\$ 8.40	\$ 16.80	\$ 25.20	\$ 33.60
	\$ 36.00	\$.00	\$ 3.60	\$ 7.20	\$ 14.40	\$ 21.60	\$ 28.80
Maternity Care Coordination(4)							
Risk Screening	\$ 11.50	\$.00	\$ 1.15	\$ 2.30	\$ 4.60	\$ 6.90	\$ 9.20
Maternity Assessment	\$ 20.50	\$.00	\$ 2.05	\$ 4.10	\$ 8.20	\$ 12.30	\$ 16.40
Maternity follow-up	\$ 45.50 per month x 11 months	\$.00	\$ 4.55	\$ 9.10	\$ 18.20	\$ 27.30	\$ 36.40
Nutritional Services							
Original Assessment	\$ 22.75	\$.00	\$ 2.25	\$ 4.50	\$ 9.00	\$ 13.50	\$ 18.00
Follow-up	\$ 11.50 per encounter	\$.00	\$ 1.15	\$ 2.30	\$ 4.60	\$ 6.90	\$ 9.20
Group Education	\$ 7.00 per class or session	\$.00	\$.70	\$ 1.40	\$ 2.80	\$ 4.20	\$ 5.60
	\$ 41.00 maximum						
Homecare Services							
	\$ 37.50 per visit or	\$.00	\$ 3.75	\$ 7.50	\$ 15.00	\$ 22.50	\$ 30.00
	\$ 9.25 per hour, not to exceed 4 hours	\$.00	\$.95	\$ 1.85	\$ 3.70	\$ 5.55	\$ 7.40
PEDIATRIC/HELL BABY(5)							
New Patient, Comprehensive Visit	\$ 42.00	\$.00	\$ 4.20	\$ 8.40	\$ 16.80	\$ 25.20	\$ 33.60
	\$ 36.00	\$.00	\$ 3.60	\$ 7.20	\$ 14.40	\$ 21.60	\$ 28.80
Established Patient, Comprehensive Visit	\$ 42.00	\$.00	\$ 4.20	\$ 8.40	\$ 16.80	\$ 25.20	\$ 33.60
	\$ 50.00	\$.00	\$ 5.00	\$ 10.00	\$ 20.00	\$ 30.00	\$ 40.00
Follow-up/Problem Visit	\$ 24.25	\$.00	\$ 2.40	\$ 4.80	\$ 9.60	\$ 14.40	\$ 19.20
	\$ 30.00	\$.00	\$ 3.00	\$ 6.00	\$ 12.00	\$ 18.00	\$ 24.00
Brief Visit	\$ 17.00	\$.00	\$ 1.70	\$ 3.40	\$ 6.80	\$ 10.20	\$ 13.60
	\$ 21.00	\$.00	\$ 2.10	\$ 4.20	\$ 8.40	\$ 12.60	\$ 16.80
PNP(6) VISITS(4)							
Infant Care Coordination(4)							
Risk Screening	\$ 11.50	\$.00	\$ 1.15	\$ 2.30	\$ 4.60	\$ 6.90	\$ 9.20
Infant Assessment	\$ 20.50	\$.00	\$ 2.05	\$ 4.10	\$ 8.20	\$ 12.30	\$ 16.40
Follow-up	\$ 45.50 per month x 24 months	\$.00	\$ 4.55	\$ 9.10	\$ 18.20	\$ 27.30	\$ 36.40
FAMILY PLANNING(7)							
Initial/Annual Visit	\$ 56.00	\$.00	\$ 5.60	\$ 11.20	\$ 22.40	\$ 33.60	\$ 44.80
Follow-up/Problem Visit	\$ 22.75	\$.00	\$ 2.25	\$ 4.50	\$ 9.00	\$ 13.50	\$ 18.00

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STATE HEALTH DEPARTMENT
CHARGES AND PAYMENT REQUIREMENTS BY INCOME LEVELS
EFFECTIVE ANNUL OCTOBER 1, 1991
NORTHERN VIRGINIA - CHART II

By the provisions of the "Regulations Governing Eligibility Standards and Charges for Medical Care Services," promulgated by the authority of the Board of Health in accordance with § 52.1-12 of the Code of Virginia, listed below are the charges for medical care services, stating the minimum required payments to be made by patients toward their charges, according to income levels.

MEDICAL CARE SERVICES(1)	MAXIMUM CHARGES PER VISIT/SERVICE(2)	INCOME LEVEL A (0%)	INCOME LEVEL B (10%)	INCOME LEVEL C (25%)	INCOME LEVEL D (50%)	INCOME LEVEL E (75%)	INCOME LEVEL F (100%)
CHILD DEVELOPMENT SERVICES (According to Physicians' Current Procedural Terminology)							
Medical Services							
Limited, new patient	\$ 25.00	\$.00	\$ 2.50	\$ 6.25	\$ 12.50	\$ 18.75	\$ 25.00
Established patient	\$ 19.50	\$.00	\$ 1.95	\$ 4.85	\$ 9.65	\$ 14.50	\$ 19.50
Intermediate, new patient	\$ 26.00	\$.00	\$ 2.60	\$ 6.50	\$ 13.00	\$ 19.50	\$ 26.00
Established patient	\$ 21.60	\$.00	\$ 2.15	\$ 5.40	\$ 10.80	\$ 16.20	\$ 21.60
Comprehensive, new patient	\$ 42.00	\$.00	\$ 4.20	\$ 10.50	\$ 21.00	\$ 31.50	\$ 42.00
Established patient	\$ 22.75	\$.00	\$ 2.28	\$ 5.75	\$ 11.50	\$ 17.25	\$ 22.75
Initial Consultation, Interm.	\$ 24.00	\$.00	\$ 2.40	\$ 6.00	\$ 12.00	\$ 18.00	\$ 24.00
Follow-up Consultation, Interm.	\$ 12.00	\$.00	\$ 1.20	\$ 3.00	\$ 6.00	\$ 9.00	\$ 12.00
Pharmalogical Management	\$ 9.50	\$.00	\$.95	\$ 2.40	\$ 4.75	\$ 7.15	\$ 9.50
Developmental Screening	\$ 9.50	\$.00	\$.95	\$ 2.40	\$ 4.75	\$ 7.15	\$ 9.50
Health Education	\$ 12.00	\$.00	\$ 1.20	\$ 3.00	\$ 6.00	\$ 9.00	\$ 12.00
Mental Health Services							
Psychological Evaluation per hr.	\$ 120.00	\$.00	\$ 12.00	\$ 30.00	\$ 60.00	\$ 90.00	\$ 120.00
Psycho-social Assessment	\$ 34.00	\$.00	\$ 3.40	\$ 8.50	\$ 17.00	\$ 25.50	\$ 34.00
Individual Psychotherapy per 1/2 hour	\$ 18.00	\$.00	\$ 1.80	\$ 4.50	\$ 9.00	\$ 13.50	\$ 18.00
Family Psychotherapy	\$ 12.00	\$.00	\$ 1.20	\$ 3.00	\$ 6.00	\$ 9.00	\$ 12.00
Group Psychotherapy	\$ 12.00	\$.00	\$ 1.20	\$ 3.00	\$ 6.00	\$ 9.00	\$ 12.00
Multisamily Psychotherapy	\$ 12.00	\$.00	\$ 1.20	\$ 3.00	\$ 6.00	\$ 9.00	\$ 12.00
Educational Services							
Educational Diagnostic Evaluation -IC-							
School Visit/Consultation -IC-							
Classroom Observation -IC-							
Case Management Services							
Interdisciplinary Medical Conference	\$ 29.50	\$.00	\$ 2.95	\$ 7.35	\$ 14.75	\$ 22.10	\$ 29.50
Medical Conference with Patient and/or Family	\$ 30.50	\$.00	\$ 3.05	\$ 7.65	\$ 15.30	\$ 22.90	\$ 30.50
Other Case Management Activity							
Progress Review -IC-							

ALL FORMERLY FOR STATEWIDE CHARGES STILL APPLY TO NORTHERN VIRGINIA CHARGES

STATE HEALTH DEPARTMENT
CHARGES AND PAYMENT REQUIREMENTS BY INCOME LEVELS
EFFECTIVE ANNUL OCTOBER 1, 1991
NORTHERN VIRGINIA - CHART II

By the provisions of the "Regulations Governing Eligibility Standards and Charges for Medical Care Services," promulgated by the authority of the Board of Health in accordance with § 52.1-12 of the Code of Virginia, listed below are the charges for medical care services, stating the minimum required payments to be made by patients toward their charges, according to income levels.

MEDICAL CARE SERVICES(1)	MAXIMUM CHARGES PER VISIT/SERVICE(2)	INCOME LEVEL A (0%)	INCOME LEVEL B (10%)	INCOME LEVEL C (25%)	INCOME LEVEL D (50%)	INCOME LEVEL E (75%)	INCOME LEVEL F (100%)
GENERAL MEDICAL (Includes gynecology)(3)							
New Patient, Comprehensive Visit	\$ 42.00	\$.00	\$ 4.25	\$ 10.60	\$ 21.20	\$ 31.80	\$ 42.00
Established Patient, Comprehensive Visit	\$ 36.00	\$.00	\$ 3.60	\$ 9.00	\$ 18.00	\$ 27.00	\$ 36.00
Follow-up/Problem Visit	\$ 24.00	\$.00	\$ 2.40	\$ 6.00	\$ 12.00	\$ 18.00	\$ 24.00
Brief Visit	\$ 17.00	\$.00	\$ 1.70	\$ 4.25	\$ 8.50	\$ 12.75	\$ 17.00
Colposcopy Services							
Colposcopy	\$ 100.00	\$.00	\$ 10.00	\$ 25.00	\$ 50.00	\$ 75.00	\$ 100.00
Colposcopy With Biopsy	\$ 145.00	\$.00	\$ 14.50	\$ 36.25	\$ 72.50	\$ 108.75	\$ 145.00
DENTAL SERVICES(4)							
-----MEDICATED RATE-----							
-----BASED ON MEDIAN PRIVATE PRACTICE PROFESSIONAL FEES-----							
SPECIAL SERVICES WITHOUT ELIGIBILITY(10)							
Venipuncture	\$ 8.00						
Pregnancy Testing	FREE						
Modification and/or Nonroutine Immunizations	\$ 4.00						
PLUS: Cost of Vaccine when Furnished by Health Department							
Blood Pressure Check	FREE						
PPD/Tuberculin Testing	\$ 3.55						
Radiological Examination (Chest)	\$ 20.50						
Activities of Daily Living(11)	\$ 9.00 10.00 per hour						
Cholesterol Screening and Counseling	\$ 6.00						
Medical Record Copying	\$.50 per page						
ELIGIBILITY IS REQUIRED IN THE FOLLOWING:							
Pharmacy Professional Fee	\$ 4.40	\$.00	\$.00	\$ 1.00	\$ 2.25	\$ 3.25	\$ 4.40
PLUS: Cost of Drugs or Vaccine							
Other X-ray Services(12)							
Other Laboratory Services(13)							
-----MEDICATED RATE-----							
-----MEDICATED RATE-----							
OTHER SERVICES							
Children's Specialty Services (Annual)	\$ 136.00	\$.00	\$ 13.60	\$ 34.00	\$ 68.00	\$ 102.00	\$ 136.00
-----BASED ON MEDIAN PRIVATE PRACTICE PROFESSIONAL FEES-----							

CHARGES AND PAYMENTS BY INCOME LEVELS
August/October 1, 1991

CONTENTS

1. For any service not specifically listed, the maximum Medicaid reimbursement level will be the charge. If Medicaid does not reimburse for a particular service, a charge may be established through the Office of Community Health Services.
2. Maximum Charges per Visit:
 - a. If the service is obtained through contracts with providers of the department, charges will be those charged the department as stated in the contract or the set charges, whichever is more.
 - b. The listed charges include all procedures such as routine lab work or x-ray as required in each program protocol for all patients.
 - c. Health Department maximum charges shall be: Income A - Free; Income B - 10% of charges; Income C - 25% charges; Income D - 50% of charges; Income E - 75% of charges; Income F - 100% of charges. See Income Levels Schedules in the Eligibility Section of the OHS manual for more details.
3. Maternity:
 - a. Maternity patients covered by Medicaid will ~~may~~ be charged one clinic fee per month regardless of the number of visits incurred during the month. ~~The proper billing code for this is 29900 either on a per visit basis or for global care.~~
Maternity patients covered by private insurance will be billed on a global basis. At the end of the pregnancy, the insurance company is to be billed \$222 \$100 for antenatal care. The billing code is 59420.
~~Maternity patients not covered by Medicaid or private insurance will be charged one clinic fee per month regardless of the number of visits made during the month.~~
 - b. All women making a postpartum visit are to be charged for the visit. To bill as a postpartum visit, use CPT code 59330. If family planning services are provided, this visit may be billed as a family planning visit (CPT code 09007 for Medicaid; appropriate office visit code for private insurances).
4. Maternal and Infant Care Coordination:

Services must meet Medicaid's guidelines before charging the patient for the services.

Charges may be deferred if the determination is made that the patient needs the services, but cannot pay for them at the time of service. Documentation of the waiver for deterrment must be on file in the patient's medical folder. Refer to "Waiver of Payments" section of Regulations Governing Eligibility Standards and Charges for Medical Care Services.
5. Pediatric/Well Baby:

New Patient/Comprehensive Visit is defined as the first time an individual is seen, when a patient record is established, and a comprehensive evaluation is done by the provider. The correct CPT code is 90020.

Established Patient/Comprehensive Visit is the description to be used anytime a patient who already has an established medical record receives a comprehensive evaluation from a provider. The correct CPT code is 90000.

Follow-up/Problem Visit is to be charged whenever services less than a comprehensive evaluation are provided. Examples would include, but not be limited to, ongoing care for chronic conditions, acute care, and more detailed follow-up to a comprehensive exam. For billing purposes, this is an intermediate visit, established patient. The CPT code is 90000.

A brief service is defined as an encounter with a patient who is required to return for specific follow-up at a medical condition. This can be used in conjunction with all clinics except maternity. For billing, this is a brief visit, established patient (CPT=90000).
6. EPSDT Visits:

These are to be used for well child exams for children on Medicaid. Correct codes and charges for the exam are as follows:

	New Patient		Established Patient	
	Code	Charge	Code	Charge
Age 14 to 20	90360	\$27.00	90760	\$25.00
Age 12 to 17	90351	27.00 \$15.00	90761	25.00 \$31.00
Age 5 to 11	90252	24.00 39.00	90762	24.00 30.00
Age 1 to 4	90253	22.00 39.00	90763	23.00 36.00
Under 1 year	90254	27.00 20.00	90764	20.00 35.00
7. Family Planning:

For non-Medicaid patients, the contraceptive method selected is included in the cost of the initial and yearly visits.

If the patient has Medicaid and is given contraceptives at the clinic visit, bill for two procedures: one for the clinic visit and one for the contraceptives. Districts with pharmacies are to bill the prescription filling fee.

Billing codes for Medicaid are 09007 for the initial/yearly exam and 09009 for the follow-up/problem visits. If private insurance is to be billed, use the appropriate visit and code as described in Item 3.b above.
8. General Medical including Gynecology:

See Item 4 above for description of visit levels and CPT codes.

All visits for gynecological problems are to use the CPT codes. Do not use codes related to maternity.
9. Dental:

~~The charges for dental services are to be the same as the maximum rates that Medicaid allows for dental charges.~~
~~The charges for dental services are based on average professional charges in the private sector. Charge schedules may be obtained from the Division of Dental Health.~~
~~For any service requiring the services of a dental job, the patient will be required to pay the full job charge. The professional fee is \$30.00 per hour. Contact Dental Health for specific charges.~~
10. Special Services:

Service charges are to be applied statewide except when indicated as free. Flat rate services must be paid at the time the services are provided.
11. ADL Services:

ADL services are provided to patients who do not qualify for Medicaid benefits. All ADL service collections are to be charged to the General Medical subprogram activity.

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10. Other X-Ray Services:

The charges for other x-ray services are to be the same as the maximum charges allowed by Medicaid. These services are to be charged whenever they are ordered by the provider and are not part of the routine examination protocol for all clinic patients.

11. Other Lab Services:

The charges for other lab services are to be the same as the maximum charges allowed by Medicaid. These services are to be charged whenever they are ordered by the provider and are not part of the routine examination protocol for all clinic patients.

Contract Lab Work: When lab work is sent to contract labs and the patient is covered by Medicaid, a handling fee of \$3.00 (CPT code 99000) should be charged. (Medicare will not pay a handling fee 46-GPT-400-2646-is-used, but will pay the sympuncture-as-below) for all other patients, the charges for the lab work should be the Medicaid rate for the test(s) ordered.

If a venipuncture was needed to draw the sample, you may bill for the venipuncture.

12. Home Health Services:

Current Charges are as follows:

Skilled Nursing Visit	\$48.00
Physical Therapy	43.00
Occupational Therapy	44.27
Speech Therapy	46.48
Home Health Aide	25.73
Medical Social Work*	61.60

*Medicaid does not pay for medical social work. This charge is based on 60% of Medicaid's cost cap.

~~Home health charges are subject to the sliding fee scale.~~

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

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

Title of Regulation: VR 394-01-21. Virginia Uniform Statewide Building Code, Volume I - New Construction Code/1990.

Statutory Authority: §§ 36-98 and 36-99 of the Code of Virginia.

Effective Date: November 1, 1991.

Summary:

This action incorporates the text of the Final Fair Housing Accessibility Guidelines (24 CFR Chapter 1) promulgated by the Federal Department of Housing and Urban Development into Volume I of the Uniform Statewide Building Code. The guidelines establish minimum accessibility requirements for the physically handicapped in new multifamily dwellings containing four or more dwelling units.

The text of the guidelines has been incorporated into Addendum 3 of the building code, which is based on the requirements of the American National Standards Institute's American National Standard number A117.1-1986 entitled, "American National Standard for Buildings and Facilities - Providing Accessibility and Usability for Physically Handicapped People." Due to the difference in format between the federal guidelines and the USBC, the guidelines have been rewritten in the proper format to incorporate the text into Addendum 3 of the regulation. Numerous editorial changes were necessary to accomplish this conversion.

VR 394-01-21. Virginia Uniform Statewide Building Code, Volume I - New Construction Code/1990.

ARTICLE 1.

ADOPTION, ADMINISTRATION AND ENFORCEMENT.

SECTION 100.0. GENERAL.

100.1. Title. These regulations shall be known as Volume I - New Construction Code of the 1990 edition of the Virginia Uniform Statewide Building Code. Except as otherwise indicated, USBC, and code, as used herein, shall mean Volume I - New Construction Code of the 1990

edition of the Virginia Uniform Statewide Building Code.

Note: See Volume II - Building Maintenance Code for maintenance regulations applying to existing buildings.

100.2. Authority. The USBC is adopted under authority granted the Board of Housing and Community Development by the Uniform Statewide Building Code Law, Chapter 6, Title 36, Code of Virginia.

100.3. Purpose and scope. *The purpose of the USBC is to ensure safety to life and property from all hazards incident to building design, construction, use, repair, removal or demolition. Buildings shall be permitted to be constructed at the least possible cost consistent with nationally recognized standards for health, safety, energy conservation, water conservation, adequate egress facilities, sanitary equipment, light and ventilation, fire safety, structural strength, and physically handicapped and aged accessibility. As provided in the Uniform Statewide Building Code Law, Chapter 6, Title 36, Code of Virginia, the USBC supersedes the building codes and regulations of the counties, municipalities and other political subdivisions and state agencies, relating to any construction, reconstruction, alterations, conversion, repair or use of buildings and installation of equipment therein. The USBC does not supersede zoning ordinances or other land use controls that do not effect the manner of construction or materials to be used in the construction, alteration or repair of a building.*

~~100.3.~~ **100.4. Adoption.** The 1990 edition of the USBC was adopted by order of the Board of Housing and Community Development on November 19, 1990. This order was prepared according to requirements of the Administrative Process Act. The order is maintained as part of the records of the Department of Housing and Community Development, and is available for public inspection.

~~100.4.~~ **100.5. Effective date.** The 1990 edition of the USBC replaces previous editions. It shall become effective on March 1, 1991. Any building that was subject to previous editions of the USBC, and for which a building permit has been issued or on which construction has commenced, or for which working drawings have been prepared in the year prior to the effective date of this edition of the USBC shall remain subject to the edition of the USBC in effect at the time of such issuance or commencement of construction or preparation of plans. A permit application, based on plans prepared in the year prior to the effective date of this edition, must be submitted by March 1, 1992. Subsequent reconstruction, renovation, repair or demolition of such buildings shall be subject to the pertinent provisions of the USBC in effect at the time of such action.

~~100.5.~~ **100.6. Application.** As provided in the Uniform Statewide Building Code Law, Chapter 6, Title 36, Code of Virginia, the USBC supersedes the building codes and regulations of the counties, municipalities and other political subdivisions and state agencies, relating to any

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construction, reconstruction, alterations, conversion, repair, maintenance or use of buildings and installation of equipment therein that takes place after the effective date of the initial edition of the USBC. The USBC does not supersede zoning ordinances or other land use controls that do not affect the manner of construction or materials to be used in the construction, alteration or repair of a building. The USBC shall apply to all buildings, structures and associated equipment which are constructed, altered, repaired or converted in use after March 1, 1991. Buildings and structures that were designed within one year prior to March 1, 1991, shall be subject to the previous edition of the code provided that the permit application is submitted by March 1, 1992. This provision shall also apply to subsequent amendments to this edition of the code based on the effective date of the amendments.

Exception: Use Group R-2 buildings subject to Section 2.2.7 of Addendum 3 for which an application is submitted after November 1, 1991, shall comply with amendments effective November 1, 1991.

~~100.5.1.~~ 100.6.1. Industrialized buildings and manufactured homes. Industrialized buildings registered under the Virginia Industrialized Building Safety Law and manufactured homes labeled under the Federal Manufactured Housing Construction and Safety Standards shall be exempt from the USBC; however, the building official shall be responsible for issuing permits, inspecting the site work and installation of industrialized buildings and manufactured homes, and issuing certificates of occupancy for such buildings when all work is completed satisfactorily.

~~100.6.~~ 100.7. Exemptions. The following buildings, structures and equipment are exempted from the requirements of the USBC:

1. Farm buildings and structures not used for residential purposes; however, such buildings and structures lying within a flood plain or in a mudslide-prone area shall be subject to the applicable flood proofing or mudslide regulations.
2. Equipment installed by a provider of publicly regulated utility service and electrical equipment used for radio and television transmission. The exempt equipment shall be under the exclusive control of the public service agency and located on property by established rights; however, the buildings, including their service equipment, housing such public service agencies shall be subject to the USBC.
3. Manufacturing and processing machines and equipment; however, the buildings, including service equipment, housing such machinery and equipment shall be subject to the USBC.
4. Parking lots and sidewalks; however, parking lots and sidewalks which form part of an accessible route,

as defined by ANSI A117.1 - 1986 shall comply with the requirements of Section 512.0.

5. Recreational equipment such as swing sets, sliding boards, climbing bars, jungle gyms, skateboard ramps, and similar equipment when such equipment is a residential accessory use not regulated by the Virginia Amusement Device Regulations.

~~100.7.~~ Purpose. The purpose of the USBC is to ensure safety to life and property from all hazards incident to building design, construction, use, repair, removal or demolition. Buildings shall be permitted to be constructed at the least possible cost consistent with nationally recognized standards for health, safety, energy conservation, water conservation, adequate egress facilities, sanitary equipment, light and ventilation, fire safety, structural strength, and physically handicapped and aged accessibility.

SECTION 101.0.

REFERENCE STANDARDS AND AMENDMENTS.

101.1. Adoption of model codes and standards. The following model building codes and all portions of other model codes and standards that are referenced in this Code are hereby adopted and incorporated in the USBC. Where differences occur between provisions of the USBC and the referenced model codes or standards, the provisions of the USBC shall apply. Where differences occur between the technical provisions of the model codes and their referenced standards, the provisions of the model code shall apply.

The referenced model codes are:

THE BOCA NATIONAL BUILDING CODE/1990 EDITION

(also referred to herein as BOCA Code)

Published by:

Building Officials and Code Administrators
International, Inc.
4051 West Flossmoor Road
Country Club Hills, Illinois 60478-5795
Telephone No. (708) 799-2300

Note: The following major subsidiary model codes are among those included by reference as part of the BOCA National Building Code/1990 Edition:

BOCA National Plumbing Code/1990 Edition

BOCA National Mechanical Code/1990 Edition

NFIPA National Electrical Code/1990 Edition

The permit applicant shall have the option to select as an acceptable alternative for detached one and two family

dwellings and one family townhouses not more than three stories in height and their accessory structures the following standard:

CABO ONE AND TWO FAMILY DWELLING CODE/1989 EDITION and 1990 Amendments (also referred to herein as One and Two Family Dwelling Code)

Jointly published by:

Building Officials and Code Administrators International, Inc.

Southern Building Code Congress and International Conference of Building Officials.

101.2. General administrative and enforcement amendments to referenced codes. All requirements of the referenced model codes that relate to fees, permits, certification of fitness, unsafe notices, unsafe conditions, maintenance, disputes, condemnation, inspections, existing buildings, existing structures, certification of compliance, approval of plans and specifications and other procedural, administrative and enforcement matters are deleted and replaced by the provisions of Article 1 of the USBC.

Note: The purpose of this provision is to eliminate overlap, conflict and duplication by providing a single standard for administration and enforcement of the USBC.

101.3. Amendments to the BOCA Code. The amendments noted in Addendum 1 of the USBC shall be made to the specified articles and sections of the BOCA National Building Code/1990 Edition for use as part of the USBC.

101.4. Amendments to the One and Two Family Dwelling Code. The amendments noted in Addendum 2 of the USBC shall be made to the indicated chapters and sections of the One and Two Family Dwelling Code/1989 Edition and 1990 Amendments for use as part of the USBC.

SECTION 102.0. LOCAL BUILDING DEPARTMENTS.

102.1. Responsibility of local governments. Enforcement of the USBC Volume I shall be the responsibility of the local building department in accordance with § 36-105 of the Code of Virginia. Whenever a local government does not have such a building department, it shall enter into an agreement with another local government or with some other agency, or a state agency approved by the Virginia Department of Housing and Community Development for such enforcement. The local building department and its employees may be designated by such names or titles as the local government considers appropriate.

102.2. Building official. Each local building department shall have an executive official in charge, hereinafter referred to as the building official.

102.2.1. Appointment. The building official shall be appointed in a manner selected by the local government having jurisdiction. After appointment, he shall not be removed from office except for cause after having been afforded a full opportunity to be heard on specific and relevant charges by and before the appointing authority. The local government shall notify the Office of Professional Services within 30 days of the appointment or release of the building official. The building official must complete an orientation course approved by the Department of Housing and Community Development within 90 days after appointment.

102.2.2. Qualifications. The building official shall have at least five years of building experience as a licensed professional engineer or architect, building inspector, contractor or superintendent of building construction, with at least three years in responsible charge of work, or shall have any combination of education and experience which would confer equivalent knowledge and ability. The building official shall have general knowledge of sound engineering practice in respect to the design and construction of buildings, the basic principles of fire prevention, the accepted requirements for means of egress and the installation of elevators and other service equipment necessary for the health, safety and general welfare of the occupants and the public. The local governing body may establish additional qualification requirements.

102.2.3. Certification. The building official shall be certified in accordance with Part III of the Virginia Certification Standards for Building and Amusement Device Inspectors, Blasters and Tradesmen within three years after the date of employment.

Exception: An individual employed as the building official in any locality in Virginia prior to April 1, 1983, shall be exempt from certification while employed as the building official in that jurisdiction. This exemption shall not apply to subsequent employment as the building official in another jurisdiction.

102.3. Qualifications of technical assistants. A technical assistant shall have at least three years of experience in general building construction. Any combination of education and experience which would confer equivalent knowledge and ability shall be deemed to satisfy this requirement. The local governing body may establish additional qualification requirements.

102.3.1. Certification of technical assistants. Any person employed by, or under contract to, a local governing body for determining compliance with the USBC shall be certified in their trade field within three years after the date of employment in accordance with Part III of the Virginia Certification Standards for Building and Amusement Device Inspectors, Blasters and Tradesmen.

Exception: An individual employed as the building,

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electrical, plumbing, mechanical, fire protection systems inspector or plans examiner in Virginia prior to March 1, 1988, shall be exempt from certification while employed as the technical assistant in that jurisdiction. This exemption shall not apply to subsequent employment as a technical assistant in another jurisdiction.

102.4. Relief from personal responsibility. The local building department personnel shall not be personally liable for any damages sustained by any person in excess of the policy limits of errors and omissions insurance, or other equivalent insurance obtained by the locality to insure against any action that may occur to persons or property as a result of any act required or permitted in the discharge of official duties while assigned to the department as employees. The building official or subordinates shall not be personally liable for costs in any action, suit or proceedings that may be instituted in pursuance of the provisions of the USBC as a result of any act required or permitted in the discharge of official duties while assigned to the department as employees, whether or not said costs are covered by insurance. Any suit instituted against any officer or employee because of an act performed by that officer or employee in the discharge of official duties and under the provisions of the USBC may be defended by the department's legal representative.

102.5. Control of conflict of interests. The minimum standards of conduct for building officials and technical assistants shall be in accordance with the provisions of the ~~Virginia Comprehensive State and Local Government~~ Conflict of Interest Interests Act, Chapter 40.1 (§ 2.1-639.1 et seq.) of Title 2.1 of the Code of Virginia.

SECTION 103.0. DUTIES AND POWERS OF THE BUILDING OFFICIAL.

103.1. General. The building official shall enforce the provisions of the USBC as provided herein and as interpreted by the State Building Code Technical Review Board in accordance with § 36-118 of the Code of Virginia.

103.2. Modifications. The building official may grant modifications to any of the provisions of the USBC upon application by the owner or the owner's agent provided the spirit and intent of the USBC are observed and public health, welfare and safety are assured.

Note: The current editions of many nationally recognized model codes and standards are referenced by the Uniform Statewide Building Code. Future amendments do not automatically become part of the USBC; however, the building official should give consideration to such amendments in deciding whether a requested modification should be granted. See State Building Code Technical Review Board Interpretation Number 64/81 issued November 16, 1984.

103.2.1. Supporting data. The building official may require the application to include architectural and engineering plans and specifications that include the seal of a professional engineer or architect. The building official may also require and consider a statement from a professional engineer, architect or other competent person as to the equivalency of the proposed modification.

103.2.2. Records. The application for modification and the final decision of the building official shall be in writing and shall be officially recorded with the copy of the certificate of use and occupancy in the permanent records of the local building department.

103.3. Delegation of duties and powers. The building official may delegate duties and powers subject to any limitations imposed by the local government, but shall be responsible that any powers and duties delegated are carried out in accordance with the USBC.

103.4. Department records. The building official shall keep records of applications received, permits and certificates issued, reports of inspections, notices and orders issued and such other matters as directed by the local government. A copy of the certificate of use and occupancy and a copy of any modification of the USBC issued by the building official shall be retained in the official records, as long as the building to which it relates remains in existence. Other records may be disposed of in accordance with the provisions of the Virginia Public Records Act, ~~(a)~~ (i) after one year in the case of buildings under 1,000 square feet in area and one and two family dwellings of any area, or ~~(b)~~ (ii) after three years in the case of all other buildings.

SECTION 104.0. FEES.

104.1. Fees. Fees may be levied by the local governing body in order to defray the cost of enforcement and appeals in accordance with § 36-105 of the Code of Virginia.

104.2. When payable. A permit shall not be issued until the fees prescribed by the local government have been paid to the authorized agency of the jurisdiction, nor shall an amendment to a permit be approved until any required additional fee has been paid. The local government may authorize delayed payment of fees.

104.3. Fee schedule. The local government shall establish a fee schedule. The schedule shall incorporate unit rates which may be based on square footage, cubic footage, cost of construction or other appropriate criteria.

104.4. Refunds. In the case of a revocation of a permit or abandonment or discontinuance of a building project, the local government shall provide fee refunds for the portion of the work which was not completed.

104.5. Fee levy. Local governing bodies shall charge e

permit applicant an additional 1.0% (levy) of the total fee for each building permit. This additional 1.0% levy shall be transmitted quarterly to the Department of Housing and Community Development and shall be used to support the training programs of the Virginia Building Code Academy.

Exception: Localities which maintain training academies that are accredited by the Department of Housing and Community Development may retain such levy.

104.5.1. Levy adjustment. The Board of Housing and Community Development shall annually review the percentage of this levy and may adjust the percentage not to exceed 1.0%. The annual review shall include a study of the operating costs for the previous year's Building Code Academy, the current balance of the levy collected, and the operational budget projected for the next year of the Building Code Academy.

104.5.2. Levy cap. Annual collections of this levy which exceed \$500,000, or any unobligated fund balance greater than one-third of that fiscal year's collections shall be credited against the levy to be collected in the next fiscal year.

SECTION 105.0. APPLICATION FOR CONSTRUCTION PERMIT.

105.1. When permit is required. Written application shall be made to the building official when a construction permit is required. A permit shall be issued by the building official before any of the following actions subject to the USBC may be commenced:

1. Constructing, enlarging, altering, repairing, or demolishing a building or structure.
2. Changing the use of a building either within the same use group or to a different use group when the new use requires greater degrees of structural strength, fire protection, exit facilities or sanitary provisions.
3. Installing or altering any equipment which is regulated by this code.
4. Removing or disturbing any asbestos containing materials during demolition, alteration, renovation or additions to buildings or structures.

Exceptions:

1. Ordinary repairs which do not involve any violation of the USBC shall be exempt from this provision. Ordinary repairs shall not include the removal, addition or relocation of any wall or partition, or the removal or cutting of any structural beam or bearing support, or the removal, addition or relocation of any parts of a building affecting the means of egress or exit requirements. Ordinary repairs shall not include

the removal, disturbance, encapsulation, or enclosure of any asbestos containing material. Ordinary repairs shall not include additions, alterations, replacement or relocation of the plumbing, mechanical, or electrical systems, or other work affecting public health or general safety. The term "ordinary repairs" shall mean the replacement of the following materials with like materials:

- a. Painting.
- b. Roofing when not exceeding 100 square feet of roof area.
- c. Glass when not located within specific hazardous locations as defined in Section 2203.2 of the BOCA Code and all glass repairs in Use Group R-3 and R-4 buildings.
- d. Doors, except those in fire-rated wall assemblies or exitways.
- e. Floor coverings and porch flooring.
- f. Repairs to plaster, interior tile work, and other wall coverings.
- g. Cabinets installed in residential occupancies.
- h. Wiring and equipment operating at less than 50 volts.

2. A permit is not required to install wiring and equipment which operates at less than 50 volts provided the installation is not located in a noncombustible plenum, or is not penetrating a fire-resistance rated assembly.

3. Detached utility sheds 150 square feet or less in area and 8 feet 6 inches or less in height when accessory to Use Group R-3 or R-4 buildings.

105.1.1. Authorization of work. The building official may authorize work to commence pending receipt of written application.

105.2. Who may apply for a permit. Application for a permit shall be made by the owner or lessee of the building or agent of either, or by the licensed professional engineer, architect, contractor or subcontractor (or their respective agents) employed in connection with the proposed work. If the application is made by a professional engineer, architect, contractor or subcontractor (or any of their respective agents), the building official shall verify that the applicant is either licensed to practice in Virginia, or is exempt from licensing under the Code of Virginia. The full names and addresses of the owner, lessee and the applicant, and of the responsible officers if the owner or lessee is a corporate body, shall be stated in the application. The building official shall accept and process permit applications through the mail. The building

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official shall not require the permit applicant to appear in person.

105.3. Form of application. The application for a permit shall be submitted on forms supplied by the building official.

105.4. Description of work. The application shall contain a general description of the proposed work, its location, the use of all parts of the building, and of all portions of the site not covered by the building, and such additional information as may be required by the building official.

105.5. Plans and specifications. The application for the permit shall be accompanied by not less than two copies of specifications and of plans drawn to scale, with sufficient clarity and dimensional detail to show the nature and character of the work to be performed. Such plans and specifications shall include the seal and signature of the architect or engineer under whose supervision they were prepared, or if exempt under the provisions of state law, shall include the name, address, and occupation of the individual who prepared them. When quality of materials is essential for conformity to the USBC, specific information shall be given to establish such quality. In cases where such plans and specifications are exempt under state law, the building official may require that they include the signature and seal of a professional engineer or architect.

Exceptions:

1. The building official may waive the requirement for filing plans and specifications when the work involved is of a minor nature.

2. Detailed plans may be waived by the building official for buildings in Use Group R-4, provided specifications and outline plans are submitted which satisfactorily indicate compliance with the USBC.

Note: Information on the types of construction exempted from the requirement for a professional engineer's or architect's seal and signature is included in Addenda 4 and 10.

105.5.1. Site plan. The application shall also contain a site plan showing to scale the size and location of all the proposed new construction and all existing buildings on the site, distances from lot lines, the established street grades and the proposed finished grades. The building official may require that the application contain the elevation of the lowest floor of the building. It shall be drawn in accordance with an accurate boundary line survey. In the case of demolition, the site plan shall show all construction to be demolished and the location and size of all existing buildings and construction that are to remain on the site. In the case of alterations, renovations, repairs and installation of new equipment, the building official may waive submission of the site plan or any parts thereof.

105.6. Plans review. The building official shall examine all plans and applications for permits within a reasonable time after filing. If the application or the plans do not conform to the requirements of the USBC, the building official shall reject such application in writing, stating the reasons for rejection.

105.7. Approved plans. The building official shall stamp "Approved" or provide an endorsement in writing on both sets of approved plans and specifications. One set of such approved plans shall be retained by the building official. The other set shall be kept at the building site, open to inspection by the building official at all reasonable times.

105.8. Approval of partial plans. The building official may issue a permit for the construction of foundations or any other part of a building before the plans and specifications for the entire building have been submitted, provided adequate information and detailed statements have been filed indicating compliance with the pertinent requirements of the USBC. The holder of such permit for the foundations or other part of a building shall proceed with construction operations at the holder's risk, and without assurance that a permit for the entire building will be granted.

105.9. Engineering details. The building official may require adequate details of structural, mechanical, plumbing, and electrical work to be filed, including computations, stress diagrams and other essential technical data. All engineering plans and computations shall include the signature of the professional engineer or architect responsible for the design. Plans for buildings more than two stories in height shall indicate where floor penetrations will be made for pipes, wires, conduits, and other components of the electrical, mechanical and plumbing systems. The plans shall show the material and methods for protecting such openings so as to maintain the required structural integrity, fire-resistance ratings, and firestopping affected by such penetrations.

105.10. Asbestos inspection in buildings to be renovated or demolished. A local building department shall not issue a building permit allowing a building for which an initial building permit was issued before January 1, 1978, to be renovated or demolished until the local building department receives a certification from the owner or the owner's agent that the building has been inspected for asbestos, in accordance with standards developed pursuant to subdivision 1 of subsection A of § 2.1-526.14:1 of the Code of Virginia that response actions will be undertaken in accordance with the requirements of the Clean Air Act National Emission Standard for the Hazardous Air Pollutant (NESHAPS) (40 CFR 61, Subpart M) the management standards for asbestos-containing materials prepared by the Department of General Services in accordance with § 2.1-526.14:2 of the Code of Virginia, and the asbestos worker protection requirements established by the U.S. Occupational Safety and Health Administration for construction workers (29 CFR 1926.58).

Exceptions:

1. Single family dwellings.
2. Residential housing with four or fewer units.
3. Farm buildings.
4. Buildings less than 3,500 square feet in area.
5. Buildings with no central heating system.
6. Public utilities required by law to give notification to the Commonwealth of Virginia and to the United States Environmental Protection Agency prior to removing asbestos in connection with the renovation or demolition of a building.

105.10.1. Replacement of roofing, floorcovering, or siding materials. To meet the inspection requirements of Section 105.10 except with respect to schools, asbestos inspection of renovation projects consisting only of repair or replacement of roofing, floorcovering, or siding materials may be satisfied by:

1. A statement that the materials to be repaired or replaced are assumed to contain asbestos and that asbestos installation, removal, or encapsulation will be accomplished by a licensed asbestos contractor or a licensed asbestos roofing, flooring, siding contractor; or
2. A certification by the owner that sampling of the material to be renovated was accomplished by an RFS inspector as defined in § 54.1-500 of the Code of Virginia and analysis of the sample showed no asbestos to be present.

105.11. Amendments to application. Amendments to plans, specifications or other records accompanying the application for permit may be filed at any time before completion of the work for which the permit is issued. Such amendments shall be considered part of the original application and shall be filed as such.

105.12. Time limitation of application. An application for a permit for any proposed work shall be considered to have been abandoned six months after notification by the building official that the application is defective unless the applicant has diligently sought to resolve any problems that are delaying issuance of the permit; except that for reasonable cause, the building official may grant one or more extensions of time.

SECTION 106.0. PROFESSIONAL ENGINEERING AND ARCHITECTURAL SERVICES.

106.1. Special professional services; when required. The building official may require representation by a professional engineer or architect for buildings and structures which are subject to special inspections as

required by Section 1308.0.

106.2. Attendant fees and costs. All fees and costs related to the performance of special professional services shall be the responsibility of the building owner.

SECTION 107.0. APPROVAL OF MATERIALS AND EQUIPMENT.

107.1. Approval of materials; basis of approval. The building official shall require that sufficient technical data be submitted to substantiate the proposed use of any material, equipment, device or assembly. If it is determined that the evidence submitted is satisfactory proof of performance for the use intended, the building official may approve its use subject to the requirements of the USBC. In determining whether any material, equipment, device or assembly complies with the USBC, the building official shall approve items listed by nationally recognized research, testing and product certification organizations or may consider the recommendations of engineers and architects certified in this state.

107.2. Used materials and equipment. Used materials, equipment and devices may be used provided they have been reconditioned, tested or examined and found to be in good and proper working condition and approved for use by the building official.

107.3. Approved materials and equipment. All materials, equipment, devices and assemblies approved for use by the building official shall be constructed and installed in accordance with the conditions of such approval.

SECTION 108.0. INTERAGENCY COORDINATION - FUNCTIONAL DESIGN.

108.1. Functional design approval. Pursuant to § 36-98 of the Code of Virginia, certain state agencies have statutory authority to approve functional design and operation of building related activities not covered by the USBC. The building official may refuse to issue a permit until the applicant has supplied certificates of functional design approval from the appropriate state agency or agencies. State agencies with functional design approval are listed in Addendum 5. For purposes of coordination, the local governing body may require reports to the building official by other departments as a condition for issuance of a building permit or certificate of use and occupancy. Such reports shall be based upon review of the plans or inspection of the project as determined by the local governing body.

SECTION 109.0. CONSTRUCTION PERMITS.

109.1. Issuance of permits. If the building official is satisfied that the proposed work conforms to the requirements of the USBC and all applicable laws and

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ordinances, a permit shall be issued as soon as practicable. The building official may authorize work to commence prior to the issuance of the permit.

109.2. Signature on permit. The signature of the building official or authorized representative shall be attached to every permit.

109.3. Separate or combined permits. Permits for two or more buildings on the same lot may be combined. Permits for the installation of equipment such as plumbing, electrical or mechanical systems may be combined with the structural permit or separate permits may be required for the installation of each system. Separate permits may also be required for special construction considered appropriate by the local government.

109.4. Annual permit. The building official may issue an annual permit for alterations to an already approved equipment installation.

109.4.1. Annual permit records. The person to whom an annual permit is issued shall keep a detailed record of all alterations to an approved equipment installation made under such annual permit. Such records shall be accessible to the building official at all times or shall be filed with the building official when so requested.

109.5. Posting of permit. A copy of the building permit shall be posted on the construction site for public inspection until the work is completed.

109.6. Previous permits. No changes shall be required in the plans, construction or designated use of a building for which a permit has been properly issued under a previous edition of the USBC, provided the permit has not been revoked or suspended in accordance with Section 109.7 or 109.8.

109.7. Revocation of permits. The building official may revoke a permit or approval issued under the provisions of the USBC in case of any false statement or misrepresentation of fact in the application or on the plans on which the permit or approval was based.

109.8. Suspension of permit. Any permit issued shall become invalid if the authorized work is not commenced within six months after issuance of the permit, or if the authorized work is suspended or abandoned for a period of six months after the time of commencing the work; however, permits issued for building equipment such as plumbing, electrical and mechanical work shall not become invalid if the building permit is still in effect. Upon written request the building official may grant one or more extensions of time not to exceed six months per extension.

109.9. Compliance with code. The permit shall be a license to proceed with the work in accordance with the application and plans for which the permit has been issued and any approved amendments thereto and shall

not be construed as authority to omit or amend any of the provisions of the USBC, except by modification pursuant to Section 103.2.

SECTION 110.0. INSPECTIONS.

110.1. Right of entry. The building official may inspect buildings for the purpose of enforcing the USBC in accordance with the authority granted by § 36-105 of the Code of Virginia. The building official and assistants shall carry proper credentials of office when inspecting buildings and premises in the performance of duties under the USBC.

Note: Section 36-105 of the Code of Virginia provides, pursuant to enforcement of the USBC, that any building may be inspected at any time before completion. It also permits local governments to provide for the reinspection of buildings.

110.2. Preliminary inspection. Before issuing a permit, the building official may examine all buildings and sites for which an application has been filed for a permit to construct, enlarge, alter, repair, remove, demolish or change the use thereof.

110.3. Minimum inspections. Inspections shall include but are not limited to the following:

1. The bottom of footing trenches after all reinforcement steel is set and before any concrete is placed.
2. The installation of piling. The building official may require the installation of pile foundations be supervised by the owner's professional engineer or architect or by such professional service as approved by the building official.
3. Reinforced concrete beams, or columns and slabs after all reinforcing is set and before any concrete is placed.
4. Structural framing and fastenings prior to covering with concealing materials.
5. All electrical, mechanical and plumbing work prior to installation of any concealing materials.
6. Required insulating materials before covering with any materials.
7. Upon completion of the building, and before issuance of the certificate of use and occupancy, a final inspection shall be made to ensure that any violations have been corrected and all work conforms with the USBC.

110.3.1. Special inspections. Special inspections required by this code shall be limited to only those required by

Section 1308.0.

110.4. Notification by permit holder. It shall be the responsibility of the permit holder or the permit holder's representative to notify the building official when the stages of construction are reached that require an inspection under Section 110.3 and for other inspections as directed by the building official. All ladders, scaffolds and test equipment required to complete an inspection or test shall be provided by the property owner, permit holder or their representative.

110.5. Inspections to be prompt. The building official shall respond to inspection requests without unreasonable delay. The building official shall approve the work or give written notice of defective work to the permit holder or the agent in charge of the work. Such defects shall be corrected and reinspected before any work proceeds that would conceal them.

Note: A reasonable response time should normally not exceed two working days.

110.6. Approved inspection agencies. The building official may accept reports from individuals or inspection agencies which satisfy qualifications and reliability requirements, and shall accept such reports under circumstances where the building official is unable to make the inspection by the end of the following working day. Inspection reports shall be in writing and shall be certified by the individual inspector or by the responsible officer when the report is from an agency. An identifying label or stamp permanently affixed to the product indicating that factory inspection has been made shall be accepted instead of the written inspection report, if the intent or meaning of such identifying label or stamp is properly substantiated.

110.7. In-plant inspections. When required by the provisions of this code, materials or assemblies shall be inspected at the point of manufacture or fabrication. The building official shall require the submittal of an evaluation report of each prefabricated assembly, indicating the complete details of the assembly, including a description of the assembly and its components, the basis upon which the assembly is being evaluated, test results, and other data as necessary for the building official to determine conformance with this code.

110.8. Coordination with other agencies. The building official shall cooperate with fire, health and other state and local agencies having related maintenance, inspection or functional design responsibilities, and shall coordinate required inspections for new construction with the local fire official whenever the inspection involves provisions of the BOCA National Fire Prevention Code.

SECTION 111.0. WORKMANSHIP.

111.1. General. All construction work shall be performed and completed so as to secure the results intended by the

USBC.

SECTION 112.0. VIOLATIONS.

112.1. Code violations prohibited. No person, firm or corporation shall construct, alter, extend, repair, remove, demolish or use any building or equipment regulated by the USBC, or cause same to be done, in conflict with or in violation of any of the provisions of the USBC.

112.2. Notice of violation. The building official shall serve a notice of violation on the person responsible for the construction, alteration, extension, repair, removal, demolition or use of a building in violation of the provisions of the USBC, or in violation of plans and specifications approved thereunder, or in violation of a permit or certificate issued under the provisions of the USBC. Such order shall reference the code section that serves as the basis for the violation and direct the discontinuance and abatement of the violation. Such notice of violation shall be in writing and be served by either delivering a copy of the notice to such persons by mail to the last known address, delivered in person or by delivering it to and leaving it in the possession of any person in charge of the premises, or by posting the notice in a conspicuous place at the entrance door or accessway if such person cannot be found on the premises.

112.3. Prosecution of violation. If the notice of violation is not complied with, the building official shall request, in writing, the legal counsel of the jurisdiction to institute the appropriate legal proceedings to restrain, correct or abate such violation or to require the removal or termination of the use of the building in violation of the provisions of the USBC.

112.4. Violation penalties. Violations are a misdemeanor in accordance with § 36-106 of the Code of Virginia. Violators, upon conviction, may be punished by a fine of not more than \$1,000 .

112.5. Abatement of violation. Conviction of a violation of the USBC shall not preclude the institution of appropriate legal action to require correction or abatement of the violation or to prevent other violations or recurring violations of the USBC relating to construction and use of the building or premises.

SECTION 113.0. STOP WORK ORDER.

113.1. Notice to owner. When the building official finds that work on any building is being executed contrary to the provisions of the USBC or in a manner endangering the general public, an order may be issued to stop such work immediately. The stop work order shall be in writing. It shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work. It shall state the conditions under which work may be resumed. No work covered by a stop work order

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shall be continued after issuance, except under the conditions stated in the order.

113.2. Application of order limited. The stop work order shall apply only to the work that was being executed contrary to the USBC or in a manner endangering the general public, provided other work in the area would not cause concealment of the work for which the stop work order was issued.

SECTION 114.0. POSTING BUILDINGS.

114.1. Use group and form of sign. Prior to its use, every building designed for Use Groups B, F, H, M or S shall be posted by the owner with a sign approved by the building official. It shall be securely fastened to the building in a readily visible place. It shall state the use group, the live load, the occupancy load, and the date of posting.

114.2. Occupant load in places of assembly. Every room constituting a place of assembly or education shall have the approved occupant load of the room posted on an approved sign in a conspicuous place, near the main exit from the room. Signs shall be durable, legible, and maintained by the owner or the owner's agent. Rooms or spaces which have multiple-use capabilities shall be posted for all such uses.

114.3. Street numbers. Each structure to which a street number has been assigned shall have the number displayed so as to be readable from the public right of way.

SECTION 115.0. CERTIFICATE OF USE AND OCCUPANCY.

115.1. When required. Any building or structure constructed under this code shall not be used until a certificate of use and occupancy has been issued by the building official.

115.2. Temporary use and occupancy. The holder of a permit may request the building official to issue a temporary certificate of use and occupancy for a building, or part thereof, before the entire work covered by the permit has been completed. The temporary certificate of use and occupancy may be issued provided the building official determines that such portion or portions may be occupied safely prior to full completion of the building.

115.3. Contents of certificate. When a building is entitled thereto, the building official shall issue a certificate of use and occupancy. The certificate shall state the purpose for which the building may be used in its several parts. When the certificate is issued, the building shall be deemed to be in compliance with the USBC. The certificate of use and occupancy shall specify the use group, the type of construction, the occupancy load in the building and all parts thereof, the edition of the USBC under which the building permit was issued, and any special stipulations,

conditions and modifications.

115.4. Changes in use and occupancy. A building hereafter changed from one use group to another, in whole or in part, whether or not a certificate of use and occupancy has heretofore been issued, shall not be used until a certificate for the changed use group has been issued.

115.5. Existing buildings. A building constructed prior to the USBC shall not be prevented from continued use. The building official shall issue a certificate of use and occupancy upon written request from the owner or the owner's agent, provided there are no violations of Volume II of the USBC and the use of the building has not been changed.

SECTION 116.0. LOCAL BOARD OF BUILDING CODE APPEALS.

116.1. Local board of building code appeals. Each local government shall have a local board of building code appeals to act on applications for appeals as required by § 36-105 of the Code of Virginia; or it shall enter into an agreement with the governing body of another county or municipality or with some other agency, or a State agency approved by the Virginia Department of Housing and Community Development, to act on appeals.

116.1.1. Separate divisions. The local board of building code appeals may be divided into separate divisions to consider appeals relating to separate areas of regulation of the USBC. When separate divisions are created, the scope of each shall be clearly stated. The local board of appeals may permit appeals from a division to be submitted directly to the State Building Code Technical Review Board. Each division shall comply with the membership requirements and all other requirements of the USBC relating to the local board of building code appeals.

116.2. Membership. The local board of building code appeals shall consist of at least five members appointed by the local government. Members may be reappointed.

Note: In order to provide continuity, it is recommended that the terms of local board members be staggered so that less than half of the terms expire in any one year.

116.2.1. Qualifications of board members. Board members shall be selected by the local government on the basis of their ability to render fair and competent decisions regarding application of the code, and shall, to the extent possible, represent different occupational or professional fields. Employees or officials of the local government appointing the board shall not serve as board members.

Note: At least one member should be an experienced builder. At least one other member should be a licensed professional engineer or architect.

116.3. Officers of the board. The board shall select one of

its members to serve as chairman. The building official shall designate an employee from the department to serve as secretary to the board. The secretary shall keep a detailed record of all proceedings on file in the local building department.

116.4. Alternates and absence of members. The local government may appoint alternate members who may sit on the board in the absence of any regular members of the board and, while sitting on the board, shall have the full power and authority of the regular member. A procedure shall be established for use of alternate members in case of absence of regular members.

116.5. Control of conflict of interest. A member of the board shall not vote on any appeal in which that member is currently engaged as contractor or material dealer, has prepared the plans or specifications, or has any personal interest.

116.6. Notice of meeting. The board shall meet upon notice of the chairman or at stated periodic meetings if warranted by the volume of work. The board shall meet within 30 calendar days of the filing of an appeal.

116.7. Application for appeal. The owner of a building, the owner's agent, or any other person, firm or corporation directly involved in the design or construction of a building or structure may appeal to the local building code board of appeals within 90 calendar days from a decision of the building official when it is claimed that:

1. The building official has refused to grant a modification which complies with the intent of the provisions of the USBC; or
2. The true intent of the USBC has been incorrectly interpreted; or
3. The provisions of the USBC do not fully apply; or
4. The use of a form of construction that is equal to or better than that specified in the USBC has been denied.

116.7.1. Form of application. Applications for appeals shall be submitted in writing to the local building code board of appeals.

116.8. Hearing open to public. All hearings shall be public and conducted in accordance with the applicable provisions of the Administrative Process Act, § 9-6.14:1 et seq. of the Code of Virginia.

116.9. Postponement of hearing. When a quorum (more than 50%) of the board, as represented by members or alternates, is not present to consider a specific appeal, either the appellant, the building official or their representatives may, prior to the start of the hearing, request a single postponement of the hearing of up to 14 calendar days.

116.10. Decision. A vote equivalent to a majority of the quorum of the board is required to reverse or modify the decision of the building official. Every action of the board shall be by resolution. Certified copies shall be furnished to the appellant and to the building official.

116.11. Enforcement of decision. The building official shall take immediate action in accordance with the decision of the board.

116.12. Appeal by State Fire Marshal. This section shall apply only to buildings subject to inspection by § 36-139.3 of the Code of Virginia. The State Fire Marshal, appointed pursuant to § 36-139.2 of the Code of Virginia, shall have the right to inspect applications for building permits or conversions of use group. The State Fire Marshal may appeal to the local building code board of appeals from the decision of the building official when it is claimed that the true intent of the USBC has been incorrectly interpreted as applied to the proposed construction or conversion. Such appeals shall be filed before the required permits are issued. The State Fire Marshal may also inspect the building during construction, repair or alteration and may appeal to the local building code board of appeals from the decision of the building official when it is claimed that the construction, repairs or alterations do not comply with the approved plans. Such appeals shall be filed prior to the issuance of the new or revised certificate of occupancy. Copies of all appeals shall be furnished to the building official and to the applicant for the building permit.

Note: The building official is encouraged to have plans submitted to the State Fire Marshal for buildings subject to state licensure in order to prevent delays in construction.

SECTION 117.0. APPEAL TO THE STATE BUILDING CODE TECHNICAL REVIEW BOARD.

117.1. Appeal to the State Building Code Technical Review Board. Any person aggrieved by a decision of the local board of building code appeals who was a party to the appeal may appeal to the State Building Code Technical Review Board. Application for review shall be made to the State Building Code Technical Review Board within 21 calendar days of receipt of the decision of the local appeals board by the aggrieved party.

117.2. Control of conflict of interest. A member of the State Technical Review Board shall not vote on any appeal in which that member is currently engaged as contractor or material dealer, has prepared plans or specifications, or has any personal interest.

117.3. Enforcement of decision. Upon receipt of the written decision of the State Building Code Technical Review Board, the building official shall take immediate action in accordance with the decision.

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117.4. Court review. Decisions of the State Building Code Technical Review Board shall be final if no appeal is made. An appeal from the decision of the State Building Code Technical Review Board may be presented to the court of the original jurisdiction in accordance with the provisions of the Administrative Process Act, Article 4 (§ 9-6.14:15 et seq.) of Chapter 1.1:1 of Title 9 of the Code of Virginia.

SECTION 118.0. EXISTING BUILDINGS AND STRUCTURES.

118.1. Additions, alterations, and repairs. Additions, alterations or repairs to any structure shall conform to that required of a new structure without requiring the existing structure to comply with all of the requirements of this code. Additions, alterations or repairs shall not cause an existing structure to become unsafe or adversely affect the performance of the building. Any building plus new additions shall not exceed the height, number of stories and area specified for new buildings. Alterations or repairs to an existing structure which are structural or adversely affect any structural member or any part of the structure having a fire-resistance rating shall be made with materials required for a new structure.

Exception: Existing materials and equipment may be replaced with materials and equipment of a similar kind or replaced with greater capacity equipment in the same location when not considered a hazard.

Note 1: Alterations after construction may not be used by the building official as justification for requiring any part of the old building to be brought into compliance with the current edition of the USBC. For example, replacement of worn exit stair treads that are somewhat deficient in length under current standards does not, of itself, mean that the stair must be widened. It is the intent of the USBC that alterations be made in such a way as not to lower existing levels of health and safety.

Note 2: The intent of this section is that when buildings are altered by the addition of equipment that is neither required nor prohibited by the USBC, only those requirements of the USBC that regulate the health and safety aspects thereof shall apply. For example, a partial automatic alarm system may be installed when no alarm system is required provided it does not violate any of the electrical safety or other safety requirements of the code.

118.2. Conversion of building use. No change shall be made in the use of a building which would result in a change in the use group classification unless the building complies with all applicable requirements for the new use group classification in accordance with Section 105.1(2). An application shall be made and a certificate of use and occupancy shall be issued by the building official for the new use. Where it is impractical to achieve exact compliance with the USBC the building official shall, upon

application, consider issuing a modification under the conditions of Section 103.2 to allow conversion.

118.3. Alternative method of compliance. Compliance with the provisions of Article 32 for repair, alteration, change of use of, or additions to existing buildings shall be an acceptable method of complying with this code.

SECTION 119.0. MOVED BUILDINGS.

119.1. General. Any building moved into or within the jurisdiction shall be brought into compliance with the USBC unless it meets the following requirements after relocation.

1. No change has been made in the use of the building.
2. The building complies with all state and local requirements that were applicable to it in its previous location and that would have been applicable to it if it had originally been constructed in the new location.
3. The building has not become unsafe during the moving process due to structural damage or for other reasons.
4. Any alterations, reconstruction, renovations or repairs made pursuant to the move have been done in compliance with the USBC.

119.2. Certificate of use and occupancy. Any moved building shall not be used until a certificate of use and occupancy is issued for the new location.

SECTION 120.0. UNSAFE BUILDINGS.

120.1. Right of condemnation before completion. Any building under construction that fails to comply with the USBC through deterioration, improper maintenance, faulty construction, or for other reasons, and thereby becomes unsafe, unsanitary, or deficient in adequate exit facilities, and which constitutes a fire hazard, or is otherwise dangerous to human life or the public welfare, shall be deemed an unsafe building. Any such unsafe building shall be made safe through compliance with the USBC or shall be taken down and removed, as the building official may deem necessary.

120.1.1. Inspection of unsafe buildings; records. The building official shall examine every building reported as unsafe and shall prepare a report to be filed in the records of the department. In addition to a description of unsafe conditions found, the report shall include the use of the building, and nature and extent of damages, if any, caused by a collapse or failure.

120.1.2. Notice of unsafe building. If a building is found to be unsafe the building official shall serve a written notice

on the owner, the owner's agent or person in control, describing the unsafe condition and specifying the required repairs or improvements to be made to render the building safe, or requiring the unsafe building or portion thereof to be taken down and removed within a stipulated time. Such notice shall require the person thus notified to declare without delay to the building official the acceptance or rejection of the terms of the notice.

120.1.3. Posting of unsafe building notice. If the person named in the notice of unsafe building cannot be found after diligent search, such notice shall be sent by registered or certified mail to the last known address of such person. A copy of the notice shall be posted in a conspicuous place on the premises. Such procedure shall be deemed the equivalent of personal notice.

120.1.4. Disregard of notice. Upon refusal or neglect of the person served with a notice of unsafe building to comply with the requirement of the notice to abate the unsafe condition, the legal counsel of the jurisdiction shall be advised of all the facts and shall be requested to institute the appropriate legal action to compel compliance.

120.1.5. Vacating building. When, in the opinion of the building official, there is actual and immediate danger of failure or collapse of a building, or any part thereof, which would endanger life, or when any building or part of a building has fallen and life is endangered by occupancy of the building, the building official may order the occupants to vacate the building forthwith. The building official shall cause a notice to be posted at each entrance to such building reading as follows. "This Structure is Unsafe and its Use or Occupancy has been Prohibited by the Building Official." No person shall thereafter enter such a building except for one of the following purposes: (i) to make the required repairs; (ii) to take the building down and remove it; or (iii) to make inspections authorized by the building official.

120.1.6. Temporary safeguards and emergency repairs. When, in the opinion of the building official, there is immediate danger of collapse or failure of a building or any part thereof which would endanger life, or when a violation of this code results in a fire hazard that creates an immediate, serious and imminent threat to the life and safety of the occupants, he shall cause the necessary work to be done to the extent permitted by the local government to render such building or part thereof temporarily safe, whether or not legal action to compel compliance has been instituted.

120.2. Right of condemnation after completion. Authority to condemn unsafe buildings on which construction has been completed and a certificate of occupancy has been issued, or which have been occupied, may be exercised after official action by the local governing body pursuant to § 36-105 of the Code of Virginia.

SECTION 121.0. DEMOLITION OF BUILDINGS.

121.1. General. Demolition permits shall not be issued until the following actions have been completed:

1. The owner or the owner's agent has obtained a release from all utilities having service connections to the building stating that all service connections and appurtenant equipment have been removed or sealed and plugged in a safe manner.
2. Any certificate required by Section 105.10 has been received by the building official.
3. The owner or owner's agent has given written notice to the owners of adjoining lots and to the owners of other lots affected by the temporary removal of utility wires or other facilities caused by the demolition.

121.2. Hazard prevention. When a building is demolished or removed, the established grades shall be restored and any necessary retaining walls and fences shall be constructed as required by the provisions of Article 30 of the BOCA Code.

ADDENDUM 1. AMENDMENTS TO THE BOCA NATIONAL BUILDING CODE/1990 EDITION.

As provided in Section 101.3 of the Virginia Uniform Statewide Building Code, the amendments noted in this addendum shall be made to the BOCA National Building Code/1990 Edition for use as part of the USBC.

ARTICLE 1. ADMINISTRATION AND ENFORCEMENT.

(A) Entire article is deleted and replaced by Article 1, Adoption, Administration and Enforcement, of the Virginia Uniform Statewide Building Code.

ARTICLE 2. DEFINITIONS.

(A) Change the following definitions in Section 201.0, General Definitions, to read:

"Building" means a combination of any materials, whether portable or fixed, that forms a structure for use or occupancy by persons or property; provided, however, that farm buildings not used for residential purposes and frequented generally by the owner, members of his family, and farm employees shall be exempt from the provisions of the USBC, but such buildings lying within a flood plain or in a mudslide regulations, as applicable. The word building shall be construed as though followed by the words "or part or parts and fixed equipment thereof" unless the context clearly requires a different meaning. The word "building" includes the word "structure."

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"Boarding house" means a building arranged or used for lodging, with or without meals, for compensation and not occupied as a single family unit.

"Dormitory" means a space in a building where group sleeping accommodations are provided for persons not members of the same family group, in one room, or in a series of closely associated rooms.

"Hotel" means any building containing six or more guest rooms, intended or designed to be used, or which are used, rented or hired out to be occupied or which are occupied for sleeping purposes by guests.

"Multi-family apartment house" means a building or portion thereof containing more than two dwelling units and not classified as a one- or two-family dwelling.

"One-family dwelling" means a building containing one dwelling unit.

"Two-family dwelling" means a building containing two dwelling units.

"Jurisdiction" means the local governmental unit which is responsible for enforcing the USBC under state law.

"Mobile unit" means a structure of vehicular, portable design, built on a chassis and designed to be moved from one site to another, subject to the Industrialized Building and Manufactured Home Safety Regulations, and designed to be used without a permanent foundation.

"Owner" means the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a building.

"Structure" means an assembly of materials forming a construction for use including stadiums, gospel and circus tents, reviewing stands, platforms, stagings, observation towers, radio towers, water tanks, trestles, piers, wharves, swimming pools, amusement devices, storage bins, and other structures of this general nature. The word structure shall be construed as though followed by the words "or part or parts thereof" unless the context clearly requires a different meaning.

(B) Add these new definitions to Section 201.0, General Definitions:

"Family" means an individual or married couple and the children thereof with not more than two other persons related directly to the individual or married couple by blood or marriage; or a group of not more than eight unrelated persons, living together as a single housekeeping

unit in a dwelling unit.

"Farm building" means a structure located on a farm utilized for the storage, handling or production of agricultural, horticultural and floricultural products normally intended for sale to domestic or foreign markets and buildings used for the maintenance, storage or use of animals or equipment related thereto.

"Local government" means any city, county or town in this state, or the governing body thereof.

"Manufactured home" means a structure subject to federal regulations, which is transportable in one or more sections; is eight body feet or more in width and 40 body feet or more in length in the traveling mode, or is 320 or more square feet when erected on site; is built on a permanent chassis; is designed to be used as a single family dwelling, with or without a permanent foundation when connected to the required utilities; and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure.

"Night club" means a place of assembly that provides exhibition, performance or other forms of entertainment; serves food ~~and/or~~ or alcoholic beverages or both ; and provides music and space for dancing.

"Plans" means all drawings that together with the specifications, describe the proposed building construction in sufficient detail and provide sufficient information to enable the building official to determine whether it complies with the USBC.

"Skirting" means a weather-resistant material used to enclose the space from the bottom of a manufactured home to grade.

"Specifications" means all written descriptions, computations, exhibits, test data and other documents that together with the plans, describe the proposed building construction in sufficient detail and provide sufficient information to enable the building official to determine whether it complies with the USBC.

ARTICLE 3.

USE GROUP CLASSIFICATION.

(A) Change Section 307.2 to read as follows:

307.2. Use Group I-1. This use group shall include buildings and structures, or parts thereof, which house six or more individuals who, because of age, mental disability or other reasons, must live in a supervised environment but who are physically capable of responding to an emergency situation without personal assistance. Where accommodating persons of the above description, the following types of facilities shall be classified as I-1 facilities: board and care facilities, half-way houses, group homes, social rehabilitation facilities, alcohol and drug centers and convalescent facilities. A facility such as th

above with five or less occupants shall be classified as a residential use group.

Exception: Group homes licensed by the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services which house no more than eight mentally ill, mentally retarded, or developmentally disabled persons, with one or more resident counselors, shall be classified as Use Group R-3.

(B) Change Section 309.4 to read as follows:

309.4. Use Group R-3 structures. This use group shall include all buildings arranged for the use of one- or two-family dwelling units and multiple single-family dwellings where each unit has an independent means of egress and is separated by a two-hour fire separation assembly (see Section 909.0).

Exception: In multiple single-family dwellings which are equipped throughout with an approved automatic sprinkler system installed in accordance with Section 1004.2.1 or 1004.2.2, the fire-resistance rating of the dwelling unit separation shall not be less than one hour. Dwelling unit separation walls shall be constructed as fire partitions (see Section 910.0).

ARTICLE 4. TYPES OF CONSTRUCTION CLASSIFICATION.

(A) Add the following to line 5 of Table 401.

Dwelling unit separations for buildings of Type 2C, 3B and 5B construction shall have fire-resistance ratings of not less than one-half hour in buildings sprinklered throughout in accordance with Section 1004.2.1 or 1004.2.2.

ARTICLE 5. GENERAL BUILDING LIMITATIONS.

(A) Change Section 502.3 to read:

502.3. Automatic sprinkler system. When a building of other than Use Group H is equipped throughout with an automatic sprinkler system in accordance with Section 1004.2.1 or 1004.2.2, the area limitation specified in Table 501 shall be increased by 200% for one- and two-story buildings and 100% for buildings more than two stories in height. An approved limited area sprinkler system is not considered as an automatic sprinkler system for the purpose of this section.

(B) Change Section 503.1 to read:

503.1. Automatic sprinkler system. When a building is equipped throughout with an automatic sprinkler system in accordance with Section 1004.2.1, the building height limitation specified in Table 501 shall be increased one story and 20 feet (6096mm). This increase shall not apply to buildings of Use Group I-2 of Types 2C, 3A, 4 and 5A

construction nor to buildings of Use Group H. An approved limited-area sprinkler system is not considered an automatic sprinkler system for the purpose of this section. The building height limitations for buildings of Use Group R specified in Table 501 shall be increased one story and 20 feet, but not to exceed a height of four stories and 60 feet, when the building is equipped with an automatic sprinkler system in accordance with Section 1004.2.2.

(C) Replace Section 512.0, Physically Handicapped and Aged with the following new section:

SECTION 512.0. ACCESSIBILITY FOR PEOPLE WITH PHYSICAL DISABILITIES.

512.1. Referenced standard. The following national standard shall be incorporated into this section for use as part of this code:

American National Standard for Buildings and Facilities - Providing Accessibility and Usability for Physically Handicapped People (ANSI A117.1 - 1986)

512.2. Amendments to standard. The amendments noted in Addendum 3 of the USBC shall be made to the indicated sections of the ANSI A117.1 standard for use as part of the USBC.

ARTICLE 6. SPECIAL USE AND OCCUPANCY REQUIREMENTS.

(A) Change Section 610.2.1 to read as follows:

610.2.1. Waiting areas. Waiting areas shall not be open to the corridor, except where all of the following criteria are met:

1. The aggregate area of waiting areas in each smoke compartment does not exceed 600 square feet (56 m²);
2. Each area is located to permit direct visual supervision by facility staff;
3. Each area is equipped with an automatic fire detection system installed in accordance with Section 1017.0;
4. Each area is arranged so as not to obstruct access to the required exits; and
5. The walls and ceilings of the space are constructed as required for corridors.

(B) Delete Section 610.2.2, Waiting areas on other floors, but do not renumber remaining sections.

(C) Change Section 610.2.3 to read as follows:

610.2.3. Waiting areas of unlimited area. Spaces constructed as required for corridors shall not be open to

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a corridor, except where all of the following criteria are met:

1. The spaces are not used for patient sleeping rooms, treatment rooms or specific use areas as defined in Section 313.1.4.1;
2. Each space is located to permit direct visual supervision by the facility staff;
3. Both the space and corridors that the space opens into in the same smoke compartment are protected by an automatic fire detection system installed in accordance with Section 1017.0; and
4. The space is arranged so as not to obstruct access to the required exits.

(D) Change Section 610.2.5 to read as follows:

610.2.5. Mental health treatment areas. Areas wherein only mental health patients who are capable of self-preservation are housed, or group meeting or multipurpose therapeutic spaces other than specific use areas as defined in Section 313.1.4.1, under continuous supervision by facility staff, shall not be open to the corridor, except where all of the following criteria are met:

1. Each area does not exceed 1,500 square feet (140 m²);
2. The area is located to permit supervision by the facility staff;
3. The area is arranged so as not to obstruct any access to the required exits;
4. The area is equipped with an automatic fire detection system installed in accordance with Section 1017.0;
5. Not more than one such space is permitted in any one smoke compartment; and
6. The walls and ceilings of the space are constructed as required for corridors.

(E) Change Section 610.3 and subsection 610.3.1 to read as follows:

610.3. Corridor walls. Corridor walls shall form a barrier to limit the transfer of smoke. The walls shall extend from the floor to the underside of the floor or roof deck above or to the underside of the ceiling above where the ceiling membrane is constructed to limit the transfer of smoke.

610.3.1. Corridor doors. All doors shall conform to Section 916.0. Corridor doors, other than those in a wall required to be rated by Section 313.1.4.1 or for the enclosure of a vertical opening, shall not have a required fire-resistance

rating, but shall provide an effective barrier to limit the transfer of smoke.

(F) Change Section 610.5 to read as follows:

610.5. Automatic fire detection. An automatic fire detection system shall be provided in corridors and common spaces open to the corridor as permitted by Section 610.2.

(G) Delete Section 610.5.1, Rooms, and Section 610.5.2, Corridors.

(H) Add new Section 618.10 to read as follows:

SECTION 618.10. MAGAZINES.

618.10. Magazines. Magazines for the storage of explosives, ammunition and blasting agents shall be constructed in accordance with the Statewide Fire Prevention Code as adopted by the Board of Housing and Community Development.

(I) Change Section 619.1 to read as follows:

619.1. Referenced codes. The storage systems for flammable and combustible liquids shall be in accordance with the mechanical code and the fire prevention code listed in Appendix A.

Exception: Aboveground tanks which are used to store or dispense motor fuels, aviation fuels or heating fuels at commercial, industrial, governmental or manufacturing establishments shall be allowed when in compliance with NFPA 30, 30A, 31 or 407 listed in Appendix A.

(J) Change Section 620.0 to read as follows:

SECTION 620.0. MOBILE UNITS AND MANUFACTURED HOMES.

620.1. General. Mobile units, as defined in Section 201.0, shall be designed and constructed to be transported from one location to another and not mounted on a permanent foundation. Manufactured homes shall be designed and constructed to comply with the Federal Manufactured Housing Construction and Safety Standards and used with or without a permanent foundation.

620.2. Support and anchorage of mobile units. The manufacturer of each mobile unit shall provide with each unit specifications for the support and anchorage of the mobile unit. The manufacturer shall not be required to provide the support and anchoring equipment with the unit. Mobile units shall be supported and anchored according to the manufacturer's specifications. The anchorage shall be adequate to buildings and structures, based upon the size and weight of the mobile unit.

620.3. Support and anchorage of manufactured homes. Th

manufacturer of the home shall provide with each manufactured home printed instructions specifying the location, required capacity and other details of the stabilizing devices to be used with or without a permanent foundation (i.e., tiedowns, piers, blocking, footings, etc.) based upon the design of the manufactured home. Manufactured homes shall be supported and anchored according to the manufacturer's printed instructions or supported and anchored by a system conforming to accepted engineering practices designed and engineered specifically for the manufactured home. Footings or foundations on which piers or other stabilizing devices are mounted shall be carried down to the established frost lines. The anchorage system shall be adequate to resist wind forces, sliding and uplift as imposed by the design loads.

620.3.1. Hurricane zone. Manufactured homes installed or relocated in the hurricane zone shall be of Hurricane and Windstorm Resistive design in accordance with the Federal Manufactured Housing Construction and Safety Standards and shall be anchored according to the manufacturer's specifications for the hurricane zone. The hurricane zone includes the following counties and all cities located therein, contiguous thereto, or to the east thereof. Accomack, King William, Richmond, Charles City, Lancaster, Surry, Essex, Mathews, Sussex, Gloucester, Middlesex, Southampton, Greenville, Northumberland, Westmoreland, Isle of Wight, Northampton, York, James City, New Kent, King & Queen and Prince George.

620.4. Used mobile/manufactured homes. When used manufactured homes or used mobile homes are being installed or relocated and the manufacturer's original installation instructions are not available, installations complying with the applicable portions of NCSBCS/ANSI A225.1 listed in Appendix A shall be accepted as meeting the USBC.

620.5. Skirting. Manufactured homes installed or relocated after July 1, 1990, shall have skirting installed within 60 days of occupancy of the home. Skirting materials shall be durable, suitable for exterior exposures, and installed in accordance with the manufacturer's installation instructions. Skirting shall be secured as necessary to ensure stability, to minimize vibrations, to minimize susceptibility to wind damage, and to compensate for possible frost heave. Each manufactured home shall have a minimum of one opening in the skirting providing access to any water supply or sewer drain connections under the home. Such openings shall be a minimum of 18 inches in any dimension and not less than three square feet in area. The access panel or door shall not be fastened in a manner requiring the use of a special tool to open or remove the panel or door. On-site fabrication of the skirting by the owner or installer of the home shall be acceptable, provided that the material meets the requirements of the USBC.

(K) Add new Section 627.0 to read as follows:

SECTION 627.0. UNDERGROUND STORAGE TANKS.

627.1. General. The installation, upgrade, or closure of any underground storage tanks containing an accumulation of regulated substances, shall be in accordance with the Underground Storage Tank Regulations adopted by the State Water Control Board. Underground storage tanks containing flammable or combustible liquids shall also comply with the applicable requirements of Section 619.0.

ARTICLE 7. INTERIOR ENVIRONMENTAL REQUIREMENTS.

(A) Add new Section 706.2.3 as follows:

706.2.3. Insect screens. Every door and window or other outside opening used for ventilation purposes serving any building containing habitable rooms, food preparation areas, food service areas, or any areas where products used in food for human consumption are processed, manufactured, packaged or stored, shall be supplied with approved tight fitting screens of not less than 16 mesh per inch.

(B) Change Section 714.0 to read as follows:

SECTION 714.0. SOUND TRANSMISSION CONTROL IN RESIDENTIAL BUILDINGS.

714.1. Scope. This section shall apply to all common interior walls, partitions and floor/ceiling assemblies between adjacent dwellings or between a dwelling and adjacent public areas such as halls, corridors, stairs or service areas in all buildings of Use Group R.

714.2. Airborne noise. Walls, partitions and floor/ceiling assemblies separating dwellings from each other or from public or service areas shall have a sound transmission class (STC) of not less than 45 for airborne noise when tested in accordance with ASTM E90 listed in Appendix A. This requirement shall not apply to dwelling entrance doors, but such doors shall be tight fitting to the frame and sill.

714.3. Structure borne sound. Floor/ceiling assemblies between dwellings and between a dwelling and a public or service area within the structures shall have an impact insulation class (IIC) rating of not less than 45 when tested in accordance with ASTM E492 listed in Appendix A.

714.4. Tested assemblies. Where approved, assemblies of building construction listed in GA 600, NCMA TEK 69A and BIA TN 5A listed in Appendix A shall be accepted as having the STC and IIC ratings specified therein for determining compliance with the requirements of this section.

(C) Add new Section 715.0 to read as follows:

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SECTION 715.0. HEATING FACILITIES.

715.1. Residential buildings. Every owner of any structure who rents, leases, or lets one or more dwelling units or guest rooms on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply sufficient heat during the period from October 1 to May 15 to maintain a room temperature of not less than 65°F. (18°C.), in all habitable spaces, bathrooms, and toilet rooms during the hours between 6:30 a.m. and 10:30 p.m. of each day and maintain a temperature of not less than 60°F. (16°C.) during other hours. The temperature shall be measured at a point three feet (914 mm) above the floor and three feet (914 mm) from exterior walls.

Exception: When the exterior temperature falls below 0°F. (-18°C.) and the heating system is operating at its full capacity, a minimum room temperature of 60°F. (16°C.) shall be maintained at all times.

715.2. Other structures. Every owner of any structure who rents, leases, or lets the structure or any part thereof on terms, either express or implied, to furnish heat to the occupant thereof; and every occupant of any structure or part thereof who rents or leases said structure or part thereof on terms, either express or implied, to supply its own heat, shall supply sufficient heat during the period from October 1 to May 15 to maintain a temperature of not less than 65°F. (18°C.), during all working hours in all enclosed spaces or rooms where persons are employed and working. The temperature shall be measured at a point three feet (914 mm) above the floor and three feet (914 mm) from exterior walls.

Exceptions:

1. Processing, storage and operations areas that require cooling or special temperature conditions.
2. Areas in which persons are primarily engaged in vigorous physical activities.

ARTICLE 8. MEANS OF EGRESS.

(A) Change Exception 6 of Section 813.4.1 to read as follows:

6. Devices such as double cylinder dead bolts which can be used to lock doors to prevent egress shall be permitted on egress doors in Use Groups B, F, M or S. These doors may be locked from the inside when all of the following conditions are met:

- a. The building is occupied by employees only and all employees have ready access to the unlocking device.
- b. The locking device is of a type that is readily distinguished as locked, or a "DOOR LOCKED" sign

with red letters on white background is installed on the locked doors. The letters shall be six inches high and 3/4 of an inch wide.

c. A permanent sign is installed on or adjacent to lockable doors stating "THIS DOOR TO REMAIN UNLOCKED DURING PUBLIC OCCUPANCY." The sign shall be in letters not less than one-inch high on a contrasting background.

(B) Add new Exception 7 to Section 813.4.1 to read as follows:

Exception

7. Locking arrangements conforming to Section 813.4.5.

(C) Add new Section 813.4.5 to read as follows:

813.4.5. Building entrance doors. In Use Groups A, B, E, M, R-1 and R-2, the building entrance doors in a means of egress are permitted to be equipped with an approved entrance and egress control system which shall be installed in accordance with items 1 through 6 below.

1. A sensor shall be provided on the egress side arranged to detect an occupant approaching the doors. The doors shall be arranged to unlock by a signal from or loss of power to the sensor.

2. Loss of power to that part of the access control system which locks the doors shall automatically unlock the doors.

3. The doors shall be arranged to unlock from a manual exit device located 48 inches (1219 mm) vertically above the floor and within five feet (1524 mm) of the secured doors. The manual exit device shall be readily accessible and clearly identified by a sign. When operated, the manual exit device shall result in direct interruption of power to the lock – independent of the access control system electronics – and the doors shall remain unlocked for a minimum of 30 seconds.

4. Activation of the building fire protective signaling system, if provided, shall automatically unlock the doors, and the doors shall remain unlocked until the fire protective signaling system has been reset.

5. Activation of the building sprinkler or detection system, if provided, shall automatically unlock the doors. The doors shall remain unlocked until the fire protective signaling system has been reset.

6. The doors shall not be secured from the egress side in Use Groups A, B, E and M during periods when the building is accessible to the general public.

(D) Add new Section 826.0 to read as follows:

SECTION 826.0. EXTERIOR DOORS.

826.1. Swinging entrance doors. Exterior swinging doors of each dwelling unit in buildings of Use Group R-2 shall be equipped with a dead bolt lock, with a throw of not less than one inch, and shall be capable of being locked or unlocked by key from the outside and by turn-knob from the inside.

826.2. Exterior sliding doors. In dwelling units of Use Group R-2 buildings, exterior sliding doors which are one story or less above grade, or shared by two dwelling units, or are otherwise accessible from the outside, shall be equipped with locks. The mounting screws for the lock case shall be inaccessible from the outside. The lock bolt shall engage the strike in a manner that will prevent its being disengaged by movement of the door.

Exception: Exterior sliding doors which are equipped with removable metal pins or charlie bars.

826.3. Entrance doors. Entrance doors to dwelling units of Use Group R-2 buildings shall be equipped with door viewers with a field of vision of not less than 180 degrees.

Exception: Entrance doors having a vision panel or side vision panels.

ARTICLE 10. FIRE PROTECTION SYSTEMS.

(A) Delete Section 1000.3.

(B) Change Section 1002.6 to read as follows:

1002.6. Use Group I. Throughout all buildings with a Use Group I fire area.

Exception: Use Group I-2 child care facilities located at the level of exit discharge and which accommodate 100 children or less. Each child care room shall have an exit door directly to the exterior.

(C) Change Section 1002.8 to read as follows:

1002.8. Use Group R-1. Throughout all buildings of Use Group R-1.

Exception: Use Group R-1 buildings where all guestrooms are not more than three stories above the lowest level of exit discharge of the exits serving the guestroom. Each guestroom shall have at least one door opening directly to an exterior exit access which leads directly to the exits.

(D) Change Section 1002.9 to read as follows:

1002.9. Use Group R-2. Throughout all buildings of Use Group R-2.

Exceptions 1.

Use Group R-2 buildings where all dwelling units are not more than one story above the lowest level of exit discharge and not more than one story below the highest level of exit discharge of exits serving the dwelling unit.

2. Use Group R-2 buildings where all dwelling units are not more than three stories above the lowest level of exit discharge and not more than one story below the highest level of exit discharge of exits serving the dwelling unit and every two dwelling units are separated from other dwelling units in the building by fire separation assemblies (see Sections 909.0 and 913.0) having a fire resistance rating of not less than two hours.

(E) Add new Section 1002.12 to read as follows:

1002.12. Use Group B, when more than 50 feet in height. Fire suppression systems shall be installed in buildings and structures of Use Group B, when more than 50 feet in height and less than 75 feet in height according to the following conditions:

1. The height of the building shall be measured from the point of the lowest grade level elevation accessible by fire department vehicles at the building or structure to the floor of the highest occupiable story of the building or structure.

2. Adequate public water supply is available to meet the needs of the suppression system.

3. Modifications for increased allowable areas and reduced fire ratings permitted by Sections 502.3, 503.1, 905.2.2, 905.3.1, 921.7.2, 921.7.2.2, 922.8.1, and any others not specifically listed shall be granted.

4. The requirements of Section 602.0 for high-rise buildings, such as, but not limited to voice alarm systems, central control stations, and smoke control systems, shall not be applied to buildings and structures affected by this section.

(F) Change Sections 1004.1 through 1004.2.2 to read as follows:

1004.1. General. Automatic sprinkler systems shall be approved and shall be designed and installed in accordance with the provisions of this code.

1004.2. Equipped throughout. Where the provisions of this code require that a building or portion thereof be equipped throughout with an automatic sprinkler system, the system shall be designed and installed in accordance with Section 1004.2.1, 1004.2.2 or 1004.2.3.

Exception: Where the use of water as an extinguishing agent is not compatible with the fire hazard (see Section 1003.2) or is prohibited by a law, statute or ordinance, the affected area shall be equipped with an

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approved automatic fire suppression system utilizing a suppression agent that is compatible with the fire hazard.

1004.2.1. NFPA 13 systems. The systems shall be designed and installed in accordance with NFPA 13 listed in Appendix A.

Exception: In Use Group R fire areas, sprinklers shall not be required in bathrooms that do not exceed 55 square feet in area and are located within individual dwelling units or guestrooms.

1004.2.1.1. Quick response sprinklers. NFPA 13 systems installed in Use Group I-2 fire areas shall use quick response sprinklers in patient sleeping rooms.

1004.2.2. NFPA 13R systems. In buildings four stories or less in height, systems designed and installed in accordance with NFPA 13R listed in Appendix A shall be permitted in Use Group I-1 fire areas in buildings with not more than 16 occupants, and in Use Group R fire areas.

Exception: Sprinklers shall not be required in bathrooms that do not exceed 55 square feet in area and are located within individual dwelling units or guestrooms.

(G) Add new Section 1004.2.3 to read as follows:

1004.2.3. NFPA 13D systems. In Use Group I-1 fire areas in buildings with not more than eight occupants, systems designed and installed in accordance with NFPA 13D listed in Appendix A shall be permitted.

Exceptions:

1. Sprinklers shall not be required in bathrooms that do not exceed 55 square feet in area.
2. A single fire protection water supply shall be permitted to serve not more than eight dwelling units.

(H) Add new Section 1018.3.5 to read as follows:

1018.3.5. Smoke detectors for the deaf and hearing impaired. Smoke detectors for the deaf and hearing impaired shall be provided as required by § 36-99.5 of the Code of Virginia.

ARTICLE 12. FOUNDATION SYSTEMS.

(A) Add new provision to Section 1205.0, Depth of Footings:

1205.4. Small storage sheds. The building official may accept utility sheds without footings when they are used for storage purposes and do not exceed 150 square feet in gross floor area when erected or mounted on adequate supports.

ARTICLE 13. MATERIALS AND TESTS.

(A) Add new Section 1300.4 to read as follows:

1300.4. Lead based paint. Lead based paint with a lead content of more than 0.5% shall not be applied to any interior or exterior surface of a dwelling, dwelling unit or child care facility, including fences and outbuildings at these locations.

(B) Change Section 1308.1 to read as follows:

1308.1. General. The permit applicant shall provide special inspections where application is made for construction as described in this section. The special inspectors shall be provided by the owner and shall be qualified and approved for the inspection of the work described herein.

Exception: Special inspections are not required for buildings or structures unless the design involves the practice of professional engineering or architecture as required by §§ 54.1-401, 54.1-402 and 54.1-406 of the Code of Virginia.

(C) Delete Section 1308.8, Special cases.

ARTICLE 17. WOOD.

(A) Change Section 1702.4.1 to read as follows:

1702.4.1. General. Where permitted for use as a structural element, fire-retardant treated wood shall be defined as any wood product which, when impregnated with chemicals by a pressure process in accordance with AWPA C20 or AWPA C27 listed in Appendix A or other means during manufacture, shall have, when tested in accordance with ASTM E84 listed in Appendix A, a flame spread rating not greater than 25 when the test is continued for a period of 30 minutes, without evidence of significant progressive combustion and the flame front shall not progress more than 10.5 feet (3200 mm) beyond the centerline of the burner at any time during the test. Fire-retardant treated wood shall be dried to a moisture content of 19% or less for lumber and 15% or less for plywood before use.

(B) Add new Sections 1702.4.1.1 and 1702.4.1.2 as follows:

1702.4.1.1. Strength modifications. Design values for untreated lumber, as specified in Section 1701.1, shall be adjusted when the lumber is pressure impregnated with fire-retardant chemicals. Adjustments to the design values shall be based upon an approved method of investigation which takes into consideration the effects of the anticipated temperature and humidity to which the fire-retardant treated wood will be subjected, the type of treatment, and the redrying procedures.

1702.4.1.2. Labeling. Fire-retardant treated lumber an

plywood shall bear the label of an approved agency in accordance with Section 1307.3.2. Such label shall contain the information required by Section 1307.3.3.

ARTICLE 25. MECHANICAL EQUIPMENT AND SYSTEMS.

(A) Change Section 2500.2 to read as follows:

2500.2. Mechanical code. All mechanical equipment and systems shall be constructed, installed and maintained in accordance with the mechanical code listed in Appendix A, as amended below:

1. Delete Article 17, Air Quality:
2. Add Note to M-2000.2 to read as follows:

Note: Boilers and pressure vessels constructed under this article shall be inspected and have a certificate of inspection issued by the Department of Labor and Industry.

ARTICLE 27. ELECTRIC WIRING AND EQUIPMENT.

(A) Add Section 2700.5 to read as follows:

2700.5. Telephone outlets. Each dwelling unit shall be rewired to provide at least one telephone outlet (jack). In multifamily dwellings, the telephone wiring shall terminate inside or outside of the building at a point prescribed by the telephone company.

ARTICLE 28. PLUMBING SYSTEMS.

(A) Change Section 2800.1 to read as follows:

2800.1. Scope. The design and installation of plumbing systems, including sanitary and storm drainage, sanitary facilities, water supplies and storm water and sewage disposal in buildings shall comply with the requirements of this article and the plumbing code listed in

1. Change Section P-303.1 to read as follows:

P-303.1. General. The water distribution and drainage system of any building in which plumbing fixtures are installed shall be connected to public water main and sewer respectively, if available. Where a public water main is not available, an individual water supply shall be provided. Where a public sewer is not available, a private sewage disposal system shall be provided conforming to the regulations of the Virginia Department of Health.

2. Change Section P-303.2 to read as follows:

P-303.2. Public systems available. A public water supply system or public sewer system shall be deemed available premises used for human occupancy if such premises

are within (number of feet and inches as determined by the local government) measured along a street, alley, or easement, of the public water supply or sewer system, and a connection conforming with the standards set forth in the USBC may be made thereto.

3. Change Section P-308.3 to read as follows:

P-308.3. Freezing. Water service piping and sewers shall be installed below recorded frost penetration but not less than (number of feet and inches to be determined by the local government) below grade for water piping and (number of feet and inches to be determined by the local government) below grade for sewers. In climates with freezing temperatures, plumbing piping in exterior building walls or areas subjected to freezing temperatures shall be adequately protected against freezing by insulation or heat or both.

4. Delete Section P-311.0, Toilet Facilities for Workers.

5. Add new Section P-604.2.1 to read as follows:

P-604.2.1. Alarms. Malfunction alarms shall be provided for sewage pumps or sewage ejectors rated at 20 gallons per minute or less when used in Use Group R-3 buildings.

6. Add the following exception to Section P-1001.1:

4. A grease interceptor listed for use as a fixture trap may serve a single fixture or a combination sink of not more than three compartments when the vertical distance of the fixture drain to the inlet of the grease interceptor does not exceed 30 inches and the horizontal distance does not exceed 60 inches.

7. Change Note d of Table P-1202.1 to read:

Note d. For attached one and two family dwellings one automatic clothes washer connection shall be required per 20 dwelling units. Automatic clothes washer connections are not required for Use Group R-4.

8. Revise Table P-1202.1 for Building Use Groups A-1, A-3, A-4 and A-5.

Building Use Group	Water Closets (Urinals see Section P1218.2)	
	Males	Females
A-1 Assembly, theaters	1 per 125	1 per 65
A-2 Assembly, nightclubs	1 per 40	1 per 40
A-3 Assembly, restaurants	1 per 75	1 per 75
A-3 Assembly, halls, museums, etc.	1 per 125	1 per 65

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A-4 Assembly, churches(b) 1 per 150 1 per 75

A-5 Assembly, stadiums,
pools, etc. 1 per 100 1 per 50

9. Add Note e to Table P-1202.1 to reference Use Group I-2 day nurseries to read as follows:

Note e. Day nurseries shall only be required to provide one bathtub or shower regardless of the number of occupants.

10. Delete Section P-1203.0, Handicap Plumbing Facilities, but do not renumber the remaining sections in the article.

11. Add new Section P-1501.3:

P-1501.3. Public water supply and treatment. The approval, installation and inspection of raw water collection and transmission facilities, treatment facilities and all public water supply transmission mains shall be governed by the Virginia Waterworks Regulations. The internal plumbing of buildings and structures, up to the point of connection to the water meter shall be governed by this code. Where no meter is installed, the point of demarcation shall be at the point of connection to the public water main; or, in the case of an owner of both public water supply system and the building served, the point of demarcation is the point of entry into the building.

Note: See Memorandum of Agreement between the Board of Housing and Community Development and the Virginia Department of Health, signed July 21, 1980.

12. Add Note to P-1506.3 to read as follows:

Note: Water heaters which have a heat input of greater than 200,000 BTU per hour, a water temperature of over 210°F, or contain a capacity of more than 120 gallons shall be inspected and have a certificate of inspection issued by the Department of Labor and Industry.

13. Delete Article 16, Individual Water Supply.

(B) Change Section 2804.3 to read as follows:

2804.3. Private water supply. When public water mains are not used or available, a private source of water supply may be used. The Health Department shall approve the location, design and water quality of the source prior to the issuance of the permit. The building official shall approve all plumbing, pumping and electrical equipment associated with the use of a private source of water.

(C) Change Section 2807.1 to read as follows:

2807.1. Private sewage disposal. When water closets or other plumbing fixtures are installed in buildings which

are not located within a reasonable distance of a sewer, suitable provisions shall be made for disposing of the building sewage by some method of sewage treatment and disposal satisfactory to the administrative authority having jurisdiction. When an individual sewage system is required, the control and design of this system shall be as approved by the State Department of Health, which must approve the location and design of the system and septic tanks or other means of disposal. Approval of pumping and electrical equipment shall be the responsibility of the building official. Modifications to this section may be granted by the local building official, upon agreement by the local health department, for reasons of hardship, unsuitable soil conditions or temporary recreational use of a building. Temporary recreational use buildings shall mean any building occupied intermittently for recreational purposes only.

ARTICLE 29. SIGNS.

- (A) Delete Section 2901.1, Owner's consent.
- (B) Delete Section 2901.2, New signs.
- (C) Delete Section 2906.0, Bonds and Liability Insurance.

ARTICLE 30. PRECAUTIONS DURING BUILDING OPERATIONS.

(A) Change Section 3000.1 to read as follows:

3000.1. Scope. The provisions of this article shall apply to all construction operations in connection with the erection, alteration, repair, removal or demolition of buildings and structures. It is applicable only to the protection of the general public. Occupational health and safety protection of building-related workers are regulated by the Virginia Occupational Safety and Health Standards for the Construction Industry, which are issued by the Virginia Department of Labor and Industry.

APPENDIX A. REFERENCED STANDARDS.

(A) Add the following standards:

NCSBCS/ANSI A225.1-87

Manufactured Home Installations (referenced in Section 620.4).

NFIPA 13D-89

Installation of Sprinkler Systems in One- and Two-Family Dwellings and Mobile Homes (referenced in Section 1004.2.3)

NFIPA 30A-87

Automotive and Marine Service Station Code

(referenced in Section 619.1).

NFIPA 31-87

Installation of Oil Burning Equipment (referenced in Section 619.1)

NFIPA 407-90

Aircraft Fuel Servicing (referenced in Section 619.1)

ADDENDUM 2. AMENDMENTS TO THE CABO ONE AND TWO FAMILY DWELLING CODE/1989 EDITION AND 1990 AMENDMENTS.

As provided in Section 101.4 of the Virginia Uniform Statewide Building Code, the amendments noted in this addendum shall be made to the CABO One and Two Family Dwelling Code/1989 Edition and 1990 Amendments for use as part of the USBC.

PART I. ADMINISTRATIVE.

Chapter 1. Administrative.

(A) Any requirements of Sections R-101 through R-113 that relate to administration and enforcement of the CABO One and Two Family Dwelling Code are superseded by Article 1, Adoption, Administration and Enforcement of the USBC.

PART II. BUILDING PLANNING.

Chapter 2. Building Planning.

(A) Add Section R-203.5, Insect Screens:

R-203.5. Insect Screens. Every door and window or other outside opening used for ventilation purposes serving any building containing habitable rooms, food preparation areas, food service areas, or any areas where products used in food for human consumption are processed, manufactured, packaged or stored, shall be supplied with approved tight fitting screens of not less than 16 mesh per inch.

(B) Change Section R-207 to read as follows:

SECTION R-207. SANITATION.

Every dwelling unit shall be provided with a water closet, lavatory and a bathtub or shower.

Each dwelling unit shall be provided with a kitchen area and every kitchen area shall be provided with a sink of approved nonabsorbent material.

All plumbing fixtures shall be connected to a sanitary sewer or to an approved private sewage disposal system.

All plumbing fixtures shall be connected to an approved water supply and provided with hot and cold running water, except water closets may be provided with cold water only.

Modifications to this section may be granted by the local building official, upon agreement by the local health department, for reasons of hardship, unsuitable soil conditions or temporary recreational use of the building.

(C) Add to Section R-212:

Key operation is permitted from a dwelling unit provided the key cannot be removed when the door is locked from the side from which egress is to be made.

(D) Change Section R-214.2 to read as follows:

R-214.2. Guardrails. Porches, balconies or raised floor surfaces located more than 30 inches above the floor or grade below shall have guardrails not less than 36 inches in height.

Required guardrails on open sides of stairways, raised floor areas, balconies and porches shall have intermediate rails or ornamental closures which will not allow passage of an object six inches or more in diameter.

(E) Change Section R-215.1 to read:

R-215.1. Smoke detectors required. Smoke detectors shall be installed outside of each separate sleeping area in the immediate vicinity of the bedrooms and on each story of the dwelling, including basements and cellars, but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels, a smoke detector need be installed only on the upper level, provided the lower level is less than one full story below the upper level, except that if there is a door between levels then a detector is required on each level. All detectors shall be connected to a sounding device or other detectors to provide, when activated, an alarm which will be audible in all sleeping areas. All detectors shall be approved and listed and shall be installed in accordance with the manufacturers instructions. When one or more sleeping rooms are added or created in existing dwellings, the addition shall be provided with smoke detectors located as required for new dwellings.

(F) Add new Section R-221:

SECTION R-221. TELEPHONE OUTLETS.

Each dwelling unit shall be prewired to provide at least one wall telephone outlet (jack). The telephone wiring shall terminate on the exterior of the building at a point prescribed by the telephone company.

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(G) Add new Section R-222:

SECTION R-222. LEAD BASED PAINT.

Lead Based Paint. Lead based paint with a lead content of more than 0.5% shall not be applied to any interior or exterior surface of a dwelling, dwelling unit or child care facility, including fences and outbuildings at these locations.

PART III. CONSTRUCTION.

Chapter 3. Foundations.

(A) Add Section R-301.6 to read as follows:

R-301.6. Floodproofing. All buildings or structures located in areas prone to flooding as determined by the governing body having jurisdiction shall be floodproofed in accordance with the provisions of Section 2101.6 of the 1990 BOCA National Building Code.

Chapter 9. Chimneys and Fireplaces.

(A) Add Section R-903.10 as follows:

R-903.10. Spark arrestor. Spark arrestor screens shown in Figure R-904 are optional unless specifically required by the manufacturer of the fireplace stove or other appliance utilizing a chimney.

PART IV. MECHANICAL.

(A) Add new Section M-1101.1:

M-1101.1. Residential buildings. Every owner of any structure who rents, leases, or lets one or more dwelling units or guest rooms on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply sufficient heat during the period from October 1 to May 15 to maintain a room temperature of not less than 65°F. (18°C.), in all habitable spaces, bathrooms, and toilet rooms during the hours between 6:30 a.m. and 10:30 p.m. of each day and maintain a temperature of not less than 60°F. (16°C.) during other hours. The temperature shall be measured at a point three feet (914 mm) above the floor and three feet (914 mm) from exterior walls.

Exception: When the exterior temperature falls below 0°F. (-18°C.) and the heating system is operating at its full capacity, a minimum room temperature of 60°F. (16°C.) shall be maintained at all times.

PART V. PLUMBING.

Chapter 22.

Plumbing, Drainage, Waste and Vent Systems (DWV).

(A) Change Section P-2206.8.2 to read as follows:

P-2206.8.2. Sewage ejectors or sewage pumps. A sewage ejector or sewage pump receiving discharge of water closets shall have a minimum discharge capacity of 20 gallons per minute. The ejector or pump shall be capable of passing a 1 1/2-inch-diameter solid ball, and the discharge piping of each ejector or pump shall have a backwater valve and be a minimum of two inches. Malfunction alarms shall be provided on sewage pumps or sewage ejectors rated at 20 gallons per minute or less.

PART VI. ELECTRICAL.

(A) Revise Part VI as follows:

The electrical installations shall conform to the Electrical Code for One and Two Family Dwellings (NFPA 70A-1990) published by the National Fire Protection Association.

PART VII. ENERGY CONSERVATION.

(A) Revise Part VII as follows:

The energy conservation requirements shall conform to Article 31 of the BOCA National Building Code/1990.

ADDENDUM 3. AMENDMENTS TO THE ANSI A117.1 STANDARD.

As provided in Section 512.2 of the USBC, the amendments noted in this addendum shall be made to the American National Standard for Buildings and Facilities - Providing Accessibility and Usability for Physically Handicapped People (ANSI A117.1 - 1986) for use as part of the USBC.

(A) Change Section 1 ; ~~Purpose and Application~~, to read as follows:

1. Purpose.

This standard sets minimum requirements for facility accessibility by people with physical disabilities, which includes those with sight impairment, hearing impairment and mobility impairment.

(B) Change Section 2 ; ~~Recommendations to Adopting Authorities~~, to read as follows:

2. Application of Standard.

2.1. General.

The number of spaces and elements to be made accessible for each building type shall be established by this section and other applicable portions of this standard.

2.2. Where Required.

All buildings and structures portions thereof of Use Groups A, B, E, F, H, I, M, R, and S, and their associated exterior sites and facilities are required to be accessible to people with physical disabilities, unless otherwise noted shall be made accessible in accordance with applicable provisions of this standard .

Exceptions:

1. Building areas and exterior facilities where providing physical access is not practical, such as elevator pits, piping and equipment catwalks, and similar incidental spaces.

2. Floors above or below accessible levels in buildings when the aggregate floor area of the building does not exceed 12,000 square feet.

3. Temporary grandstands and bleachers used for less than 90 days, when accessible seating with equivalent lines of sight are provided.

4. Individually owned dwelling units in Use Group R-2 and R-3 buildings and their associated exterior sites and facilities .

5. Those portions of existing buildings which would require modification to the structural system in order to provide accessibility.

2.2.1. Use Group A-1. Use Group A-1 buildings shall provide not less than four wheelchair positions for each assembly area up to 300 seated participants, plus one additional space for each additional 100 seated occupants or fraction thereof. Removable seats shall be permitted in the wheelchair positions.

2.2.2. Use Group A-3. In areas of Use Group A-3 without fixed seating or fixed tables, at least 20% of the total seating shall be accessible. In areas with fixed seating or fixed tables, at least 3% of the total seating shall be accessible. All functional spaces and elements shall be accessible from all accessible seating.

2.2.3. Use Group I-1. Use Group I-1 buildings shall meet the requirements of Section 2.2.7 In buildings of Use Group I-1, at least 2.0% but not less than one of all patient sleeping rooms or dwelling units shall be accessible in accordance with applicable provisions of this standard .

2.2.4. Use Group I-2. In Use Group I-2 buildings, at least one patient sleeping room and its toilet per nursing unit shall be accessible.

2.2.5. Use Group I-3. In Use Group I-3 buildings, at least one accessible unit shall be provided for each 100 resident units or fraction thereof.

2.6. Use Group R-1. Use Group R-1 buildings shall

comply with the following:

1. Doors designed to allow passage into a room or space shall provide a minimum 32-inch clear opening width.

2. When 21 or more guest units are provided, 1% shall be accessible.

2.2.6.1. Multiple buildings on single lot. In determining the required number of accessible guest rooms, all buildings of Use Group R-1 on a single lot shall be considered as one building.

2.2.7. Use Groups R-2 and R-3. In buildings of Use Group R-2 or R-3 containing more than 20 dwelling units, the following number of dwelling units shall be accessible:

1. In buildings with 21 through 99 dwelling units, at least one shall be accessible.

2. In buildings with over 100 dwelling units, one accessible unit plus one for each additional 100 units or fraction thereof.

2.2.7. Use Group R-2. Buildings of Use Group R-2 containing four or more dwelling units and their associated sites and facilities shall comply with this section and other applicable provisions of this standard. The term, "dwelling unit" as used in this section shall be types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling. Dwelling units within a single structure separated by firewalls do not constitute separate buildings.

2.2.7.1. Terms defined. The following terms, when used in this section or in provisions for buildings affected by this section shall have the following meaning:

"Entrance" means any exterior access point to a building or portion of a building used by residents for the purpose of entering. For purpose of this standard, an "entrance" does not include a door to a loading dock or a door used primarily as a service entrance, even if nonhandicapped residents occasionally use that door to enter.

"Finished grade" means the ground surface of the site after all construction, leveling, grading, and development has been completed.

"Ground floor" means a floor of a building with a building entrance on an accessible route. A building may have one or more ground floors. Where the first floor containing dwelling units in a building is above grade, all units on that floor must be served by a building entrance on an accessible route. This floor will be considered to be a ground floor.

"Loft" means an intermediate level between the floor

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and ceiling of any story, located within a room or rooms of a dwelling.

"Multistory dwelling unit" means a dwelling unit with a finished living space located on one floor and the floor or floors immediately above or below it.

"Public use areas" means interior or exterior rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.

"Site" means a parcel of land bounded by a property line or a designated portion of a public right of way.

"Slope" means the relative steepness of the land between two points and is calculated as follows: The distance and elevation between the two points (e.g., an entrance and a passenger loading zone) are determined from a topographic map. The difference in elevation is divided by the distance and that fraction is multiplied by 100 to obtain a percentage slope figure.

"Undisturbed site" means the site before any construction, leveling, grading, or development associated with the current project.

2.2.7.2. Entrance requirements for buildings with elevators. Every building with an elevator shall have at least one building entrance on an accessible route.

2.2.7.3. Entrance requirements for buildings without elevators. Every building without an elevator shall have at least one building entrance on an accessible route except as provided for in 2.2.7.3.1 through 2.2.7.3.3.

2.2.7.3.1. Single building having common entrance for all units. A single building on a site having a common entrance for all units is not required to have an accessible entrance provided the slopes of the undisturbed site measured between the planned entrance and all vehicular or pedestrian arrival points within 50 feet of the planned entrance exceed 10% and the slopes of the planned finished grade measured between the entrance and all vehicular or pedestrian arrival points within 50 feet of the planned entrance also exceed 10%. If there are no vehicular or pedestrian arrival points within 50 feet of the planned entrance, the slope is to be measured to the closet vehicular or pedestrian arrival point.

2.2.7.3.2. Multiple buildings or single building with multiple entrances. Where there are multiple buildings on a site or a single building with multiple entrances serving either individual dwelling units or clusters of dwelling units, an accessible entrance shall be provided for accessible dwelling units. The number of dwelling units to be accessible shall be determined by either 2.2.7.3.1. or shall be at least equal to the percentage of the undisturbed site with a natural slope of less than 10%, but in either case shall be at least 20% of the total ground floor units. In addition to the percentage of dwelling units required to be

accessible by this section, all ground floor dwelling unit shall be made accessible if the entrances to the units are on an accessible route.

2.2.7.3.3. Site impracticality due to unusual characteristics. An accessible route to a building entrance need not be provided where the site is located in a floodplain or coastal high-hazard area where the site characteristics result in a difference in finished grade elevation exceeding 30 inches and 10% measured between the entrance and all vehicular or pedestrian arrival points within 50 feet of the planned entrance. If there are no vehicular or pedestrian arrival points within 50 feet of the planned entrance, the slope is to be measured to the closest vehicular or pedestrian arrival point.

Exception: An accessible entrance shall be provided if an elevated walkway is provided between a building entrance and a vehicular arrival point and the walkway has a slope of no greater than 10%.

2.2.8. Historic buildings. These standards shall apply to buildings and structures or portions thereof that are designated, or are eligible to be designated, as historic landmarks by the federal, state, or local government, to the extent that the historical character of the building, or its elements, are not impaired.

(C) Delete the following definitions from Section 3.5:

Administrative authority; Assembly area, Authority having jurisdiction, Children, Coverage, Dwelling unit, Means of egress, Multifamily dwelling, and Temporary.

(D) Change Section 4.1 to read as follows:

4.1. Basic components.

Accessible sites, facilities, and buildings, including public-use, employee-use, and common-use spaces in housing facilities, shall provide accessible elements and spaces as identified in Table 2 unless modified by other sections of this standard.

(E) The following modifications shall be made to Table 2:

Accessible Element or Space

8. Elevator

Section

4.10

Application

Accessible routes connecting different accessible levels; except as provided for in 2.2.7.

Accessible Element or Space

22. Seating, tables or work surfaces

Section

4.30

Application

If provided in accessible spaces; or, at least one of each type shall be accessible in public and common use areas in buildings subject to 2.2.7.

Accessible Element or Space

26. Common-use spaces and facilities

Section

4.1 through 4.30

Application

Buildings and facilities; or, at least one of each type shall be accessible if serving buildings subject to 2.2.7.

(F) Add an exception to Section 4.3.2, Location, to read as follows:

Exception: Access shall be provided by a vehicular route in cases where the finished grade between a building subject to 2.2.7 and a public or common use facility on the same site exceeds 8.33% or where other physical barriers (natural or manmade) or legal restrictions, all of which are outside the control of the owner, prevent the installation of an accessible pedestrian route.

(G) Add new Section 4.3.11 to read as follows:

4.3.11. Modifications for buildings subject to 2.2.7. Buildings subject to 2.2.7 shall comply with 4.3 and 4.32.3.1. Differences in provisions between 4.3 and 4.32.3.1 shall be controlled by 4.32.3.1.

(D) (H) Change Section 4.6.1 ; ~~General~~, to read as follows:

4.6.1. General. Accessible parking spaces shall comply with 4.6.2. Accessible passenger loading zones shall comply with 4.6.3.

When lots or garage facilities are provided, the number of accessible spaces provided shall be in accordance with Table 4.6. In facilities with multiple building entrances on grade, accessible parking spaces shall be dispersed and located near these entrances. The required number of accessible spaces in parking lots and garages which serve multiple family dwellings shall be based on the total number of spaces provided for visitors and public use facilities.

Table 4.6.

ACCESSIBLE PARKING SPACES.

Total parking spaces in lots and garages	Required minimum no. of accessible spaces
1 to 15	1a
16 to 50	1
51 to 100	2
101 to 150	3
151 to 400	2.0%
401 and over	8 plus 1.0 % of all spaces over 401

Note a: The accessible space shall be provided, but need not be designated.

(E) (I) Change Section 4.11.1 ; ~~General~~, to read as follows:

4.11.1. General. Platform lifts shall not be part of a required accessible route in new construction.

Exception: Buildings subject to Section 2.2.7 are permitted to use platform lifts on interior accessible routes.

(J) Add an exception to Section 4.13.1, General, to read as follows:

Exception: Doors intended for user passage within individual dwelling units of buildings subject to 2.2.7 shall only be required to comply with 4.13.5.

(F) (K) Change Section 4.14 ; ~~Entrances~~, to read as follows:

4.14. Entrances and Exits.

4.14.1. ~~Entrances General~~ . Entrances to a building or facility that are part of an accessible route shall comply with Section 4.3. At least one entrance to a building or facility or to each separate occupancy or tenancy within a building or facility, and all entrances which normally serve accessible parking facilities, transportation facilities, passenger loading zones, taxi stands, public streets and sidewalks, or accessible interior vertical access, shall be accessible. All required exits shall be accessible.

4.14.2. ~~Exits~~. All required exits shall be accessible. Entrances in buildings subject to 2.2.7. Entrances in buildings subject to 2.2.7 shall comply with the provisions of 2.2.7 and 4.14. Differences between 2.2.7 and 4.14 shall be controlled by 2.2.7 .

(G) (L) Change Section 4.15.1 ; ~~General~~, to read as follows:

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4.15.1. General. All drinking fountains and water coolers on an accessible route shall comply with Section 4.4. At least 50% of drinking fountains and water coolers on accessible routes shall be accessible. If only one drinking fountain or water cooler is provided on an accessible route, it shall be accessible. Accessible drinking fountains shall comply with Section 4.15 and shall be on an accessible route.

~~(H)~~ (M) Change the title of Section 4.22 and the text of Section 4.22.1 ; ~~General~~, to read as follows:

4.22. Toilet and Bathing Facilities.

4.22.1. General. Toilet rooms and bathing facilities shall comply with 4.22 and shall be on an accessible route. At least one of each type fixture or element shall be accessible. When there are 10 or more fixtures of any type, two of that type shall be accessible. Separate rooms for each sex need not be made accessible if an additional accessible room containing the required facilities is provided. Such room shall be lockable from the interior for privacy.

Exceptions:

1. Nonrequired toilet rooms with no more than one fixture of each type which is provided for the convenience of a single employee, and is not generally available to the public.
2. Dwelling units, guest rooms and patient rooms, unless required by other provisions of this standard.

~~(I)~~ (N) Change Section 4.23.1 ; ~~General~~, to read as follows:

4.23.1. General. Where storage facilities such cabinets, shelves, closets and drawers are provided in required accessible or adaptable spaces, at least one of each type shall contain storage space that complies with Section 4.23.

~~(J)~~ (O) Change Section 4.28.1 ; ~~General~~, to read as follows:

4.28.1. General. All signs required by 4.28.2 shall comply with Sections 4.28.3, 4.28.4, and 4.28.6. Tactile signage shall also comply with Section 4.28.5.

~~(K)~~ (P) Add new Section 4.28.2 to read as follows and renumber existing Sections 4.28.2 through 4.28.5:

4.28.2. Where Required. Accessible facilities shall be identified by the International Symbol of Accessibility at the following locations:

1. Parking spaces designated as reserved for physically disabled persons.
2. Passenger loading zones.
3. Accessible building entrances.

4. Accessible toilet and bathing facilities.

5. Exterior accessible routes.

~~(L)~~ (Q) Add new Section 4.28.7 to read as follows:

4.28.7. Sign Height. Accessible parking space signs shall have the bottom edge of the sign no lower than four feet (1219 mm) nor higher than seven feet (2134 mm) above the parking surface.

~~(M)~~ (R) Add new Section 4.29.2 to read as follows, and renumber existing Sections 4.29.2 through 4.29.8:

4.29.2. Where required. At least one telephone in each bank of two or more shall have a volume control. Where such telephones are located on an accessible route, at least one shall comply with 4.29.

~~(N)~~ (S) Add new Section 4.30.2 to read as follows and renumber existing Sections 4.30.2 through 4.30.4:

4.30.2. Where required. Fixed tables, counters and work stations provided in a required accessible space shall have at least one station that is accessible.

~~(O)~~ (T) Change Section 4.31.1 ; ~~General~~, to read as follows:

4.31.1. General. Auditorium and assembly areas shall comply with Section 4.31, with the number of accessible seating to be established by Section 2.2. Such areas with audio-amplification systems shall have a listening system complying with Sections 4.31.6 and 4.31.7 to assist persons with severe hearing loss in listening to audio presentations.

~~(P)~~ (U) Change Section 4.32.1 ; ~~General~~, to read as follows:

4.32.1. General. *All dwelling units served by an accessible entrance and all dwelling units served by an elevator shall be accessible.* Accessible dwelling units shall comply with Section 4.32.

~~Exception:~~ Dwelling units need not be fully equipped for accessibility at the time of construction provided at least 5% of all dwelling units in the building comply with the adaptability provisions of this section.

(V) Add new Section 4.32.2.1 to read as follows:

4.32.2.1. *Modifications to adaptable design. Adaptable dwelling units shall not be required to comply with the following sections of this standard:*

1. 4.32.4.3(3) - Medicine Cabinets
2. 4.32.4.4(2) - Bathtubs - Seat
3. 4.32.4.4(5) - Bathtubs - Shower Unit

4. 4.32.4.5(5) - Shower - Shower Unit
5. 4.32.5.3 - Kitchen - Controls
6. 4.32.5.4 - Kitchen - Work Surfaces
7. 4.32.5.5 - Kitchen - Sink
(1, 2, 5, 7, 8)
8. 4.32.5.6 - Ranges and Cooktops
(last sentence only)
9. 4.32.5.8 - Refrigerator/Freezers
10. 4.32.5.10(1) - Kitchen Storage
11. 4.32.6.3 - Laundry - Controls

(W) Change Section 4.32.3 to read as follows:

4.32.3. Basic components. Accessible dwelling units shall provide accessible elements and spaces as identified in Table 4 unless modified by other sections of this standard.

(X) The following modifications shall be made to Table 4:

Accessible Element or Space

11. Bathrooms

Section

4.32.4

Application

At least one bathroom within the dwelling unit shall be accessible and all other bathrooms and powder rooms shall be on an accessible route with accessible entry doors. Where two or more of the same type of fixture are provided at least one is required to be accessible.

(Y) Add new Section 4.32.3.1 to read as follows:

4.32.3.1. Modifications relating to accessible route into and through dwelling unit. The following modifications shall be made to the requirements for an accessible route into and through an accessible dwelling unit:

4.32.3.1.1. Changes in level within one story units. Changes in level within one story units with a height greater than 1/2 inch shall be ramped in accordance with 4.8. Changes in level with heights between 1/4 inch and 1/2 inch shall be beveled with a slope no greater than 1:2.

Exception: Lofts and design features such as raised or sunken areas are not required to be ramped provided the sunken or raised areas do not interrupt the accessible route through the dwelling unit.

4.32.3.1.2. Multistory units in buildings with elevators. In

multistory dwelling units in buildings with elevators, the primary level of the dwelling unit shall be accessible and shall contain at least one accessible bathroom or powder room.

4.32.3.1.3. Thresholds at exterior doors. Thresholds at exterior doors shall be no more than 3/4 inch above the interior floor level and beveled with a slope no greater than 1:2.

Exception: Landing surfaces constructed of impervious material such as concrete, brick or flagstone when located adjacent to the primary entry door shall be no more than 1/2 inch below the floor level of the interior of the dwelling unit.

4.32.3.1.4. Exterior deck, patio or balcony surfaces. Exterior deck, patio or balcony surfaces shall be no more than 1/2 inch below the floor level of the interior of the dwelling unit.

Exception: Landing surfaces constructed of impervious material such as concrete, brick or flagstone shall be permitted to be up to four inches below the interior floor level.

(Z) Add an exception to Section 4.32.3.4, Water Closets (Bathrooms) Item #1, to read as follows:

Exception: Clear floor space at the water closet may be reduced to 15 inches between the nongrab bar side of the fixture and the adjoining wall, vanity or lavatory.

(AA) Add an exception to Section 4.32.5.1, Clearance (Kitchens), to read as follows:

Exception: The 60 in (1525 mm) clearance shall not be required in U-shaped kitchens providing the base cabinets are removable to allow knee space for a forward approach.

(BB) Change Section 4.32.5.2 to read as follows:

4.32.5.2. Clear floor space. A clear floor space at least 30 inches by 48 inches complying with 4.2.4 that allows a parallel approach by a person in a wheelchair is provided at the range or cooktop and sink, and either a parallel or forward approach is provided at oven, dish washer, refrigerator/freezer or trash compactor. Laundry equipment located in the kitchen shall comply with 4.32.6.

(CC) Change Section 4.32.6.2 to read as follows:

4.32.6.2. Washing machines and clothes dryers. Washing machines and clothes dryers that are provided in common-use areas shall be front loading unless assistive devices enabling the use of top loading machines are provided upon request.

Final Regulations



COMMONWEALTH of VIRGINIA

VIRGINIA CODE COMMISSION
General Assembly Building

JOAN W. SMITH
REGISTRAR OF REGULATIONS

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591

August 2, 1991

Mr. Neal J. Barber, Director
Department of Housing and
Community Development
205 North Fourth Street
Richmond, Virginia 23219

Re: VR 394-01-21 Uniform Statewide Building Code Volume I
New Construction / 1990

Dear Mr. Barber:

This will acknowledge receipt of the above-referenced regulations from the Department of Housing and Community Development.

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

Sincerely,

A handwritten signature in cursive script that reads "Joan W. Smith".

Joan W. Smith
Registrar of Regulations

JWS:jbc

DEPARTMENT OF LABOR AND INDUSTRY

* * * * *

NOTICE: The repeal of the following regulation (VR 425-01-78) filed by the Department of Labor and Industry is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(a) of the Code of Virginia, which excludes regulations that are necessary conform to Virginia statutory law where no agency discretion is involved. The Department of Labor and Industry will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: VR 425-01-78. Rules and Regulations for Public Safety for Passenger Tramways and Related Devices (Ski Resorts).

Statutory Authority: § 40.1-6 of the Code of Virginia. (Regulation originally adopted under repealed § 40.1-131)

Effective Date: September 25, 1991.

Summary:

The Passenger Tramway Safety Act was enacted by the 1979 General Assembly to ensure the safe operation of passenger tramways and ski lifts.

In enacting Chapter 7 (§§ 40.1-128 through 40.1-134) of Title 40.1 of the Code of Virginia, the General Assembly stated that it would be the policy of the Commonwealth of Virginia to protect its citizens and visitors from hazards in the operation of passenger tramways and related devices. The law placed the responsibility for the design, construction, maintenance, inspection and safe operation of all passenger tramways in Virginia with the operators of such devices.

As a result of the enactment of the Passenger Tramway Safety Act, the department promulgated rules and regulations that became effective on January 15, 1980. They have been enforced by the Department of Labor and Industry since their promulgation.

At the 1991 session of the General Assembly, Senate Bill 643 was passed, which repealed Chapter 7 of Title 40.1 of the Code of Virginia, consisting of §§ 40.1-128 through 40.1-134, relating to passenger tramway safety. It also amended and reenacted § 36-98.1 of the Code of Virginia, thus placing the responsibility for passenger tramway safety with the Department of Housing and Community Development effective July 1, 1991.

Therefore, the Rules and Regulations for Public Safety for Passenger Tramways and Related Devices (Ski Resorts) as promulgated by the Virginia Department of Labor and Industry are hereby repealed.

Safety and Health Codes Board

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

Title of Regulation: VR 425-02-29. Virginia Occupational Safety and Health Standards for General Industry - Hazardous Waste Operations and Emergency Response (1910.120).

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

Effective Date: October 1, 1991.

Summary:

On April 18, 1991, OSHA published corrections to the amended Standard for Hazardous Waste Operations and Emergency Response by clarifying the definition of "uncontrolled hazardous waste site" in 1910.120(a)(3) to include an "area identified as an uncontrolled hazardous waste site by a governmental body, whether Federal, state local or other...." The definition of "Equivalent training" in 1910.120(e)(9) has been clarified to include a provision requiring the employer to "provide a copy of the certification or documentation (of employee's work experience and/or training) to the employee upon request."

Note on Incorporation by Reference

Pursuant to § 9-6.18 of the Code of Virginia, the Standard on Hazardous Waste Operations and Emergency Response (1910.120) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason, the entire document will not be printed in The Virginia Register of Regulations. Copies of the document are available for inspection at the Department of Labor and Industry, 205 North Fourth Street, Richmond, Virginia, and in the Office of the Registrar of Regulations, Room 262, General Assembly Building, Capitol Square, Richmond, Virginia.

VR 425-02-29. Virginia Occupational Safety and Health Standards for General Industry - Hazardous Waste Operations and Emergency Response (1910.120).

When the regulations as set forth in the Standard on Hazardous Waste Operations and Emergency Response are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the federal term "29 CFR" shall be considered to read as "VOSH

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Standard.”

On July 30, 1991, the Virginia Safety and Health Codes Board adopted the federal OSHA regulation concerning corrections to the Standard on Hazardous Waste Operations and Emergency Response, 29 CFR 1910.120, as published in the Federal Register, Vol. 56, No. 75, pp. 15832-15833, April 18, 1991. The amendments as adopted are explained below.

Corrections Made to Improve the Clarity of the Amended Standard

The following subsections of the General Industry Standard for Hazardous Waste Operations and Emergency Response are amended or revised by federal OSHA to improve the clarity of § 1910.120(a)(3) and (e)(9):

Paragraph (a)(3) reads:

“Uncontrolled hazardous waste site,” means an area identified as an uncontrolled hazardous waste site by a governmental body, whether federal, state, local or other where an accumulation of hazardous substances creates a threat to the health and safety of individuals or the environment or both. Some sites are found on public lands such as those created by former municipal, county or state landfills where illegal or poorly managed waste disposal has taken place. Other sites are found on private property, often belonging to generators or former generators of hazardous substance wastes. Examples of such sites include, but are not limited to, surface impoundments, landfills, dumps, tank or drum farms. Normal operations at TSD sites are not covered by this definition.

Paragraph (e)(9) reads:

“Equivalent training.” Employers who can show by documentation or certification that an employee’s work experience and/or training has resulted in training equivalent to that training required in paragraphs (e)(1) through (e)(4) of this section shall not be required to provide the initial training requirements of those paragraphs to such employees and shall provide a copy of the certification or documentation to the employee upon request. However, certified employees or employees with equivalent training new to a site shall receive appropriate, site specific training before site entry and have appropriate supervised field experience at the new site. Equivalent training includes any academic training or the training that existing employees might have already received from actual hazardous waste site work experience.



COMMONWEALTH of VIRGINIA

VIRGINIA CODE COMMISSION
General Assembly Building

JOAN W. SMITH
REGISTRAR OF REGULATIONS

RECEIVED, FREE
RICHMOND, VIRGINIA
AUG 14 1991

August 7, 1991

Ms. Carol Amato, Commissioner
Department of Labor and Industry
205 North Fourth Street
Richmond, Virginia 23219

Re: VR 425-02-29 Virginia Occupational Safety and Health
Standards for General Industry,
Hazardous Waste Operations and Emergency
Response; Corrections.

Dear Ms. Amato:

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

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

Sincerely,

Joan W. Smith
Registrar of Regulations

JWS: lbc

DEPARTMENT OF LABOR AND INDUSTRY

Safety and Health Codes Board

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

Title of Regulation: VR 425-02-66. Virginia Occupational Safety and Health Standards for General Industry - Lead Standard (1910.1025).

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

Effective Date: October 1, 1991.

Summary:

On November 14, 1978, OSHA published a final rule in the Federal Register on Occupational Exposure to Lead, 1910.1025. This document makes administrative corrections and amendments to 29 CFR 1910.1025 based on the lifting of a judicial stay which had been in effect on the effective date of the final standard.

Note on Incorporation by Reference

Pursuant to § 9-6.18 of the Code of Virginia, the Lead Standard (1910.1025) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason, the entire document will not be printed in The Virginia Register of Regulations. Copies of the document are available for inspection at the Department of Labor and Industry, 205 North Fourth Street, Richmond, Virginia, and in the Office of the Registrar of Regulations, Room 262, General Assembly Building, Capitol Square, Richmond, Virginia.

VR 425-02-66. Virginia Occupational Safety and Health Standards for General Industry - Lead Standard (1910.1025)

When the regulations as set forth in the Lead Standard are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the federal term "29 CFR" shall be considered to read as "VOSH Standard."

On July 30, 1991, the Virginia Safety and Health Codes Board adopted the federal OSHA regulation concerning corrections to the Lead Standard, 29 CFR 1925.1025, as published in the Federal Register, Vol. 56, No. 105, p. 24686, Friday, May 31, 1991. The amendments as adopted are explained below.

Administrative Corrections and Amendments to Standard

The sections below are amended as follows:

A. In Appendix A, the last sentence of that Appendix was removed.

B. In Appendix B, the following was amended by removing:

1. The second paragraph.

2. Under section III. METHODS OF COMPLIANCE – PARAGRAPH (F), the words "but this requirement has been stayed as part of the pending litigation" in the last sentence of the second paragraph.

3. Under section IV. RESPIRATORY PROTECTION – PARAGRAPH (F), the words "but this requirement has been stayed as part of the pending litigation" in the last sentence of the second paragraph.

4. Under section VII. HYGIENE FACILITIES AND PRACTICES – (I), the second sentence, the words "and these facilities are made available, however," in the next (third) sentence, and the words "if available," in the fourth sentence.

5. Under section III. MEDICAL SURVEILLANCE – PARAGRAPH (J), the words "but this test has been temporarily stayed by the Court" in the second sentence of the fourth paragraph and the next (third) sentence of that paragraph. Also, the words "As a result," in the seventh sentence of the eighth paragraph.

6. Under section XI. SIGNS – PARAGRAPH (M), the last sentence.

C. Appendix C to § 1910.1025 is amended by removing the following:

1. Under section I. MEDICAL SURVEILLANCE AND MONITORING REQUIREMENTS FOR LEAD WORKERS EXPOSED TO INORGANIC LEAD, the last two sentences of the second paragraph and the last sentence of the eleventh paragraph.

2. Under section III. MEDICAL EVALUATION, the words "(This requirement is currently not in effect due to the pending litigation, but is recommended nonetheless)" in the last sentence (item 6) of the thirteenth paragraph.

3. Under section IV. LABORATORY EVALUATION, the words "which" and "is, due to the pending litigation, not required under the standard" in the second sentence.

Final Regulations



COMMONWEALTH of VIRGINIA

JOAN W. SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

400 CAPITAL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591

August 7, 1991

Ms. Carol Amato, Commissioner
Department of Labor and Industry
205 North Fourth Street
Richmond, Virginia 23219

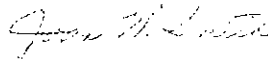
Re: VR 425-02-66 Virginia Occupational Safety and Health
Standards for General Industry.
Occupational Exposure to Lead, 1910.1025;
Corrections.

Dear Ms. Amato:

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

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

Sincerely,


Joan W. Smith
Registrar of Regulations

JWS:jhc

Safety and Health Codes Board

REGISTRAR'S NOTICE: This regulation is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The Department of Labor and Industry will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: VR 425-02-72. Virginia Occupational Safety and Health Standards for the Construction Industry - Sanitation (§ 1926.51).

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

Effective Date: October 1, 1991.

Summary:

This document clarifies the standard by making technical corrections to 1926.51(a)(3). The technical corrections include inserting language that had been inadvertently omitted and omitting redundant language that was included.

VR 425-02-72. Virginia Occupational Safety and Health Standards for the Construction Industry - Sanitation (§ 1926.51).

§ 1926.51: Sanitation.

(a) Water supply. (1) Potable drinking water. (i) Potable water shall be provided and placed in locations readily accessible to all employees.

(ii) The water shall be suitably cool and in sufficient amounts, taking into account the air temperature, humidity and the nature of the work performed to meet the needs of all employees.

(iii) The water shall be dispensed in single-use drinking cups or by fountains. The use of the common drinking cup is prohibited.

(2) Portable containers used to dispense drinking water shall be capable of being tightly closed, and equipped with a tap. Water shall not be dipped from containers.

(3) Any container used to distribute drinking water shall be capable of being tightly closed and equipped with a tap clearly marked as to the nature of its contents and not used for any other purpose. Water shall not be dipped from containers.

(4) Where single service cups (to be used but once) are supplied, both a sanitary container for the unused cups and a receptacle for disposing of the cups shall be

provided.

(5) Maintenance. Portable drinking water, toilet and handwashing facilities shall be maintained in accordance with appropriate public health sanitation practices, and shall include the following:

(i) Drinking water containers shall be constructed of materials that maintain water quality;

(ii) Drinking water containers shall be refilled daily and shall be covered; and

(iii) Drinking water containers shall be regularly cleaned.

(b) Nonpotable water. (1) outlets for nonpotable water, such as water for industrial or firefighting purposes only, shall be identified by signs meeting the requirements of Subpart G of this part, to indicate clearly that the water is unsafe and is not to be used for drinking, washing, or cooking purposes.

(2) There shall be no cross-connection, open or potential, between a system furnishing potable water and a system furnishing nonpotable water.

(c) Toilet and handwashing facilities. (1) One toilet and one handwashing facility shall be provided for each twenty (20) employees or fraction thereof.

(2) Toilet facilities shall be adequately ventilated, appropriately screened, have self-closing doors that can be closed and latched from inside and shall be constructed to insure privacy.

(3) Toilet and handwashing facilities shall be readily accessible to all employees, accessibly located and in close proximity to each other.

(4) Toilet facilities shall be operational and maintained in a clean and sanitary condition.

(5) The requirements of this paragraph for sanitation facilities shall not apply to mobile crews having transportation readily available to nearby toilet facilities.

(d) (Note: Rescinded as being inconsistent with the more stringent Virginia Standard.)

(e) (Note: Rescinded as being inconsistent with the more stringent Virginia Standard.)

(f) Washing facilities. Handwashing facilities shall be refilled with potable water as necessary to ensure an adequate supply of potable water, soap and single use towels.

(g) [Revoked]

(h) Waste disposal. (1) Disposal of wastes from facilities

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shall not cause unsanitary conditions.

(i) Definitions. (1) "Handwashing" facility means a facility providing either a basin, container or outlet with an adequate supply of potable water, soap and single use towels.

(2) "Potable water" means water that meets the standards for drinking purposes of the state or local authority having jurisdiction or water that meets the quality standards prescribed by the U. S. Environmental Protection Agency's Interim Primary Drinking Water Regulations, published in 40 CFR Part 141.

(3) "Toilet facility" means a fixed or portable facility designed for the containment of the products of both defecation and urination which is supplied with toilet paper adequate to meet employee needs. Toilet facilities include biological, chemical, flush and combustion toilets and sanitary privies.

The following requirements from 29 CFR Part 1910 (General Industry) have been identified as applicable to construction (29 CFR 1926.51, Sanitation), in accordance with their respective scope and definitions.

§ 1910.141. Sanitation.

(a)(1) Scope.— This section applies to all permanent places of employment.

(2) * * *

(v) (Note: Rescinded as being inconsistent with the more stringent Virginia Standard.)

(5) Vermin control. Every enclosed workplace shall be so constructed, equipped, and maintained, so far as reasonably practicable, as to prevent the entrance or harborage of rodents, insects, and other vermin. A continuing and effective extermination program shall be instituted where their presence is detected.

* * * * *

(g) * * *

(2) Eating and drinking areas. No employee shall be allowed to consume food or beverages in a toilet room nor in any area exposed to a toxic material.* * *

(g) (Note: Rescinded as being inconsistent with the more stringent Virginia Standard.)

§ 1910.151. Medical Services and first aid.

* * * * *

(c) Where the eyes or body of any person may be exposed to injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body shall

be provided within the work area for immediate emergency use.

VIRGINIA STATE LIBRARY AND ARCHIVES (LIBRARY BOARD)

Title of Regulation: VR 440-01-137.1. Standards for the Microfilming of Public Records for Archival Retention.

Statutory Authority: § 42.1-82 of the Code of Virginia.

Effective Date: October 1, 1991.

NOTICE: As provided in § 9-6.14:22 of the Code of Virginia, this regulation is not being republished. The regulation was adopted as it was proposed in 7:17 VA.R. 2423-2426 May 20, 1991.

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Title of Regulation: VR 440-01-137.2. Archival Standards for Recording Deeds and Other Writings by a Procedural Microphotographic Process.

Statutory Authority: § 42.1-82 of the Code of Virginia.

Effective Date: October 1, 1991.

NOTICE: As provided in § 9-6.14:22 of the Code of Virginia, this regulation is not being republished. The regulation was adopted as it was proposed in 7:17 VA.R. 2426-2429 May 20, 1991.

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Title of Regulation: VR 440-01-137.4. Standards for the Microfilming of Ended Law Chancery and Criminal Cases of the Clerks of the Circuit Courts Prior to Disposition.

Statutory Authority: § 42.1-82 of the Code of Virginia.

Effective Date: October 1, 1991.

NOTICE: As provided in § 9-6.14:22 of the Code of Virginia, this regulation is not being republished. The regulation was adopted as it was proposed in 7:17 VA.R. 2429-2433 May 20, 1991.

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Title of Regulation: VR 440-01-137.5. Standards for Computer Output Microfilm (COM) for Archival Retention.

Statutory Authority: § 42.1-82 of the Code of Virginia.

Effective Date: October 1, 1991.

NOTICE: As provided in § 9-6.14:22 of the Code of Virginia, this regulation is not being republished. The regulation was adopted as it was proposed in 7:17 VA.R. 2433-2436 May 20, 1991.

Virginia, this regulation is not being republished. The regulation was adopted as it was proposed in 7:17 V.A.R. 2433-2436 May 20, 1991.

* * * * *

Title of Regulation: VR 440-01-137.6. Standards for Plats.

Statutory Authority: § 42.1-82 of the Code of Virginia.

Effective Date: October 1, 1991.

Summary:

Pursuant to § 42.1-82 of the Code of Virginia, the Library Board is responsible for issuing regulations/standards which preserve the Commonwealth's archival public records. The revisions of the current standard update referenced standards, clarify some items and simplify sections of the 1986 version. They update criteria for submission of plats for recordation in circuit court clerks' offices. The revisions pose no additional impact to state agencies, local government entities, or the public.

The only change made to this standard after the regulation was published is a note of clarification on what and when the original signatures and stamp are required on a plat.

VR 440-01-137.6. Standards for Plats.

§ 1. Statement of applicability.

These standards shall apply to all plats and maps submitted for recordation in the circuit courts of the Commonwealth.

§ 2. Recording medium.

Documents size shall be between 8 1/2 x 11 and 18 x 24 inches, and the scale shall be appropriate to the size of the paper. Original plats shall be inscribed on either translucent or opaque paper, polyester or linen. The background quality for opaque paper shall be uniformly white, smooth in finish, unglazed, and free of visible watermarks or background logos. Only the original or a first generation unreduced black or blue line copy of the original plat drawing, which meets the quality inscription standards noted below and has the stamp and original signature of the preparer, shall be submitted for recordation.

[A plat prepared prior to 1986 which is being entered as reference can be recorded if the current landowner's notarized signature appears on the plat. Changes or alterations made to any original plat must be accompanied by the stamp and signature of the preparer who did the changes/alterations. Any plats exempted from these regulations under the Code of Virginia can be recorded with the notarized signature of the original

preparer.

§ 3. Quality inscription standards.

Color of original inscription shall be black or blue and be solid, uniform, dense, sharp, and unglazed. Signatures shall be in dark blue or black ink. Lettering shall be no less than 1/10 inch or 2.54 mm in height. Lettering and line weight shall be no less than .013 inches or .3302 mm. Letter and line spacing for control pencil drawings shall be no less than .050 inches and for ink drawings no less than .040 inches. The drawing substance must be either wet ink or control pencil but not a combination thereof. Good drafting practices shall be followed when eliminating ghost lines and when doing erasures, and all shading and screening shall be eliminated over written data. Inscriptions shall meet standards established herein, and *Engineering Drawing and Related Documentation Practices - Line Conventions and Lettering (ANSI Y14.2M - 1979 - 1987), Drawing Sheet Size and Format (ANSI Y14.1 - 1975), and Modern Drafting Techniques for Quality Microreproduction (NMA Reference Series No. 3) Technical Drawing - Lettering - Part I: Currently Used Characters (ISO 3098/1-1974) Technical Drawings - Sizes and Layout of Drawing Sheets ISO 5457 - 1980* shall be consulted as guidelines.

§ 4. Format for copies.

Margins shall be at least 1/4 inch on all sides, and inscriptions are to be made on only one side of the paper. All drawings shall have centering marks on each side, adjacent and outside the margins. Match lines or grid tics delineating 8 1/2 x 11 inch sections shall be inscribed on all plats larger than 8 1/2 x 11 inches, to create the least number of grid blocks possible and be located adjacent and inside the margins. Continuation sheets of multi-sheet drawings shall be the same size as the first sheet.

§ 5. Recording standards.

Recordation inscriptions shall be by clerk's printed certificate, stamping, typing or handwriting and shall conform to the quality inscription standards noted above.

§ 6. Exclusion.

A first generation copy of an original plat drawing dated prior to [the adoption of these standards July 1, 1986,] shall be admitted to record [subject to the requirements of § 2 of this regulation].

§ 7. Note.

Where a plat is submitted as part of an instrument, these plat standards shall apply to such plat.

§ 8. These standards become effective January 1, 1986.

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Title of Regulation: VR 440-01-137.7. Standards for Recorded Instruments.

Statutory Authority: § 42.1-82 of the Code of Virginia.

Effective Date: October 1, 1991.

NOTICE: As provided in § 9-6.14:22 of the Code of Virginia, this regulation is not being republished. The regulation was adopted as it was proposed in 7:17 VA.R. 2436-2437 May 20, 1991.

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Title of Regulation: VR 440-01-137.8. Standards for Paper for Permanent Circuit Court Records.

Statutory Authority: § 42.1-82 of the Code of Virginia.

Effective Date: October 1, 1991.

NOTICE: As provided in § 9-6.14:22 of the Code of Virginia, this regulation is not being republished. The regulation was adopted as it was proposed in 7:17 VA.R. 2437 May 20, 1991.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulation: VR 460-02-4.1920. Estimated Acquisition Cost Pharmacy Reimbursement Methodology.

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

Effective Date: October 1, 1991.

Summary:

The State Plan for Medical Assistance section affected by this action is "Methods and Standards for Establishing Payment Rates - Other Types of Care" (Attachment 4.19 B). The U.S. Department of Health and Human Services (HHS) Health Care Financing Administration (HCFA) has directed that state Medicaid agencies reimburse pharmacies for drug products based on the agency's best estimate of providers' actual drug acquisition costs.

HHS has determined, through its Office of the Inspector General's nationwide study of pharmacy costs, that pharmacies often obtain 13% to 17% savings over the Average Wholesale Price (AWP) in their pharmaceutical purchases. Therefore, HCFA has determined that a state's strict reliance upon the AWP as a pricing reference fails to recognize these potential savings.

Effective October 1, 1990, an emergency regulation and a State Plan amendment were implemented, pursuant to Chapter 972 of the Acts of Assembly,

1990, item 466 (L), changing the reimbursement formula to better reflect pharmacy providers' drug product acquisition costs and the cost to dispense such products. The Health Care Financing Administration approved this State Plan amendment on December 20, 1990.

This change provided that DMAS reimburse pharmacies based on the lower of either their usual and customary charge or the AWP -9% plus \$4.40 dispensing fee. This variant of the AWP base cost ensures that Medicaid recipients have the same access to services as that of the general population in conformance to federal requirements (42 CFR 447.204).

In addition, a technical language change is being made in subdivision f(7) to remove references to skilled and intermediate care facilities. OBRA 87 changed the Social Security Act to remove these two nursing home levels of care and replace them with the term "nursing facility."

VR 460-02-4.1920. Estimated Acquisition Cost Pharmacy Reimbursement Methodology.

The policy and the method to be used in establishing payment rates for each type of care or service (other than inpatient hospitalization, skilled nursing and intermediate care facilities) listed in § 1905(a) of the Social Security Act and included in this State Plan for Medical Assistance are described in the following paragraphs:

a. Reimbursement and payment criteria will be established which are designed to enlist participation of a sufficient number of providers of services in the program so that eligible persons can receive the medical care and services included in the Plan at least to the extent these are available to the general population.

b. Participation in the program will be limited to providers of services who accept, as payment in full, the state's payment plus any copayment required under the State Plan.

c. Payment for care or service will not exceed the amounts indicated to be reimbursed in accord with the policy and methods described in this Plan and payments will not be made in excess of the upper limits described in 42 CFR 447.304(a). The state agency has continuing access to data identifying the maximum charges allowed; such data will be made available to the Secretary, HHS, upon request.

d. Payments for services listed below shall be on the basis of reasonable cost following the standards and principles applicable to the Title XVIII Program. The upper limit for reimbursement shall be no higher than payments for Medicare patients on a facility by facility basis in accordance with 42 CFR 447.321 and 42 CFR 447.325. In no instance, however, shall charges for

beneficiaries of the program be in excess of charges for private patients receiving services from the provider. The professional component for emergency room physicians shall continue to be uncovered as a component of the payment to the facility.

Reasonable costs will be determined from the filing of a uniform cost report by participating providers. The cost reports are due not later than 90 days after the provider's fiscal year end. If a complete cost report is not received within 90 days after the end of the provider's fiscal year, the Program shall take action in accordance with its policies to assure that an overpayment is not being made. The cost report will be judged complete when DMAS has all of the following:

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

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

The services that are cost reimbursed are:

- (1) Inpatient hospital services to persons over 65 years of age in tuberculosis and mental disease hospitals
- (2) Home health care services
- (3) Outpatient hospital services excluding laboratory
- (4) Rural health clinic services provided by rural health clinics or other federally qualified health centers defined as eligible to receive grants under the Public Health Services Act §§ 329, 330, and 340.
- (5) Rehabilitation agencies
- (6) Comprehensive outpatient rehabilitation facilities

(7) Rehabilitation hospital outpatient services.

e. Fee-for-service providers. (1) Payment for the following services shall be the lowest of: State agency fee schedule, actual charge (charge to the general public), or Medicare (Title XVIII) allowances:

(a) Physicians' services (Supplement 1 has obstetric/pediatric fees.)

(b) Dentists' services

(c) Mental health services including:

Community mental health services

Services of a licensed clinical psychologist

Mental health services provided by a physician

(d) Podiatry

(e) Nurse-midwife services

(f) Durable medical equipment

(g) Local health services

(h) Laboratory services (Other than inpatient hospital)

(i) Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis (limited to payment for handling)

(j) X-Ray services

(k) Optometry services

(l) Medical supplies and equipment.

(2) Hospice services payments must be no lower than the amounts using the same methodology used under part A of Title XVIII, and adjusted to disregard offsets attributable to Medicare coinsurance amounts.

f. Payment for pharmacy services shall be the lowest of items (1) through (5) (except that items (1) and (2) will not apply when prescriptions are certified as brand necessary by the prescribing physician in accordance with the procedures set forth in 42 CFR 447.331 (c) if the brand cost is ~~higher~~ greater than the HCFA upper limit of VMAC cost) subject to the conditions, where applicable, set forth in items (6) and (7) below:

(1) The upper limit established by the Health Care Financing Administration (HCFA) for multiple source drugs which are included both on HCFA's list of multiple source drugs and on the Virginia Voluntary Formulary (VVF), unless specified otherwise by the agency; The upper limit established by the Health Care Financing Administration (HCFA) for multiple

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source drugs pursuant to 42 CFR §§ 447.331 and 447.332, as determined by the HCFA Upper Limit List plus a dispensing fee. If the agency provides payment for any drugs on the HCFA Upper Limit List, the payment shall be subject to the aggregate upper limit payment test.

(2) The Virginia Maximum Allowable Cost (VMAC) established by the agency plus a dispensing fee, if a legend drug, for multiple source drugs listed on the VVF ; .

(3) The estimated acquisition cost established by the agency for legend drugs except oral contraceptives; plus the dispensing fee established by the state agency; or The Estimated Acquisition Cost (EAC) [which] shall be based on the published Average Wholesale Price (AWP) minus a percent discount established by the [following] methodology [set out in (a) through (c) below] . [() Pursuant to OBRA 90 § 4401, from January 1, 1991, through December 31, 1994, no changes in reimbursement limits or dispensing fees shall be made which reduce such limits or fees for covered outpatient drugs [)] .

(a) Percent discount shall be determined by a statewide survey of providers' acquisition cost.

(b) The survey shall reflect statistical analysis of actual provider purchase invoices.

(c) The agency will conduct surveys at intervals deemed necessary by DMAS, but no less frequently than triennially.

[Determination of EAC was the result of an analysis of FY '89 paid claims data of ingredient cost used to develop a matrix of cost using 0 to 10% reductions from AWP as well as discussions with pharmacy providers. As a result of this analysis, AWP minus 9.0% was determined to represent prices currently paid by providers effective October 1, 1990.

The same methodology used to determine AWP minus 9.0% was utilized to determine a dispensing fee of \$4.40 per prescription as of October 1, 1990. A periodic review of dispensing fee using Employment Cost Index - wages and salaries, professional and technical workers will be done with changes made in dispensing fee when appropriate. As of October 1, 1990, the Estimated Acquisition Cost will be AWP minus 9.0% and dispensing fee will be \$4.40.]

(4) A mark-up allowance determined by the agency for covered nonlegend drugs and oral contraceptives; or A mark-up allowance (150%) of the Estimated Acquisition Cost (EAC) for covered nonlegend drugs and oral contraceptives.

(5) The provider's usual and customary charge to the public, as identified by the claim charge.

(6) Payment for pharmacy services will be as described above; however, payments for legend drugs (except oral contraceptives) will include the allowed cost of the drug plus only one dispensing fee per month for each specific drug. Payments will be reduced by the amount of the established copayment per prescription by noninstitutionalized clients with exceptions as provided in federal law and regulation.

(7) The Program recognizes the unit dose delivery system of dispensing drugs only for patients residing in skilled or intermediate care nursing facilities. Reimbursements are based on the allowed payments described above plus the unit dose add on fee and an allowance for the cost of unit dose packaging established by the state agency. The maximum allowed drug cost for specific multiple source drugs will be the lesser of: either the VMAC based on the 60th percentile cost level identified by the state agency or HCFA's upper limits. All other drugs will be reimbursed at drug costs not to exceed the estimated acquisition cost determined by the state agency.

[(8) Historical determination of EAC. Determination of EAC was the result of an analysis of FY'89 paid claims data of ingredient cost used to develop a matrix of cost using 0 to 10% reductions from AWP as well as discussions with pharmacy providers. As a result of this analysis, AWP minus 9.0% was determined to represent prices currently paid by providers effective October 1, 1990.

The same methodology used to determine AWP minus 9.0% was utilized to determine a dispensing fee of \$4.40 per prescription as of October 1, 1990. A periodic review of dispensing fee using Employment Cost Index - wages and salaries, professional and technical workers will be done with changes made in dispensing fee when appropriate. As of October 1, 1990, the Estimated Acquisition Cost will be AWP minus 9.0% and dispensing fee will be \$4.40.]

g. All reasonable measures will be taken to ascertain the legal liability of third parties to pay for authorized care and services provided to eligible recipients including those measures specified under 42 USC 1396(a)(25).

h. The single state agency will take whatever measures are necessary to assure appropriate audit of records whenever reimbursement is based on costs of providing care and services, or on a fee-for-service plus cost of materials.

i. Payment for transportation services shall be according to the following table:

TYPE OF SERVICE	PAYMENT METHODOLOGY
Taxi services	Rate set by the single state agency
Wheelchair van	Rate set by the single

	state agency
Nonemergency ambulance	Rate set by the single state agency
Emergency ambulance	Rate set by the single state agency
Volunteer drivers	Rate set by the single state agency
Air ambulance	Rate set by the single state agency
Mass transit	Rate charged to the public
Transportation agreements	Rate set by the single state agency
Special Emergency transportation	Rate set by the single state agency

j. Payments for Medicare coinsurance and deductibles for noninstitutional services shall not exceed the allowed charges determined by Medicare in accordance with 42 CFR 447.304(b) less the portion paid by Medicare, other third party payors, and recipient copayment requirements of this Plan.

k. Payment for eyeglasses shall be the actual cost of the frames and lenses not to exceed limits set by the single state agency, plus a dispensing fee not to exceed limits set by the single state agency.

l. Expanded prenatal care services to include patient education, homemaker, and nutritional services shall be reimbursed at the lowest of: state agency fee schedule, actual charge, or Medicare (Title XVIII) allowances.

m. Targeted case management for high-risk pregnant women and infants up to age 1 shall be reimbursed at the lowest of: state agency fee schedule, actual charge, or Medicare (Title XVIII) allowances.

n. Reimbursement for all other nonenrolled institutional and noninstitutional providers.

(1) All other nonenrolled providers shall be reimbursed the lesser of the charges submitted, the DMAS cost to charge ratio, or the Medicare limits for the services provided.

(2) Outpatient hospitals that are not enrolled as providers with the Department of Medical Assistance Services (DMAS) which submit claims shall be paid based on the DMAS average reimbursable outpatient cost-to-charge ratio, updated annually, for enrolled outpatient hospitals less five percent. The five percent is for the cost of the additional manual processing of the claims. Outpatient hospitals that are nonenrolled shall submit claims on DMAS invoices.

(3) Nonenrolled providers of noninstitutional services shall be paid on the same basis as enrolled in-state providers of noninstitutional services. Nonenrolled providers of physician, dental, podiatry, optometry, and clinical psychology services, etc., shall be reimbursed the lesser of the charges submitted, or the DMAS rates for the services.

(4) All nonenrolled noninstitutional providers shall be reviewed every two years for the number of Medicaid recipients they have served. Those providers who have had no claims submitted in the past twelve months shall be declared inactive.

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

o. Refund of overpayments.

(1) Providers reimbursed on the basis of a fee plus cost of materials.

(a) When DMAS determines an overpayment has been made to a provider, DMAS shall promptly send the first demand letter requesting a lump sum refund. Recovery shall be undertaken even though the provider disputes in whole or in part DMAS's determination of the overpayment.

(b) If the provider cannot refund the total amount of the overpayment within 30 days after receiving the DMAS demand letter, the provider shall promptly request an extended repayment schedule.

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

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

If, during the time an extended repayment schedule is in effect, the provider withdraws from the Program, the outstanding balance shall become immediately due and payable.

When a repayment schedule is used to recover only

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part of an overpayment, the remaining amount shall be recovered by the reduction of interim payments to the provider or by lump sum payments.

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

(d) Once an initial determination of overpayment has been made, DMAS shall undertake full recovery of such overpayment whether the provider disputes, in whole or in part, the initial determination of overpayment. If an appeal follows, interest shall be waived during the period of administrative appeal of an initial determination of overpayment.

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

The director's determination shall be deemed to be final on (i) the issue date of any notice of overpayment, issued by DMAS, if the provider does not file an appeal, or (ii) the issue date factfinding conference, if the provider does not file an appeal, or (iii) the issue date of any administrative decision signed by the director, regardless of whether a judicial appeal follows. In any event, interest shall be waived if the overpayment is completely liquidated within 30 days of the date of the final determination. In cases in which a determination of overpayment has been judicially reversed, the provider shall be reimbursed that portion of the payment to which it is entitled, plus any applicable interest which the provider paid to DMAS.

(2) Providers reimbursed on the basis of reasonable costs.

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

(b) If the provider has been overpaid for a particular fiscal year and has been underpaid for another fiscal year, the underpayment shall be offset against the overpayment. So long as the provider has an overpayment balance, any

underpayments discovered by subsequent review or audit shall also be used to reduce the remaining amount of the overpayment.

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

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

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

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

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

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

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

Interest charges on the unpaid balance of any

overpayment shall accrue pursuant to § 32.1-313 of the Code of Virginia from the date the director's determination becomes final.

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

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Title of Regulation: VR 460-03-4.1921. **Methods and Standards for Other Types of Services: Obstetric and Pediatric Payments.** **Statutory Authority:** § 32.1-324 of the Code of Virginia.

Effective Date: October 1, 1991.

NOTICE: As provided in § 9-6.14:22 of the Code of Virginia, this regulation is not being republished. The regulation was adopted as it was proposed in 7:18 VA.R. 2634-2636 June 3, 1991.

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Title of Regulation: VR 460-05-3000. **Drug Utilization Review in Nursing Facilities.**

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

Effective Date: September 25, 1991.

Summary:

This regulation provides for a drug utilization review program in nursing facilities.

In order to meet the requirement set forth by the 1990 General Assembly, DMAS is implementing a drug use review program beginning with covered drugs prescribed for nursing facility residents. This action is also a component of DMAS' cost management efforts. Modifications to this regulation will be needed later to respond to the drug utilization review requirements of the Omnibus Budget Reconciliation Act of 1990 (OBRA) which will encompass prospective drug

utilization review in the outpatient environment.

The program provides, through the establishment of a drug use review committee, for active and ongoing outreach to educate physicians and pharmacists about common drug therapy problems with the aim of improving prescribing practices. The specific intent is to identify and reduce the frequency of patterns of inappropriate or medically unnecessary care among physicians, pharmacists, and patients, or common problems associated with specific drugs or groups of drugs.

Retrospective drug use reviews will be initially conducted in nursing facilities demonstrating exceptional drug utilization patterns. Information will be retrieved from existing Long-Term Care Information System (LTCIS) and through drug claims processing information. DMAS will assess data on drug use against standards such as the American Hospital Formulary Service Drug Information, United States Pharmacopeia-Drug Information, American Medical Association Drug Evaluations, and peer-reviewed medical literature.

In addition, the program is designed to recognize potential and actual severe adverse reactions to drugs and to provide education on therapeutic appropriateness, overutilization and underutilization, appropriate use of generic products, therapeutic duplication, drug-disease contraindications, drug/drug interactions, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, clinical abuse/misuse, and fraud.

VR 460-05-3000. Drug Utilization Review in Nursing Facilities.

§ 1. Definitions.

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

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"Drug utilization review" means a formal continuing program for assessing medical or drug use data against explicit standards and, as necessary, introducing remedial strategies. [The primary objectives are (i) improvement in the quality of care; (ii) conserving program funds and individual expenditures; and (iii) maintaining program integrity (i.e., controlling problems of fraud and benefit abuse).]

"Drug Utilization Review Committee (DUR Committee)" means a committee composed of knowledgeable health care professionals who make recommendations for developing and modifying drug therapy review standards

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or criteria, participate in retrospective reviews, recommend remedial strategies, and evaluate the success of the interventions.

"Exceptional drug utilization pattern" means (i) a pattern of drug utilization within a nursing facility that differs substantially from predetermined standards established pursuant to § 3 B; (ii) individual resident's drug use patterns that differ from the established standards; or (iii) individual resident's drug use patterns that exhibit a high risk for drug therapy induced illness.

"Retrospective drug review" means the drug utilization review process that is conducted using historic or archived medical or drug use data.

"Targeted facility" means a nursing facility where residents' patterns of drug utilization demonstrate an exceptional drug utilization pattern as defined herein.

§ 2. Scope.

A. Medicaid shall conduct a drug utilization review program for covered drugs prescribed for nursing facility residents. The program shall help to ensure that prescriptions are appropriate, medically necessary, and are not likely to cause adverse actions. [The primary objectives are (i) improvement in the quality of care; (ii) conserving program funds and individual expenditures; and (iii) maintaining program integrity (i.e., controlling problems of fraud and benefit abuse).]

B. Retrospective drug utilization review will be conducted on an ongoing basis in targeted nursing facilities demonstrating exceptional drug utilization patterns.

C. With the aim of improving prescribing practices, the program shall provide for ongoing educational outreach programs to educate practitioners on common drug therapy problems.

§ 3. Utilization review process.

[A. Utilization reviews shall be performed to determine if drugs are appropriately provided and to help to ensure that the drugs provided to Medicaid recipients are medically necessary.]

[B. A.] The program shall provide, through its drug claims processing and information retrieval systems, for the ongoing periodic examination of claims data and other records for targeted facilities to identify patterns of inappropriate or medically unnecessary care for individuals receiving benefits under Title XIX of the Social Security Act.

[C. B.] The program shall, on an ongoing basis, assess data on drug use against predetermined standards (as described [below in this section]) including, but not limited to, monitoring for therapeutic appropriateness,

overutilization and underutilization, appropriate use of generic products, therapeutic duplication, drug-disease contraindications, drug/drug interactions, incorrect drug dosage or duration of treatment, clinical abuse/misuse, fraud, and, as necessary, introduce to physicians and pharmacists remedial strategies in order to improve the quality of care.

[D. C.] The Department of Medical Assistance Services may assess data on drug use against such standards as the American Hospital Formulary Service Drug Information, United States Pharmacopeia-Drug Information, American Medical Association Drug Evaluations, and peer-reviewed medical literature.

§ 4. Drug Use Review Committee.

A. DMAS shall provide for the establishment of a drug use review committee (hereinafter referred to as the "DUR Committee"). [The Director of DMAS shall determine the number of members and appoint the members of the DUR committee.]

B. The membership of the DUR Committee shall include health care professionals who have recognized knowledge and expertise in one or more of the following areas:

1. The clinically appropriate prescribing of covered drugs;
2. The clinically appropriate dispensing and monitoring of covered drugs;
3. Drug use review, evaluation, and intervention; [and]
4. Medical quality assurance [; and]

[5. Clinical practice and drug therapy in the long-term care setting.]

C. The membership of the DUR Committee shall include physicians, pharmacists, and other health care professionals [, including those with recognized expertise and knowledge in long-term care] .

D. Activities of the DUR Committee shall include, but not be limited to, the following:

1. Retrospective [DUR drug utilization review] as defined in § 2 B of this regulation;
2. Application of standards as defined in § 3 C of this regulation; and
3. Ongoing interventions for physicians and pharmacists, targeted toward therapy problems of individuals identified in the course of retrospective drug use reviews.

E. The DUR Committee shall reevaluate interventions

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after an appropriate period of time to determine if the intervention improved the quality of drug therapy, to evaluate the success of the interventions and recommend modifications as necessary.

§ 5. Medical quality assurance.

A. Documentation of drug regimens [in nursing facilities] shall, at a minimum:

1. Be included in a plan of care that must be established and periodically reviewed by a physician;

2. Indicate all drugs administered to the resident in accordance with the plan with specific attention to frequency, quantity, and type and identify who administered the drug (include full name and title); and

3. Include the drug regimen review prescribed for nursing facilities in regulations implementing Section 483.60 of Title 42, Code of Federal Regulations.

[B. Documentation specified in subsection A will serve as the basis for drug utilization reviews provided for in these regulations.]

MILK COMMISSION

NOTICE: The Milk Commission is exempted from the Administrative Process Act (§ 9-6.14:4 of the Code of Virginia); however, it is required by § 9-6.14:22 to publish its regulations.

Due to its length, the following regulation filed by the Milk Commission is not being published; however, in accordance with § 9-6.14:22 of the Code of Virginia, a summary is being published in lieu of full text. Also, the amended text is set out below. The full text of the regulation is available for public inspection at the office of the Registrar of Regulations and at the Milk Commission.

Title of Regulation: VR 475-02-02. Rules and Regulations for the Control, Regulation and Supervision of the Milk Industry in Virginia.

Statutory Authority: § 3.1-430 of the Code of Virginia.

Effective Date: August 1, 1991.

Summary:

Regulation No. 8 was amended by adding Paragraph No. 5, which provides for the redistribution of producer losses in the event of bankruptcy. This amendment was necessitated by the need to relieve the loss suffered by very few dairy farmers in the event of a dairy processing plant being unable to pay for producer milk.

VR 475-02-02. Rules and Regulations for the Control, Regulation and Supervision of the Milk Industry in Virginia.

REGULATION NO. 8

CLASS PRICES FOR PRODUCER'S MILK TIME AND METHOD OF PAYMENT BUTTERFAT TESTING AND DIFFERENTIAL

§ 5. Redistribution of producer losses.

When the Commission is satisfied that when one or more licensed distributor(s) is/are unable, due to bankruptcy or receivership, to fulfill the financial obligation to producers and/or cooperative associations of producers for base deliveries, the Commission may authorize the establishment of a temporary producer redistribution fund to reallocate a distributor's deficient financial obligation.

A. When it is determined that an obligation for base milk deliveries cannot be satisfied, the distributor(s), producer(s) and/or cooperative associations of producers involved shall notify the Commission within five working days of a voluntary filing or adjudication of bankruptcy or receivership, or within five working days of the effective date of this regulation for licensed distributors currently in bankruptcy or receivership. This notification must be in writing accompanied by copies of pertinent court documents.

B. The producer funded redistribution of losses of an unfulfilled obligation of base deliveries shall be limited to an amount not to exceed the unsecured value of base deliveries calculated in accordance with these regulations.

C. A producer funded redistribution rate shall be established which will be the lesser of the actual dollar loss under § 5B or the dollars generated by a rate not in excess of .10/cwt., levied on producer's and/or cooperative associations of producers monthly Class I allocated base deliveries for a period not to exceed 12 months for each bankruptcy.

(1) Each distributor shall remit to the Milk Commission no later than the 15th of each month the amount collected in accordance with § 5C above, applicable to the prior months delivery period at the rate established by the Commission.

D. The Milk Commission shall disburse all redistribution funds, net of applicable bank charges, collected each month for the redistribution fund by the last day of the month. Funds will be disbursed prorata in relationship to the loss incurred by producers and/or cooperative associations of producers, less applicable bank charges.

E. Producers and/or cooperative associations of producers shall assign to the Commission that portion of their loss claim which pertains to the value of

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redistributed funds paid on Virginia base deliveries by the Commission in order to participate in the producer redistribution fund.

F. Any overpayment or recovery of loss claims assigned to the Commission by producers and/or cooperative associations of producers to the producer redistribution fund shall be disbursed to producers and/or cooperative associations of producers on a prorata basis of payments made to the fund.

DEPARTMENT OF MINES, MINERALS AND ENERGY

Title of Regulation: VR 480-05-22. Rules and Regulations for Conservation of Oil and Gas Resources and Well Spacing.

Statutory Authority: §§ 45.1-1.3 and 45.1-361.27 of the Code of Virginia.

Effective Date: September 25, 1991.

Summary:

The Department of Mines, Minerals and Energy is repealing the existing regulations governing gas, oil and geophysical operations in Virginia. This regulation as well as the emergency VR 480-05-22.1, Gas and Oil Regulations, will be replaced by the new VR 480-05-22.1, Gas and Oil Regulations, which is being adopted concurrently with the repeal of this regulation.

* * * * *

REGISTRARS NOTICE: Due to its length, the regulation entitled "VR 480-05-22.1, Gas and Oil Regulations, filed by the Department of Mines, Minerals and Energy is not being published. However, in accordance with § 9-6.14:22 of the Code of Virginia, the summary is being published in lieu of the full text. The full text of the regulation is available for public inspection at the office of the Registrar of Regulations and at the Department of Mines, Minerals and Energy.

Title of Regulation: VR 480-05-22.1. Gas and Oil Regulations.

Statutory Authority: §§ 45.1-1.3 and 45.1-361.27 of the Code of Virginia.

Effective Date: September 25, 1991.

Summary:

The Department of Mines, Minerals and Energy is issuing a final regulation governing gas, oil and geophysical operations in Virginia. This regulation is authorized by the Virginia Gas and Oil Act of 1990, Chapter 22.1 of Title 45.1 of the Code of Virginia.

This regulation will replace VR 480-05-22, Rules and Regulations for Conservation of Oil and Gas Resources and Well Spacing which will be repealed concurrently with promulgation of this regulation, and VR 480-05-22.1, emergency Gas and Oil Regulations, which will expire with promulgation of this regulation or on June 30, 1992, whichever comes first.

This regulation will protect the citizens and environment of the Commonwealth from the public safety and environmental risks associated with the development and production of gas and oil, and ensure the safe recovery of coal and other minerals without substantially affecting the rights of coal, mineral, gas, oil or geophysical operators to explore for and produce coal, minerals, gas or oil.

This regulation establishes general standards governing permitting, enforcement, reporting, technical operations, plugging wells and coreholes and reclamation of disturbed lands. The regulation also establishes specific standards governing conventional gas and oil wells, including Class II injection wells, as well as coalbed methane gas wells, geophysical operations and gathering pipelines.

All bracketed changes included in the final regulation reflect comments and suggestions made during the public comment period. The department also made nonsubstantial changes to clarify standards.

* * * * *

Title of Regulation: VR 480-05-96. Regulations Governing Vertical Ventilation Holes and Mining Near Gas and Oil Wells.

Statutory Authority: §§ 45.1-1.3(4), 45.1-92.1 and 45.1-104 of the Code of Virginia.

Effective Date: September 25, 1991.

Summary:

The Department of Mines, Minerals and Energy is amending its vertical ventilation hole regulations to improve the effectiveness of its program to protect the health and safety of underground coal miners who conduct mining activities near drill holes installed for the purpose of removing gas and oil from subsurface strata. The amendments (i) incorporate provisions for safely mining near gas or oil wells that pass through mineable coal seams; (ii) provide a mechanism allowing operators to avoid duplication of some requirements when they plan to operate a drilled hole both as a vertical ventilation hole and as a gas well; and (iii) update existing provisions to improve the effectiveness and consistency of the program.

VR 480-05-96. Regulations Governing Vertical Ventilation Holes and Mining Near Gas and Oil Wells.

PART I. DEFINITIONS.

§ 1.1. *Definitions.*

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

"Approved" means approved by the Division of Mines or other recognized agencies.

"Building" means a building regularly occupied in whole or in part as a habitation for human beings or any church, schoolhouse, railroad station, store or other building where people are accustomed to live, work, or assemble.

"Casing" means a string or strings of pipe commonly placed in wells drilled for petroleum and natural gas, except conductor pipe and tubing.

"Cement" means hydraulic cement properly mixed with water only.

"Certified mail" means mail which is carried by the U.S. Postal Service with a request for the return of a receipt showing that the mail was delivered to the addressee.

"Chief" means the chief of the Division of Mines or his designee.

"Coalbed methane gas well" means a well capable of producing coalbed methane.

"Coal operator" means any person or persons, firm, partnership, partnership association or corporation that proposes to or does operate a coal mine.

"Coal-protection string" means a casing designed to protect a coal seam by excluding all fluids, oil, gas or gas pressure from the seam, except such as may be found in the coal seam itself.

"Deviation Test" means any test made to determine the variation from the vertical of a well or hole bore.

"Directional survey" means [any process to determine (i) the angle of deviation of the hole bore from the true vertical beneath the apex on the same horizontal subsurface plane, and (ii) the direction of an imaginary line from the true vertical beneath the apex to the hole bore on the same horizontal subsurface plane, using the surface location of the hole as the apex a survey that measures (i) the degree of deviation or distance of the vertical ventilation hole from the true vertical, and (ii) the direction of the deviation] .

"Division" means the Division of Mines.

"Gas" means natural gas including casing-head gas obtained from gas wells or ventilation holes regardless of its chemical analysis.

[*"Gas or oil operator"* means any person who has been designated to operate or does operate any gas or oil well.]

"Gob well" means a coalbed methane gas well which [produces is capable of producing] coalbed methane from the de-stressed zone associated with any full-seam extraction of coal that extends above and below the mined-out coal seam.

"Highway" means and includes any public street, public alley, or public road.

[*"Inclination survey"* means a survey, using the surface location of the vertical ventilation hole as the apex, to determine the deviation of a vertical ventilation hole from the true vertical beneath the apex on the same horizontal subsurface plane.]

"Mine" means an underground or surface excavation or development with or without any shafts, slopes, drifts or tunnels for the extraction of coal, minerals or nonmetallic materials, commonly designated as mineral resources (excluding petroleum and natural gas), containing the same with hoisting or haulage equipment and appliances for the extraction of the said mineral resources; and embraces any and all of the land or property of the mining plant, and the surface and underground, that is used or contributes directly or indirectly to the mining property, concentration or handling of said mineral resources.

"Mine operator" means any person or persons, firm, partnership, partnership association or corporation that proposes to or does operate a mine.

"Owner" means the person or persons listed as owner of record by the Clerk of the Circuit Court of the county in which the property is located.

"Permanent point" means an established physical point of reference on the land surface, based on the applicant's coordinate system, used for a map or plat submitted with a permit application.

"Person" means [any natural person, firm, partnership, partnership association, association, company, corporation, receiver, trustee, guardian, executor, administrator, fiduciary or representative of any kind individual, corporation, partnership, association, company, business, trust, joint venture or other legal entity] .

"Pillar" means a solid block of coal or ore or other material, left unmined to support the overlying strata in a mine.

"Plug" means the stopping of or a device used for the

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~~stopping or sealing off~~ of the flow of water, oil or gas from one stratum to another in a well or ventilation hole.

"Railroad" means and includes any steam, electric or other motive-powered transportation systems operating on track which carries passengers for hire, or over which loaded or empty equipment is transported.

"Vertical ventilation hole" means any hole drilled from the surface to the coal seam used only for the safety purpose of removing gas from the underlying coal seam and the adjacent strata, thus, removing the gas that would normally be in the mine ventilation system. ~~This does not prohibit the hole, at a later date when no longer used for safety, to be declared a gas well or for any other purpose meeting the approval of the chief as provided in Chapters 1-12, Title 45.1, Code of Virginia.~~

"Water-protection string" means a string of pipe in a vertical ventilation hole or gas or oil well designed to protect groundwater-bearing strata.

"Well" means any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata for the extraction, injection or placement of any gaseous or liquid substance, or any shaft or hole sunk or used in conjunction with such extraction, injection or placement. The term shall not include any shaft or hole sunk, drilled, bored or dug into the earth for the sole purpose of pumping or extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural, or public use and shall not include water boreholes, vertical ventilation holes where methane is vented or flared rather than produced and saved, subsurface boreholes drilled from the mine face of an underground coal mine, any other boreholes necessary or convenient for the extraction of coal or drilled pursuant to a uranium exploratory program carried out pursuant to the laws of this Commonwealth, or any coal or non-fuel mineral core hole or borehole for the purpose of exploration.

"Workable coal bed seam" means a coal bed seam in fact being ~~operated~~ mined commercially, or which, in the judgment of the chief, can ; and that is reasonably to be expected ~~will to be so operated~~ mined , and which, when ~~operated~~ mined , will require protection if holes are drilled through it.

PART II.

APPLICATIONS FOR PERMITS: MAPS OR PLATS , NOTICE. ADJACENT OWNERS, ETC., TO FILE OBJECTIONS .

§ 2.1. Before drilling a [mine vertical] ventilation hole on any tract of land, the mine operator shall have prepared by a competent engineer or surveyor and file with the chief, together with the application required, an accurate plat or map certified by a licensed professional engineer or licensed land surveyor on a scale ; to be stated thereon ; ~~not smaller than~~ of 400 feet to the inch, showing the proposed location and surface elevation of the hole

determined by survey, the courses and distances of such location from two permanent points or landmarks on said tract as shown on the map or plat, the name and number proposed to be given to the hole, the name of the owner and the boundaries and acreage of the tract on which the hole is to be drilled, the names of the owners of all adjoining surface and mineral tracts and of any other tract within 500 750 feet of the proposed location and any building, highway, railroad, stream, ventilation hole, oil or gas well operation , mine, mine openings or workings, or quarry within 500 750 feet of the proposed location. A survey accuracy of 1:5000 is required for the location of the subject hole with reference to the two permanent points or landmarks as shown on the map or plat.

§ 2.2. Copies of such application and plat or map shall be mailed to each adjacent landowner owner of the surface on the tract which is to be drilled , and to each owner, or lessee, or operator of any mineral rights on, in or under, such land or mine, well or quarry within 500 750 feet of the proposed location, by registered certified mail ; together with notice (on forms provided by the chief) of his intention to drill a vertical mine ventilation hole . Each such owner, lessee, or operator shall may , within 10 15 days from receipt of such notice, file with the chief any objection which he may have to the proposed location. The chief may, if he deems necessary, allow five additional days before the issuance of any permits to drill. The notice shall [inform all persons with standing to object to the permit of their right to object to the proposed location, and shall state the proscribed time limit for objections be on a from proscribed by the chief] . Objections filed under this section shall be limited to objections to the proposed location of the vertical ventilation hole addressed in the application, and shall state the nature of the objection to the proposed location. [Any person required to be notified under this section may waive the right to receive notice of the application and the right to object to the proposed location of the hole. Any such waiver must be in writing and shall include a written agreement specifying the location of the proposed hole.]

§ 2.3. Each application also shall contain a description of all safety equipment and safety facilities to be utilized on the surface during the drilling and after completion of the vertical ventilation hole. Such description shall include a schematic diagram showing the placement of the equipment and facilities described. Equipment and facilities described shall include, but are not limited to, any flame arrestors, back-pressure systems, pressure-relief systems, vent systems and fire-fighting equipment.

PART III.

SIMULTANEOUS APPLICATIONS FOR PERMITS; COALBED METHANE GAS WELLS TO BE CONVERTED TO VERTICAL VENTILATION HOLES; VERTICAL VENTILATION HOLES TO BE CONVERTED TO GOB WELLS.

§ 3.1. Applicants who intend to operate a coalbed

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methane gas well for a period of time and then later convert that well to operation as a vertical ventilation hole may elect to submit simultaneous applications for both permits prior to commencement of any activity on the proposed well site. This application process also may be used by vertical ventilation hole while mining through, and then later operate the hole as a gob well. Applications made under this part for vertical ventilation holes shall be in accordance with the requirements of Part II of these regulations. Applications made under this part for coalbed methane gas wells or gob wells shall be in accordance with the requirements of the Virginia Gas and Oil Act, Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1 of the Code of Virginia and the Gas and Oil Regulations, VR 480-05-22.1.

§ 3.2. Applications submitted simultaneously under this part shall contain, in addition to the information required for each type of permit when submitted separately, a detailed description of the nature of the activities to be conducted from the time activity commences on the site until final plugging of the holes takes place. The description shall include the estimated date for converting the well.

§ 3.3. Applicants who submit simultaneous applications under this part shall fulfill the notice requirements for each type of permit at the time of the application. The notice shall inform all persons with standing to object to any permit of their right to object, and state the prescribed time limits for objections. Any person who objects to applications for permits filed under this part shall comply with the applicable requirements for filing objections to the type of permit being requested.

§ 3.4. If there are timely objections made to permits proposed in simultaneously submitted applications, then the chief and the gas and oil inspector shall determine who has authority to hear the objections and schedule a hearing according to applicable provisions of the laws and regulations pertaining to the permits for which objections are made. If objections are filed against more than one type of permit, then the objections may be heard jointly at a single hearing.

§ 3.5. The operators of coalbed methane gas wells and vertical ventilation holes that have been permitted under Part III must notify the chief [of the Division of Mines] and the gas and oil inspector in writing at least [~~10~~ two] working days prior to commencement of activity on conversion of a vertical ventilation hole to a gob well. Such notice shall state whether there have been any changes in the persons that were required to be notified at the time of the original application for a permit. If such changes have occurred, then the operator must notify by certified mail each new person so identified of the intention to convert the operation. Such notification shall include a copy of the original application for a permit, the map or plat, and the description of activity to take place on the site.

§ 3.6. Nothing in this part shall prevent the operator of a permitted coalbed methane gas well from venting methane from the well in accordance with the requirements of the Virginia Gas and Oil Act, Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1 of the Code of Virginia and the Gas and Oil Regulation, VR 480-05-22.1.

PART III IV . ISSUANCE OF PERMIT WHEN NO OBJECTIONS FILED.

§ ~~3.1~~ § 4.1. Upon the filing of an application for a permit to drill vertical ventilation hole, the chief shall, if no objection has been made within the specified ~~10~~ 15 day period to such drilling by any person to whom notice is required to be sent under Part II, issue the requested permit , provided all other conditions have been met.

§ 4.2. If, however, an operator has elected to make simultaneous applications for permits under Part III of these regulations, and vertical ventilation of methane is not the initial use for the drilled hole described in the operator's plans, then the chief shall postpone issuance of a permit for the vertical ventilation hole until after he has received the Notice of Commencement of Activity required under Part III.

§ 4.3. Any permit so issued shall recite the filing of an application for a permit to drill and a plat or map showing the proposed location of the hole and other required information, that no objection has been made to the proposed location by any interested person, or found by the chief, that the same is approved and the mine operator is authorized to proceed to drill vertical mine ventilation hole at such location.

§ 4.4. If the operator shows there [~~is a~~ are] compelling [~~reason~~ safety reasons] to drill a vertical ventilation hole without delay [~~for safety reasons~~], and submits proof in writing that none of the persons with standing to object to the permit have any objections, then the chief may waive the notice requirements under Part II and issue the permit for a vertical ventilation hole, provided all other conditions have been met. However, this exception shall not apply to vertical ventilation holes permit applications submitted simultaneously under Part III of this regulation.

PART IV V . WHEN OBJECTIONS FILED: HEARING: ISSUANCE OF PERMIT AFTER HEARING AND [AGREEMENT DECISION] ON LOCATION.

§ ~~4.1~~ § 5.1. If any objection or objections are filed by any person having an interest in such land or adjacent lands notified under Part II of these regulations, the chief shall notify the applicant for permit of the character nature of the objections and by whom made and fix a time and place for a hearing, not less than ~~10~~ 20 nor more than 40 30 days after the original filing of the application for a permit to drill, at which hearing such objections will be considered, of which every person to whom notice was

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required to be sent shall be given at least five 10 days written notice. At such hearing *the chief shall consider any evidence presented by the applicant, or any person filing objections to the proposed location ; and all other interested persons shall proceed to consider the location and objection thereto, and to agree upon the location either as made or so moved as to satisfy all objections and satisfy the Chief, and any change in the original location so agreed upon shall be indicated on the plat or map on file with the Chief . Within 30 days after the close of any hearing for objections to the proposed location of a vertical ventilation hole, the chief shall render a decision in writing and send notice of his decision by certified mail to all parties to the hearing. Such notice shall indicate the approved location of the hole or, if the chief for reasons of safety finds there is no suitable location for the hole, state his reasons for denying approval of the location. When a location is approved, Whereupon the chief shall issue to the applicant a drilling permit reciting the filing of an application for a permit to drill and a plat or map showing the proposed location of the hole and other required information, that at after a hearing duly held the location shown was agreed upon and approved, and that the applicant is authorized to drill at such location.*

§ 5.2. *If, however, an operator has elected to make simultaneous applications for permits under Part III of these regulations, and vertical ventilation of methane is not the initial use of the drilled hole described in the operator's plans, then the chief shall postpone issuance of a permit for the vertical ventilation hole until after he has received the Notice of Commencement of Activity required under Part III.*

PART V VI . FIXING LOCATION OF HOLE PENETRATING WORKABLE COAL BED SEAM.

§ 5.1. § 6.1. *If the requested location is such that the [mine vertical] ventilation hole would penetrate a workable coal bed seam , then the chief shall fix the location on such tract of land as near to the requested location as possible in a pillar of suitable size, through which the ventilation hole can be drilled safely, taking into consideration the dangers from creeps, squeezes or other disturbances due to the extraction of coal. Should no such pillar exist, the ventilation hole may be located and drilled through open workings where, in the judgment of the chief, it is practicable and safe to do so, taking into consideration the dangers from creeps, squeezes and other disturbances. The chief shall be governed by the information contained in Attachments (1) and (2) in making his decision as to the location of the proposed vertical mine ventilation hole.*

PART VI VII . RECORDS TO BE KEPT BY CHIEF.

§ 6.1. § 7.1. *The chief shall number, index and keep as a permanent record each application, plat or map and notice*

filed with him and shall record the name of the applicant, names of the persons notified and their addresses, the date of receipt of any such application, plat or map and all objections filed, dates of hearings and all actions taken by the chief and permits issued or refused, which records shall be open to inspection by the public.

PART VII VIII . REVIEW OF ACTION OF CHIEF.

§ 7.1. § 8.1. *Any person aggrieved by any action of the chief in fixing or approving any location for the drilling of a vertical [mine] ventilation hole, or by the issuance of or refusal to issue any drilling permit, shall have the right to apply to the circuit court of the county wherein the location lies for review of the chief's decision.*

PART VIII. HOW A MINE VENTILATION HOLE PENETRATING WORKABLE COAL BED TO BE DRILLED AND CASED.

A mine ventilation hole penetrating one or more workable coal beds shall be drilled to such depth, and of such size, as will permit the placing of casing and packers in the hole at such points and in such manner as will exclude all fresh or salt water, oil, gas or gas pressure from the coal bed, except such as may be found in the coal bed itself.

§ 8.1. *For mine ventilation holes drilled on the valley floor, for protection of fresh water supplies the necessary amount of surface casing (normally 9-5/8 inch O.D.) shall be set and cemented back to surface. When the hole has been reduced and completed, the production casing string (normally 7 inch O.D.) shall be cemented from the packer collar above the slotted casing at the bottom back to the surface. (See figure 1)*

§ 8.2. *For mine ventilation holes which penetrate virgin coal or barrier, a large enough hole shall be drilled to a depth of 50 feet below the seal bed to allow placement of a liner (normally 9-5/8 inch O.D.) through the coal and then the hole may be reduced and completed. The liner may be welded to the production casing string and these shall be cemented from the packer collar above the slotted casing back to the surface. (See Figure 2)*

§ 8.3. *For mine ventilation holes which penetrate a mined out area in an active mine, a large enough hole shall be drilled to a depth of 50 feet below the coal bed to allow placement of a liner through the bed, and then the hole may be reduced and completed. The liner may be welded to the production casing string and a cement basket placed directly above the liner. The casing shall be cemented from the packer collar above the slotted casing or the bottom of the production string back up the the mined out area and from the cement basket to the surface. (see Figure 3)*

§ 8.4. *For mine ventilation holes which penetrate a mined*

out area in an abandoned mine, the large hole shall be drilled to a depth of 50 feet below the coal bed and then the hole may be reduced and completed. The liner will not be required through the mined out area. The production casing string shall be set and cemented in from the packer collar above the slotted casing at the bottom back up to the mined out area and from the cement basket above the mined out area to the surface. (See Figure 4)

PART IX. CASING REQUIREMENTS FOR VERTICAL VENTILATION HOLES.

§ 9.1. Each application for a vertical ventilation hole permit shall contain a plan for casing the hole. Each such casing plan shall provide the following information:

1. The depth, type and size of the [casing water-protection string] extending from the surface to 300 feet below the surface, or from the surface to 50 feet below the lowest groundwater [supply source horizon], whichever is deeper;

2. The depth, type and size of the coal-protection string, including an indication of whether the coal-protection string also will be used to protect freshwater-bearing strata located above the lowest coal seam penetrated;

3. [The proposed method of completion, whether cased hole, open hole or cased/open hole Whether the hole will be cased, left open, or a combination cased/open hole];

4. The names and locations of coal seams to be left uncased;

5. The names and locations of coal seams to be protected by the coal-protection string;

6. When a vertical ventilation hole is drilled through a mined-out coal seam, the nature of the protection that will be provided to prevent the escape of gases from the vertical ventilation hole into the mined-out coal seam.

§ 9.2. The water-protection and coal-protection strings both shall be cemented back to the surface [whenever possible. If the cement does not return to the surface, then every reasonable attempt shall be made to fill the annular space by introducing cement from the surface]. The water-protection string, coal-protection string and cement used in both of these casings shall be designed to withstand 300 psig surface pressure. The casing cement [must shall] be allowed to set for at least 12 hours prior to drilling from under the casing, unless the chief gives prior approval for a shorter period of time.

§ 9.3. Within 30 days after the date that casing is completed on a vertical ventilation hole, the operator of

the hole shall file with the chief a diagram indicating the nature of the casing actually installed in the hole. The diagram shall indicate the depth, type and size of the casing; the names and locations of mineable coal seams encountered; and the surface location of the hole indicated on an accurate plat or map meeting the specifications prescribed in Part II of these regulations.

§ 9.4. When an operator intends to convert a vertical ventilation hole drilled [after July 1, 1991 on or after September 25, 1991], to a coalbed methane well or gob well, the casing must be installed according the requirements set forth for such wells under Chapter 22.1 of Title 45.1 of the Code of Virginia.

PART IX X . MINE VENTILATION HOLE PENETRATING MINE OTHER THAN COAL MINE.

§ 9.1. § 10.1. In the event that a permit is requested to drill a [mine vertical] ventilation hole in such a location that it would penetrate any active or abandoned mine other than a coal mine, the chief may by regulation establish the safety precautions to be followed by the ventilation hole operator, which shall conform to standard safety measures generally followed in the industry in such cases.

PART X XI . DEVIATION TESTS.

§ 10.1. § 11.1. All [mine vertical] ventilation holes shall be drilled with due diligence to maintain a reasonably vertical hole bore. [When a vertical ventilation hole passes through a workable coal seam, upon completion of the hole the operator shall run a directional survey] Upon completion of each mine ventilation hole, a directional survey shall be run [to determine the exact location of the hole bore at total depth and at the points where the hole passes through all workable coal] beds [seams. The permittee shall use an inclination survey to determine the horizontal location of any vertical ventilation hole that penetrates a workable coal seam. The inclination survey shall be conducted from the surface to the lowest workable coal seam penetrated by the hole. The first survey point shall be taken at a depth not greater than the shallowest workable coal seam, and thereafter, shot points shall be taken at each workable coal seam or at intervals of 200 feet, whichever distance is less, to the lowest workable coal seam penetrated by the hole. If the deviation of the hole exceeds one degree from the true vertical at any point between the surface and the lowest workable coal seam, then the permittee, unless granted a variance by the chief, shall:

1. Correct the borehole to within one degree of vertical, or

2. Conduct a directional survey to the lowest workable coal seam penetrated by the hole and notify the coal owners of the actual location of the hole.]

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~~§ 10.2. [§ 11.2. A hole may be intentionally deviated from the vertical only after written permission has been granted by the chief or an authorized agent thereof, and provided further, that such permission shall not be granted without due notice and hearing, if such is required in the opinion of the chief.~~

~~§ 11.2. Prior to drilling any vertical ventilation hole into a workable coal seam in which active mining is being conducted within 500 feet of where the hole will penetrate the seam, the permittee shall conduct an inclination survey to determine whether the deviation of the hole exceeds one degree from the true vertical. If the hole is found to exceed one degree from vertical, then the permittee shall cease operations immediately and notify the chief. The chief then shall require the permittee to conduct a directional survey to drilled depth to determine the horizontal and vertical location of the hole, and unless granted a variance by the chief, the permittee shall correct the hole to within one degree of true vertical.~~

~~§ 11.3. The chief may grant a variance under §§ 11.1 and 11.2 only after the permittee and the owners of any workable coal seams penetrated by the hole have jointly submitted a written request for a variance stating that the directional survey or correction to the hole is not needed to protect the safety of persons engaged in active coal mining. The chief may at any time require the permittee to conduct a directional survey if he finds that the lack of assurance of the horizontal location of the hole could pose a danger to persons engaged in active coal mining.]~~

~~§ 10.3. [§ 11.3. § 11.4.] A copy of the any [directional] survey required for each a [mine vertical] ventilation hole shall be filed with the chief within 30 days after completion of the hole. All mining operations affected by the ventilation hole shall be furnished a copy of the [directional] survey and its interpretation.~~

~~§ 10.4. [§ 11.4. The chief shall have the right to require the operator to make a directional survey of any hole, at any time prior to the completion of the hole at the expense of the operator, in order to ascertain that the hole has not deviated from a reasonably vertical direction.]~~

PART XI XII . MINING OPERATIONS NEAR MINE VERTICAL VENTILATION HOLES AND GAS OR OIL WELLS.

~~§ 11.1. § 12.1. Before removing any coal or other mineral, or extending any mine workings or mining operations within 500 feet [horizontally] of any permitted vertical mine ventilation hole or any vertical ventilation projected in [a an approved] permit , the operator of such mine shall give notice by registered certified mail to the ventilation hole operator and to the chief and forward therewith an accurate map or maps on a scale, to be stated thereon, of 100 to 400 feet to the inch showing its mine workings and projected mine workings beneath such~~

~~tract of land or within 500 feet [horizontally] of such ventilation hole. Following the giving of such notice and the furnishing of such map or maps, the mine operator may proceed with mining operations as projected on such map or maps, but shall not remove any coal or other mineral or conduct any mining operations nearer than 200 feet [horizontally] as determined by survey to any completed permitted hole or hole that is being drilled, or for the purpose of which drilling a derriek is being constructed or hole projected in [a an approved] permit , without the consent of the chief. This provision shall not apply to mining operations in the seam which the [mine vertical] ventilation hole is intended to ventilate unless the casing extends through that seam.~~

~~§ 12.2. Before removing any coal or other mineral, or extending any mine workings or mining operations within 500 feet [horizontally] of any permitted gas or oil well, or gas or oil well being drilled, the operator of such mine shall give notice by certified mail to the well operator, the gas and oil inspector and the chief, and shall forward therewith an accurate map or maps on a scale, to be stated thereon, of 400 feet to the inch showing its mine workings and projected mine workings beneath such tract of land or within 500 feet [horizontally] of such gas or oil well. Following the giving of such notice and the furnishing of such map or maps, the mine operator may proceed with mining operations as projected on such map or maps, but shall not remove any coal or other mineral or conduct any mining operations nearer than 200 feet [horizontally] as determined by survey to any permitted well or well that is being drilled without the consent of the chief.~~

~~§ 11.2. § 12.3. Application may be made at any time to the chief by the mine operator for [leave a permit] to conduct mining operations within 200 feet [horizontally] of any such permitted [mine vertical] ventilation hole or projected hole projected in [a an approved] permit on forms furnished by the chief and containing such information as the chief may require. Such application shall be accompanied by a map or maps as above specified showing all mining operations or workings projected within 200 feet [horizontally] of the hole or projected hole. Notice of such application shall be sent by registered certified mail to the mine operator whose ventilation hole may be affected. The notice shall inform the ventilation hole operator of the right to object to the proposed mining activity. Such objections must be filed with the chief within 15 days after notice is received by the objecting person. The chief may, prior to considering the application, make or cause to be made any inspections or surveys which he deems necessary, and may, if no objection is filed by the ventilation hole operator within 15 days after notice is received , grant the request of the mine operator to conduct the mining operations as projected, or with such modifications as he may deem necessary. If the ventilation hole operator files objections, a hearing will be held under the same procedures as set forth in Part IV V . The chief shall be governed by the information contained in Attachments (1) and (2) in~~

making his decision as to the location of the proposed mine ventilation hole. If the applicant for a permit to mine within 200 feet [horizontally] of a ventilation hole or projected hole submits proof in writing that the ventilation hole operator does not object to the projected mining activity within 200 feet [horizontally] of the hole, then the chief may waive the notice requirement under this section and grant the request of the mine operator to conduct the projected mining activity, provided all other conditions have been met.

§ 12.4. Application may be made at any time to the chief by the mine operator for [leave a permit] to conduct mining operations within 200 feet [horizontally] of any permitted gas or oil well or gas or oil well being drilled on forms furnished by the chief and containing such information as the chief may require. Such application shall be accompanied by a map or maps as above specified showing all mining operations or workings projected within 200 feet [horizontally] of the well. Notice of such application shall be sent by certified mail to the well operator and the gas and oil inspector. The notice shall inform the ventilation hole operator of the right to object to the proposed mining activity. Such objections must be filed with the chief within 15 days after notice is received by the objecting person. The chief may, prior to considering the application, make or cause to be made any inspections or surveys which he deems necessary, and may, if no objection is filed by the well operator or the gas and oil inspector within 15 days after the notice is received, grant the request of the mine operator to conduct the mining operations as projected, or with such modifications as he may deem necessary. If the well operator or gas and oil inspector files objections, a hearing will be held under the same procedures as set forth in Part V. If the applicant for a permit to mine within 200 feet [horizontally] of a gas or oil well submits proof in writing that none of the persons required to be notified under this section has any objection to the projected mining activity, then the chief may waive the notice requirement under this section and grant the request of the mine operator to conduct the projected mining activity, provided all other conditions have been met.

§ 12.5. When mining within 200 feet [horizontally] of a vertical ventilation hole, or within 200 feet [horizontally] of a gas or oil well, the mine operator shall submit a plan showing projected pillars of coal to be left unmined around each hole or well. Such pillars shall be situated so that each hole or well is centered within a pillar, and each pillar should conform to the following specifications based on the depth of cover above the area being mined. The excavated areas adjacent to any pillar may not exceed 20 feet in width without prior approval from the chief. In no circumstances may the narrowest pillar dimension be less than twice the width of the excavated area.

Req'd Additional Total Area

Cover	Req'd Solid Pillar Area	Pillar Area (Solid or Split)	Bearing Surface Required
0-149 ft.	3,600 sq. ft.	-	3,600 sq. ft.
150-249 ft.	5,625 sq. ft.	-	5,625 sq. ft.
250-349 ft.	10,000 sq. ft.	-	10,000 sq. ft.
350-449 ft.	10,000 sq. ft.	5,600 sq. ft.	15,600 sq. ft.
450-549 ft.	10,000 sq. ft.	13,000 sq. ft.	23,000 sq. ft.
550-649 ft.	10,000 sq. ft.	22,000 sq. ft.	32,000 sq. ft.
650 or more ft.	10,000 sq. ft.	30,000 sq. ft.	40,000 sq. ft.

§ 12.6. When a mine operator plans to mine in a seam located [within 200 feet] below a seam that is being vented [or produced] by a vertical ventilation hole [or produced by a ,] coalbed methane well or gob well, such operator shall give notice by certified mail to the chief, the hole or well operator, and the gas and oil inspector. Such notice shall be accompanied by a map or maps showing all mining projections under the hole or well. The notice shall inform the hole or well operator and the gas and oil inspector of the right to object to the proposed mining activity. Such objections must be filed with the chief within 15 days after notice is received. If the operator of the hole or well, or the gas and oil inspector, objects to such mining, then a hearing will be held according to the procedures set forth in Part V of these regulations. If the applicant for a permit to mine in a seam located below a seam that is being so vented or produced submits proof in writing that none of the persons required to be notified under this section has any objection to the projected mining activity, then the chief may waive the notice requirement under this section and grant the request of the mine operator to conduct the project mining activity, provided all other conditions have been met.

§ 12.7. Application may be made at any time to the chief by the mine operator for [leave a permit] to mine through a plugged vertical ventilation hole or plugged gas or oil well on forms furnished by the chief and containing such information as the chief may require. Such application shall be accompanied by a map or maps as above specified showing all mining operations or workings projected through the area of the hole or well. Notice of such application shall be sent by certified mail to the hole or well operator and, in the case of mining through a well, to the gas and oil inspector. The notice shall inform the hole or well operator and the gas and oil inspector of the right to object to the proposed mining activity. Such objections must be filed with the chief within 15 days after notice is received. The application also shall contain information necessary to establish that (i) the hole or well has been adequately plugged for the purpose of safely hole or well has been adequately plugged for the purpose of safely mining through, and (ii) no oil, gas or fluids can migrate into the mine workings. The chief may, prior to considering the application, make or cause to be made any inspections or surveys which he deems necessary, and may, if no objection is filed by the [hole or] well operator or the gas and oil inspector within 15 days after notice is received, grant the request of the mine operator

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to conduct the mining operations as projected, or with such modifications as he may deem necessary. If the [hole or] well operator or gas and oil inspector files objections, a hearing will be held under the same procedures as set forth in Part V. If the applicant for a permit to mine through a ventilation hole or gas or oil well submits proof in writing that none of the persons required to be notified under this section has any objection to the projected mining activity, then the chief may waive the notice requirement under this section and grant the request of the mine operator to conduct the project mining activity, provided all other conditions have been met.

PART ~~XII~~ XIII . NOTIFICATION OF INTERESTED PERSONS.

~~§12.1~~ § 13.1. When an application to drill a vertical [mine] ventilation hole has been made and all interested persons notified as required in Part II, all such interested persons who are owners, lessees, or operators of any coal seams which are located above the seam from which methane gas is to be removed shall furnish information to the Division of Mines regarding the elevations and thicknesses of these seams, if known, so that a decision can be made by the chief prior to the drilling of the hole as to which seams will require protection by use of a [~~liner~~ casing] as described in Part ~~VIII~~ IX .

PART ~~XIII~~ XIX . PROCEDURE FOR ABANDONMENT.

~~§ 13.1.~~ § 14.1. When it is determined by the chief that a vertical [mine] ventilation hole is no longer useful for venting methane gas from a gob area or relieving gas pressure from an abandoned area of a mine, and for any other useful and safe purpose as approved by the chief, such holes shall be plugged and abandoned according to methods and procedures which shall be approved by the chief.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF MINES, MINERALS AND ENERGY
DIVISION OF MINES
BIG STONE GAP, VIRGINIA, 24219
703-523-8100

NOTICE AND APPLICATION FOR A PERMIT TO DRILL VERTICAL VENTILATION HOLE

One copy of this form and one copy of a plat or map on a scale of 400 feet to the inch, and showing information required by REGULATIONS GOVERNING VERTICAL VENTILATION HOLES AND MINING NEAR GAS AND OIL WELLS (480-05-96), must be submitted to the Division of Mines prior to obtaining a permit to drill. Within one day after the date on which this notice and application is filed with the Chief, copies must be sent by certified mail to all persons identified below in accordance with Part II of the regulations.

TO: Division of Mines _____ Date _____
219 Wood Avenue
Big Stone Gap, Virginia 24219

The undersigned hereby makes application for a permit to drill a vertical ventilation hole on the _____ property, comprising _____ acres in the _____ District of _____ County, Virginia, having the fee title thereto, or as the case may be, under grant or lease dated _____, made by _____ to _____ and recorded on the _____ day of _____, 19____, in the office of the County Clerk for said County in Book _____ Page _____. The hole proposed in this application will be known as Hole No. _____ of _____ (company, etc.). The proposed location of the hole, as shown on the attached plat or map, is approximately _____ (feet/miles) _____ of _____. The proposed depth of the hole is approximately _____ feet. The proposed location of the hole is approximately _____ feet from the nearest property or lease line; approximately _____ feet from the nearest mine opening or quarry (strike words not applicable); and/or approximately _____ feet from the nearest permitted, abandoned or applied for (strike words not applicable) oil or gas (strike words not applicable) well.

A plat or map on a scale of 400 feet to the inch, showing the proposed location of the hole and other information required in REGULATIONS GOVERNING VERTICAL VENTILATION HOLES AND MINING NEAR GAS OR OIL WELLS, 480-05-96, is attached hereto. Copies of the plat or map and application have been sent to persons listed below (attach list if needed). In accordance with Part II of the regulations, any person so notified has the right to object to the proposed location of the vertical ventilation hole, provided the objecting person states the nature of the objection and files the objection with the Chief of the Division of Mines within 15 days from the receipt of this notice.

- 1. _____
- 2. _____
- 3. _____

- 4. _____
- 5. _____
- 6. _____

Signature of officer or certifying party: _____ Operator

Name _____ Street Address

Title _____ City or Town and State

Correspondence regarding this hole should be addressed to _____

For Office Use Only

PERMIT APPROVAL

File _____ Date Received _____ Hole No. _____

Date Approved _____ Date Denied _____

Reason for Denial _____

Chief

APP#Number: _____
Well or Hole: _____
Mine Name: _____
Date: _____

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF MINES, MINERALS AND ENERGY
DIVISION OF MINES
219 WOOD AVENUE
BIG STONE GAP, VA 24219
703-523-8100

NOTICE AND PETITION
TO MINE WITHIN 200 FEET OF OR THROUGH A GAS OR OIL WELL
OR VERTICAL VENTILATION HOLE

One copy of this form and one copy of a plat or map on a scale of 400 feet to the inch, and showing information required by REGULATIONS GOVERNING VERTICAL VENTILATION HOLES AND MINING NEAR GAS OR OIL WELLS (480-05-96), shall be submitted to the Division of Mines prior to obtaining a permit to conduct the proposed mining activity. Copies of this petition must be sent by certified mail to persons identified below in accordance with Part XII of the regulations.

TO: Division of Mines _____
Date _____

The undersigned hereby makes application for a permit to:

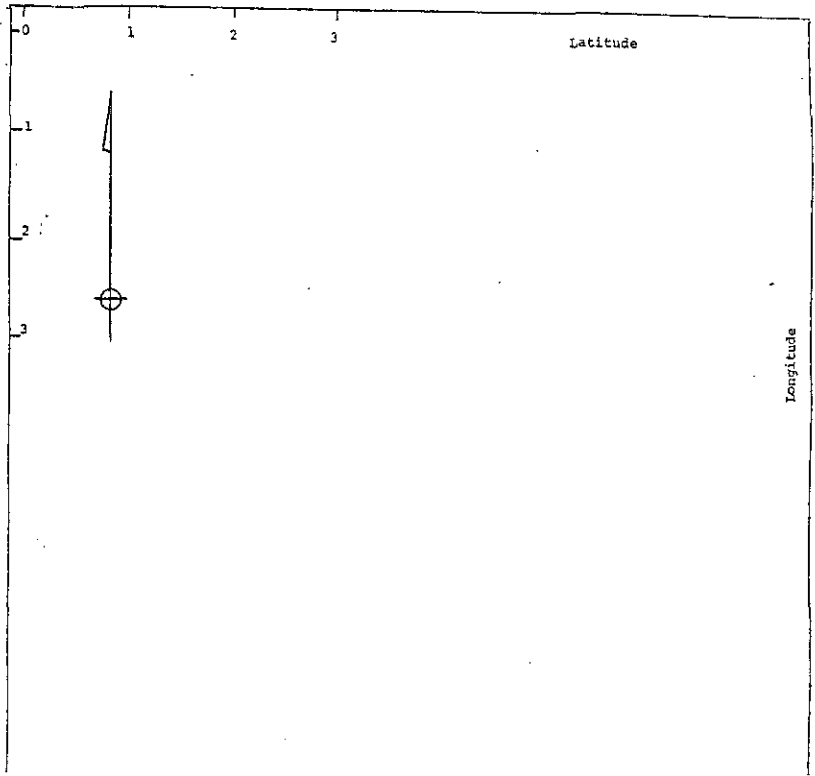
- _____ Extend mine workings to within 200 feet of the referenced well or vertical ventilation hole; or
- _____ Mine through the referenced well or vertical ventilation hole which has been plugged.

Attached are maps, plat and plans showing 1) the location of the well or vertical ventilation hole; 2) mine workings located within 500 feet of the well or vertical ventilation hole as it passes through the coal seam or seams involved; and 3) the protected mining operations within 200 feet of the well or vertical ventilation hole, or through the well or vertical ventilation hole. The maps, plats and plans have been certified by a licensed professional engineer or licensed land surveyor.

If the well or vertical ventilation hole will not be mined through, then attached are pillar plans prepared in accordance with Part XII of the REGULATIONS GOVERNING VERTICAL VENTILATION HOLES AND MINING NEAR GAS OR OIL WELLS (480-05-96), indicating details of the pillar to be left intact for the protection of the hole and the mine, and noting any unusual conditions that exist.

If the well or vertical ventilation hole will be mined through, then attached is information necessary to establish that the subject well or hole has been adequately plugged for the purpose of mining through, and that no gas, oil or fluids are able to migrate into the workings of the mine.

The undersigned requests approval by the Chief of the Division of Mines of this petition and avows that copies of the petition and all attachments have been sent by certified mail to the Virginia Gas and Oil Inspector at his official address and to the operator of the subject well or vertical ventilation hole, as indicated below:



Well or Hole Operator _____

Address _____

In accordance with Section 45.1-92.1 of the Code of Virginia, and Part XII of the REGULATIONS GOVERNING VERTICAL VENTILATION HOLES AND MINING NEAR GAS OR OIL WELLS, 480-05-96, the Gas and Oil Inspector and the well or hole operator may file objections to the mining activity proposed in this petition. Such objections must be filed with the Chief of the Division of Mines within 15 days from the receipt of notice.

Submitted by: Mine Operator _____

Address _____

Telephone _____

Signature _____ Title _____

For Office Use Only

PERMIT APPROVAL

Date Approved _____ Date Denied _____

Reason for Denial _____

Chief _____

APP Number: _____

Well or Hole: _____

Mine Name: _____

Date: _____

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF MINES, MINERALS AND ENERGY
DIVISION OF MINES
219 WOOD AVENUE
BIG STONE GAP, VA 24219
703-523-8100

NOTICE OF MINING WITHIN 500 FEET OF A GAS OR OIL WELL
OR VERTICAL VENTILATION HOLE

Take notice that pursuant to Section 45.1-92.1 of the Code of Virginia, the undersigned mine operator proposes to extend mine workings to within 500 feet of the referenced well or vertical ventilation hole either permitted or projected under an approve permit, located in the _____ District, City/County, Virginia. Attached are maps, plats and plans sufficient to show the undersigned's mine workings and projected mine workings beneath the tract where the well or hole is located and within 500 feet of the well or hole.

The undersigned hereby avows to the Chief that copies of this notice and attachments have been sent by certified mail to the Virginia Gas and Oil Inspector at his official address and to the operator of the subject well or hole, as indicated below:

Well or Hole Operator _____

Address _____

Submitted by: Mine Operator _____

Address _____

Telephone _____

Signature _____ Title _____

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BOARD OF NURSING

REGISTRAR'S NOTICE: This regulation is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Board of Nursing will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: VR 495-01-01. Board of Nursing Regulations.

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

Effective Date: September 25, 1991.

Summary:

Section 54.1-3011.1 of the Code of Virginia authorizes the Board of Nursing to charge a fee of one dollar for the licensure and renewal of licensure of every practical nurse and registered nurse to be deposited in the Nursing Scholarship Fund established pursuant to § 54.1-3011.2. Section 1.3 of the Board of Nursing Regulations has been amended to reflect this authorization by adding the fee of one dollar to the fee for application for registered nurse licensure, the fee for application for licensed practical nurse licensure, and the biennial licensure renewal fee.

VR 495-01-01. Board of Nursing Regulations.

PART I. GENERAL PROVISIONS.

§ 1.1. Definitions.

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

"Approval" means the process by which the board or a governmental agency in another state or foreign country evaluates and grants official recognition to nursing education programs that meet established standards not inconsistent with Virginia law.

"Associate degree nursing program" means a nursing education program preparing for registered nurse licensure, offered by a Virginia college or other institution and designed to lead to an associate degree in nursing, provided that the institution is authorized to confer such degree by the State Board of Education, State Council of Higher Education or an Act of the General Assembly.

"Baccalaureate degree nursing program" means a nursing education program preparing for registered nurse licensure, offered by a Virginia college or university and

designed to lead to a baccalaureate degree with a major in nursing, provided that the institution is authorized to confer such degree by the State Board of Education, the State Council of Higher Education or an Act of the General Assembly.

"Board" means the State Board of Nursing.

"Clinical nurse specialist" means a licensed registered nurse who holds:

1. A master's degree from a board approved program which prepares the nurse to provide advanced clinical nursing services; and
2. Specialty certification from a national certifying organization acceptable to the board or an exception available from March 1, 1990, to July 1, 1990.

"Conditional approval" means a time-limited status which results when an approved nursing education program has failed to maintain requirements as set forth in § 2.2 of these regulations.

"Cooperating agency" means an agency or institution that enters into a written agreement to provide learning experiences for a nursing education program.

"Diploma nursing program" means a nursing education program preparing for registered nurse licensure, offered by a hospital and designed to lead to a diploma in nursing, provided the hospital is licensed in this state.

"National certifying organization" means an organization that has as one of its purposes the certification of a specialty in nursing based on an examination attesting to the knowledge of the nurse for practice in the specialty area.

"Nursing education program" means an entity offering a basic course of study preparing persons for licensure as registered nurses or as licensed practical nurses. A basic course of study shall include all courses required for the degree, diploma or certificate.

"Practical nursing program" means a nursing education program preparing for practical nurse licensure, offered by a Virginia school, that leads to a diploma or certificate in practical nursing, provided the school is authorized by the appropriate governmental agency.

"Program director" means a registered nurse who has been designated by the controlling authority to administer the nursing education program.

"Provisional approval" means the initial status granted to a nursing education program which shall continue until the first class has graduated and the board has taken final action on the application for approval.

"Recommendation" means a guide to actions that will

assist an institution to improve and develop its nursing education program.

"Requirement" means a mandatory condition that a nursing education program must meet to be approved.

§ 1.2. Delegation of authority.

A. The executive director of the board shall issue a certificate of registration to each person who meets the requirements for initial licensure under §§ 54.1-3017, 54.1-3018, 54.1-3020 and 54.1-3021 of the Code of Virginia. Such certificates of registration shall bear the signature of the president of the board, the executive director and the director of the Department of Health Regulatory Boards.

B. The executive director shall issue license to each applicant who qualifies for such license under § 54.1-3011 of the Code of Virginia. Such licenses shall bear the name of the executive director.

C. The executive director shall be delegated the authority to execute all notices, orders and official documents of the board unless the board directs otherwise.

§ 1.3. Fees.

Fees required in connection with the licensing of applicants by the board are:

- | | |
|-------------------------------------------------------|----------------------|
| 1. Application for R.N. Licensure | \$45 \$46 |
| 2. Application for L.P.N. Licensure | \$35 \$36 |
| 3. Biennial Licensure Renewal | \$28 \$29 |
| 4. Reinstatement Lapsed License | \$50 |
| 5. Duplicate License | \$10 |
| 6. Verification of License | \$10 |
| 7. Transcript of Examination Scores | \$5 |
| 8. Transcript of Applicant/Licensee Records | \$10 |
| 9. Returned Check Charge | \$15 |
| 10. Application for C.N.S. registration | \$50 |
| 11. Biennial renewal of C.N.S. registration | \$30 |
| 12. Reinstatement of lapsed C.N.S. registration | \$25 |
| 13. Verification of C.N.S. registration | \$25 |

§ 1.4. Public participation guidelines.

A. Mailing list.

The Virginia State Board of Nursing (board) 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 proceeding," the subject of which is proposed or existing regulation.
3. Final regulation adopted.

Any person wishing to be placed on the mailing list may do so by writing the board. In addition, the board, at its discretion, may 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 on the list will be provided all above-listed information. 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.

B. Notice of intent.

At least 30 days prior to publication of the notice to conduct an informational proceeding as required by § 9-6.14:1 of the Code of Virginia, the board will publish a "notice of intent." 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 of Regulations for inclusion in the Virginia Register of Regulations.

C. Public comment period.

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 of Regulations for inclusion in the Virginia Register of Regulations. Such proceedings may be held separately or in conjunction with other informational proceedings.

D. Petitions to the board.

Any person may petition the board to adopt, amend, or delete any regulation. Any petition received shall appear on the next agenda of the board. The board shall have sole authority to dispose of the petition.

E. Publication in the Virginia Register of Regulations.

At any meeting of the board or any subcommittee or advisory committee, where the formulation or adoption of regulation occurs, the subject matter shall be transmitted

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to the Registrar of Regulations for inclusion in the Virginia Register of Regulations.

F. Advisory committee.

The board, in cooperation with the Council on Health Regulatory Boards, may appoint advisory committees as they deem necessary to provide for adequate citizen participation in the formation, promulgation, adoption, and review of regulations.

PART II. NURSING EDUCATION PROGRAMS.

§ 2.1. Establishing a nursing education program.

Phase I.

A. An institution wishing to establish a nursing education program shall:

1. Submit to the board, at least 15 months in advance of expected opening date, a statement of intent to establish a nursing education program;
2. Submit to the board, along with the statement of intent, a feasibility study to include the following information:
 - a. Studies documenting the need for the program;
 - b. Purpose and type of program;
 - c. Availability of qualified faculty;
 - d. Budgeted faculty positions;
 - e. Availability of clinical facilities for the program;
 - f. Availability of academic facilities for the program;
 - g. Evidence of financial resources for the planning, implementation and continuation of the program;
 - h. Anticipated student population;
 - i. Tentative time schedule for planning and initiating the program; and
 - j. Current catalog, if applicable.
3. Respond to the board's request for additional information.

B. A site visit shall be conducted by a representative of the board.

C. The board, after review and consideration, shall either approve or disapprove Phase I.

1. If Phase I is approved, the institution may apply

for provisional approval of the nursing education program as set forth in these regulations.

2. If Phase I is disapproved, the institution may request a hearing before the board and the provisions of the Administrative Process Act shall apply. (§ 9-6.14:1 et seq.)

Phase II.

D. The application for provisional approval shall be complete when the following conditions are met:

1. A program director has been appointed and there are sufficient faculty to initiate the program (§ 2.2.C of these regulations);
2. A tentative written curriculum plan developed in accordance with § 2.2.F of these regulations has been submitted; and

E. The board, after review and consideration, shall either grant or deny provisional approval.

1. If provisional approval is granted:

- a. The admission of students is authorized; and
- b. The program director shall submit quarterly progress reports to the board which shall include evidence of progress toward application for approval and other information as required by the board.

2. If provisional approval is denied, the institution may request a hearing before the board and the provisions of the Administrative Process Act shall apply. (§ 9-6.14:1 et seq.)

F. Following graduation of the first class, the institution shall apply for approval of the nursing education program.

Phase III.

G. The application for approval shall be complete when a self-evaluation report of compliance with § 2.2 of these regulations has been submitted and a survey visit has been made by a representative of the board.

H. The board will review and consider the self-evaluation and the survey reports at the next regularly scheduled meeting.

I. The board shall either grant or deny approval. If denied, the institution may request a hearing before the board and the provisions of the Administrative Process Act shall apply. (§ 9-6.14:1 et seq.)

§ 2.2. Requirements for approval.

- A. Organization and administration.

1. The institution shall be authorized to conduct a nursing education program by charter or articles of incorporation of the controlling institution; by resolution of its board of control; or by the institution's own charter or articles of incorporation.

2. Universities, colleges, community or junior colleges, proprietary schools and public schools offering nursing education programs shall be accredited by the appropriate state agencies and the Southern Association of Colleges and Schools.

3. Hospitals conducting a nursing education program shall be accredited by the Joint Commission on Accreditation of Healthcare Organizations.

4. Any agency or institution that is utilized by a nursing education program shall be one that is authorized to conduct business in the Commonwealth of Virginia, or in the state in which the agency or institution is located.

5. The authority and responsibility for the operation of the nursing education program shall be vested in a program director who is duly licensed to practice professional nursing in Virginia and who is responsible to the controlling board, either directly or through appropriate administrative channels.

6. A written organizational plan shall indicate the lines of authority and communication of the nursing education program to the controlling body; to other departments within the controlling institution; to the cooperating agencies; and to the advisory committee, if one exists.

7. Funds shall be allocated by the controlling agency to carry out the stated purposes of the program. The program director of the nursing education program shall be responsible for the budget recommendations and administration, consistent with the established policies of the controlling agency.

B. Philosophy and objectives.

Written statements of philosophy and objectives shall be:

1. Formulated and accepted by the faculty;
2. Directed toward achieving realistic goals;
3. Directed toward the meaning of education, nursing and the learning process;
4. Descriptive of the practitioner to be prepared; and
5. The basis for planning, implementing and evaluating the total program.

C. Faculty.

1. Qualifications.

a. Every member of a nursing faculty, including the program director, shall hold a current license to practice as a registered nurse in Virginia.

b. Every member of a nursing faculty responsible for teaching students in a cooperating agency located outside the jurisdictional limits of Virginia shall meet the licensure requirements of that jurisdiction .

c. The program director and each member of the nursing faculty shall maintain professional competence through such activities as nursing practice, continuing education programs, conferences, workshops, seminars, academic courses, research projects and professional writing.

d. For baccalaureate degree programs:

(1) The program director shall hold a doctoral degree.

(2) Every member of the nursing faculty shall hold a graduate degree. Faculty members without a graduate degree with a major in nursing shall have a baccalaureate degree with a major in nursing.

(3) At least one faculty member in each clinical area shall have master's preparation in specialty.

e. For associate degree and diploma programs:

(1) The program director shall hold a graduate degree, preferably with a major in nursing.

(2) The majority of the members of the nursing faculty shall hold a graduate degree, preferably with a major in nursing.

(3) Other members of the nursing faculty shall hold a baccalaureate degree, preferably with a major in nursing.

f. For practical nursing programs.

(1) The program director shall hold a baccalaureate degree, preferably with a major in nursing.

(2) The majority of the members of the nursing faculty shall hold a baccalaureate degree, preferably with a major in nursing.

g. Exceptions to provisions of subparagraphs d, e, and f of this subsection shall be by board approval.

(1) Initial request for exception.

(a) The program director shall submit a request for initial exception in writing for considerations at a

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regular board meeting prior to the term during which the nursing faculty member is scheduled to teach.

(b) A description of teaching assignment, a curriculum vitae and a statement of intent, from the prospective faculty member, to pursue the required degree shall accompany each request.

(2) Request for continuing exception.

(a) Continuing exception will be based on the progress of the nursing faculty member toward meeting the degree required by these regulations during each year for which the exception is requested.

(b) The program director shall submit the request for continuing exception in writing for consideration at a regular board meeting prior to the next term during which the nursing faculty member is scheduled to teach.

(c) A list of courses required for the degree being pursued and college transcripts showing successful completion of a minimum of two of the courses during the past academic year shall accompany each request.

(3) The executive director of the board shall be authorized to make the initial decision on requests for exceptions. Any appeal of that decision shall be in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

2. Number.

a. The number of faculty shall be sufficient to prepare the students to achieve the objectives of the educational program and such number shall be reasonably proportionate to:

- (1) Number of students enrolled;
- (2) Frequency of admissions;
- (3) Education and experience of faculty members;
- (4) Number and location of clinical facilities; and
- (5) Total responsibilities of the faculty.

b. When students are giving direct care to patients, the ratio of students to faculty in clinical areas shall not exceed 10 students to one faculty member.

3. Conditions of employment.

a. Qualifications and responsibilities for faculty positions shall be defined in writing.

b. Faculty assignments shall allow time for class and laboratory preparation; teaching; program revision; improvement of teaching methods; academic advisement and counseling of students; participation in faculty organizations and committees; attendance at professional meetings; and participation in continuing education activities.

4. Functions.

The principal functions of the faculty shall be to:

- a. Develop, implement and evaluate the philosophy and objectives of the nursing education program;
- b. Participate in designing, implementing, teaching, and evaluating and revising the curriculum;
- c. Develop and evaluate student admission, progression, retention and graduation policies within the framework of the controlling institution;
- d. Participate in academic advisement and counseling of students; and
- e. Provide opportunities for student and graduate evaluation of curriculum and teaching and program effectiveness.

5. Organization.

- a. The nursing faculty shall hold regular meetings for the purpose of developing, implementing and evaluating the nursing education program. Written rules shall govern the conduct of meetings.
- b. All members of the faculty shall participate in the regular faculty meetings.
- c. Committees shall be established to implement the functions of the faculty.
- d. Minutes of faculty and committee meetings, including actions taken, shall be recorded and available for reference.
- e. There shall be provision for student participation.

D. Students.

1. Admission, promotion and graduation.

a. Requirements for admission to the nursing education program shall not be less than the statutory requirements that will permit the graduate to be admitted to the appropriate licensing examination.

(EXPLANATORY NOTE: Reference subdivision 1 of subsection A of § 54.1-3017 of the Code of Virginia: The equivalent of a four-year high school course of

study is considered to be:

(1) A General Educational Development (GED) certificate for high school equivalence; or

(2) Satisfactory completion of the college courses required by the nursing education program.)

b. Students shall be selected on the basis of established criteria and without regard to age, race, creed, sex or national origin.

c. Requirements for admission, readmission, advanced standing, progression, retention, dismissal and graduation shall be available to the students in written form.

E. Records.

1. School records.

A system of records shall be maintained and be made available to the board representative and shall include:

a. Data relating to accreditation by any agency or body,

b. Course outlines,

c. Minutes of faculty and committee meetings,

d. Reports of standardized tests,

e. Survey reports.

2. Student records.

a. A file shall be maintained for each student. Each file shall be available to the board representative and shall include:

(1) The student's application,

(2) High school transcript or copy of high school equivalence certificate,

(3) Current record of achievement.

b. A final transcript shall be retained in the permanent file of the institution.

c. Provision shall be made for the protection of student and graduate records against loss, destruction and unauthorized use.

3. School bulletin or catalogue.

Current information about the nursing education program shall be published periodically and distributed to students, applicants for admission and the board. Such information shall include:

a. Description of the program.

b. Philosophy and objectives of the controlling institution and of the nursing program.

c. Admission and graduation requirements.

d. Fees.

e. Expenses.

f. Financial aid.

g. Tuition refund policy.

h. Education facilities.

i. Living accommodations.

j. Student activities and services.

k. Curriculum plan.

l. Course descriptions.

m. Faculty-staff roster.

n. School calendar.

F. Curriculum.

1. Curriculum shall reflect the philosophy and objectives of the nursing education program, and shall be consistent with the law governing the practice of nursing.

2. The ratio between nursing and nonnursing credit shall be based on a rationale to ensure sufficient preparation for the safe and effective practice of nursing.

3. Learning experiences shall be selected to fulfill curriculum objectives.

4. Nursing education programs preparing for practical nursing licensure shall include:

a. Principles and practice in nursing encompassing the attainment and maintenance of physical and mental health and the prevention of illness for individuals and groups throughout the life cycle;

b. Basic concepts of the nursing process;

c. Basic concepts of anatomy, physiology, chemistry, physics and microbiology;

d. Basic concepts of communication, growth and development, interpersonal relations, patient education and cultural diversity;

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e. Ethics, nursing history and trends, vocational and legal aspects of nursing, including regulations and sections of the Code of Virginia related to nursing; and

f. Basic concepts of pharmacology, nutrition and diet therapy.

5. Nursing education programs preparing for registered nurse licensure shall include:

a. Theory and practice in nursing, encompassing the attainment and maintenance of physical and mental health and the prevention of illness throughout the life cycle for individuals, groups and communities;

b. Concepts of the nursing process;

c. Concepts of anatomy, physiology, chemistry, microbiology and physics;

d. Sociology, psychology, communications, growth and development, interpersonal relations, group dynamics, cultural diversity and humanities;

e. Concepts of pharmacology, nutrition and diet therapy, and pathophysiology;

f. Concepts of ethics, nursing history and trends, and the professional and legal aspects of nursing, including regulations and sections of the Code of Virginia related to nursing; and

g. Concepts of leadership, management and patient education.

G. Resources, facilities and services.

1. Periodic evaluations of resources, facilities and services shall be conducted by the administration, faculty, students and graduates of the nursing education program.

2. Secretarial and other support services shall be provided.

3. Classrooms, conference rooms, laboratories, clinical facilities and offices shall be available to meet the objectives of the nursing education program and the needs of the students, faculty, administration and staff.

4. The library shall have holdings that are current, pertinent and accessible to students and faculty, and sufficient in number to meet the needs of the students and faculty.

5. Written agreements with cooperating agencies shall be developed, maintained and periodically reviewed. The agreement shall:

a. Ensure full control of student education by the

faculty of the nursing education program, including the selection and supervision of learning experiences.

b. Provide that an instructor shall be present on the clinical unit(s) to which students are assigned for direct patient care.

c. Provide for cooperative planning with designated agency personnel.

6. Any observational experiences shall be planned in cooperation with the agency involved to meet stated course objectives.

7. Cooperating agencies shall be approved by the appropriate accreditation, evaluation or licensing bodies, if such exist.

H. Program changes requiring board of nursing approval.

The following proposed changes require board approval prior to their implementation:

1. Proposed changes in the nursing education program's philosophy and objectives that result in program revision.

2. Proposed changes in the curriculum that result in alteration of the length of the nursing education program.

3. Proposed additions, deletions or major revisions of courses.

I. Procedure for approval of program change.

1. When a program change is contemplated, the program director shall inform the board or board representative.

2. When a program change is requested, a plan shall be submitted to the board including:

a. Proposed change,

b. Rationale for the change,

c. Relationship of the proposed change to the present program.

3. Twelve copies of these materials shall be submitted to the board at least three weeks prior to the board meeting at which the request will be considered.

§ 2.3. Procedure for maintaining approval.

A. The program director of each nursing education program shall submit an annual report to the board.

B. Each nursing education program shall be reevaluated at least every eight years and shall require:

1. A comprehensive self-evaluation report based on § 2.2 of these regulations, and
2. A survey visit by a representative(s) of the board on dates mutually acceptable to the institution and the board.

C. The self-evaluation and survey visit reports shall be presented to the board for consideration and action at a regularly scheduled board meeting. The reports and the action taken by the board shall be sent to the appropriate administrative officers of the institution. In addition, a copy shall be forwarded to the executive officer of the state agency or agencies having program approval authority or coordinating responsibilities for the governing institutions.

D. Interim visits shall be made to the institution by board representatives at any time within the eight-year period either by request or as deemed necessary by the board.

E. A nursing education program shall continue to be approved provided the requirements set forth in § 2.2 of these regulations are attained and maintained.

F. If the board determines that a nursing education program is not maintaining the requirements of § 2.2 of these regulations, the program shall be placed on conditional approval and the governing institution shall be given a reasonable period of time to correct the identified deficiencies. The institution may request a hearing before the board and the provisions of the Administrative Process Act shall apply. (§ 9-6.14:1 et seq.)

G. If the governing institution fails to correct the identified deficiencies within the time specified by the board, the board shall withdraw the approval following a hearing held pursuant to the provisions of the Administrative Process Act. (§ 9-6.14:1 et seq.) Sections 2.4, B and C of these regulations shall apply to any nursing education program whose approval has been withdrawn.

§ 2.4. Closing of an approved nursing education program.

A. Voluntary closing.

When the governing institution anticipates the closing of a nursing education program, it shall notify the board in writing, stating the reason, plan and date of intended closing. The governing institution shall choose one of the following closing procedures:

1. The program shall continue until the last class enrolled is graduated.
 - a. The program shall continue to meet the standards for approval until all of the enrolled students have

graduated.

- b. The date of closure is the date on the degree, diploma or certificate of the last graduate.

- c. The governing institution shall notify the board of the closing date.

2. The program shall close after the governing institution has assisted in the transfer of students to other approved programs.

- a. The program shall continue to meet the standards required for approval until all students are transferred.

- b. A list of the names of students who have been transferred to approved programs and the date on which the last student was transferred shall be submitted to the board by the governing institution.

- c. The date on which the last student was transferred shall be the closing date of the program.

B. Closing as a result of denial or withdrawal or approval.

When the board denies or withdraws approval of a program, the governing institution shall comply with the following procedures:

1. The program shall close after the institution has made a reasonable effort to assist in the transfer of students to other approved programs. A time frame for the transfer process shall be established by the board.

2. A list of the names of students who have transferred to approved programs and the date on which the last student was transferred shall be submitted to the board by the governing institution.

3. The date on which the last student was transferred shall be the closing date of the program.

C. Custody of records.

Provision shall be made for custody of records as follows:

1. If the governing institution continues to function, it shall assume responsibility for the records of the students and the graduates. The institution shall inform the board of the arrangements made to safeguard the records.

2. If the governing institution ceases to exist, the academic transcript of each student and graduate shall be transferred by the institution to the board for safekeeping.

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§ 2.5. Clinical nurse specialist education program.

An approved program shall be offered by:

1. A nationally accredited school of nursing within a college or university that offers a master's degree in nursing designed to prepare a registered nurse for advanced practice in a clinical specialty in nursing; or
2. A college or university that offers a master's degree consistent with the requirements of a national certifying organization as defined in § 1.1 of these regulations.

PART III. LICENSURE AND PRACTICE.

§ 3.1. Licensure by examination.

A. The board shall administer examinations for registered nurse licensure and examinations for practical nurse licensure no less than twice a year.

B. The minimum passing score on the examination for registered nurse licensure shall be determined by the board.

C. If a candidate does not take the examination when scheduled, the application shall be retained on file as required for audit and the candidate must file a new application and fee to be rescheduled.

D. Any applicant suspected of giving or receiving unauthorized assistance during the writing of the examination shall be noticed for a hearing before the board to determine whether the license shall be issued.

E. The board shall not release examination results of a candidate to any individual or agency without written authorization from the applicant or licensee.

F. An applicant for the licensing examination shall:

1. File the required application and fee no less than 60 days prior to the scheduled date of the examination.
2. Arrange for the board to receive the final certified transcript from the nursing education program at least 15 days prior to the examination date or as soon thereafter as possible. The transcript must be received prior to the reporting of the examination results to candidates.

G. Fifteen days prior to an examination date, all program directors shall submit a list of the names of those students who have completed or are expected to complete the requirements for graduation since the last examination. Any change in the status of a candidate within the above specified 15-day period shall be reported to the board immediately.

H. Practice of nursing pending receipt of examination results.

1. Graduates of approved nursing education programs may practice nursing in Virginia pending the results of the first licensing examination given by a board of nursing following their graduation, provided they have filed an application for licensure in Virginia. Candidates taking the examination in Virginia shall file the application for licensure by examination. Candidates taking the examination in other jurisdictions shall file the application for licensure by endorsement.

2. Candidates who practice nursing as provided in § 3.1 I 1 of these regulations shall use the designation "R.N. Applicant" or "L.P.N. Applicant" when signing official records.

3. The designations "R.N. Applicant" and "L.P.N. Applicant" shall not be used by applicants who do not take or who have failed the first examination for which they are eligible.

I. Applicants who fail the examination.

1. An applicant who fails the licensing examination shall not be licensed or be authorized to practice nursing in Virginia.

2. An applicant for reexamination shall file the required application and fee no less than 60 days prior to the scheduled date of the examination.

3. Applicants who have failed the licensing examination in another U.S. jurisdiction and who meet the qualifications for licensure in this jurisdiction may apply for licensure by examination in Virginia. Such applicants shall submit the required application and fee. Such applicants shall not, however, be permitted to practice nursing in Virginia until the requisite license has been issued.

§ 3.2. Licensure by endorsement.

A. A graduate of an approved nursing education program who has been licensed by examination in another U.S. jurisdiction and whose license is in good standing, or is eligible for reinstatement, if lapsed, shall be eligible for licensure by endorsement in Virginia, provided the applicant satisfies the requirements for registered nurse or practical nurse licensure.

B. An applicant for licensure by endorsement shall submit the required application and fee and submit the required form to the appropriate credentialing agency in the state of original licensure for verification of licensure. Applicants will be notified by the board after 30 days, if the completed verification form has not been received.

C. If the application is not completed within one year of

the initial filing date, the application shall be retained on file by the board as required for audit.

§ 3.3. Licensure of applicants from other countries.

A. Applicants whose basic nursing education was received in, and who are duly licensed under the laws of another country, shall be scheduled to take the licensing examination provided they meet the statutory qualifications for licensure. Verification of qualification shall be based on documents submitted as required in § 3.3 B and C of these regulations.

B. Such applicants for registered nurse licensure shall:

1. Submit evidence of a passing score on the Commission on Graduates of Foreign Nursing Schools Qualifying Examination; and
2. Submit the required application and fee for licensure by examination.

C. Such applicants for practical nurse licensure shall:

1. Request a transcript from the nursing education program to be submitted directly to the board office;
2. Provide evidence of secondary education to meet the statutory requirements;
3. Request that the credentialing agency, in the country where licensed, submit the verification of licensure; and
4. Submit the required application and fee for licensure by examination.

§ 3.4. Renewal of licenses.

A. Licensees born in even-numbered years shall renew their licenses by the last day of the birth month in even-numbered years. Licensees born in odd-numbered years shall renew their licenses by the last day of the birth month in odd-numbered years.

B. No less than 30 days prior to the last day of the licensee's birth month, an application for renewal of license shall be mailed by the board to the last known address of each licensee, who is currently licensed.

C. The licensee shall complete the application and return it with the required fee.

D. Failure to receive the application for renewal shall not relieve the licensee of the responsibility for renewing the license by the expiration date.

E. The license shall automatically lapse if the licensee fails to renew by the last day of the birth month.

F. Any person practicing nursing during the time a

license has lapsed shall be considered an illegal practitioner and shall be subject to prosecution under the provisions of § 54.1-3008 of the Code of Virginia.

§ 3.5. Reinstatement of lapsed licenses.

A. A nurse whose license has lapsed shall file a reinstatement application and pay the current renewal fee and the reinstatement fee.

B. The board may request evidence that the nurse is prepared to resume practice in a competent manner.

§ 3.6. Replacement of lost license.

A. The licensee shall report in writing the loss of the original certificate of registration or the current license.

B. A duplicate license for the current renewal period shall be issued by the board upon receipt of the required form and fee.

§ 3.7. Evidence of change of name.

A licensee who has changed his name shall submit as legal proof to the board a copy of the marriage certificate or court order evidencing the change. A duplicate license shall be issued by the board upon receipt of such evidence and the required fee.

§ 3.8. Requirements for current mailing address.

A. All notices, required by law and by these regulations to be mailed by the board to any licensee, shall be validly given when mailed to the latest address on file with the board.

B. Each licensee shall maintain a record of his current mailing address with the board.

C. Any change of address by a licensee shall be submitted in writing to the board within 30 days of such change.

§ 3.9. Licensed practical nursing is performed under the direction or supervision of a licensed medical practitioner, a registered nurse or a licensed dentist within the context of § 54.1-3408 of the Code of Virginia.

§ 3.10. Clinical nurse specialist registration.

A. Initial registration.

An applicant for initial registration as a clinical nurse specialist shall:

1. Be currently licensed as a registered nurse in Virginia;
2. Submit evidence of graduation from an approved program as defined in § 2.5 of these regulations;

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3. Submit evidence of current specialty certification from a national certifying organization as defined in § 1.1 of these regulations; and

4. Submit the required application and fee.

B. Renewal of registration.

1. Registration as a clinical nurse specialist shall be renewed biennially at the same time the registered nurse license is renewed.

2. The clinical nurse specialist shall complete the renewal application and return it with the required fee and evidence of current specialty certification unless registered in accordance with an exception .

3. Registration as a clinical nurse specialist shall lapse if the registered nurse license is not renewed and may be reinstated as follows:

a. Reinstatement of R.N. license;

b. Payment of reinstatement and current renewal fees; and

c. Submission of evidence of continued specialty certification unless registered in accordance with an exception.

§ 3.11. Clinical nurse specialist practice.

A. The practice of clinical nurse specialists shall be consistent with the

1. Education required in § 2.5 of these regulations, and

2. Experience required for specialist certification.

B. The clinical nurse specialist shall provide those advanced nursing services that are consistent with the standards of specialist practice as established by a national certifying organization for the designated specialty and in accordance with the provisions of Title 54.1 of the Code of Virginia.

C. Advanced practice as a clinical nurse specialist shall include but shall not be limited to performance as an expert clinician to:

1. Provide direct care and counsel to individuals and groups;

2. Plan, evaluate and direct care given by others; and

3. Improve care by consultation, collaboration, teaching and the conduct of research.

PART IV. DISCIPLINARY PROVISIONS.

§ 4.1. The board has the authority to deny, revoke or suspend a license issued, or to otherwise discipline a licensee upon proof that the licensee has violated any of the provisions of § 54.1-3007 of the Code of Virginia. For the purpose of establishing allegations to be included in the notice of hearing, the board has adopted the following definitions:

A. Fraud or deceit shall mean, but shall not be limited to:

1. Filing false credentials;

2. Falsely representing facts on an application for initial license, reinstatement or renewal of a license; or

3. Giving or receiving assistance in writing the licensing examination.

B. Unprofessional conduct shall mean, but shall not be limited to:

1. Performing acts beyond the limits of the practice of professional or practical nursing as defined in Chapter 30 of Title 54.1, or as provided by §§ 54.1-2901 and 54.1-2957 of the Code of Virginia;

2. Assuming duties and responsibilities within the practice of nursing without adequate training or when competency has not been maintained;

3. Obtaining supplies, equipment or drugs for personal or other unauthorized use;

4. Employing or assigning unqualified persons to perform functions that require a licensed practitioner of nursing;

5. Falsifying or otherwise altering patient or employer records;

6. Abusing, neglecting or abandoning patients or clients; or

7. Practice of a clinical nurse specialist beyond that defined in § 3.11. of these regulations.

8. Holding self out as or performing acts constituting the practice of a clinical nurse specialist unless so registered by the Board.

§ 4.2. Any sanction imposed on the registered nurse license of a clinical nurse specialist shall have the same effect on the clinical nurse specialist registration.

PART V. CERTIFIED NURSE AIDES.

§ 5.1. Definitions.

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

"Nurse aide education program" means a program designed to prepare nurse aides for certification.

"Nursing facility" means a licensed nursing home or a Medicare or Medicaid certified skilled or intermediate care facility or unit.

"Primary instructor" means a registered nurse who is responsible for teaching and evaluating the students enrolled in a nurse aide education program.

"Program coordinator" means a registered nurse who is administratively responsible and accountable for a nurse aide education program.

"Program provider" means an entity which conducts a nurse aide education program.

§ 5.2. Delegation of authority.

The executive director of the board shall issue a certificate as a certified nurse aide to each applicant who qualifies for such a certificate under §§ 54.1-3025, 54.1-3026 and 54.1-3028 of the Code of Virginia.

§ 5.3. Nurse aide education programs.

A. Establishing a nurse aide education program.

1. A program provider wishing to establish a nurse aide education program shall submit an application to the board at least 90 days in advance of the expected opening date.

2. The application shall provide evidence of the ability of the institution to comply with § 5.3 B of these regulations.

3. The application shall be considered at a meeting of the board. The board shall, after review and consideration, either grant or deny approval.

4. If approval is denied the program provider may request a hearing before the board and the provisions of the Administrative Process Act shall apply. (§ 9-6.14:1 et seq.)

B. Maintaining an approved nurse aide education program.

To maintain approval, the nurse aide education program shall demonstrate evidence of compliance with the following essential elements:

1. Curriculum content and length as set forth in §§ 5.3 D and 5.3 G of these regulations.

2. Maintenance of qualified instructional personnel as set forth in § 5.3 C of these regulations.

3. Classroom facilities that meet requirements set forth in § 5.3 H of these regulations.

4. Maintenance of records as set forth in § 5.3 E of these regulations.

5. Skills training experience in a nursing facility which was not terminated from the Medicare or Medicaid programs during the past two years.

C. Instructional personnel.

1. Program coordinator.

a. The program coordinator in a nursing facility based program may be the director of nursing services. The director of nursing may assume the administrative responsibility and accountability for the nurse aide education program.*

b. The primary instructor may be the program coordinator in any nurse aide education program.

2. Primary instructor.

a. Qualifications.

(1) Nursing facility based programs.

(a) The primary instructor shall hold a current Virginia license as a registered nurse; and

(b) Have at least one year of experience, within the preceding five years, in a nursing facility.

(2) Programs other than those based in nursing facilities.

(a) The primary instructor, who does the actual teaching of the students, shall hold a current Virginia license as a registered nurse; and

(b) Shall have two years of experience, within the preceding five years, in caring for the elderly or chronically ill of any age. Such experience may include, but not be limited to, employment in a nurse aide education program or employment in or supervision of nursing students in a nursing facility or unit, geriatrics department, chronic care hospital, home care or other long-term care setting. Experience should include varied responsibilities, such as direct resident care, supervision and education.

b. Responsibilities. The primary instructor shall:

(1) Participate in the planning of each learning experience;

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- (2) Ensure that course objectives are accomplished;
- (3) Ensure that the provisions of § C 6 of these regulations are maintained;
- (4) Maintain records as required by § 5.3 E of these regulations; and
- (5) Perform other activities necessary to comply with § 5.3 B of these regulations.

3. Other instructional personnel.

a. Qualifications.

(1) A registered nurse shall:

- (a) Hold a current Virginia license as a registered nurse; and
- (b) Have had at least one year, within the preceding five years, of direct patient care experience as a registered nurse with the elderly or chronically ill, or both, of any age.

(2) A licensed practical nurse shall:

- (a) Hold a current Virginia license as a practical nurse;
- (b) Hold a high school diploma or equivalent;
- (c) Have been graduated from a state-approved practical nursing program; and
- (d) Have had at least two years, within the preceding five years, of direct patient care experience with the elderly or chronically ill, or both, of any age.

b. Responsibilities. Other personnel shall provide instruction under the general supervision of the primary instructor.

4. Prior to being assigned to teach the nurse aide education program, all instructional personnel shall demonstrate competence to teach adults by one of the following:

a. Complete satisfactorily a "train-the-trainer" program approved by the board. Such a program shall be approved by the board for five years, at which time the sponsor must request reapproval of the program. The content of the program must include:

- (1) Basic principles of adult learning;
- (2) Teaching methods and tools for adult learners; and

(3) Evaluation strategies and measurement tools for assessing the learning outcomes; or

b. Complete satisfactorily a credit or noncredit course or courses approved by the board. Such courses shall be evaluated for approval by the board upon request from the individual taking the course. The content of such credit or noncredit course shall be comparable to that described in § 5.4 C 4(a) of these regulations; or

c. Provide evidence acceptable to the board of experience in teaching adult learners within the preceding five years.

5. The program may utilize resource personnel to meet the planned program objectives for specific topics.

6. When students are giving direct care to clients in clinical areas, instructional personnel must be on site and the ratio of students to each instructor shall not exceed ten students to one instructor.

D. Curriculum.

1. The objective of the nurse aide education program shall be to prepare a nurse aide to provide quality services to clients under the supervision of licensed personnel. The graduate of the nurse aide education program shall be prepared to:

- a. Communicate and interact competently (emphasis added) on a one-to-one basis with the clients;
- b. Demonstrate sensitivity to clients' emotional, social, and mental health needs through skillful directed interactions;
- c. Assist clients in attaining and maintaining functional independence;
- d. Exhibit behavior in support and promotion of clients' rights; and
- e. Demonstrate skills in observation and documentation needed to participate in the assessment of clients' health, physical condition and well-being.

2. Content.

The curriculum shall include, but shall not be limited to, classroom and clinical instruction in the following:

a. Initial core curriculum (minimum 16 hours). The classroom instruction prior to the direct involvement of a student with a nursing facility client must include, at a minimum, the topics listed below:

- (1) Communication and interpersonal skills,

- (2) Infection control,
- (3) Safety and emergency procedures,
- (4) Promoting client independence, and
- (5) Respecting clients' rights.

b. Basic skills.

(1) Recognizing abnormal signs and symptoms of common diseases and conditions (e.g., shortness of breath, rapid respirations, fever, coughs, chills, pains in chest, blue color to lips, pain in abdomen, nausea, vomiting, drowsiness, sweating, excessive thirst, pus, blood or sediment in urine, difficulty urinating, urinating in frequent small amounts, pain or burning on urination, urine with dark color or strong odor) which indicate that the licensed nurse should be notified.

- (2) Measuring and recording routine vital signs.
- (3) Measuring and recording height and weight.
- (4) Caring for the clients' environment.
- (5) Measuring and recording fluid and food intake and output.
- (6) Performing basic emergency measures.
- (7) Caring for client when death is imminent.

c. Personal care skills.

- (1) Bathing and oral hygiene.
- (2) Grooming.
- (3) Dressing.
- (4) Toileting.
- (5) Assisting with eating and hydration including proper feeding techniques.
- (6) Caring for skin.

d. Individual client's needs including mental health and social service needs and care of cognitively impaired clients.

- (1) Identifying the psychosocial characteristics of the populations who reside in nursing homes.
- (2) Modifying behavior in response to behavior of clients.
- (3) Identifying developmental tasks associated with the aging process.

(4) Providing training in and the opportunity for self care according to clients' capabilities.

(5) Demonstrating principles of behavior management by reinforcing appropriate behavior and causing inappropriate behavior to be reduced or eliminated.

(6) Demonstrating skills supporting age-appropriate behavior by allowing the client to make personal choices, providing and reinforcing other behavior consistent with clients' dignity.

(7) Utilizing client's family or concerned others as a source of emotional support.

e. Skills for basic restorative services.

- (1) Using assistive devices in ambulation, eating and dressing.
- (2) Maintaining range of motion.
- (3) Turning and positioning, both in bed and chair.
- (4) Transferring.
- (5) Bowel and bladder training.
- (6) Caring for and using prosthetic devices.

f. Clients' rights.

- (1) Providing privacy and maintaining confidentiality.
- (2) Promoting the client's right to make personal choices to accommodate individual needs.
- (3) Giving assistance in resolving grievances.
- (4) Providing assistance necessary to participate in client and family groups and other activities.
- (5) Maintaining care and security of the client's personal possessions.
- (6) Providing care that maintains the client free from abuse, mistreatment or neglect and reporting improper care to appropriate persons.
- (7) Maintaining the client's environment and care to minimize the need for physical and chemical restraints.

3. Unit objectives.

a. Objectives for each unit of instruction shall be stated in behavioral terms including measurable performance criteria.

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b. Objectives shall be reviewed with the students at the beginning of each unit.

E. Records.

1. Each nurse aide education program shall develop an individual performance record of major duties and skills taught. This record will consist of, at a minimum, a listing of the duties and skills expected to be learned in the program, space to record when the nurse aide student performs this duty or skill, spaces to note satisfactory or unsatisfactory performance, the date of performance, and the instructor supervising the performance. At the completion of the nurse aide education program, the nurse aide and his employer must receive a copy of this record.

2. A record of the reports of graduates' performance on the approved competency evaluation program shall be maintained.

3. A record that documents the disposition of complaints against the program shall be maintained.

F. Student identification.

The nurse aide students shall wear identification that is clearly recognizable to clients, visitors and staff.

G. Length of program.

1. The program shall be at least 80 hours in length.

2. The program shall provide for at least 16 hours of instruction prior to direct involvement of a student with a nursing facility client.

3. Skills training in clinical settings shall be at least 40 hours. Five of the clinical hours may be in a setting other than a nursing home.

4. Employment orientation to facilities used in the education program must not be included in the 80 hours allotted for the program.

H. Classroom facilities.

The nurse aide education program shall provide facilities that meet federal and state requirements including

1. Comfortable temperatures.

2. Clean and safe conditions.

3. Adequate lighting.

4. Adequate space to accommodate all students.

5. All equipment needed, including audio-visual equipment and that needed for simulating resident care.

I. Program review.

1. Each nurse aide education program shall be reviewed on site by an agent of the board at least every two years following initial review.

2. The report of the site visit shall be presented to the board for consideration and action. The report and the action taken by the board shall be sent to the appropriate administrative officer of the program.

3. The program coordinator shall prepare and submit a program evaluation report on a form provided by the board in the intervening year that an on site review is not conducted.

4. A nurse aide education program shall continue to be approved provided the requirements set forth in subsections B through H of § 5.3 of these regulations are maintained.

5. If the board determines that a nurse aide education program is not maintaining the requirements of subsections B through H of § 5.3 of these regulations, the program shall be placed on conditional approval and be given a reasonable period of time to correct the identified deficiencies. The program provider may request a hearing before the board and the provisions of the Administrative Process Act shall apply. (§ 9-6.14:1 et seq.)

6. If the program fails to correct the identified deficiencies within the time specified by the board, the board shall withdraw the approval following a hearing held pursuant to the provisions of the Administrative Process Act. (§ 9-6.14:1 et seq.)

J. Curriculum changes.

Changes in curriculum must be approved by the board prior to implementation and shall be submitted for approval at the time of a report of a site visit or the report submitted by the program coordinator in the intervening years.

K. Closing of a nurse education program.

When a nurse aide education program closes, the program provider shall:

1. Notify the board of the date of closing.

2. Submit to the board a list of all graduates with the date of graduation of each.

§ 5.4. Nurse aide competency evaluation.

A. The board may contract with a test service for the development and administration of a competency evaluation.

B. All individuals completing a nurse aide education program in Virginia shall successfully complete the competency evaluation required by the board prior to making application for certification and to using the title Certified Nurse Aide.

C. The board shall determine the minimum passing score on the competency evaluation.

§ 5.5. Nurse aide registry.

A. Initial certification by examination.

1. To be placed on the registry and certified, the nurse aide must:

a. Satisfactorily complete a nurse aide education program approved by the board; or

b. Be enrolled in a nursing education program preparing for registered nurse or practical nurse licensure, have completed at least one nursing course which includes clinical experience involving client care; or

c. Have completed a nursing education program preparing for registered nurse licensure or practical nurse licensure; and

d. Pass the competency evaluation required by the board; and

e. Submit the required application and fee to the board.

2. Initial certification by endorsement.

a. A graduate of a state approved nurse aide education program who has satisfactorily completed a competency evaluation program and been registered in another state may apply for certification in Virginia by endorsement.

b. An applicant for certification by endorsement shall submit the required application and fee and submit the required verification form to the credentialing agency in the state where registered, certified or licensed within the last two years.

3. Initial certification shall be for two years.

B. Renewal of certification.

1. No less than 30 days prior to the expiration date of the current certification, an application for renewal shall be mailed by the board to the last known address of each currently registered certified nurse aide.

2. The certified nurse aide shall return the completed application with the required fee and verification of

performance of nursing-related activities for compensation within the preceding two years.

3. Failure to receive the application for renewal shall not relieve the certificate holder of the responsibility for renewing the certification by the expiration date.

4. A certified nurse aide who has not performed nursing-related activities for compensation during the two years preceding the expiration date of the certification shall repeat an approved nurse aide education program and the nurse aide competency evaluation prior to applying for recertification.

C. Reinstatement of lapsed certification.

An individual whose certification has lapsed shall file the required application and renewal fee and:

1. Verification of performance of nursing-related activities for compensation within the preceding two years; or

2. When nursing activities have not been performed during the preceding two years, evidence of having repeated an approved nurse aide education program and the nurse aide competency evaluation.

D. Evidence of change of name.

A certificate holder who has changed his name shall submit as legal proof to the board a copy of the marriage certificate or court order authorizing the change. A duplicate certificate shall be issued by the board upon receipt of such evidence and the required fee.

E. Requirements for current mailing address.

1. All notices required by law and by these regulations to be mailed by the board to any certificate holder shall be validly given when mailed to the latest address on file with the board.

2. Each certificate holder shall maintain a record of his current mailing address with the board.

3. Any change of address by a certificate holder shall be submitted in writing to the board within 30 days of such change.

§ 5.6. The board has the authority to deny, revoke or suspend a certificate issued, or to otherwise discipline a certificate holder upon proof that he has violated any of the provisions of § 54.1-3007 of the Code of Virginia. For the purpose of establishing allegations to be included in the notice of hearing, the board has adopted the following definitions:

1. Fraud or deceit shall mean, but shall not be limited to:

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- a. Filing false credentials;
 - b. Falsely representing facts on an application for initial certification, reinstatement or renewal of a certificate; or
 - c. Giving or receiving assistance in taking the competency evaluation.
2. Unprofessional conduct shall mean, but shall not be limited to:
- a. Performing acts beyond those authorized for practice as a nurse aide as defined in Chapter 30 of Title 54.1;
 - b. Assuming duties and responsibilities within the practice of a nurse aide without adequate training or when competency has not been maintained;
 - c. Obtaining supplies, equipment or drugs for personal or other unauthorized use;
 - d. Falsifying or otherwise altering client or employer records;
 - e. Abusing, neglecting or abandoning clients; or
 - f. Having been denied a license or having had a license issued by the board revoked or suspended.

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 (VR 640-02).

The following regulations amend various sections of VR 640-02. The amended regulations are 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 amendment to § 4 allows the Treasury Board to increase the required collateral of any and all savings institutions above 100% of the public deposits held. The amendment to § 7 states that pledged securities which are difficult to value or subject to rapid decline in value may be valued at less than their market value. The amendment to § 8 permits the Treasury Board to select a single escrow agent to hold pledged collateral and requires public deposits to be collateralized at all times. The new § 13 clarifies that a depository who no longer has the authority to receive public deposits is still subject to the provisions of the Act and the regulations as long as it continues to hold public deposits. Other changes to the regulations and the accompanying forms are either clarifying or cosmetic in nature or necessary to conform with statutory changes.

B. Background.

Upon its effective date of January 1, 1974, the Security for Public Deposits 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"

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* Implementing instructions, dated April 1989, from the Health Care Financing Administration, of the U.S. Department of Health and Human Services, state that, "When the program coordinator is the director of nursing, qualified assistance must be available so that the nursing service responsibilities of the director of nursing are covered."
.....

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: October 31, 1991.

Summary:

A. Amendments.

These regulations amend and supersede the regulations adopted March 18, 1987.

The Virginia Security for Public Deposits Act (the Act), Code of Virginia, §§ 2.1-359 through 2.1-370,

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 federal deposit insurance applicable to the account 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 at the time a deposit is made. The financial institution 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 of the financial institution, and a copy will be forwarded to the State Treasurer.

C. 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 State Comptroller, the State Tax Commissioner and four citizen members appointed by the Governor.

D. 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 under which public deposits may be received and 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.

E. Administration.

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 directed to:

*Treasurer of Virginia
P.O. Box 6-H
Richmond, Virginia 23215*

F. Effective Date.

The Act became effective January, 1974, and was amended effective April 8, 1987. Emergency regulations are effective from November 1, 1990, through October 31, 1991.

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~~ *October 31, 1991*.

§ 3. Required collateral for banks.

~~A.~~ The required collateral of a national or state chartered bank to secure public deposits shall be determined according to the following applicable criteria and 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. Fifty percent of the actual public deposits held at the close of business on the last

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banking day in of the preceding [*reporting immediately preceding*] month, or 50% of the average balance of all public deposits for the preceding [*reporting immediately preceding*] month, whichever is greater;

2. *Seventy-five percent.* In the event [*that*] a bank's average daily public deposits for the [*reporting immediately preceding*] month exceed one-fifth of its average daily total deposits, the required collateral will be Seventy-five percent 75% of the bank's average daily balance for the preceding month or the actual public deposits held as aforesaid, at the close of business on the last banking day of the [*reporting immediately preceding*] month, or 75% of the average balance of all public deposits for the [*reporting immediately preceding*] month, 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.* In the event [*that*] a bank's average daily public deposits for the [*reporting immediately 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, or in the event that a bank's average daily public deposits for the [*reporting immediately preceding*] month exceed one-third of its average daily total deposits, or in the event that a bank has not been actively engaged in the commercial banking business for at least one year, the required collateral will be One hundred percent 100% of the bank's average daily balance for the preceding month or the actual public deposits held ; as aforesaid, at the close of business on the last banking day of the [*reporting immediately preceding*] month, or 100% of the average balance of all public deposits for the [*reporting immediately preceding*] month, 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 a bank has repeatedly violated the pledging statutes and regulations or for other

reasons deemed sufficient, [*such as the financial condition of the bank,*] 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 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 deposits held by such savings institution for the [*reporting immediately 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 of the [*reporting immediately preceding*] month.

In the event that a savings institution has violated the pledging statutes and regulations, or for other reasons deemed sufficient, [*such as the financial condition of the savings institution,*] 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 sum 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 and the average balance 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 federal deposit insurance .

§ 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 ~~these~~ 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 , *African Development Bank* [,] 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 African Development Bank, or 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~~ *qualified public depository*] 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~~ *qualified public depository*] 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 of the preceding [~~reporting month, immediately 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 . In the event the market value of the collateral declines by 10% or more between said date and the date of submitting the monthly report to the Treasury Board, the market value on the submission date shall be used to determine any additional collateral requirements.

The State Treasurer, upon written notice to any or all [financial institutions qualified public depositories] , may require as deemed necessary for reporting purposes that certain securities that are difficult-to-value or 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. 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 an escrow agent or agents approved by the Treasury Board.

Whether or not a [*qualified public*] depository has eligible collateral deposited as heretofore provided at the time it receives a public deposit, if such deposit would result in an increase in the [*qualified public*] depository's required collateral computed as of the day on which the deposit is received, such [*qualified public*] depository shall immediately deposit sufficient securities to increase its collateral to an amount equal to that determined pursuant to § 3 or § 4 of these regulations, whichever is applicable, utilizing the [*qualified public*] 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 [*immediately*] preceding [~~calendar~~] month. Written notice of deposit of collateral shall be submitted to the State Treasurer.

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 [qualified public] depository's liabilities under the Act in the event the collateral needs to be liquidated.

§ 8. § 9. Substitution of eligible collateral.

A substitution of eligible collateral may be made by the [~~depository financial institution~~ *qualified public depository*] at any time provided that the market value of the securities substituted is equal to or greater than the

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market value of the securities withdrawn.

At the time of making a [*collateral*] substitution, the [~~depository financial institution~~ *qualified public depository*] shall prepare a request for the substitution upon a form approved by the State Treasurer and deliver the original to the escrow [~~bank agent~~] and a copy to the State Treasurer. The escrow [~~bank agent~~] shall not allow a [*collateral*] 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. *In the event the market value of the substituted collateral is not equal to or greater than the value of the securities to be withdrawn [as determined in accordance with § 7 of this regulation,] the [qualified public] depository shall receive written approval of the State Treasurer.*

§ 9. § 10. Withdrawal of collateral.

A [~~financial institution~~ *qualified public depository*] 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~~ *qualified public depository*] 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~~ *qualified public depository'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 *The escrow [bank agent] or trust company holding securities as collateral for another financial institution shall not permit the [depositing financial institution *qualified public depository*] to withdraw same collateral without the written approval of the State Treasurer.*

§ 10. § 11. Reports by qualified public depositories.

Within 10 business days after the end of each *every* 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 [*reporting immediately preceding*] month ; and ; the 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 ; *the average balance of all bank deposits for the [reporting immediately preceding] month; the total required collateral; and the total par value and market value of collateral. Included with this report shall be a detailed schedule of pledged collateral at its current market value, determined pursuant to § 7 of these regulations .*

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 ~~or~~ of such depositor on the last business day in the [*immediately preceding*] 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 *every* 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~~ *on*] deposit as of the close of business on the last banking day of the calendar quarter being reported. *At the same time a copy of [said this] 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 § 2, 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 [qualified] public depository's collateral account and [its] 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 institution of any irregularities, including, but not limited to, the late filing of the required monthly reports or of deficiencies in the [financial institution's qualified public depository'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. Suspension of authority to receive public deposits.

For failure to comply with the Act or the regulations, the Treasury Board may remove from a qualified public depository the authority to receive further public deposits. Such depository remains fully subject to the provisions of the Act and the regulations as to any public deposits that it continues to hold during a period of removal of its authority to receive further public deposits, including without limitation the collateralization and reporting requirements, and continues to be deemed a qualified public depository for purposes of § [§] 2.1-363 [and 2.1-363.1] of the Act.

§ 14. Exception reports by public depositors.

Upon receipt of the quarterly public depositor report, as stated in § 10 § 11 , [the] public depositors [will shall] notify the State Treasurer of any unresolved discrepancy between the information provided and the public depositors' records.

NOTICE: The forms used in administering the Department of the Treasury Regulations are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Department of the Treasury, 101 N. 14th Street, 3rd Floor, Richmond, Virginia, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia.

Form No. 1001 Treas. "Public Deposit Security Agreement"

Form No. 1002 Treas. "Public Deposit Safekeeping Agreement"

Form No. 1004 Treas. "Notice of Election to Require Security for Public Deposits"

Exhibit 3 "Public Depository Monthly Report"

Exhibit 4 Listing of public depositor information

Schedule "A"

Exhibit 5 "Withdrawal of Collateral"

Exhibit 6 "Deposit of Collateral"

Exhibit 7 "Request for Substitution of Collateral"

VIRGINIA RACING COMMISSION

Title of Regulation: VR 662-03-03. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering - Stewards.

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

Effective Date: September 26, 1991.

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. This final regulation is to establish the duties, responsibilities and powers of the stewards who shall oversee the conduct of horse racing with pari-mutuel wagering.

VR 662-03-03. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering - Stewards.

§ 1. Definitions.

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

"Disciplinary action" means an action taken by the stewards or the commission for violation of federal or state law, local ordinance, or the regulations of the commission and may include any of the following:

1. Revocation of a permit;
2. Suspension of a permit;
3. Assessment of a fine;
4. Reprimand;
5. Probation; and
6. Any combination of the above.

"Disqualification" means a ruling by the stewards which revises the order of finish of a race.

"Fine" means a form of disciplinary action where a

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pecuniary punishment is imposed on the holder of a permit by the stewards or commission.

"Inquiry" means an investigation into the conduct of a race which is initiated by the stewards prior to declaring a race "official."

"Objection" means a complaint filed by an owner, trainer, jockey or driver against another horse, jockey or driver after a race but prior to the race being declared "official."

"Probation" means for a stipulated period a holder of a permit shall conduct himself according to terms and conditions established by the stewards.

"Protest" means a written statement filed before a race objecting to the eligibility of a horse or holder of a permit to participate in a race.

"Reprimand" means a form of disciplinary action where the holder of a permit is reprovved severely in writing by the stewards or the commission.

"Revocation" means a form of disciplinary action where the permit of a holder is recalled by the stewards or the commission.

"Suspension" means a form of disciplinary action where the permit of a holder is temporarily withdrawn by the stewards or the commission.

§ 2. Appointment.

There shall be three stewards for each race meeting licensed by the commission. Two of the stewards shall be appointed by the commission and the third shall be appointed by the licensee. The licensee shall disclose its nominee for steward to the commission no later than 45 days prior to the commencement of the race meeting. No steward shall be appointed by a licensee unless first approved by the commission.

§ 3. Senior Commonwealth Steward.

One of the two stewards appointed by the commission shall be designated as the Senior Commonwealth Steward. The Senior Commonwealth Steward shall preside at all informal fact-finding proceedings conducted by the stewards.

§ 4. Authority.

The stewards for each race meeting licensed by the commission shall be responsible to the commission for the conduct of the race meeting in accordance with the Code of Virginia and the regulations of the commission. The stewards shall have authority over all holders of permits and shall have authority to resolve conflicts or disputes that are related to the conduct of racing.

§ 5. General powers.

The stewards shall exercise immediate supervision, control and regulation of horse racing at each race meeting licensed by the commission and shall be responsible to the commission. The powers of the stewards shall include:

1. Determining all questions, disputes, protests, complaints, or objections concerning horse racing which arise during a race meeting and enforcing their rulings;
2. Taking disciplinary action against any holder of a permit found violating federal laws, state laws, local ordinances or regulations of the commission;
3. Reviewing applications for permits and either granting or denying the permits;
4. Enforcing the regulations of the commission in all matters pertaining to horse racing;
5. Issuing rulings pertaining to the conduct of horse racing;
6. Varying any arrangement for the conduct of a race meeting including but not limited to postponing a race or races, canceling a race, or declaring a race "no contest."
7. Requesting assistance from other commission employees, racing officials, members of industry or the licensee's security service in the investigation of possible rule infractions;
8. Conducting informal fact-finding proceedings on all questions, disputes, protests, complaints, or objections concerning racing matters; and
9. Substituting another qualified person where any permit holder is unable to perform his duties.

§ 6. Duties.

In addition to the duties necessary and pertinent to the general supervision, control and regulation of race meetings, the stewards shall have the following specific duties:

1. Causing investigations to be made in all instances of possible violations of federal laws, state laws, local ordinances and regulations of the commission;
2. Being present within the enclosure no less than 90 minutes before post time of the first race and remaining until 15 minutes after the last race is declared "official";
3. Being present in the stewards' stand during the running of all races;

4. Administering examinations for applicants applying for permits as trainers, jockeys, apprentice jockeys or farriers to determine the applicants qualifications for the permits;

5. Determining the identification of horses;

6. Determining eligibility of horses for [~~restricted~~ ~~raees~~ ~~aces~~ restricted] to Virginia-breds;

7. Determining eligibility of a horse or person to participate in a race;

8. Supervising the taking of entries and the drawing of post positions;

9. Approving or denying requests for horses to be excused from racing;

10. Locking the totalizator at the start of the race so that no more pari-mutuel tickets may be sold;

11. Determining alleged violations of these regulations in the running of any race through their own observation or by patrol judges and posting the "inquiry" sign on the infield results board [~~where~~ when] there are alleged violations;

12. Determining alleged violations of these regulations in the running of any race brought to their attention by any participant and posting the "objection" sign on the infield results board [~~where~~ when] there are alleged violations;

13. Causing the "official" sign to be posted on the infield results board after determining the official order of finish for the purposes of the pari-mutuel payout;

14. Reviewing the video tapes of the previous day's races and determining the jockeys whom the stewards feel should review the films for instructional purposes;

15. Making periodic inspections of the facilities within the enclosure including but not limited to the stable area, paddock, [and] jockeys' room;

16. Reporting their findings of their periodic inspections of the facilities to the commission;

17. Filing with the commission a written daily report which shall contain a detailed written record of all questions, disputes, protests, complaints or objections brought to the attention of the stewards, a summary of any interviews relating to these actions, copies of any rulings issued by the stewards, and any emergency actions taken and the basis for the actions; and

18. Submitting to the commission after the conclusion of the race meeting a written report setting out their

findings on the conduct of the race meeting, the condition of the facilities and any recommendation for improvement that they deem appropriate.

§ 7. Objections and protests.

The stewards receive and hear all objections lodged by jockeys or drivers after the completion of a race, and all protests lodged by holders of a permit before or after the completion of a race under the following provisions:

1. The stewards shall keep a written record of all objections and protests;

2. Jockeys shall indicate their intention of lodging an objection immediately upon arriving at the scales to weigh in;

3. Drivers shall indicate their intention of lodging an objection immediately after the race by reporting to the patrol judge;

4. If the placement of the starting gate or line is in error, a protest must be made prior to the time that the first horse enters the starting gate or line;

5. Protests, other than those arising out of the running of a race, shall be in writing, clearly stating the nature of the protest, signed by the holder of a permit making the protest, and filed with the stewards at least one hour before post time of the race out of which the protest arises;

6. Protests, arising out of the running of a race, must be made to the stewards as soon as possible after the completion of the race but before the race is declared official and the stewards may call and examine any witness;

7. Until a final determination is made on an objection or protest and any administrative remedies and all appeals thereof are exhausted, the purse money for the race shall be retained by the horsemen's bookkeeper or licensee and paid only upon the approval of the stewards or commission; and

8. A holder of a permit may not withdraw a protest without the permission of the stewards.

§ 8. Period of authority.

The period of authority shall commence at a period of time prior to the race meeting and shall terminate at a period of time after the end of the race meeting as designated by the commission.

§ 9. Appointment of substitute.

If any steward is absent at the time of the running of the race or is otherwise unable to perform his duties, the other two stewards shall agree on the appointment of a

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substitute to act for the absent steward. If a substitute is appointed, the commission shall be notified immediately followed by a written report, stating the name of the deputy steward, the reason for his appointment, and the races over which the substitute officiated.

§ 10. Initiate action.

The stewards may, from their observations, take notice of misconduct or violation of these regulations and institute investigations and disciplinary proceedings regarding possible violations of these regulations.

§ 11. Informal fact-finding proceedings.

Informal fact-finding proceedings conducted by the stewards includes the following:

1. The Senior Commonwealth Steward shall preside at the informal fact-finding proceeding;

2. The stewards may issue subpoenas to compel the attendance of witnesses or for the production of reports, books, papers, registration documents or any other materials they deem appropriate;

3. The stewards shall administer oaths to all witnesses;

4. The stewards may examine any witnesses at informal fact-finding proceedings;

5. Written notice shall be given to the holder of a permit in a reasonable time prior to the informal fact-finding proceeding;

6. The written notice shall inform the holder of a permit of the charges against him, the basis thereof and possible penalties;

7. The holder of a permit shall be informed of his right to counsel, the right to present a defense including witnesses for that purpose, and the right to cross-examine any witnesses;

8. The stewards may grant a continuance of any informal fact-finding proceeding for good cause; and

9. A recording of the proceedings shall be made and forwarded to the commission in the event of a request for a formal hearing.

§ 12. Emergency authority.

The stewards, in their discretion, may exercise emergency authority within the enclosure of a horse racing facility licensed by the commission under the following provisions:

1. When any racing official is unable to discharge his duties, the stewards may appoint a substitute;

2. The stewards may name a substitute jockey or driver for any horse;

3. The stewards may designate a substitute trainer for any horse; and

4. In the event of illness or injury to a horse or any other emergency before the start of a race, the stewards may excuse the horse from racing.

§ 13. Multiple wagering pools.

When the stewards determine that there is an irregular pattern of wagering or determine that the conduct of a race would not be in the best interests of horse racing in the Commonwealth, they have the authority to cancel any multiple wagering pool. The stewards shall submit a written report to the commission of every cancellation of a multiple wagering pool.

§ 14. Form reversal.

The stewards shall take notice of any reversal of form by any horse and shall conduct an inquiry of the horse's owner, trainer, jockey or driver, or other persons connected with the horse including any person found to have deliberately restrained or impeded a horse in order to cause it not to win or finish as near as possible to first.

§ 15. Extent of disqualification.

The stewards, in their discretion, may determine the extent of any disqualification and may place any disqualified horse behind others in the race with which it interfered or may place the offending horse last in the race.

§ 16. Disqualification of entry.

The stewards, in their discretion, may disqualify a coupled entry when they determine the act that led to the disqualification served to unduly benefit the other horse or horses in the coupled entry.

§ 17. Orders following disciplinary actions.

Any disciplinary action taken by the stewards or the commission shall be made in writing to the holder of a permit, setting forth the federal or state law, local ordinance or regulation that was violated, the date of the violation, the factual or procedural basis of the finding, the extent of the disciplinary action taken, and the date when the disciplinary action is to take effect. The order following disciplinary action may be hand delivered or mailed to the holder of the permit, but in either case, shall be duly acknowledged by the holder of a permit.

§ 18. Fines.

All fines imposed by the stewards or commission shall

be payable within 72 hours, excluding Saturdays, Sundays or holidays. Fines shall be payable in cash, checks or money orders.

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Title of Regulation: VR 662-03-04. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering - Commission Veterinarian.

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

Effective Date: September 26, 1991.

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. This final regulation establishes the duties and responsibilities of the commission veterinarian.

VR 662-03-04. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering - Commission Veterinarian.

§ 1. Generally.

The Virginia Racing Commission shall appoint a commission veterinarian who shall be a graduate of an accredited school of veterinary medicine and in possession of a full and unrestricted license from the Virginia Board of Veterinary Medicine. The commission, in its discretion, may appoint assistant veterinarians and personnel to assist the commission veterinarian in the carrying out of his duties and responsibilities.

§ 2. Restrictions.

The commission veterinarian or his assistant veterinarians shall not be permitted to treat or prescribe for any horse within the enclosure or any horse that may be entered to race. However, this shall not preclude the commission veterinarian or his assistant veterinarians from rendering care in an emergency situation. When emergency care is rendered, the veterinarian shall submit a written report to the commission.

§ 3. Duties.

The commission veterinarian shall perform those duties assigned to him by the commission, the executive secretary of the commission, and the stewards. His duties shall include but not be limited to:

- 1. Ensuring that all horses within the enclosure are treated in a humane manner and reporting any case of animal abuse or neglect to the stewards;*
- 2. Reviewing the daily written reports submitted by practicing veterinarians;*

3. Making prerace examinations of the horses entered to race on that day's program and recommending to the stewards that horses found to be unfit for racing be excused;

4. Recommending that sick and injured horses be placed on the stewards' list;

5. Advising the stewards on the condition of horses that are coming off the stewards' list;

6. Supervising the collection of samples and the proper operation of the detention barn;

7. Approving the lists of medications and preparations submitted by pharmaceutical representatives prior to their sale within the enclosure;

8. Being present at scratch time of each racing day to inspect any horses requested by the stewards and report on their fitness for racing;

9. Giving the stewards his opinion of a horse's condition and recommendation relative to the horse's fitness for racing; and

10. Reporting to the stewards the names of all horses euthanized at the race meeting and the reasons.

§ 4. Prohibitions.

No holder of a permit shall employ or pay compensation or any gratuity to any veterinarian, either directly or indirectly, during the term of his employment with the commission.

* * * * *

Title of Regulation: VR 662-03-05. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering - Formal Hearings.

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

Effective Date: September 26, 1991.

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. This final regulation is to establish the procedures under which a holder of a permit may appeal a decision of the stewards to the commission for a formal hearing.

VR 662-03-05. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering - Formal Hearings.

§ 1. Generally.

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A holder of a permit who wishes to contest a disciplinary action of the stewards may request a formal hearing by the commission. A disciplinary action taken by the stewards shall not be stayed or superseded by the filing of a request for a formal hearing unless the commission so orders. A stay in the implementation of a disciplinary action may be granted by the executive secretary of the commission.

§ 2. Where to file a request.

A request for a formal hearing shall be sent by certified mail or hand delivered to the main office of the commission.

1. A request for a formal hearing must be submitted within 72 hours of receipt of the order being contested by the holder of a permit, excluding Saturdays, Sundays and holidays;

2. A request for a formal hearing must be delivered by certified mail or by hand and will be timely only if received at the main office of the commission by 5 p.m. on or before the date prescribed;

3. Delivery to other than the main office of the commission or to other commission personnel is not effective; and

4. The holder of a permit assumes full responsibility for the method chosen to file a request for a formal hearing.

§ 3. Content of request.

The request shall state:

1. The disciplinary action of the stewards being contested;

2. The basis for the request; and

3. Any additional information the holder of a permit may wish to include concerning the request.

§ 4. Withdrawal of a request.

A holder of a permit may withdraw a request, which has been filed with the commission, by submitting a written statement to the main office of the commission within 72 hours of filing a request declaring his intention to withdraw the request. The commission, in its discretion, may accept or reject a request to withdraw a request.

§ 5. Procedures for conducting a formal hearing.

The commission shall conduct a formal hearing within 45 days of receipt of a request for a formal hearing on a disciplinary action taken by the stewards. The following provisions shall apply to formal hearings:

1. If any commissioner determines that he has a conflict of interest or cannot accord a fair and impartial hearing, that commissioner shall not take part in the hearing;

2. The commissioners, in their discretion, may appoint an independent hearing officer to preside at the formal hearing and prepare a proposed written decision for their consideration;

3. Unless the parties otherwise agree, a notice setting the hearing date, time and location shall be sent to the holder of a permit at least 10 days before the date set for the hearing;

4. The formal hearing shall be open to the public.

a. The hearing shall be electronically recorded and the recordings will be kept until any time limits for any subsequent court appeals have expired.

b. A court reporter may be used. The court reporter shall be paid by the person who requests him. If the holder of a permit elects to have a court reporter, a transcript shall be provided to the commission. The transcript shall become part of the commission's records.

c. The provisions of §§ 9-6.14:12 through 9-6.14:14 of the Administrative Process Act shall apply with respect to the rights and responsibilities of the holder of a permit and of the commission.

5. The formal hearing is a hearing on the record of the informal fact-finding proceeding and not a new hearing; therefore, presentations by both sides will be limited to arguments and comments regarding the record of the informal fact-finding proceeding.

6. The commission, in its discretion, may allow new evidence to be introduced which, through the exercise of reasonable diligence, could not have been found at the time of the informal fact-finding proceeding.

§ 6. Decision by commission.

The commission's decision shall be in writing and shall be sent to the holder of a permit by certified mail, return receipt requested. The original written decision shall be retained by the commission and become part of its records.

1. Prior to rendering its decision, the parties to the formal hearing shall be given the opportunity, on request, to submit in writing for the record proposed findings and conclusions and statements of reasons therefor.

2. If the commission has appointed a hearing officer to preside at the formal hearing, the commission shall consider the proposed written decision of the hearing

officer and any exceptions filed thereto after which the commission may adopt, modify or reject the hearing officer's proposed decision.

3. The commission's decision shall briefly state the findings, conclusions, reasons, or basis therefor upon the evidence presented by the record and relevant to the basic law under which the commission is operating together with the appropriate order, permit, grant of benefits, sanction, relief or denial thereof.

* * * * *

Title of Regulation: VR 662-04-01. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering - Horses.

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

Effective Date: September 26, 1991.

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. This final regulation is to establish the conditions under which horses may be identified, determined eligible for racing, and may be barred for racing.

VR 662-04-01. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering - Horses.

§ 1. Generally.

The conduct of horse racing, with pari-mutuel wagering, shall be safe to the participants and humane to the horses as well as being of the highest quality and free of any corrupt, incompetent, dishonest or unprincipled practices.

§ 2. Registration requirements.

No horse may start in a race unless the horse's certificate of foal registration, eligibility certificate or other registration document from the appropriate breed registry is on file with the racing secretary. The certificate of foal registration, eligibility certificate or other registration document must be filed with the racing secretary by the owner, or in his absence by his trainer or authorized agent before the horse may start in a race. However, the stewards may for good cause, in their discretion, waive this requirement, if the horse is otherwise correctly identified to the stewards' satisfaction and the complete past performances of the horse are available to the public. When the stewards waive this requirement, they must submit written notification to the commission.

§ 3. Lip tattoo requirements.

No horse may start in a race without a legible lip tattoo number being applied by the designated personnel appropriate to the breed of horse.

§ 4. Names of horses.

No horse may be entered or raced under any other name than the name listed on its certificate of foal registration, eligibility certificate or other registration document. In the event a horse's name is changed, the horse's former name shall be shown parenthetically in the daily race program the first three times the horse races after its name is changed. In the event a horse is named after completing published workouts, it shall be the trainer's responsibility to notify the stewards and racing secretary of the horse's name so that the published workouts may be correctly attributed and the public notified.

§ 5. Ringers.

No horse may be entered or raced, if it has been determined that the horse was knowingly entered or raced under a name other than its own by the owner or trainer [at the time the horse was entered or raced]. No horse may be entered or raced, if it has been determined that the owner or trainer knowingly participated in or assisted in the entry or racing of some other horse under the horse's name.

§ 6. Concealed identity or ownership.

No person shall, at any time, cause or permit the correct identity or ownership of a horse to be concealed or altered, and no person shall refuse to reveal to any racing official the correct identity or ownership of any horse he owns or trains.

§ 7. Nerved horses.

No horse that has been "high nerved" may be entered or raced. A horse that has been "low heel nerved" may be entered and raced. The following provisions shall apply to horses that have been "high nerved" or "low heel nerved":

1. A "high nerved horse" means a horse whose nerves have been desensitized by any means at or above the fetlock, including volar, palmar or plantar nerves;

2. Lack of feeling at the coronary band at the front of the foot is prima facie evidence that a horse has been nerved in contravention of this regulation;

3. Incisions over nerves at or above the fetlock are evidence that the horse has been "high nerved," even if partial or complete feeling is present at the front of the coronary band of the foot;

4. A "low heel nerved horse" means a horse whose posterior branch only of the palmar digital nerves

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have been desensitized by any means below the fetlock;

5. A horse that has been "low heel nerved" must have the procedure designated on its certificate of foal registration, eligibility certificate, or other registration document, and this designation must be certified by the practicing veterinarian who performed the procedure;

6. The primary responsibility rests with the owner to see that the certificate of foal registration, eligibility certificate or other registration document is properly designated and certified by the practicing veterinarian when a horse is low nerved;

7. Prior to being entered, a horse, that has been "low heel nerved" must be examined and approved by the commission veterinarian for racing;

8. The racing secretary shall maintain a list of horses that have been "low heel nerved" and shall cause this list to be prominently displayed in the racing office; and

9. The primary responsibility rests with the trainer to see that all horses [;] that have been "low heel nerved" and are under his supervision [;] are immediately added to the list of nerved horses maintained by the racing secretary.

§ 8. Certificate of veterinary inspection.

An official test for equine infectious anemia is required and must be conducted by a laboratory approved by the United States Department of Agriculture for each horse within the enclosure. The following provisions shall apply:

1. Horses entering the Commonwealth of Virginia must be accompanied by an official Certificate of Veterinary Inspection signed by an accredited veterinarian. This certificate shall give an accurate description of each horse;

2. The Certificate of Veterinary Inspection shall indicate that each horse has been officially tested and found negative for equine infectious anemia within the past 12 months. The test must be valid to cover the time the horse is expected to be within the enclosure;

3. Horses originating in the Commonwealth of Virginia must be accompanied by a report of an official negative test for equine infectious anemia conducted within the past 12 months. The test must be valid to cover the time the horse is expected to be within the enclosure;

4. For the purposes of this regulation, an "approved laboratory" means a laboratory approved by the Deputy Administrator, Veterinary Services, Animal

and Plant Health Inspection Service, U.S. Department of Agriculture;

5. For the purposes of this regulation, an "accredited veterinarian" means a veterinarian approved by the Deputy Administrator to perform functions required by cooperative state-federal disease control and eradication programs;

6. The Certificate of Veterinary Inspection or report of an official negative test shall be attached to the certificate of foal registration, eligibility certificate or other registration document; and

7. The primary responsibility for the presentation of the foregoing documents shall rest with the owner of the horse or his trainer or authorized agent.

§ 9. Vision.

No horse may be entered or raced unless it has unimpaired vision in at least one eye. No horse currently afflicted by ocular disease affecting its vision may be entered or raced.

§ 10. Published workouts.

Except as may be specifically exempted by the commission, no horse may be entered or raced unless its most recent workouts have been recorded and made generally available to the public by being prominently displayed in the grandstand and clubhouse or published in periodicals of general circulation. The following provisions shall apply to published workouts:

1. No horse may be entered to race for the first time in its life unless it has a minimum of two published workouts;

2. No horse may start in a race unless it has a published workout within the past 30 days or has raced within the past 30 days; and

3. No horse may start in a race unless the stewards, in their discretion, determine that the horse's published past performances, whether in races or workouts, are sufficient to enable the public to make a reasonable assessment of its capabilities.

§ 11. Qualifying races.

No Standardbred may be raced unless it has a race at the chosen gait, with a charted line, within 30 days of its last race. If a Standardbred does not have a charted line within 30 days of its last race, then the horse must race in a qualifying race under the supervision of the stewards to determine its fitness for racing. The following provisions shall apply to qualifying races:

1. The licensee shall provide appropriate personnel for qualifying races to keep a charted line for each

Standardbred in each qualifying race, an electronic timing device shall be in operation, and a photo-finish camera shall be in operation;

2. The licensee shall schedule as many qualifying races on as many days as is deemed appropriate for the horse supply, and the licensee shall maintain the racing surface in condition so that all Standardbreds have a reasonable opportunity to meet the qualifying time;

3. A Standardbred must race in a qualifying race if it has two consecutive races over a fast track which are not in the qualifying time as agreed upon by the licensee and the representative of the horsemen;

4. A Standardbred coming off the stewards' list must race in a qualifying race, and the stewards, in their discretion, may require the horse to race in one or more qualifying races to establish its fitness for racing; and

5. The stewards, in their discretion, may authorize the collecting of blood, urine or other samples of body substances from Standardbreds after competing in qualifying races.

§ 12. Official publication statistics.

For Thoroughbreds, in determining eligibility, allowances and penalties, the reports, records and statistics as published in the Daily Racing Form and its monthly charts or similar publication or corresponding official publications of any foreign country, shall be considered official, but the records and statistics may be corrected until 45 minutes prior to post time of the race. For Standardbreds, in determining eligibility, the eligibility certificate and any records the United States Trotting Association may provide shall be considered as official. For American Quarter Horses, in determining eligibility, the registration certificates and records of the American Quarter Horse Association shall be considered as official.

§ 13. Valuation of purse money.

The amount of purse money earned in foreign races is credited in United States currency on the day the purse money was earned for the purposes of determining penalties and allowances. There shall be no appeal for any loss on the exchange rate at the time of transfer from that of another country to United States currency.

§ 14. Time trials.

For Standardbreds, time trials are permitted with the permission of the licensee and the commission providing (i) the horse is subject to post-race testing, (ii) an electronic timing device is utilized, (iii) if the horse is accompanied by prompters, the prompters shall not precede the horse, and (iv) the stewards are present.

§ 15. Stewards' List.

A horse may be placed on the Stewards' List if it is unfit to race because of illness or lameness, unmanageable at the starting gate, dangerous or not competitive. Entries for horses on the Stewards' List shall be refused. The following provisions shall apply to the Stewards' List;

1. The stewards shall consult with the commission veterinarian before removing from the list any horse originally placed on the list for illness or lameness;

2. The stewards shall consult with the starter before removing a horse placed on the list by a starter for being unmanageable at the starting gate; and

3. The trainer of a horse on the Stewards' List or on a starter's, veterinarian's or similar list in another jurisdiction shall be responsible for reporting this fact to the stewards.

§ 16. Filly or mare bred.

Any filly or mare [; which that] has been covered by a stallion [;] shall be reported to the racing secretary prior to being entered in a race. The racing secretary shall prominently display in the racing office a listing of the fillies and mares that have been bred and the names of the stallions to which they have been bred. No filly or mare that has been covered by a stallion may be entered in a claiming race unless a written release from the stallion owner is attached to the certificate of foal registration, eligibility certificate or other registration document indicating the stallion service has been paid or satisfied.

§ 17. Equipment.

Equipment must be used consistently on a horse, and a trainer must obtain permission from the stewards to change the use of any equipment on a horse from its last previous start. The paddock judge shall maintain a list of the equipment worn by each horse and inform the stewards immediately of any change in its equipment. The following provisions shall apply to equipment:

1. A horse's tongue may be tied down with a clean bandage or gauze;

2. No Thoroughbred may race shod in anything other than ordinary racing plates, e.g., bar shoe, mud calks, without the permission of the stewards and the public being informed through appropriate means;

3. No Thoroughbred may race in a bridle weighing more than two pounds;

4. Use on a horse of other than an ordinary whip either in a race or workout including any goading device, chain, spurs, electrical or mechanical device, appliance or any means which could be used to alter

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the speed of the horse is prohibited, except spurs may be used in jump races pursuant to § 15 of VR 662-05-03;

5. For Thoroughbreds, Quarter Horses and Arabians, an ordinary whip [~~can~~ shall] weigh [~~no more than~~] one pound [or less] , be [~~longer than~~] 30 inches [long or less] and have [~~only not more than~~] one popper. No stingers or projections extending through the hole of a popper or metal part on a whip shall be permitted; and

6. For Standardbreds, an ordinary whip [~~can~~ shall] be [~~no longer than~~] four feet, eight inches [~~plus~~ long or less and may have] a snapper not longer than eight inches.

§ 18. Sex alteration.

A horse which has been gelded or spayed shall [~~have~~ ~~this~~ be so] designated on the certificate of foal registration, eligibility certificate or other registration by the owner or his trainer or his authorized agent, and certified by the practicing veterinarian. The owner shall also inform the appropriate breed registry that the sex of the horse has been altered.

§ 19. Racing soundness examination.

All horses racing on the flat or over jumps that are entered to race must be examined by the commission veterinarian or the licensee's veterinarian prior to racing to determine the horse's fitness for racing. The trainer of each horse shall promptly identify the horse to be examined, and the examination is to take place outside of the horse's stall. The horse may be led at a walk or trot as requested by the examining veterinarian. For Standardbreds, the racing soundness examination shall consist of the commission veterinarian observing the horse during its warmups prior to racing.

§ 20. Post-mortem examination.

A horse which suffers a breakdown on the racing surface, either during training or racing hours, and dies or is euthanized or a horse that dies while stabled within the enclosure shall be subject to a post-mortem examination at the discretion of the stewards. The following provisions shall apply:

1. The written consent of a steward authorizing the removal of the remains shall be obtained;
2. The stewards may take control of the bodily remains of the deceased horse and order an appropriate post-mortem examination to be conducted to determine the cause of death; and
3. It shall be the responsibility of the licensee at all times to prevent the unauthorized removal from the enclosure of the remains of a deceased horse.

§ 21. Walkover.

If at post time for a stakes race, futurity or other special event, there is only one horse or horses representing only one wagering interest, then the stewards shall declare the race a walkover. However, the horse or horses shall start and complete the course before a winner is determined, but for wagering purposes, the stewards shall declare the race "no contest." For a walkover in a jump race, the horse or horses shall report to the starter and gallop across the finish line, but they shall not be required to complete the course.

§ 22. Dead heat.

Purses, prizes or awards for a race in which a dead heat has occurred shall be divided equitably by determination of the stewards. For Standardbreds, where heat racing is employed and the race winner is required to win two heats, a horse finishing in a dead heat for first place shall be considered a winner.

§ 23. Carrying assigned weight.

Each horse shall be raced to the finish by the jockey or driver to give their best effort to win the race. For all horses racing on the flat or over jumps, they shall carry their assigned weight, including the jockey, from the post parade to the start and to the finish. For Standardbreds, the horse must pass the finishing point with the driver seated in the sulky and both of the driver's feet must be in the stirrups.

§ 24. Injured horse.

Each horse, which suffers an injury during a workout or during a race, shall be pulled up by the jockey or driver as soon as safety permits to the horse and others utilizing the racing surface. All measures shall be taken to stabilize the condition of the horse until the horse ambulance and a veterinarian arrive to render assistance.

* * * * *

Title of Regulation: VR 662-04-02. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering; Entries.

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

Effective Date: September 26, 1991.

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. This final regulation is to establish the conditions and procedures for the taking of entries for horse races with pari-mutuel wagering.

VR 662-04-02. Regulations Pertaining to Horse Racing with Pari-Mutual Wagering: Entries.

§ 1. Definitions.

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

"Added money" means money added by the licensee to the stakes fees paid by subscribers to form the total purse for a stakes race.

"Allowance" means a concession in the amount of weight that may be carried by a horse as specified in the conditions of the race.

"Closing" means the time specified by the racing secretary after which entries for a race will not be accepted.

"Condition book" means a book, published by the licensee, setting forth the conditions for each race for a specified period of time during a race meeting.

"Condition sheet" means a sheet, published by the licensee, setting forth the conditions for a specified period of time usually during a Standardbred race meeting.

"Conditions" means the terms of eligibility and entry, including the amount and deadlines for the payment of any fees.

"Declaration" means the withdrawal of a horse entered in a race before the time of closing of entries.

"Entry" means the act of naming a specific horse to run in a specific race.

"Free handicap" means a handicap for which no fee is required to be weighted, but an entrance or starting fee may be required for starting.

"Futurity" means a stakes race in which the horse is nominated either during the year of foaling or when the foal is in utero.

"Handicap" means a race in which the weights assigned to the horses are done so by the racing secretary with the intent of equalizing the chance for each horse to win.

"Overnight race" means any race for which entries close 72 hours or less before the running of the race and for which the owners of the horses running in the race are not required to pay any fee.

"Penalty" means the amount of weight a horse is obligated to carry in a race as specified in the conditions for the race.

"Race" means a contest among horses for a purse, prize or other reward and is contested at a race meeting licensed by the commission as well as in the presence of the stewards.

"Purse" means the total money for which a race is run.

"Scratch" means the withdrawal of a horse entered for a race after the time of closing of entries.

"Scratch time" means the time specified by the racing secretary as a deadline to scratch a horse out of a race.

"Stakes" means all fees paid by subscribers to a stakes race for nominating, sustaining, entrance or starting fees as required by the conditions and all fees shall be included in the purse.

"Stakes race" means a race that closes more than 72 hours before its running and for which the subscribers contribute fees toward the purse.

§ 2. Horses ineligible to be entered.

A horse is ineligible to be entered in a race when:

1. The horse is not identified by name, color, sex and age and the names of its sire and dam;
2. The horse has been raced under an identity other than its own for fraudulent purposes;
3. The horse's name and identity have been utilized for fraudulent purposes;
4. The horse is wholly or partially owned by a person who is under suspension, has been ruled off or whose permit or license has been revoked by the commission or by a similar regulatory body in another jurisdiction;
5. The horse is under the care and supervision of or being trained by, a person who is under suspension, has been ruled off or whose permit or license has been revoked by the commission or a similar regulatory body in another jurisdiction;
6. The horse does not have a report of an official negative test for equine infectious anemia conducted within the past 12 months and the test must be valid to cover the time the horse is expected to be within the enclosure;
7. The horse appears on the stewards' list or on a stewards' veterinarian's, starter's or similar list in another jurisdiction;
8. The horse is a first-time starter that has not been approved for racing by the starter;
9. The horse has a tracheal tube inserted to assist

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artificially its breathing;

10. The horse has been "high nerved" or its nerves have been desensitized by any means at or above the fetlock, including volar, palmar or plantar nerves;

11. The horse has impaired vision in both eyes; or

12. The horse is not eligible under the conditions specified for the race as published in the condition book or on the condition sheet.

§ 3. Horses ineligible to start.

A horse is ineligible to start in a race when:

1. The owner does not possess the required permit issued by the commission or has not applied for the appropriate permit;

2. The trainer, authorized agent or the person having care and supervision of the horse, does not possess the appropriate permit issued by the commission or has not applied for the required permit;

3. The horse's certificate of foal registration, eligibility certificate or other registration document issued by the appropriate breed registry is not on file with the racing secretary or permission to start the horse without these documents has not been obtained from the stewards;

4. The horse has not been lip-tattooed;

5. The ownership of the horse has been transferred without notifying the racing secretary and the appropriate breed registry;

6. The horse is subject to a lien or lease that has not been approved by the stewards and filed with the racing secretary and horsemen's bookkeeper; or

7. The horse for which nominating, sustaining, entry, starting or any other required fees have not been paid by the time specified in the published conditions of the race.

§ 4. Filing.

The licensee shall provide forms on which entries may be filed with the racing secretary. All entries shall be in writing and any entries made by telephone or telegraph must be confirmed in writing upon the request of the racing secretary. The following provisions shall apply to the filing of entries:

1. No entry shall be considered filed until received by the racing secretary;

2. Every entry must be in the name of the horse's owner as completely disclosed and registered with the

racing secretary and the appropriate breed registry;

3. Every entry must designate the horse's name as spelled on its certificate of registration, eligibility certificate or other registration document;

4. Every entry must designate the horse's owner, trainer, racing colors, jockey or driver, weight claimed where appropriate, color, sex, age, sire and dam, any penalties and allowances claimed, and where appropriate, claiming price;

5. Every entry must be signed and dated by the person making the entry;

6. No alteration may be made in any entry after the closing of entries. However, an error may be corrected with the permission of the stewards;

7. A horse may be entered in two races for the same day, only if one of the races is a stakes race, futurity or other special event; and

8. The following additional provisions shall apply to Standardbred races:

a. The licensee shall provide a locked entry box in which entries shall be deposited;

b. The entry box shall be opened by a steward at the time designated; and

c. All entries shall be listed, the eligibility verified, preference ascertained, starters selected and post positions drawn under the supervision of a steward.

§ 5. Stakes races.

Entry of a horse in a stakes race, futurity or other special event shall be made in accordance with the conditions specified for the race. In the event of a dispute between the person filing an entry and the sponsor of the race, the stewards shall make the final determination on the eligibility of the horse.

§ 6. Closing of entries.

Entries for overnight races shall close at a time prescribed by the licensee and approved by the stewards. Entries for stakes races, futurities and other special events shall close at the time specified in the conditions. The following provisions shall apply to the closing of entries:

1. The racing secretary shall be responsible for the securing and safekeeping of all entries once they are filed with him and he shall be responsible for denying access to the entries by other permit holders;

2. No entry shall be accepted after the prescribed time for the closing of entries; and

3. In the event of an emergency or if an overnight race fails to fill, then the racing secretary, with the approval of the stewards, may extend the prescribed time for the closing of entries.

§ 7. Posting.

The racing secretary, upon the closing of entries, shall compile a list of the horses entered for each race for each day's racing program, and the racing secretary shall post the list in a prominent place in the racing office.

§ 8. Number of starters.

The maximum number of starters in any race shall be limited to the number of starting positions afforded by the licensee's starting gate and any extensions to the starting gate approved by the stewards. The stewards also shall consider any guidelines promulgated by the associations appropriate to the breed of horses racing, the distance from the start to the first turn, any other conditions affecting the safety and fairness of the start.

§ 9. Coupling.

All horses entered in the same race and trained by the same trainer shall be joined as a mutuel entry and shall be a single wagering interest. All horses entered in the same race and owned wholly or partially by the same owner or spouse, shall be joined as a mutuel entry and shall constitute a single wagering interest, except that in stakes races, futurities or other events, the stewards, in their discretion, may permit horses having common trainers but different owners to run as separate wagering interests. The following provisions shall apply to mutuel entries:

1. The racing secretary shall be responsible for coupling entries for wagering purposes whether based on common owners or trainers;

2. No more than two horses having common ties through ownership or training, which would result in a mutuel entry and a single wagering interest, may be entered in an overnight race;

3. When two horses having common ties through ownership or training are entered in an overnight race, then the nominator shall indicate a preference for one of the two horses to start, in Standardbred races, the determination will be based on the preference date;

4. Two horses having common ties through ownership or training shall not start as a mutuel entry in an overnight race to the exclusion of another horse; and

5. The racing secretary shall be responsible for assigning horses to the mutuel field when the number of wagering interests exceeds the numbering capacity of the infield results board.

§ 10. Penalties and allowances.

The primary responsibility for claiming the weight penalties and weight allowances for thoroughbreds and quarter horses shall rest with the person filing the entry. However, the racing secretary shall be secondarily responsible for verifying the correctness of the penalties and allowances claimed by the nominator. The following provisions shall apply to penalties and allowances:

1. Penalties are obligatory;

2. Allowances are optional as to all of the allowance or any part thereof;

3. Allowances must be claimed at the time of entry and cannot be waived after the closing of entries, except by permission of the stewards;

4. A horse shall start with only the allowance of weight to which it is entitled at the time of starting, regardless of the allowance it was entitled to at the time of entry;

5. Horses incurring penalties for a race shall not be entitled to any allowances, with the exception of age, sex or apprentice, for that race;

6. An apprentice allowance may be claimed only in overnight races and cannot be claimed in a stakes or handicap race;

7. Horses not entitled to the first allowance in a race shall not be entitled to any subsequent allowance specified in the conditions;

8. Allowances are not cumulative, unless specified in the conditions of the race;

9. Failure to claim an allowance is not cause for disqualifying the horse;

10. A claim of an allowance to which a horse is not entitled shall not disqualify the horse unless the incorrect weight is carried by the horse in the race;

11. A protest that a claim of an allowance is incorrect must be made in writing and submitted to the stewards at least one hour before post time;

12. No horse shall incur a penalty or be barred from any race for having finished second or lower in any race;

13. No horse shall be given a weight allowance for failure to finish second or lower in any race;

14. No horse shall receive an allowance for not winning in one or more races, but maiden allowances and allowances to horses that have not won a race within a specified period or a race of a specified

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value are permissible;

15. Penalties incurred and allowances due in jump races shall not apply to races on the flat and vice versa;

16. No horse shall incur a penalty for a placing from which it was subsequently disqualified, but a horse earning a placing through the disqualification shall incur the penalty for that placement;

17. When a race is under appeal, the horse that finished first and any other horse, which may be moved into first place, shall be liable for all penalties attached to the winner until there has been a final determination;

18. Any error discovered in the assignment of any penalty or claim of any allowance may be corrected, with the permission of the stewards, until 45 minutes prior to post time;

19. In determining eligibility, allowances and penalties, the reports, records and statistics as published in the Daily Racing Form and its monthly chart books or any similar publication shall be considered official; and

20. In all races, except handicaps and races where the conditions expressly state otherwise, two-year-old fillies are allowed three pounds and fillies and mares three years old and upward are allowed five pounds before September 1 and three pounds thereafter.

§ 11. Scale of weights.

For thoroughbreds racing on the flat, when the weights are not stated in the conditions of the race, the weights shall be assigned according to the scale of weights as published by The Jockey Club. For horses racing over jumps, when the weights are not stated in the conditions of the race, the weights shall be assigned according to the scale of weights as published by the National Steeplechase and Hunt Association.

§ 12. Foreign entries.

In determining eligibility, penalties and allowances for horses imported from a foreign nation, the racing secretary shall consider the Pattern Race Book published jointly by the Irish Turf Club, the Jockey Club of Great Britain and the Societe d'Encouragement. For horses imported from a foreign nation, the racing secretary shall convert metric distances to English measures by using a scale of 200 meters to the furlong and 1600 meters to the mile.

§ 13. Prohibited entries.

Unless the published conditions state otherwise, any money paid in nominating, subscription, sustaining or

entry fees shall be refunded, if the entry of an ineligible horse is discovered at least 45 minutes before post time. Otherwise, the moneys shall be considered part of the purse.

§ 14. Preference system.

The racing secretary shall maintain a list of horses which were entered but denied an opportunity to race because they were eliminated through races overfilling or failing to fill. The racing secretary shall develop procedures through which these horses will be granted preference in future entries. The procedures developed by the racing secretary must be submitted to the stewards for their approval at least 15 days before the beginning of the race meeting.

§ 15. Post positions.

Post positions for all races shall be determined by lot, drawn in the presence of persons filing the entries and supervised by a steward. The racing secretary shall be responsible for assigning pari-mutuel numbers for each starter to conform with the post position draw, except where the race includes two or more horses joined as a single wagering interest.

§ 16. Also-eligible list.

If the number of entries for a race exceeds the number of horses permitted to start in any race, then the racing secretary may place as many as eight horses on an "also-eligible list." The racing secretary shall develop procedures through which the horses on the also-eligible list may be drawn into the race should a horse be scratched. The procedures developed by the racing secretary for the also-eligible list must be submitted to the stewards for their approval at least 15 days before the beginning of the race meeting.

§ 17. Declarations.

For thoroughbred racing, a horse may be withdrawn from or "declared out" of a race before the closing of entries. All declarations shall be made in a manner prescribed by the racing secretary. Declarations are subject to the approval of the stewards and are irrevocable.

§ 18. Scratches.

For flat racing, a horse may be withdrawn from or "scratched out" of a race after the closing of entries under the following conditions:

1. Scratches shall be made in a manner prescribed by the racing secretary;

2. Scratches are subject to the approval of the stewards;

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3. A horse may be scratched from a stakes race, futurity or other special event until 45 minutes before post time for the race for any reason;

4. No horse may be scratched from an overnight race without the approval of the stewards;

5. In making a determination on whether to permit a horse to be scratched from an overnight race, the stewards may require a report from a veterinarian, who possesses a permit issued by the commission, attesting to the physical condition of the horse; and

6. Scratches, once approved by the stewards, are irrevocable.

§ 19. Responsibility for eligibility.

The primary responsibility for the eligibility of a horse for a race shall rest with the person filing the entry. In any event, a person shall not enter a horse which is ineligible under the conditions specified in the condition book or condition sheet. The racing secretary shall be secondarily responsible for verifying the eligibility of each horse as specified in the condition book or condition sheet as well as the penalties and allowances.

§ 20. Reopening entries.

In the event an overnight race does not fill, [~~then~~] the racing secretary, with the permission of the stewards, may reopen entries on that race and extend the closing time for entries for a reasonable period. When entries on a race are reopened, the racing secretary shall cause an announcement to be made over the public address system that entries have been reopened.

§ 21. Cancelling a race.

In the event an overnight race does not fill, [~~then~~] the racing secretary may cancel that race and instead use a substitute race, which must be listed in the condition book or condition sheet, to complete the program.

§ 22. Divided races.

When a race fails to fill, the racing secretary may divide any other programmed race, which may have been overfilled, for the same day. The following provisions shall apply to divided races:

1. The stewards, in their discretion, may grant additional time beyond the prescribed closing of entries to permit entries to be filed for races that have been divided;

2. The division of entries in divided races shall be in accordance with the conditions specified under which the entries were made; and

3. In the absence of any conditions regarding the

division of entries, horses that might be coupled as mutuel entries may be placed in different divisions and the remainder of the horses shall be drawn by lot to provide wagering interests as equal as possible for each division of the divided race.

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Title of Regulation: VR 662-05-01. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering - Conduct of Flat Racing.

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

Effective Date: September 26, 1991.

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. This final regulation is to establish the conditions and procedures for flat racing which includes races for Thoroughbreds, American Quarter Horses and Arabians.

VR 662-05-01. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering - Conduct of Flat Racing.

PART I. GENERALLY.

§ 1.1. Definitions.

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

"Assigned weight" means the weight carried by a horse specified in the conditions of the race or by the racing secretary and printed in the daily racing program.

"Dead heat" means the finish of a race by two horses or more at the same time.

"Finish wire" means a real or imaginary line from the position of the photo-finish camera to a point immediately across and at right angles to the racing surface.

"Flat racing" means horse racing conducted over a surface without obstacles and includes racing with mounted riders for Arabians, Quarter Horses and Thoroughbreds.

"Highweight handicap" means a handicap race in which the weight assigned to the top horse is not less than 140 pounds.

"Match race" means a race between two horses.

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"Official time" means the period from the time the first horse crosses the starting post until the first horse crosses under the finish wire.

"Overweight" means any weight of one pound or more over the assigned weight carried by a horse in a race.

"Place" means to finish second in a race.

"Post position" means the relative position assigned to each horse numbered from the inner rail across the track at the starting line, from which each horse is to start a race.

"Post time" means the advertised moment scheduled for the arrival of all horses at the starting post for a race.

"Produce race" means a race to be run by the produce of horses named or described in the conditions of the race at the time of entry.

"Purse race" means a race for money or other prize to which the owners of horses entered do not contribute fee of more than \$100.

"Race" means a contest among horses for a purse, prize or other reward, run at a race meeting licensed by the commission in the presence of the stewards.

"Show" means to finish third in a race.

"Starter" means a horse that obtains a fair opportunity to start when the starter dispatches the horses.

"Starting post" means the starting point of a race.

"Underweight" means any weight less than the assigned weight carried by a horse in a race.

"Weigh in" means the presentation of a jockey to the clerk of scales for weighing after a race.

"Weigh out" means the presentation of a jockey to the clerk of scales for weighing prior to a race.

"Win" means to finish first in a race.

"Winner" means the horse whose nose reaches the finish wire first.

PART II. PADDOCK TO POST.

§ 2.1. Paddock time.

The trainer shall be responsible for the arrival in the paddock at the time prescribed by the stewards for each horse entered by the trainer.

§ 2.2. Weighing out.

A jockey shall be weighed out by the clerk of scales no later than 15 minutes before post time. The following provisions shall apply to the weighing out of jockeys:

1. His clothing, saddle, girth, pad and saddle cloth shall be included in a jockey's weight;

2. Number cloth, whip, head number, bridle, bit, reins, blinkers, safety helmet, tongue strap, tongue tie, muzzle, hood, noseband, shadow roll, bandages, boots and racing plates or shoes shall not be included in a jockey's weight;

3. When a substitute jockey is required, he shall be weighed out promptly, and the name of the substitute jockey and weight announced to the public;

4. No jockey may carry overweight in excess of two pounds, without the permission of the owner or trainer;

5. If the overweight is more than one pound but less than five pounds, the jockey shall declare the amount of the overweight to the clerk of scales no later than 45 minutes before post time;

6. All overweights must be announced to the public;

7. A substitute jockey must be named, if the overweight exceeds five pounds;

8. If an underweight is discovered after wagering has commenced but before the start, the horse shall be returned to the paddock and the weight corrected;

9. A jockey shall not be weighed out unless the prescribed fee has been deposited with the horsemen's bookkeeper; and

10. Failure to have the prescribed fee on deposit with the horsemen's bookkeeper may be cause for the stewards to excuse the horse from racing.

§ 2.3. Prohibitions.

No person other than the horse's owner, trainer, employees of the owner or trainer, paddock judge, horse identifier, assigned valet, steward, farrier or outrider shall touch a horse while [it is] in the paddock. The material used as a tongue tie shall be supplied by the horse's trainer, who shall affix the tongue tie in the paddock.

§ 2.4. Saddling horses.

The trainer shall be responsible for the saddling of the horse, and in his absence, he must assign an assistant or substitute trainer to saddle each horse entered by him. All horses must be saddled in the paddock unless permission to saddle a horse elsewhere has been granted by the stewards.

§ 2.5. Changing equipment.

Permission must be obtained from the stewards for the following changes of a horse's equipment from that which the horse used in its last previous start:

1. To add blinkers to a horse's equipment or to discontinue the use of blinkers;
2. To use or discontinue use of a bar plate;
3. To use or discontinue the use of a tongue tie;
4. To race a horse without shoes or with a type of shoes not generally used for racing; and
5. To race a horse without the jockey carrying a whip.

The stewards shall cause an appropriate public announcement or a display to be made in the paddock or elsewhere at the discretion of the stewards for the aforementioned changes of equipment.

§ 2.6. First-time starters.

Whips or blinkers may be used on two-year-old horses and other first-time starters, if the horses are schooled from the starting gate under the supervision of the starter, and approved by the starter and the stewards before the time of entry.

§ 2.7. Identifying equipment.

Each horse shall carry a conspicuous saddlecloth number and each jockey shall wear a number on his right arm, both of which correspond to the number of the horse as listed in the daily racing program. In the case of a coupled entry, each horse making up the coupled entry shall carry the same number with a distinguishing letter.

§ 2.8. Inspecting equipment.

The paddock judge may, in his discretion, require that bandages on a horse's legs be removed or replaced.

§ 2.9. Post parade.

All horses shall parade past the stewards' stand and carry their assigned weight from the paddock to the starting post, unless excused by the stewards from the post parade. The following provisions shall apply to post parades:

1. The stewards, in their discretion, may excuse a horse from the post parade;
2. Any horse excused from the post parade shall be led by an employee of the owner or trainer and shall carry its assigned weight from the paddock to the starting post;

3. After passing the stewards' stand during the post parade, the horses may leave the parade to walk, canter or otherwise warm up on their way to the starting post;

4. The post parade shall not exceed 12 minutes from the time the field enters the racing surface until reaching the starting post, except for unavoidable delays;

5. If a jockey is thrown from a horse during the post parade, he shall remount the horse at the point where he was thrown from the horse;

6. If a jockey is injured during the post parade or a substitute jockey is needed, then the horse shall be returned to the paddock where the horse shall be mounted by the substitute jockey;

7. If a horse leaves the racing surface during the post parade, the horse shall be returned to the racing surface at the nearest practical point to where it left the course and then complete the post parade; and

8. No person shall willfully delay the arrival of a horse at the starting post.

§ 2.10. Lead pony and rider.

A horse may be led to the starting post by a lead pony and rider, but the horse and lead pony shall pass the steward's stand during the post parade en route to the starting post. Lead ponies and riders may be excluded from the paddock at the discretion of the stewards.

§ 2.11. Outrider.

Outriders shall accompany the horses during the post parade and be positioned to render assistance to a jockey riding an unruly horse or catch a loose horse from the time the horses enter the racing surface until reaching the starting post. The outrider shall not help a jockey riding an unruly horse unless the jockey requests the assistance of an outrider. After the start of the race, the outriders shall position themselves to help jockeys in pulling up horses, catch any loose horses or render assistance to any injured horses.

§ 2.12. Post time.

Post time shall be prominently displayed on the infield results board. The starter shall endeavor to get the horses and jockeys at the starting post at post time so as to avoid any delay in effecting the start of the race.

PART III. STARTING A RACE.

§ 3.1. Starter.

The horses and jockeys, lead ponies and riders, and

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outriders shall be under the supervision of the starter from the time the horses enter the racing surface until the race is started. While the horses, jockeys, lead ponies and pony riders are under his supervision, the starter shall:

1. Grant a delay to allow for the substitution of an injured jockey or for the repairing of broken equipment;
2. Load the horses into the starting gate in the order of their post position;
3. Report to the stewards any delay in the start; and
4. Recall the horses from a false start where a starting gate is not used.

However, the starter, in his discretion, may:

1. Allow other jockeys to dismount during any delay;
2. Unload the horses from the starting gate, if there is a lengthy delay in the start of a race; and
3. Load a fractious horse out of post position order.

§ 3.2. Unmanageable horse.

If a horse is unmanageable at the starting post, the starter may recommend to the stewards that the horse be excused. If the stewards excuse a horse from a race because it is unmanageable, they shall:

1. Order all money wagered on the unmanageable horse deducted from the pari-mutuel pool and order a prompt refund; and
2. Place the unmanageable horse on the stewards' list.

§ 3.3. Starting gate.

Each licensee shall maintain at least two operable starting gates as required by § 2.18 of VR 662-01-02, Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering.

§ 3.4. Fair start.

If a door on the starting gate fails to open, a horse is inadvertently loaded into an incorrect post position, or otherwise fails to obtain a fair start, then the starter shall immediately report the circumstances to the stewards. In these circumstances, the stewards shall:

1. Post the "inquiry" sign on the infield results board;
2. Advise the public through the public address system and any other appropriate means to hold all mutuel tickets; and

3. Make a determination of whether the horse obtained a fair start after consulting with the starter, other appropriate persons and reviewing the video tape recordings of the race.

§ 3.5. Nonstarter.

If the stewards determine that the horse did not receive a fair start, then they shall declare the horse a nonstarter and follow the provisions of subsections B, C and D of § 3.9, VR 662-01-02 Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering. If the horse is declared a nonstarter in a stakes race, futurity or other special event, then any entrance or starting fees shall be refunded.

§ 3.6. Assistance prohibited.

Only the jockey may strike a horse at the start of a race. Only the jockey shall be permitted to shout or otherwise assist in breaking the horse away from the starting gate. During the running of a race, no assistance may be rendered by others.

PART IV. POST TO FINISH.

§ 4.1. Leading horse.

A leading horse when clear of all other horses in the race is entitled to any part of the racing surface, but no horse shall cross or weave in front of other horses in any way to impede them, cause interference or constitute intimidation.

§ 4.2. Interference.

During a race, no jockey shall willfully strike, strike at or touch another jockey or another jockey's horse or equipment, or jostle another horse to interfere with that jockey or horse.

§ 4.3. Third party interference.

If a horse or jockey interferes with or jostles another horse, the aggressor may be disqualified, unless the interfered or jostled horse or jockey was partly at fault or the interference was wholly caused by the fault of some other horse or jockey.

§ 4.4. Control of horse.

A jockey shall be responsible for making his best effort to control and guide his mount during the running of the race so that it does not jostle, impede, interfere or intimidate another horse or jockey.

§ 4.5. Off course.

If a horse runs on the wrong side of a post, fence, beacon or flag, it shall be considered off course and the

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jockey must turn back, return to the point where the horse went off course and complete the proper course or be disqualified.

§ 4.6. Ridden out.

All horses shall be ridden to win or finish as near as possible to the first-place horse and show the best and fastest performance of which it is capable in the running of the race.

§ 4.7. Easing.

A jockey shall not restrain a horse without adequate cause, even if it has no apparent chance to earn a portion of the purse money. A jockey shall not unnecessarily cause a horse to shorten its stride.

§ 4.8. Instructions.

All horses and jockeys are expected to give their best efforts during the race, and any instructions or advice to jockeys to ride or handle their mounts otherwise than to win, is forbidden.

§ 4.9. Reversal of form.

The stewards shall consider marked reversals of form and conduct inquiries of owners, trainers, jockeys and any other holders of permits that they deem appropriate to determine whether the horse was deliberately restrained or impeded in any way from winning or finishing as near as possible to the first-place horse.

§ 4.10. Use of whip.

Whips are to be used uniformly and the stewards shall conduct inquiries into excessive or non-use of a whip, or the dropping of a whip during the running of a race.

§ 4.11. Prohibited equipment.

No device other than the ordinary whip, shall be used to affect the speed of the horse during a race. No sponge or other object may be used to interfere with the respiratory system of a horse.

§ 4.12. Weighing in.

After a race has been run, a jockey shall pull up his horse, ride promptly to the clerk of scales, dismount after obtaining the permission of the stewards, and be weighed in by the clerk of scales. The following provisions shall apply to the weighing in of jockeys:

1. The winning horse may be accompanied by an outrider after the horse has been pulled up and is returned to the clerk of scales;
2. If a jockey is prevented from returning to the clerk of scales because of an accident or injury to either

horse or rider, the jockey may be conveyed to the winners' circle by other means or excused by the stewards from weighing in;

3. A jockey must, upon returning to the clerk of scales, unsaddle the horse he has ridden and no other person shall touch the horse except by its bridle;

4. No person shall help a jockey in removing from the horse the equipment that is to be included in the jockey's weight;

5. No person shall throw any covering over any horse at the place of dismounting until the jockey has removed all the equipment that is to be included in his weight;

6. A jockey shall carry over to the scales all pieces of equipment carried when weighing out, but after weighing in, the equipment may be handed to a valet;

7. A jockey shall generally weigh out and weigh in at the same weight, and the stewards shall be informed of any underweight or overweight carried by the jockey;

8. If a jockey weighs in two or more pounds less than the weight at which he weighed out, the horse shall be disqualified; and

9. A jockey shall not weigh in at more than two pounds over the weight at which he weighed out, unless affected by weather or track conditions, and the stewards shall be notified immediately by the clerk of scales.

* * * * *

Title of Regulation: VR 662-05-03. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering - Conduct of Jump Racing.

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

Effective Date: September 26, 1991.

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. This final regulation establishes the conditions and procedures under which jump racing will be conducted.

VR 662-05-03. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering - Conduct of Jump Racing.

§ 1. Definitions.

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

"Field" means the spaces between the fences, the space between the starting point and the first fence, and the space between the last fence and the finish.

"Jump racing" means horse racing conducted over a surface including obstacles.

§ 2. Generally.

The provisions of VR 662-05-01 Conduct of Flat Racing shall apply equally to the conduct of jump racing, except where regulation VR 662-05-03 specifies otherwise.

§ 3. Overweights.

If the overweight is more than [~~10 pounds~~ one pound], the jockey shall declare the amount of the overweight to the clerk of scales no later than 45 minutes before post time. If the overweight exceeds 10 pounds, a substitute jockey must be named, except that an amateur jockey may carry more than 10 pounds of overweight.

§ 4. Weighing out.

If a horse is equipped with a martingale, breast-plate or yoke, then this equipment must be put on the scale and included in the jockeys' weight.

§ 5. Tongue ties.

The material used as a tongue tie shall be supplied by the horse's trainer, who shall affix the tongue tie in the paddock, except by the permission of the stewards, the tongue tie may be affixed in the horse's stall prior to going to the paddock.

§ 6. Identifying equipment.

Each horse shall carry a conspicuous saddlecloth number which corresponds to the number of the horse as listed in the daily racing program. In the case of a coupled entry, each horse making up the coupled entry shall carry the same number with a distinguishing letter.

§ 7. Post parade.

No horse shall be jumped over an obstacle on the way to the starting gate.

§ 8. Starting.

Horses may be started either by a starting gate, barrier or a flag.

§ 9. Assistance at the start.

A trainer or assistant trainer, with the permission of

the stewards, may "get behind" a horse at the start for the purpose of encouraging it to break.

§ 10. Remounting after fall.

Any horse losing its rider may be remounted by its jockey in any part of the same field or enclosure in which the mishap occurred. If the loose horse leaves the field, then it must be returned to the field where the mishap occurred before resuming the course.

§ 11. Weighing in.

If a jockey weighs in at less than the weight at which he weighed out, the horse shall be disqualified unless the stewards are satisfied that such shortness of weight was caused by exceptional circumstances.

§ 12. Fences.

Any course and obstacles over which jump races are to be conducted must conform to the standards established by the National Steeplechase and Hunt Association. The following shall be a general guideline, when conditions permit:

1. There shall be at least five fences in every mile;
2. Wings shall be a minimum of 20 feet long and a minimum of 6 feet at their highest point; and
3. Beacons shall be a minimum of 4 feet in height.

§ 13. NSHA licenses.

A trainer shall not be permitted to train horses for jump races unless he possesses the appropriate permit from the commission and a trainer's license from the National Steeplechase and Hunt Association. A jockey shall not be permitted to ride horses in jump races unless possessing the appropriate permit from the commission and a jockey's license from the National Steeplechase and Hunt Association.

§ 14. Minimum age.

No horse shall be entered or shall start in a jump race unless it is at least three years old.

§ 15. Use of spurs.

Spurs may be used in jump races, provided that they are of a type that will prod but not cut. All spurs must be approved by the stewards.

* * * * *

Title of Regulation: VR 662-05-04. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering - Conduct of Quarter Horse Racing.

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

Effective Date: September 26, 1991.

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. This final regulation is to establish the conditions and procedures that shall apply particularly for Quarter Horse racing.

VR 662-05-04. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering - Conduct of Quarter Horse Racing.

§ 1. *Generally.*

The provisions of VR 662-05-01 Conduct of Flat Racing shall apply equally to the conduct of quarter horse racing, except where regulation VR 662-05-04 specifies otherwise.

§ 2. *Starting.*

The starting gate shall be located at the starting post so that a race is actually run at the designated distance.

§ 3. *Timing.*

The timing of a race shall commence when the first horse breaks the electronic beam at the starting post and when the winner breaks the electronic beam at the wire.

§ 4. *Distance.*

Distance in a race for quarter horses shall be reckoned in yards instead of furlongs or miles.

§ 5. *Time.*

Time in a race for quarter horses shall be reckoned in at least hundredths of a second and a time shall be given for each horse finishing a race.

EMERGENCY REGULATIONS

BOARD FOR COSMETOLOGY

Title of Regulation: Emergency Nail Technician Regulations

Statutory Authority: § 54.1-1202 B of the Code of Virginia.

Effective Dates: August 1, 1991 through July 15, 1992.

Preamble:

The Board for Cosmetology is promulgating emergency regulations as detailed in § 9-6.14:5, Code of Virginia, governing the practice of nail technicians, nail salons, nail schools and nail technician instructors.

The regulations are required as a result of amendments approved by the 1990 General Assembly to § 54.1-1200 Definitions. The Board is requesting permission to promulgate these regulations as emergency regulations because it is the quickest method of establishing competency standards. The Board in developing the regulations held two public hearings to receive comments regarding the emergency regulations. The Board will proceed immediately to promulgate final regulations, and will receive, consider and respond to comments by any interested parties in accordance with the Administrative Process Act.

The emergency regulations will be in effect until July 15, 1992 the anticipated effective date of final regulations.

APPROVED:

/s/ Milton K. Brown, Jr.
Secretary of the Board for Cosmetology
Date: July 2, 1991

/s/ Lawrence H. Framme, III
Secretary of Economic Development
Date: July 5, 1991

/s/ L. Douglas Wilder
Governor
Date: July 26, 1991

/s/ Ann M. Brown
Deputy Registrar of Regulations
Date: August 1, 1991

Emergency Nail Technician Regulations.

PART I. GENERAL.

§ 1.1. Definitions.

"Certified nail technician instructor" means a person who is eligible to teach in a nail school in accordance

with § 4.2 and § 2.8(C) of the regulations of the board.

"Nail salon" means any place or establishment licensed by the board for the practice of manicuring, pedicuring, and applying artificial nails for compensation. A nail salon may provide for the training of apprentices under the regulations of the board.

"Nail school" means a place or establishment licensed by the board to accept and train students. The board shall approve the nail curriculum.

"Nail technician" means any person licensed under Chapter 12 of Title 54.1 of the Code of Virginia who for compensation manicores, or pedicures natural nails or who performs artificial nail services for compensation, or any combination thereof.

PART II. ENTRY.

§ 2.1. Requirements for licensure.

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

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

All persons offering nail technician services as defined in § 1.1 of the regulations must be licensed as of April 1, 1992.

§ 2.2. Acceptable training.

A. Schools.

Any person who has completed a nail technician program in a licensed cosmetology school, licensed nail school, or a Virginia public school in a nail technician program shall be eligible for examination.

§ 2.3. Exceptions to training requirements.

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

B. Persons with experience or training as a nail technician shall be exempt from the requirement of § 2.1

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and eligible for examination if they apply for examination by October 1, 1991. All persons applying for examination after October 1, 1991 shall meet the requirements of § 2.1 to be eligible to sit for the examination.

§ 2.4. Examination required.

A. Examination generally.

Applicants for licensure shall pass a practical and a written examination.

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

C. The fee for taking the entire examination shall be \$48.

D. The fee for retaking the practical portion of the examination shall be \$35.

E. The fee for retaking the written portion of the examination shall be \$30.

F. Failure to appear.

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

§ 2.5. Administration of examination.

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

B. Every examiner shall be a practicing nail technician with three or more years active experience as a nail technician and as of April 1, 1992 should be a currently licensed nail technician.

C. The chief examiner shall be a nail technician with three or more years of active experience and as of April 1, 1992 shall be a currently licensed nail technician.

D. No certified instructor who is currently teaching or who is a school owner shall be an examiner.

§ 2.6. Original license.

Upon application to the board, on prescribed forms, any person passing the nail technician examination shall be eligible for licensure. The fee for original licensure shall be \$30. All fees shall be nonrefundable and shall not be prorated.

§ 2.7. License by endorsement.

Upon application to the board, on prescribed forms, any

person currently licensed to practice as a nail technician, in any other state or jurisdiction of the United States may be issued a license authorizing practice as a nail technician in this state, without an examination. The fee for license by endorsement shall be \$30. All fees shall be nonrefundable and shall not be prorated.

§ 2.8. Temporary permit.

A. A temporary permit to work under the supervision of a currently licensed nail technician or licensed cosmetologist may be issued to any person found eligible by the board for examination after April 1, 1992.

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

C. A licensed nail technician or person holding a temporary permit may be granted a provisional instructor permit. The provisional instructor permit shall remain in force until thirty days following the next scheduled nail instructor's examination for which the applicant would be eligible. Failure to maintain a nail technician license or a temporary permit pending examination shall disqualify an individual from holding a provisional instructor permit.

D. The temporary permit is non-renewable.

§ 2.9. Salon license.

A. Any individual wishing to operate a nail salon shall have obtained a license by October 1, 1991.

B. A nail 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, its address, or ownership shall be reported to the board in writing within 30 days of such changes.

C. The application fee for a nail salon license shall be \$100. All fees are nonrefundable and shall not be prorated.

PART III. RENEWAL OF LICENSE/CERTIFICATE.

§ 3.1. Renewal required.

A. All nail technician licenses, nail technician instructor certificates, nail salon licenses and nail school licenses shall expire two years from the last day of the month in which they were issued.

B. The renewal fees shall be as follows: for a nail technician license, \$40, for a nail technician instructor certificate, \$40, for a nail salon license, \$85, and for a nail school license, \$120.

§ 3.2. Notice of renewal.

The Department of Commerce shall mail a renewal

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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.

§ 3.3. 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 \$40 for a nail technician license, of \$40 for a nail technician instructor certificate, of \$85 for the salon license, and of \$120 for the nail 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 the 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 \$150 for a nail technician license, of \$180 for a nail technician instructor certificate, of \$250 for a nail salon license, and \$300 for a nail school license together 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.

F. Fees.

All fees are nonrefundable and shall not be prorated.

§ 3.4. Board discretion to deny renewal.

The board, in its discretion, may deny renewal of a license. Upon such denial, the applicant for renewal may request a hearing.

PART IV. NAIL SCHOOLS.

§ 4.1. General requirements.

A nail school or cosmetology school offering a nail technician program shall be an entity that:

1. Holds a school license for each and every location

by October 1, 1991;

2. Holds a salon license if the school receives compensation for services provided in its clinic;

3. Employs a staff of certified instructors or persons with a provisional instructor permit as of September 30, 1992;

4. Develops individuals as nail technicians at an entry level of competence.

5. The application fee for a nail school license shall be \$125. All fees are nonrefundable and shall not be prorated.

6. The application fee for a licensed cosmetology school offering a nail technician program shall be \$25.00.

§ 4.2. To obtain a certificate as a nail technician instructor, a person shall:

1. Hold a current Virginia nail technician license; and

2. Pass a course in teaching techniques at the post secondary educational level; or

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

Hold a certificate as a nail technician instructor in another state; or

Pass a teachers examination administered by the board.

The fee for the teachers examination shall be \$30. All fees are nonrefundable and shall not be prorated.

§ 4.3. Curriculum requirements.

Each school shall submit with its application a curriculum including but not limited to a course syllabus, a detailed course outline, a sample of 5 lesson plans, a sample of evaluation methods to be used and a breakdown of hours and/or performances. Schools must adhere to the approved course outline which shall include but not be limited to the following:

- A. Orientation, school policies, state law, regulations and professional ethics;

- B. Sterilization, sanitation, bacteriology and safety;

- C. Anatomy and physiology;

- D. Diseases and disorders of the nail;

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E. Nail procedures (manicuring, pedicuring and nail extensions);

F. Nail theory, nail structure and composition.

A licensed school wishing to amend and seek approval of its nail technician curriculum shall pay a processing fee of \$25.

§ 4.4. Performance completions.

Each approved school shall certify, on a form provided by the board, that the student has satisfactorily completed the following minimum performance completions:

- 30 Manicures
- 15 Pedicures
- 200 Sculptured nails/nail tips
- 10 Removals
- 20 Nail wraps

§ 4.5. Performances and hours reported.

Upon completion of 50%, and 100% 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.

§ 4.6. Hours and performances, exception:

Curriculum and completion requirements shall be offered over a minimum of 150 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 subsection A through E of § 3.2 of these regulations; and
2. Inform each student of progress in achieving competency of tasks taught; and
3. Record the number of hours of instruction and performances for each student.

§ 4.7. Each nail/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.

PART V. STANDARDS OF PRACTICE.

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

All current licenses, permits, and certificates issued by the board shall be conspicuously displayed in a public

area within the school or establishment where business is conducted.

§ 5.2. Sanitation.

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

1. Premises and Equipment.

a. Cleanliness. Wash basins, sinks, and work stations shall be clean. Floors shall be kept free of nail product and other waste materials. Instruments such as nippers, brushes, towels, etc., shall be cleaned, sanitized after use by each patron and stored free from contamination. All products shall be stored in sealed containers.

b. Soiled towels shall be stored in an enclosed container.

2. Operations and Service.

a. Clean towels shall be used for each patron.

b. Brushes, nippers, and other instruments, must be washed in soap and water and sanitized after each use with a disinfectant used in accordance with the manufacturers instructions.

c. A nail technician shall maintain a supply of 70% Isopropyl alcohol to be used in the event that a patron's skin is accidentally broken during the manicuring/pedicuring process. In that event all implements must be immersed in said alcohol for ten minutes.

d. All artificial acrylic nail services must be performed in a well lighted, ventilated facility which is in compliance with Article 7 of the 1987 B.O.C.A. National Building Code, as amended. All contaminants in the breathing atmosphere shall be exhausted to the outdoor air.

e. An artificial nail shall only be applied to a healthy natural nail.

§ 5.3. 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, as amended, 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 nail technician;

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2. The licensee or certificate holder is guilty of fraud or deceit in the practice or teaching of manicuring, pedicuring and performance of artificial nail services;

3. The owner or operator of a school or salon allowed a person to practice or teach a nail program 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 manicuring, pedicuring, and artificial nail services.

STATE EDUCATION ASSISTANCE AUTHORITY

Title of Regulation: VR 275-01-01. Regulations Governing the Virginia Guaranteed Student Loan Program and PLUS Loan Program.

Statutory Authority: § 23-38.64 of the Code of Virginia.

Effective Dates: August 8, 1991 through August 7, 1992.

Preamble:

The State Education Assistance Authority (SEAA) administers the federal guaranteed student loan program and insures these loans against the death, permanent and total disability, bankruptcy or default of the borrower in exchange for a guarantee fee. The guaranteed student loan programs are governed by the Higher Education Act and by regulations 34CFR668 and 34CFR682 of the U.S. Department of Education. Lenders and schools participating in the Virginia SEAA programs must comply with the requirements set forth in those federal regulations, as well as with SEAA regulations.

The SEAA is requesting an amendment to the existing regulations promulgated and approved as VR 275-01-01. This new regulation would alter Part I, Section 1.1 and Part II, Section 2.1(A). The regulation would disqualify non-Virginia residents attending out-of-state proprietary schools from receiving the loan guarantee of the SEAA.

In addition, we are also submitting a housekeeping change of a non-emergency nature. This change would eliminate out-of-date language in Part IV, Section 4.1

regarding the Authority's guarantee fee.

Nature of the Emergency and Necessity for Action:

During the past few years, proprietary school student loan volume has grown dramatically nationwide. The schools have proliferated as established campuses branched into new geographic regions. This growth has been accompanied by aggressive marketing.

The growth in lending to proprietary school students also has been accompanied by a dramatic increase in defaults. The U.S. Congress has acted to limit default costs by implementing a series of eligibility limitations for schools and borrowers.

In the past, the SEAA has guaranteed loans for any borrower to whom participating lenders chose to lend, provided the borrower was attending a school approved by the U.S. Department of Education. As regional banking has grown, Virginia lenders also began using the SEAA guarantee beyond the borders of Virginia. While this policy has strengthened the relationship of the SEAA with Virginia lenders, it has also prompted a substantial increase in loan volume from multi-state proprietary school chains as they have sought to secure loans for all their students through Virginia lenders.

For example, while the SEAA's overall loan volume increased by 105 percent in FY 1989/90, loan volume for out-of-state proprietary school students increased by 613 percent. During that year, the proportion of the SEAA's total Stafford loan volume represented by out-of-state proprietary schools climbed from 11.96 percent to 28.46 percent. Out-of-state proprietary schools accounted for 66.06 percent of our total Supplemental Loans for Students (SLS) volume, approximately double the SLS volume for all in-state schools. While out-of-state proprietary school SLS volume has fallen tremendously during the most recent fiscal year, FY 1990/91, volume still represents a 78 percent increase over FY 1988/89.

The SEAA's experience indicates that default rates for in-state proprietary schools are six times higher than for in-state public four-year schools and two times higher than for public two-year schools. Out-of-state proprietary school students are 11 times more likely to default than are students attending public four-year schools and four times more likely to default than are students attending public two-year schools. The default rate for in-state proprietary schools is approximately half of that for out-of-state proprietary schools.

Out-of-state proprietary schools present a greater default risk for several reasons: These schools are outside of the Commonwealth's regulatory jurisdiction and the federal certification process is proving to be ineffective. Moreover, the lack of adequate national monitoring systems encourages the worst schools to

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use other states' guarantors to obscure their default rates and avoid mandated volume-based reviews.

The increase in loan volume during FY 1989/90 is now evident in the SEAA's FY 1990/91 Stafford default volume. Out-of-state proprietary schools claims increased from \$316,286 in 1989/90 to \$9,552,625 in 1990/91.

Impact of Action:

Virginia residents attending out-of-state proprietary schools will continue to qualify for the guarantee of the SEAA. However, out-of-state students attending Virginia branches of proprietary schools where the main school is approved and certified by the U.S. Department of Education in a state other than Virginia will not qualify for the SEAA's guarantee.

Summary:

Default claims from out-of-state proprietary schools continue to be unacceptably high. The future risk to the stability of the Virginia student loan program of serving out-of-state proprietary school students outweighs the potential benefit of expanding the SEAA's and Virginia lender's guarantee market. Therefore, the proposed regulation disqualifies non-Virginia resident students attending out-of-state proprietary schools from using the SEAA's student loan guarantee.

VR 275-01-01. Regulations Governing the Virginia Guaranteed Student Loan Program and PLUS Student Loan Program.

PART I. DEFINITIONS.

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

"Bankruptcy" means the judicial action to declare a person insolvent and take his assets, if any, under court administration.

"Capitalization of interest" means the addition of accrued interest to the principal balance of a loan to form a new principal balance.

"Consolidation" means the aggregation of multiple loans into a single loan.

"Default" means a condition of delinquency that persists for 180 days.

"Deferment" means postponement of conversion to repayment status or postponement of installment payments for reasons authorized by statute.

"Delinquency" means the failure to make an installment payment when due, failure to comply with other terms of the note, or failure to make an interest payment when due, when the borrower and the lender have previously agreed to a set interest repayment schedule.

"Disbursement" means the issuance of proceeds of a GSL or PLUS loan.

"Due diligence" means reasonable care and diligence in processing, making, servicing, and collecting loans.

"Endorser" means a person who agrees to share the maker's liability on a note by signing the note or repayment agreement. An endorser is liable only when the maker fails in his responsibility.

"Forbearance" means a delay of repayment of principal for a short period of time on terms agreed upon in writing by the lender and the borrower.

"Grace period" means a single continuous period between the date that the borrower ceases at least half-time studies at an eligible school and the time when repayment of his loan must begin.

"Guarantee" means the SEAA's legal obligation to repay the holder the outstanding principal balance plus accrued interest in case of a duly filed claim for default, bankruptcy, total and permanent disability, or death of the borrower.

"Guarantee fee" means the fee paid to the SEAA in consideration of its guarantee.

"Guaranteed Student Loan (GSL) Program" means the program established in 1965 under Title IV, Part B, of the Higher Education Act to make low-interest loans available to students to pay for their costs of attending eligible post-secondary schools by providing loan insurance.

"Interest" means the charge made to the borrower for the use of a lender's money.

"Interest benefits" means the payment of interest on behalf of the student GSL borrower by the U.S. Department of Education while the borrower is in school, in grace, or in a period of authorized deferment.

"Lender" means any lender meeting the eligibility requirements of the U.S. Department of Education and having a participation agreement with the SEAA.

"Non-Virginia Resident" means any loan applicant who does not indicate Virginia residency on an application for a federally guaranteed loan or does not indicate a permanent home address in the Commonwealth of Virginia.

"Non-Virginia Proprietary School" means any school that meets the following criteria:

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(1) Has an assigned OE number that is registered by the U.S. Department of Education in a state other than Virginia, and meets one of the following criteria:

(A) Is not classified by the Internal Revenue Service as a 501(C)(3) tax exempt entity, or

(B) Has been defined by the U.S. Department of Education as a proprietary school.

"OE number" means the identification number assigned by the U.S. Department of Education upon its approval of eligibility for a participating school or lender.

"Participation agreement" means the contract setting forth the rights and responsibilities of the lender and the SEAA.

"Permanent and total disability" means the inability to engage in any substantial gainful activity because of a medically determinable impairment that is expected to continue for a long and indefinite period of time or to result in death.

"PLUS" means the program established in Virginia in July of 1982, that makes long-term low interest loans available to independent undergraduate students, graduate students, and parents of dependent undergraduate students, to help them meet the cost of education.

"Repayment period" means the period of time from the day following the end of the grace period to the time a loan is paid in full or is cancelled due to the borrower's death, total and permanent disability, or discharge in bankruptcy. For PLUS loans, the repayment period normally begins within 60 days after the loan is made.

"School" means any school approved by the U.S. Department of Education for participation in the GSL and PLUS Programs.

"State Education Assistance Authority (SEAA)" means the designated guarantor for the GSL and PLUS Programs in the Commonwealth of Virginia.

PART II. PARTICIPATION.

§ 2.1. Borrower eligibility.

A. Requirements.

1. For a repeat borrower, unless he has borrowed less than the annual maximum, eight months shall have elapsed between the first day of the previous loan period and the first day of the loan period, for any subsequent application or the student for whom the proceeds are being borrowed shall have advanced to a higher grade level.

2. Neither student nor parent borrower may be in default on any previous GSL or PLUS loans; however, a borrower who has defaulted and has since made full restitution to the SEAA or other guarantor including any costs incurred by the SEAA or other guarantor in its collection effort is considered eligible.

3. For purposes of borrower eligibility determination, GSL and PLUS are treated as one program. The status of a student applying for a GSL or PLUS loan will be reviewed for the eight-month time lapse since the first day of the previous loan period, or grade level progression, on the basis of all previous SEAA-guaranteed loans made for or by that student.

4. Non-Virginia resident borrowers attending non-Virginia proprietary schools are not eligible to receive SEAA-guaranteed loans.

B. Rights.

Discrimination on the basis of race, creed, color, sex, age, national origin, marital status, or physically handicapped condition is prohibited in the Virginia GSL Program and PLUS Program.

§ 2.2. Lender participation.

A. Requirements.

A lender may participate in the GSL Program and PLUS Program by executing a participation agreement with the SEAA. Lenders participating in the GSL Program are not required to participate in the PLUS Program, nor vice versa.

B. Out-of-state lenders.

In addition to executing a participation agreement, in order to be eligible to participate in the Virginia Loan GSL Program and PLUS Program, an out-of-state lender shall meet the following criteria:

1. Submit a list of all other guarantee agencies with which the lender has a participation agreement, and the most recently available default rate of the lender with each of those guarantee agencies.

2. Provide the name of the agency (federal reserve, state bank examiner, etc.) that is responsible for conducting examinations of the lender.

3. The SEAA reserves the right to request a satisfactory letter of reference from any other guarantee agency with which the lender has a participation agreement.

C. Limitation/suspension/termination.

The SEAA reserves the right to limit, suspend, or terminate the participation of a lender in the Virginia GSL

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and PLUS programs under terms consistent with the regulations of the SEAA and state and federal law.

§ 2.3. School participation.

A. Requirements.

Any school approved by the U.S. Department of Education for participation in the GSL and PLUS Programs is eligible for the Virginia GSL and PLUS Programs. Summer school courses are eligible, provided that the student is enrolled at least half-time in the session immediately preceding the summer school session or has been accepted for enrollment in a regular session immediately following summer school. Correspondence courses and home study courses are not eligible.

B. Foreign schools.

Applications and correspondence regarding Virginia GSL and PLUS borrowers attending foreign schools shall be completed in English and all sums shall be stated in U.S. dollars.

C. Limitation/suspension/termination.

The SEAA reserves the right to limit, suspend, or terminate the participation of a school in the Virginia GSL and PLUS Programs under terms consistent with the regulations of the SEAA and state and federal law.

PART III. LOAN PROCESS.

§ 3.1. Lender/responsibilities.

A. Due diligence.

In making and collecting GSL and PLUS loans, the lender shall treat the loan in the same way as if there were no guarantee. The lender shall attempt to collect delinquent loans using every effort short of litigation that it would use on a conventional loan in the ordinary course of business. If the lender so desires, it may take legal action, but this is not required.

B. Disbursement.

1. GSL loan proceeds shall be disbursed in a check, or checks made copayable to the borrower and the school, shall include the borrower's social security number, and shall be mailed to the financial aid office of the school named on the application.

2. PLUS loan proceeds for a student borrower shall be disbursed in a check or checks made copayable to the borrower and the school, shall include the borrower's social security number, and shall be mailed to the financial aid office of the school named on the application. PLUS loan proceeds for a parent borrower shall be disbursed in a check payable to the parent

and mailed to the permanent address on the application.

3. GSL and PLUS loan proceeds may be disbursed by other funds transfer method approved by the SEAA and the U.S. Department of Education.

§ 3.2. School responsibilities.

A. General.

The school shall reply promptly to inquiries made by the SEAA or the lender concerning student borrowers. The school shall return the Student Status Verification Report to the SEAA within 30 days of its receipt.

B. Certification.

1. The school shall certify the GSL or PLUS application no later than the last day of the loan period indicated on the application.

2. The certification of the financial aid officer's own loan application, the application of a spouse or dependent of a financial aid officer or an application where conflict of interest exists, is not sufficient. In any of these cases, the application shall be accompanied by certification of the immediate supervisor of the financial aid officer.

C. Disbursement.

If the school receives a loan check for a student after the period of the loan has expired, the school may retain only the amount, if any, owed to the school by that student. The remaining amount may be disbursed to the student only if the school is satisfied that the funds will be used for education expenses incurred during the loan period. The school shall maintain documentation to support any case in which funds were released to the student in excess of the amount owed to the school.

PART IV. ACTIVE LOAN.

§ 4.1. Guarantee fee.

A. The SEAA guarantee fee on GSLs is one-half of one percent, and is calculated on the principal amount from the date of disbursement to one year after studies are expected to be completed as shown on the loan application. The SEAA does not charge any additional fee for the repayment period or for periods of authorized deferment or extension.

A. The SEAA schedule of guarantee fees on GSL and PLUS loans shall be set from time to time by the SEAA Board of Directors, subject to any limits and conditions set forth in federal regulations.

B. The SEAA guarantee fee on PLUS loans is 1.0%

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calculated on the declining principal balance for the life of the loan.

C. B. A loan cannot be sold or transferred until the guarantee fee has been paid in full.

D. C. Although the SEAA is not obliged to return any fee, it may refund a guarantee fee at the request of the lender when a loan is cancelled before disbursement, or when the borrower does not use the proceeds of the loan and repays the loan to the lender shortly after disbursement.

§ 4.2. Interest.

A. Capitalization.

Before resorting to capitalization, the lender shall first make every effort to get the borrower (or endorser, where applicable) to make full payment of principal and interest due, or if that is not possible, payment of interest as it accrues. The borrower must agree in writing to any capitalization of interest, and the following guidelines shall be followed:

1. Capitalization shall be a last resort, utilized only after exhausting other options (deferment, forbearance, full payment of accrued interest).
2. The preferred candidate for capitalization is a cooperative borrower with an extreme hardship, who takes the initiative to request assistance.
3. Capitalization should be intended not to delay a default, but to avoid it.
4. During periods for which interest is to be capitalized, the lender shall contact the borrower at least quarterly to remind him of the obligation to repay the loan.

B. Guarantee on interest.

The SEAA will guarantee capitalized interest, and the interest accruing therefrom, under the following conditions, and where the lender has exercised due diligence:

1. The SEAA will pay interest on those loans not eligible for interest benefits where interest has accrued and has been capitalized during the in-school and grace periods, or during any periods of deferment.
2. The SEAA will pay interest that has accrued during the period from the date the first repayment installment was required until it was made (as in the case of the borrower's unanticipated early departure from school).
3. The SEAA will pay interest that has not been paid during a period of forbearance, or where the SEAA

has agreed to allow the lender to accrue and capitalize the interest.

§ 4.3. Repayment.

A. Minimum loan payment.

Any exception to federally established minimum loan payments must receive SEAA approval.

B. Repayment forms.

The SEAA must approve the use of repayment instruments other than the SEAA repayment agreement furnished to lenders.

C. Consolidation.

The note(s) for any loans consolidated shall be marked "paid by renewal" and retained in the borrower's file.

§ 4.4. Forbearance.

A. Eligibility.

Forbearance may be considered for circumstances such as family illness, financial hardship, or a period of school enrollment during which the borrower is ineligible for deferment. The SEAA reserves the right to disallow any forbearance.

B. Duration.

A lender may grant a borrower a single continuous forbearance period of up to three months simply by notifying the SEAA to extend the anticipated date to begin repayment of the promissory note or the anticipated paid-in-full date of the repayment agreement. A forbearance of longer than three months is subject to approval by the SEAA, except that, in the case of a period of school enrollment the lender may grant a forbearance until the time the borrower has completed his studies at the school.

§ 4.5. Delinquent loans.

A. Lender responsibilities.

In dealing with GSL and PLUS delinquencies, the lender shall use all means short of litigation that would be used in collecting an uninsured loan of a comparable amount. The lender shall also make every effort to determine if the borrower is entitled to a deferment or eligible for forbearance.

B. Due diligence.

The lender shall notify the SEAA when a loan is 60 days past due. At 90 days past due, the lender shall send a demand letter to the borrower and to the endorsers, where applicable. The lender shall submit a claim for the

default at 180 days. The lender shall notify the SEAA if it wishes to continue to work the claim past 180 days of delinquency. In the event of such notification, the lender may continue its collection efforts and the SEAA guarantee will remain in force, up to 270 days.

PART V. CLAIMS.

§ 5.1. Death claims.

To receive payment in the event of the death of the borrower, the lender shall complete and send to the SEAA the appropriate SEAA form(s), a certified copy of the death certificate, the promissory note(s) and any repayment agreement(s) marked "Without Recourse Pay to the Order of the State Education Assistance Authority" and endorsed by a proper official of the lender, a schedule of payments made, when applicable, and any support documents the lender may be able to furnish.

§ 5.2. Total and permanent disability.

To file a claim arising from the total and permanent disability of the borrower, the lender shall complete and send to the SEAA the appropriate SEAA form(s), the appropriate, completed federal form(s), signed by a qualified physician (either an M.D. or D.O.), the promissory note(s) and any repayment agreement(s) marked "Without Recourse Pay to the Order of the State Education Assistance Authority" and endorsed by a proper official of the lender, a schedule of payments made, when applicable, and any support documents the lender may be able to furnish.

§ 5.3. Default claims.

The SEAA guarantee is contingent on the lender's due diligence. Due diligence for default claims requires the following actions:

1. Sending written notice to the borrower when the loan is 5-10 days delinquent.
2. Sending a second written notice when the loan becomes 25-30 days delinquent. Making phone calls to the borrower, endorser/co-maker, parents, references, employers. All information available to the lender shall be pursued.
3. Requesting preclaims assistance from the SEAA when the loan becomes 60 days delinquent.
4. Continuing all written correspondence and phone calls to appropriate persons when the loan is 60-90 days delinquent.
5. Sending final demand letter to borrower and endorser/co-maker when the loan is 90 days delinquent.

6. Preparing and submitting a claim to SEAA when loan is 180 days delinquent.

§ 5.4. Bankruptcy claims.

A. Lender responsibilities.

When a lender receives notice of the filing of a petition in bankruptcy, the lender shall notify the SEAA claims staff by telephone of the impending bankruptcy, contact the endorser by letter, where there is an endorser, and attempt collection on the loan from the endorser. The lender shall also send a bankruptcy claim to the SEAA within 15 days after the lender receives the Notice of First Meeting of Creditors. Except in the case of Chapter 13 Bankruptcy, the lender shall send the SEAA a copy of the letter in which it attempted to collect the loan.

B. Documentation.

The bankruptcy claim shall include the appropriate completed SEAA form, the notice of bankruptcy, the promissory note(s) and any repayment agreement(s) marked "Without Recourse Pay to the Order of the State Education Assistance Authority" and endorsed by a proper official of the lender, a schedule of payments made, when applicable, and any support documents the lender may be able to furnish, as well as any other information that may help the SEAA form the basis for an objection or an exception to the bankruptcy discharge.

§ 5.5. Interest.

The SEAA will pay interest for no more than 15 days from the date that the lender is officially notified of the grounds of the claim, or no more than 15 days from the 180th day of delinquency in the event of default, to the date the claim is received by the SEAA. The SEAA pays interest on the claim for the number of days required for review by the SEAA claims staff plus 10 days for check processing. No interest is paid for the period of time during which an incomplete claim has been returned to the lender.

The effective date of this regulation shall be the date upon which it is filed with the Virginia Registrar of Regulations.

Approved this 6th day of August, 1991

/s/ Robert P. Schultze
Executive Director
State Education Assistance Authority

Approved this 6th day of August, 1991

/s/ Karen J. Peterson
for James W. Dyke, Jr.
Secretary of Education

Approved this 6th day of August, 1991

Emergency Regulations

/s/ Lawrence Douglas Wilder
Governor

Filed With:

/s/ Jane D. Chaffin
for Joan W. Smith
Registrar of Regulations
Date: August 8, 1991

DEPARTMENT OF HEALTH (BOARD OF)

Title of Regulation: VR 355-34-400. Alternative Discharging Sewage Treatment System Regulations for Individual Single Family Dwellings.

Statutory Authority: §§ 32.1-12, 32.1-163 and 32.1-164 of the Code of Virginia.

Effective Dates: August 6, 1991 through August 5, 1992.

Request: In accordance with Virginia Code § 9-6.14:4.1.c.5, the State Health Commissioner, acting pursuant to Virginia Code § 32.1-20, finds that the Alternative Discharging Sewage Treatment System Regulations (VR 355-34-400) are necessitated by an emergency situation. The regulations control the placement, construction and operation of alternative discharging sewage systems. The State Health Commissioner is requesting the Governor's approval of these emergency regulations.

/s/ C. M. G. Buttery, M.D., M.P.H.
State Health Commissioner
Date: July 30, 1991

CONCURRENCES:

/s/ Howard M. Cullum
Secretary of Health and Human Resources
Date: July 30, 1991

AUTHORIZATION:

/s/ Lawrence Douglas Wilder
Governor
Date: August 5, 1991

FILED WITH:

/s/ Ann M. Brown
Deputy Registrar of Regulations
Date: August 6, 1991

Preamble:

In accordance with Virginia Code § 9-6.14:4.1.c.5, the State Health Commissioner, acting pursuant to Virginia Code § 32.1-20, finds that the Alternative Discharging Sewage Treatment System Regulations (VR 355-34-400) are necessitated by an emergency situation. The

regulations shall remain in force and effect until July 29, 1992 or until such time as regulations can be promulgated in accordance with the Administrative Process Act.

The State Water Control Board (SWCB) is the permitting authority for sewage discharges to State waters. To date, the State Health Department's role is primarily advisory to the State Water Control Board. Permits are currently issued by the SWCB in accordance with their regulations governing the Virginia Pollutant Discharge Elimination System (VPDES) program. Their regulations and procedures require review and comment by the State Health Department.

Over the last several years, the State Health Department has cooperated with the SWCB to streamline the permitting process. The Department worked in 1989 in cooperation with the State Water Control Board to study the issue in accordance with Senate Joint Resolution 161. As a result of the SJR 161, the General Assembly amended the Code of Virginia to authorize the Department to regulate these sewage systems under the SWCB's general permit program. The State Water Control Board has adopted VR 680-14-09 which establishes a General VPDES Permit for the category of point source discharges of treated domestic sewage of less than or equal to 1,000 gallons per day.

Issuance of General VPDES Permits would reduce the application costs and paperwork burden for the dischargers. The State Health Department's regulations control the placement, construction and operation of alternative discharging sewage systems. The objective is to permit the use of these alternative systems such that the health of the public, as well as the environment, is protected.

In January, 1991 the SWCB, due to budget reductions, suspended the processing of individual VPDES permit applications for discharges of less than 1000 gallons per day. This action resulted in approximately 120 applications not being processed.

The major factor delaying the State Health Department's regulatory authority is that the SWCB's general permit program had to be first approved by the U.S. Environmental Protection Agency. This review and approval process took over two years to complete. Finally, EPA approved the General Permit on June 19, 1991.

With EPA's approval the SWCB has adopted a general permit on an emergency basis and after the required public notice period, the general permit should be effective on July 29, 1991. Likewise, the State Board of Health must adopt emergency regulations in order for the Department to implement a regulatory program.

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Sewage treatment plants which are designed for 1,000 gallons per day or less of waste are typically installed at individual homes when central sewer is not available and the soil conditions prohibit the use of septic tank and drainfields. These treatment plants have minimal impact on water quality. There are approximately 1,000 individual VPDES permits in effect for discharges in this category. This is roughly one third of the total permit issued by the State Water Control Board for all discharges in Virginia. In spite of their numbers, if all the flows from these facilities statewide were put together, the total discharge would have less pollution load than one small town's sewage treatment plant.

Nature of the Emergency:

The State Health Department could not assume responsibility for permitting alternative discharging sewage systems, including promulgation of implementing regulations, until the State Water Control Board received EPA approval of its General Permit Program and a General Permit for single family homes. EPA approved the General Permit Program on May 20, 1991. The Water Control Board submitted a draft General Permit for domestic sewage discharges of less than or equal to 1,000 gallons per day to EPA for their review. This General Permit would cover the single family home discharges. By letter dated June 19, 1991, EPA approved the General Permit. The Board adopted the General Permit as a regulation because it covers a class of discharges rather than an individual source. The Code of Virginia provides that upon final adoption of the General Permit by the SWCB and adoption of regulations by the State Board of Health, the administration of the program as it relates to single family homes may be performed by the Health Department.

Necessity For Action:

Every discharge of treated wastewater to surface waters must have a permit according to federal and state law. A number of homeowners have had applications pending for months. Without adoption of the emergency regulation, applications will not be acted upon under the current system within a reasonable period of time. By adopting the General Permit as an emergency regulation, the Board and the Health Department can begin covering these small discharges immediately.

Summary:

The regulation will allow the Health Department to implement their legislative mandate to control the permitting, construction, and operation of alternative discharging sewage systems.

This emergency regulation will be enforced under applicable statutes and will remain in full force and

effect for one year from the effective date, unless sooner modified or vacated or superseded by permanent regulations adopted pursuant to the Administrative Process Act.

The State Board of Health will receive, consider, and respond to petitions by any interested persons at any time for the reconsideration or revision of this regulation.

VR 355-34-400. Alternative Discharging Sewage Treatment System Regulations for Individual Single Family Dwellings.

PART I. GENERAL FRAMEWORK FOR REGULATIONS.

Article I. General Provisions

§ 1.1. Authority for Regulations.

Title 32.1 of the Code of Virginia, and specifically §§ 32.1-12 and 32.1-163 and 32.1-164 provide that the State Board of Health, hereinafter referred to as the board, has the duty to protect the public health and the environment. In order to discharge this duty, the board is empowered to supervise and regulate the construction, location and operation of alternative discharging sewage treatment systems with flows less than or equal to 1,000 gallons per day on a yearly average for an individual single family dwelling within the Commonwealth when such a system is regulated by the Virginia State Water Control Board pursuant to a Virginia Pollutant Discharge Elimination System General Permit.

§ 1.2. Purpose of regulations.

These regulations have been promulgated by the State Board of Health to:

A. Ensure that discharging systems are permitted, constructed, and operated in a manner which protects the environment and protects the public welfare, safety and health;

B. Guide the State Health Commissioner in his determination of whether a permit for construction and operation of a discharging system should be issued or denied;

C. Guide the owner or his agent in the requirements necessary to secure a permit for construction of a discharging system;

D. Guide the owner, or his agent, in the requirements necessary to secure an operation permit following construction;

E. Guide the owner, or his agent, in the requirements necessary to operate and maintain a discharging system;

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F. Guide the State Health Commissioner in his determination of whether a discharging system is being operated in a manner which protects public health and the environment; and

G. Guide the State Health Commissioner in determination of what actions are appropriate to correct violations of these regulations.

§ 1.3. Scope of regulations.

A. Systems served. These regulations apply to all alternative discharging sewage treatment systems constructed and operated to serve an individual single family dwelling with flows less than or equal to 1,000 gallons per day on a yearly average. This includes the following systems:

1. New construction. All new discharging systems described above when such system is regulated by the State Water Control Board pursuant to a Virginia Pollutant Discharge Elimination System General Permit.

2. Existing systems with individual VPDES permits. All existing discharging sewage treatment systems, as described above, constructed prior to the effective date of these regulations and which were permitted by the State Water Control Board under their VPDES permit program shall be governed by these regulations effective upon the expiration date of their individual VPDES permit and approval of the owner's registration statement by the SWCB under the General Permit.

3. Existing systems without individual VPDES permits. All existing discharging sewage treatment systems as described above which were operating without a valid VPDES permit on the effective date of these regulations shall be governed by these regulations after the owner receives registration statement approval from the SWCB under the General Permit.

B. Upgrading of existing systems. Location criteria contained in these regulations shall not apply to systems legally installed prior to these regulations. When extensive repairs, modifications, or replacement are required to bring a system into compliance with the discharge requirements of the General Permit, a construction permit and temporary operation permit must be obtained by the system owner. The construction permit and temporary operation permit shall be valid for the time specified on its face, at which time the repairs, modifications, or replacement must be completed.

C. Evaluation of other options required. The Department will not issue a permit to construct a discharging system, unless all options for onsite sewage treatment and disposal have been evaluated and found unsatisfactory. The consideration of all options include site evaluation(s) by the Department and when appropriate, a soil consultant

report indicating that no sewage disposal site exists on that property. Options include a conventional onsite septic system using a pump, low pressure distribution (LPD), or an elevated sand mound or other systems which may be approved by the Department under the Sewage Handling and Disposal Regulations.

§ 1.4. Relationship to the Virginia Sewage Handling and Disposal Regulations.

These regulations are independent of the Sewage Handling and Disposal Regulations which govern the treatment and disposal of sewage utilizing onsite systems.

§ 1.5. Relationship to the State Water Control Board

These regulations contain administrative procedures and construction, location, monitoring and maintenance requirements which are supplementary to the State Water Control Board's VPDES General Permit Regulation for domestic sewage discharges less than or equal to 1,000 gallons per day. These regulations apply only to individual single family dwellings with flows less than or equal to 1,000 gallons per day on a yearly average registered under this General Permit. Single family dwellings are a subset of the systems regulated by the State Water Control Board under this General Permit.

§ 1.6. Relationship to the Uniform Statewide Building Code.

These regulations are independent of, and in addition to, the requirements of the Uniform Statewide Building Code. All persons having obtained a construction permit under these regulations shall furnish a copy of the permit to the local building official, upon request, when making application for a building permit. Prior to obtaining an occupancy permit, an applicant shall furnish the local building official with a copy of the operation permit demonstrating the system has been inspected and approved by the district or local health department.

§ 1.7. Administration of regulations.

These regulations are administered by the following:

A. State Board of Health. The State Board of Health has the responsibility to promulgate, amend, and repeal regulations necessary to ensure the proper construction, location and operation of discharging systems.

B. State Health Commissioner. The State Health Commissioner, hereinafter referred to as the commissioner, is the chief executive officer of the State Department of Health. The commissioner has the authority to act, within the scope of regulations promulgated by the board, and for the board when it is not in session. The commissioner may delegate his powers under these regulations in writing to any subordinate, with the exception of (i) his power to issue variances under § 32.1-12 of the Code of Virginia and § 2.7 of these regulations, (ii) his power to issue orders under § 32.1-26 of the Code of Virginia and §§ 2.4:

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and 2.5.B of these regulations and (iii) the power to suspend or revoke construction and operation permits under § 2.18 of these regulations, which may only be delegated pursuant to § 32.1-22 and § 2.23.

The commissioner has final authority to adjudicate contested case decisions of subordinates delegated powers under this section prior to appeal of such case decisions to the circuit court.

C. State Department of Health. The State Department of Health hereinafter referred to as the department is designated as the primary agent of the commissioner for the purpose of administering these regulations.

D. District or local health departments. The district or local health departments are responsible for implementing and enforcing the regulatory activities required by these regulations.

§ 1.8. Right of entry and inspections.

In accordance with the provisions of §§ 32.1-25 and 32.1-164 of the Code of Virginia, the commissioner or his designee shall have the right to enter any property to ensure compliance with these regulations.

Article 2. Definitions.

§ 1.9. Definitions.

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

"Aerobic treatment unit or ATU" means any mechanical sewage treatment plant, designed to treat sewage from a single family dwelling utilizing the process of extended aeration.

"Agent" means a legally authorized representative of the owner.

"All weather stream" means any stream which will, at all times, dilute point source discharge effluent (from a pipe) at least 10:1 as measured during a 7 consecutive day average of a 10 year low flow (7-Q-10).

"Alternative discharging sewage treatment system" or "discharging system" means any device or system which results in a point source discharge of treated sewage for which the Department of Health may issue a permit authorizing construction and operation when such system is regulated by the SWCB pursuant to a general VPDES permit issued for an individual single family dwelling with flows less than or equal to 1,000 gallons per day on a yearly average. Such a system is designed to treat sewage from a residential source and dispose of the effluent by discharging it to an all weather stream, a wet weather stream, a dry ditch, or other location approved by the

Department.

"Commissioner" means the State Health Commissioner or his subordinate who has been delegated powers in accordance with § 1.7.B of these regulations.

"Disinfection" means the destruction of all pathogenic organisms.

"District health department" means a consolidation of local health departments as authorized in § 32.1-31 C of the Code of Virginia.

"Division" means the Division of Sanitarian Services.

"Dry Ditch" means a naturally occurring (i.e., not man made) swale or channel which ultimately leads to an all weather stream. A dry ditch may have observable flow during or immediately after a storm event or snow melt. For the purposes of these regulations all dry ditches shall have a well defined natural channel with sides that have at least a 1:5 (rise:run) slope.

"Family" means the economic unit which shall include the owner, the spouse of the owner, and any other person actually and properly dependent upon or contributing to the family's income for subsistence.

A husband and wife who have been separated and are not living together, and who are not dependent on each other for support, shall be considered separate family units.

The family unit which is based on cohabitation is considered to be a separate family unit for determining if an application fee is waivable. The cohabitating partners and any children shall be considered a family unit.

"Failing alternative discharging sewage treatment system" means any alternative discharging sewage treatment system which either fails to discharge due to exfiltration or discharges effluent having a BOD₅, suspended solids, pH, or fecal coliform greater than allowed by the General Permit as measured at the outfall.

"Failing onsite sewage disposal system" means an onsite sewage disposal system that is backing up in a house, or is discharging untreated or partially treated effluent on the ground surface or into surface waters.

"Five day biochemical oxygen demand (BOD₅)" means the quantity of oxygen used in the biochemical oxidation of organic matter in five days at 20°C under specified conditions and expressed as milligrams per liter (mg/l).

"General Permit" means a Virginia Pollutant Discharge Elimination System ("VPDES") General Permit for domestic sewage discharges less than or equal to 1,000 gallons per day on a yearly average issued by the State Water Control Board.

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"Generic system design" means non site specific plans and specifications for a system designed to treat sewage flows of 1,000 GPD or less, or an equivalent BOD5 loading rate, which have been reviewed and approved by the Division for uses governed by these regulations.

"Income" means total cash receipts of the family before taxes from all sources. These include money wages and salaries before any deductions, but do not include food or rent in lieu of wages. These receipts include net receipts from non-farm or farm self-employment (e.g., receipts from own business or farm after deductions for business or farm expenses.) They include regular payments from public assistance (including Supplemental Security Income), social security or railroad retirement, unemployment and worker's compensation, strike benefits from union funds, veterans' benefits, training stipends, alimony, child support, and military family allotments or other regular support from an absent family member or someone not living in the household; private pensions, government employee pensions, and regular insurance or annuity payment; and income from dividends, interest, rents, royalties, or periodic receipts from estates or trusts. These receipts further include funds obtained through college work study programs, scholarships, and grants to the extent said funds are used for current living costs. Income does not include the value of food stamps, WIC checks, fuel assistance, money borrowed, tax refunds, gifts, lump sum settlements, inheritances or insurance payments, withdrawal of bank deposits, earnings of minor children, or money received from the sale of property. Income also does not include funds derived from college work study programs, scholarships, loans, or grants to the extent such funds are not used for current living costs.

"Intermittent sand filter system" means a system designed to treat sewage by causing the sewage to be dosed through a properly designed bed of graded sand media.

"Intermittent stream" means any stream which cannot, at all times, dilute point source discharge effluent (from a pipe) at least 10:1 as measured during a 7 consecutive day average of a 10 year low flow (7-Q-10).

"Local health department" means the department established in each city and county in accordance with § 32.1-30 of the Code of Virginia.

"Onsite sewage disposal system" means a sewerage system or treatment works designed not to result in a point source discharge.

"Owner" means any person, who owns, leases, or proposes to own or lease an alternative discharging sewage treatment system.

"Person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations

organized under the law of this Commonwealth or any other state or country.

"Proprietary system design" means any group of discharging sewage treatment systems manufactured and installed following substantially similar engineering plans and specifications designed to treat a specific volume of sewage or BOD5 loading rate as determined by the Division.

"Pump and Haul" means the temporary (less than one year) disposal of sewage conducted under a valid pump and haul permit issued in accordance with the Sewage Handling and Disposal Regulations.

"Recirculating sand filter system" means a system which treats sewage effluent by repeatedly passing the sewage through a pump chamber and sand filter to achieve alternating wetting and drying cycles.

"Sanitary survey" means an investigation of any condition that may effect public health.

"Settleable solids" means solids which settle after 30 minutes and expressed as milligrams per liter (mg/l).

"Sewage" means water carried and nonwater carried human excrement, kitchen, laundry, shower, bath, or lavatory wastes separately or together with such underground, surface, storm and other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments or other places.

"Sewer" means any sanitary or combined sewer used to convey sewage or municipal or industrial wastes.

"Subdivision" means the division of land creating two or more new lots from a single parcel.

"Subsurface soil absorption" means a process which utilizes the soil to treat and dispose of sewage effluent.

"SWCB" means the State Water Control Board and its designees.

"Total suspended solids" means solids in effluent samples which can be removed readily by standard filtering procedures in a laboratory and expressed as mg/l.

"Variance" means a conditional waiver of a specific regulation which is granted to a specific owner relating to a specific situation or facility and may be for a specified time period.

"VPDES permit" means a Virginia Pollutant Discharge Elimination System permit issued by the SWCB under the authority of the Federal NPDES program.

"Well" means any artificial opening or artificially altered natural opening, however made, by which ground

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water is sought or through which ground water flows under natural pressure or is intended to be artificially drawn; provided this definition shall not include wells drilled for the following purposes: i) exploration or production of oil or gas, ii) building foundation investigation and construction, iii) elevator shafts, iv) grounding of electrical apparatus, or v) the modification or development of springs.

PART II. PROCEDURAL REGULATIONS.

Article 1. Procedures.

§ 2.1. Compliance with the Administrative Process Act.

The provisions of the Virginia Administrative Process Act, (§ 9-6.14:1 et. seq. of the Code of Virginia) shall govern the promulgation and administration of these regulations and shall be applicable to the appeal of any case decision based upon these regulations.

§ 2.2. Powers and procedures of regulations not exclusive.

The commissioner may enforce these regulations through any means lawfully available.

§ 2.3. Effective date of regulations.

These regulations are effective upon filing with the Registrar of Regulations.

§ 2.4. Emergency order.

If an emergency exists the commissioner may issue an emergency order as is necessary for preservation of public health, safety, and welfare or to protect environmental resources. The emergency order shall state the reasons and precise factual basis upon which the emergency order is issued. The emergency order shall state the time period for which it is effective. Emergency orders will be publicized in a manner deemed appropriate by the commissioner. The provisions of §§ 2.5.C and 2.5.D shall not apply to emergency orders issued pursuant to this section.

§ 2.5. Enforcement of regulations.

A. Notice. Subject to the exceptions below, whenever the commissioner or the district or local health department has reason to believe a violation of any of these regulations has occurred or is occurring, the alleged violator shall be notified. Such notice shall be made in writing, shall be delivered personally or sent by certified mail, shall cite the regulation or regulations that are allegedly being violated, shall state the facts which form the basis for believing the violation has occurred or is occurring, shall include a request for a specific action by the recipient by a specified time and shall state the penalties associated with such violation. When the

commissioner deems it necessary, he may initiate criminal prosecution or seek civil relief through mandamus or injunction prior to giving notice.

B. Orders. Pursuant to the authority granted in § 32.1-26 of the Code of Virginia, the commissioner may issue orders to require any owner, or other person, to comply with the provisions of these regulations. The order shall be signed by the commissioner and may require:

1. The immediate cessation and correction of the violation;
2. Appropriate remedial action to ensure that the violation does not recur;
3. The submission of a plan to prevent future violation to the commissioner for review and approval;
4. The submission of an application for a variance; or
5. Any other corrective action deemed necessary for proper compliance with the regulations.

C. Hearing before the issuance of an order. Before the issuance of an order described in § 2.5.B, a hearing must be held, with at least 30 days notice by certified mail to the affected owner or other person of the time, place and purpose thereof, for the purpose of adjudicating the alleged violation or violations of these regulations. The procedures at the hearing shall be in accordance with §§ 2.8.A or 2.8.B of the regulations and with §§ 9-6.14:11 through 9-6.14:14 of the Code of Virginia.

D. Order - when effective. All orders issued pursuant to § 2.5.B shall become effective not less than 15 days after mailing a copy thereof by certified mail to the last known address of the owner or person violating these regulations. Violation of an order is a Class 1 misdemeanor. See § 32.1-27 of the Code of Virginia.

E. Compliance with effective orders. The commissioner may enforce all orders. Should any owner or other person fail to comply with any order, the commissioner may:

1. Apply to an appropriate court for an injunction or other legal process to prevent or stop any practice in violation of the order;
2. Commence administrative proceedings to suspend or revoke the applicable permit;
3. Request the Attorney General to bring an action for civil penalty, injunction, or other appropriate remedy; or
4. Request the Commonwealth Attorney to bring a criminal action.

F. Not exclusive means of enforcement. Nothing contained in § 2.4 or § 2.5 shall be interpreted to require

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the commissioner to issue an order prior to seeking enforcement of any regulations or statute through an injunction, mandamus or criminal prosecution.

§ 2.6. *Suspension of regulations during disasters.* If in the case of a man-made or natural disaster, the commissioner finds that certain regulations cannot be complied with and that the public health is better served by not fully complying with these regulations, he may authorize the suspension of the application of the regulations for specifically affected localities and institute a provisional regulatory plan until the disaster is abated.

§ 2.7. Variances.

Only the commissioner or the deputy commissioners may grant a variance to these regulations. (See §§ 32.1-12 and 32.1-22 of the Code of Virginia and § 1.7.B of these regulations). The commissioner or the deputy commissioners shall follow the appropriate procedures set forth in this subsection in granting a variance.

A. *Requirements for a variance.* The commissioner may grant a variance if a thorough investigation reveals that the hardship imposed by these regulations outweighs the benefits that may be received by the public. Further, the granting of such a variance shall not subject the public to unreasonable health risks or jeopardize environmental resources.

B. *Application for a variance.* Any owner who seeks a variance shall apply in writing within the time period specified in § 2.11.B. The application shall be signed by the owner, addressed and sent to the commissioner at the State Department of Health in Richmond. The application shall include:

1. A citation to the regulation from which a variance is requested;
2. The nature and duration of the variance requested;
3. Any relevant analytical results including results of relevant tests conducted pursuant to the requirements of these regulations;
4. Statements or evidence why the public health and welfare and environmental resources would not be degraded if the variance were granted;
5. Suggested conditions that might be imposed on the granting of a variance that would limit the detrimental impact on the public health and welfare or environmental resources;
6. Other information, if any, believed pertinent by the applicant; and
7. Such other information as the district or local health department or commissioner may require.

C. Evaluation of a variance application.

1. The commissioner shall act on any variance request submitted pursuant to § 2.7.B within 60 calendar days of receipt of the request.
2. In the evaluation of a variance application, the commissioner shall consider the following factors:
 - a. The effect that such a variance would have on the construction, location, or operation of the discharging system;
 - b. The cost and other economic considerations imposed by this requirement;
 - c. The effect that such a variance would have on protection of the public health;
 - d. The effect that such a variance would have on protection of environmental resources; and
 - e. Such other factors as the commissioner may deem appropriate.

D. Disposition of a variance request.

1. The commissioner may deny any application for a variance by sending a denial notice to the applicant by certified mail. The notice shall be in writing and shall state the reasons for the denial.
2. If the commissioner proposes to grant a variance request submitted pursuant to § 2.7.B the applicant shall be notified in writing of this decision. Such notice shall identify the variance, discharging system covered, and shall specify the period of time for which the variance will be effective. The effective date of a variance shall be as stated in the variance.
3. No owner may challenge the terms or conditions set forth in the variance after 30 calendar days have elapsed from the effective date of the variance.

E. *Posting of variances.* All variances granted to any discharging sewage treatment system are transferable from owner to owner unless otherwise stated. Each variance shall be attached to the permit to which it is granted. Each variance is revoked when the permit to which it is attached is revoked.

F. *Hearings on disposition of variances.* Subject to the time limitations specified in § 2.11, hearings on denials of an application for a variance or on challenges to the terms and conditions of a granted variance may be held pursuant to § 2.8.A or 2.8.B, except that informal hearings under § 2.8.A shall be held before the commissioner or his designee.

§ 2.8. Hearing types.

Hearings before the commissioner or the commissioner's designees shall include any of the following forms depending on the nature of the controversy and the interests of the parties involved.

A. Informal hearings. An informal hearing is a meeting with a district or local health department with the district or local health director presiding and held in conformance with § 9-6.14:11 of the Code of Virginia. The district or local health department shall consider all evidence presented at the meeting which is relevant to the issue in controversy. Presentation of evidence, however, is entirely voluntary. The district or local health department shall have no subpoena power. No verbatim record need be taken at the informal hearing. The local or district health director shall review the facts presented and based on those facts render a decision. A written copy of the decision and the basis for the decision shall be sent to the appellant within 15 work days of the hearing, unless the parties mutually agree to a later date in order to allow the department to evaluate additional evidence. If the decision is adverse to the interests of the appellant, an aggrieved appellant may request an adjudicatory hearing pursuant to § 2.8.B.

B. Adjudicatory hearing. The adjudicatory hearing is a formal, public adjudicatory proceeding before the commissioner, or a designated hearing officer, and held in conformance with § 9-6.14:12 of the Code of Virginia. An adjudicatory hearing includes the following features:

1. Notice. Notice which states the time and place and the issues involved in the prospective hearing shall be sent to the owner or other person who is the subject of the hearing. Notice shall be sent by certified mail at least 15 calendar days before the hearing is to take place.

2. Record. A record of the hearing shall be made by a court reporter. A copy of the transcript of the hearing, if transcribed, will be provided within a reasonable time to any person upon written request and payment of the cost.

3. Evidence. All interested parties may attend the hearing and submit oral and documentary evidence and rebuttal proofs, expert or otherwise, that are material and relevant to the issues in controversy. The admissibility of evidence shall be determined in accordance with § 9-6.14:12 of the Code of Virginia.

4. Counsel. All parties may be accompanied by and represented by counsel and are entitled to conduct such cross-examination as may elicit a full and fair disclosure of the facts.

5. Subpoena. Pursuant to § 9-6.14:13 of the Code of Virginia, the commissioner or hearing officer may issue subpoenas on behalf of himself or any person or owner for the attendance of witnesses and the production of books, papers or maps. Failure to

appear or to testify or to produce documents without adequate excuse may be reported by the commissioner to the appropriate circuit court for enforcement.

6. Judgment and final order. The commissioner may designate a hearing officer or subordinate to conduct the hearing as provided in § 9-6.14:12 of the Code of Virginia, and to make written recommended findings of fact and conclusions of law to be submitted for review and final decision by the commissioner. The final decision of the commissioner shall be reduced to writing and will contain the explicit findings of fact upon which his decision is based. Certified copies of the decision shall be delivered to the owner affected by it. Notice of a decision will be served upon the parties and become a part of the record. Service may be by personal service or certified mail return receipt requested.

§ 2.9. Request for hearing.

A request for an informal hearing shall be made by sending the request in writing to the district or local health department. A request for an adjudicatory hearing shall be made in writing and directed to the commissioner at the State Department of Health in Richmond. Requests for hearings shall cite the reason(s) for the hearing request and shall cite the section(s) of these regulations involved.

§ 2.10. Hearing as a matter of right.

Except as provided in § 2.23, any owner or other person whose rights, duties, or privileges have been, or may be affected by any decision of the board or its subordinates in the administration of these regulations shall have a right to both informal and adjudicatory hearings. The commissioner may require participation in an informal hearing before granting the request for a full adjudicatory hearing. Exception: No person other than an owner shall have the right to an adjudicatory hearing to challenge the issuance of either a construction permit or operation permit unless the person can demonstrate at an informal hearing that the minimum standards contained in these regulations have not been applied and that he will be injured in some manner by the issuance of the permit.

§ 2.11. Appeals.

Any appeal from a denial of a construction or operation permit for a discharging system must be made in writing and received by the department within sixty days of the date of the denial.

A. Any request for hearing on the denial of an application for a variance pursuant to § 2.7.D.1 must be made in writing and received within 60 days of receipt of the denial notice.

B. Any request for a variance must be made in writing

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and received by the department prior to the denial of the discharging system permit, or within 60 days after such denial.

C. In the event a person applies for a variance within the 60 day period provided by subsection B above, the date for appealing the denial of the permit, pursuant to subsection A above, shall commence from the date on which the department acts on the request for a variance.

D. Pursuant to the Administrative Process Act (§ 9-6.14:1 et. seq. of the Code of Virginia) an aggrieved owner may appeal a final decision of the commissioner to an appropriate circuit court.

§ 2.12. Permits - general.

A. Construction permit required. After the effective date of these regulations, no person shall construct, alter, rehabilitate, modify or extend a discharging system or allow the construction, alteration, rehabilitation, or extension of a discharging system, without a written construction permit from the commissioner. Furthermore, except as provided in § 1.3.A.2 and § 2.12.B, no person or owner shall cause or permit any discharging system to be operated without a written operation permit issued by the commissioner which authorizes the operation of the discharging system. Conditions may be imposed on the issuance of any construction or operation permit and no discharging system shall be constructed or operated in violation of those conditions.

B. Operation permit required. Except as provided in § 2.21, no person shall place a discharging system in operation, or cause or allow a discharging system to be placed in operation, without obtaining a written operation permit pursuant to §§ 2.20 and 2.22.

C. Construction permits valid for 54 months. Except as provided in §§ 1.3.B, 2.18 and 2.19, construction permits for a discharging system shall be deemed valid for a period of 54 months from the date of issuance.

D. Operation permit validity. Except as provided for in § 2.18, operation permits shall be valid for a period of time concurrent with the General Permit and the maintenance contract required pursuant § 3.12.B and may be renewed upon written proof of a new or renewed maintenance contract.

E. Permits not transferable. Construction and operation permits for discharging systems shall not be transferable from one person to another or from one location to another. Each new owner shall make a written application for a permit. Application forms are available at all local health departments.

§ 2.13. Procedures for obtaining a construction permit for a discharging system.

General. The process for obtaining a construction permit

for a discharging system consists of two steps. These are filing an application with fee to determine the suitability of a site and filing plans for the type of system being proposed.

A. Application fees. A fee of fifty dollars shall be charged to the owner for filing an application for an alternative discharging sewage treatment system permit with the Department. The fee shall be paid to the Virginia Department of Health by the owner or his agent at the time of filing the application and the application shall not be processed until the fee has been collected. Applications shall be limited to one site specific proposal. When site conditions change, or the needs of an applicant change, or the applicant proposes and requests another site be evaluated, and a new site evaluation is conducted, a new application and fee are required.

1. Waiver of fees. An owner whose income of his family is at or below the 1988 Poverty Income Guidelines For All States (Except Alaska and Hawaii) And The District of Columbia established by the Department of Health and Human Services, 53 Fed. Reg. 4213(1988), or any successor guidelines, shall not be charged a fee for filing an application for an alternative discharging sewage treatment system permit.

2. Determining eligibility.

a. An owner seeking a waiver of an application fee shall request the waiver on the application form. The Department will require information as to income, family size, financial status and other related data. The Department shall not process the application until final resolution of the eligibility determination for waiver.

b. It is the owner's responsibility to furnish the Department with the correct financial data in order to be appropriately classified according to income level and to determine eligibility for a waiver of an application fee. The owner shall be required to provide written verification of income such as check stubs, written letter from an employer, W-2 forms, etc., in order to provide documentation for the application.

c. The proof of income must reflect current income which is expected to be available during the next twelve month period. Proof of income must include: Name of employer, amount of gross earnings, pay period for stated earnings. If no pay stub, a written statement must include the name, address, telephone number and title of person certifying the income.

B. Written application required. Construction permits are issued by the authority of the commissioner. All requests for construction permits for discharging systems shall be by written application, signed by the owner or his agent, and shall be directed to the district or local health

department. All applications shall be made on the application form set out in Appendix I.

C. *Application completeness.* An application shall be deemed complete upon receipt by the district or local health department of a signed and dated application, together with the appropriate fee, containing the following information:

1. The property owner's name, address, and telephone number;
2. The applicant's name, address, and phone number (if different from subdivision 1 above);
3. A statement signed by the property owner, or his agent, granting the Health Department access to the site for the purposes of evaluating the suitability of the site for a discharging system and allowing the department access to inspect the construction, maintenance and operation of the discharging system after it is installed;
4. A site sketch as described in § 2.14.C which also contains the information required by §§ 2.14.B and 2.14.G;
5. A written statement from the SWCB that the owner's registration statement has been approved under the General Permit regulation;
6. Copies of all easements required by § 3.7.C; and
7. Other information which the Department deems necessary to comply with the intent of these regulations.

D. *Application assistance.* It is the policy of the Department to assist persons applying for a discharging system permit by maintaining a supply of all appropriate forms in each local office. Department personnel will assist individuals in understanding how to fill out the form and provide information on the administrative process and technical requirements involved in obtaining a permit.

E. *Site review.* Upon receipt of a completed application the department will conduct a site review to determine if the site meets the minimum siting criteria contained in Part III of these regulations. Upon completing the site evaluation the department will advise the owner in writing of the results of the evaluation.

1. *Satisfactory site found.* When a satisfactory site is found for a discharging system, the written notice to the applicant shall include the type of discharge point found (i.e., all weather stream, intermittent stream, or dry ditch).
2. *No satisfactory site found.* When no satisfactory site is found the owner shall be notified of all limiting factors restricting the use of a discharging system.

Further, the applicant shall be notified of his right to appeal and what steps are necessary to initiate the process.

§ 2.14. Site plan.

General. After a satisfactory site for a discharging system has been found, the applicant shall submit a site plan. The purpose of the site plan is to demonstrate how the effluent limitations established by the SWCB and the remaining criteria of these regulations can be met. At a minimum the site plan must show the following:

A. *Type of system.* The type of system and, where applicable, the manufacturer, model number, NSF approval, and hydraulic capacity and capacity in pounds of BOD5 per day;

B. *Location.* The specific location of the property including the county tax map number (where available), a copy of the United States Geological Survey 7.5 minute topographic map showing the discharge point and down stream for one mile, and directions to the property;

C. *Site Sketch.* A site sketch showing the location of existing or proposed houses, property boundaries, existing and proposed wells, actual or proposed discharging systems within 600 feet of the discharge point, recorded easements, public water supply intakes, and swimming or recreational water use areas within one mile;

D. *Grades.* The elevation of the house sewer line where it exits the house and the elevation of the inlet and outlet ports or tees on all treatment units. Where discharges are to dry ditches or intermittent streams the site plan shall show the elevation of the discharge point, the point 500' downgrade from the discharge point and points every fifty feet between the discharge point and 500' downstream. This requirement may be met by drawing a flow diagram showing all elements listed above;

E. *Distances.* The distance between all elevation points required by § 2.14.D so that the grade can be established;

F. *Pump specifications.* If applicable pump specifications must include the manufacturer, model number, and a pump curve;

G. *Flood plain.* The location of the 100 year flood plain. All portions of a discharging system, except for the discharge pipe and step type post aeration, if required, shall be located above the 100 year flood plain; and

H. *Sampling ports.* The plan shall show proposed sampling ports for collecting samples as described in § 3.9.I and the location of the cleanout port and frost free spigot required in §§ 3.9.J and 3.9.K.

§ 2.15. Issuance of the construction permit.

A construction permit shall be issued to the owner by

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the commissioner after receipt and review of a complete application submitted under § 2.13 and a satisfactory site and plan review and approval under § 2.14.

§ 2.16. Exception for failing onsite sewage disposal systems.

When a failing onsite sewage disposal system is identified, and the site location criteria in these regulations cannot be met, the site location criteria in Part III Article 1 of these regulations may be waived, provided the following conditions are met.

A. Reduce health hazard or environmental impact. The issuance of a discharging system permit will reduce an existing health hazard or will improve or negate environmental impacts associated with the existing discharge. This determination shall be made by the district health director or the district sanitarian manager;

B. No increase in waste load. There will be no increase in the waste load generated by any additions to the dwelling except when necessary to provide for minimum facilities necessary for good sanitation. The minimum facilities for a single family dwelling are: a water closet, a bathroom sink, a bathtub and/or shower, and a kitchen sink. More than one bathroom may be added to a dwelling provided the potential occupancy of the structure is not increased; and

C. Minimum facilities. Where a failing onsite sewage disposal system already has more than the minimum facilities described above, the discharging system may be designed and permitted to accommodate the entire existing sewage flow. In no event shall the system designed and permitted exceed the existing sewage flow unless all conditions and criteria of these regulations are met.

§ 2.17. Denial of a construction or operation permit.

A. Construction permit. If it is determined that the proposed site does not comply with these regulations or that the design of the system would preclude the safe and proper operation of a discharging system, or that the installation and operation of the system would create an actual or potential health hazard or nuisance, or the proposed design would adversely impact the environment, the permit shall be denied and the owner shall be notified in writing, by certified mail, of the basis for the denial. The notification shall also state that the owner has the right to appeal the denial.

B. Operation permit. In addition to the grounds set forth in § 2.17.A, the operation permit shall be denied if the discharging system is not constructed in accordance with the construction permit or the owner has failed to provide the completion statement required by § 2.20 or a copy of a valid maintenance contract required by 3.12. The owner shall be notified in writing, by certified mail, of the basis for the denial. The notification shall also state that the owner has the right to appeal the denial.

§ 2.18. Suspension or revocation of construction permits and operation permits.

The commissioner may suspend or revoke a construction permit or operation permit for any of the following reasons:

A. Failure to comply with the conditions of the permit including, but not limited to, the monitoring and maintenance requirements in Article 4 and the payment of the inspection fee under § 2.22;

B. Failure to keep a maintenance contract in force in accordance with § 3.12;

C. Violation of any of these regulations for which no variance has been issued;

D. Facts become known which reveal that an actual or potential health hazard has been or would be created or that the environmental resources may be adversely affected by allowing the proposed discharging system to be installed or operated; or

E. Failure to comply with the effluent limitations set forth by the SWCB in the General Permit as determined by the monitoring required by Article 4.

§ 2.19. Voidance of construction permits.

A. Null and void. All discharging system construction permits are null and void when any of the following conditions occur:

1. Conditions such as house location, well location, discharging system location, discharge point, discharge system design, topography, drainage ways, or other site conditions are changed from those shown on the application or site plan;

2. Conditions are changed from those shown on the construction permit;

3. More than 54 months elapse from the date the permit was issued; or

4. The suspension, revocation or expiration of the General Permit or of the owner's approved registration by the SWCB.

B. Reapplication. Reapplication for the purposes of having an expired permit reissued shall be the responsibility of the owner, and such reapplication shall be handled as an initial application and comply fully with § 2.13.

§ 2.20. Statement required upon completion of construction.

Upon completion of the construction, alteration, or rehabilitation of a discharging system, the owner or agent shall submit to the district or local health department a

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statement, signed by the contractor, upon the form set out in Appendix III, that the system was installed and constructed in accordance with the permit, and further that the system complies with all applicable state and local regulations, ordinances and laws.

§ 2.21. Inspection and correction.

No discharging system shall be placed in operation, except for the purposes of testing the mechanical soundness of the system, until inspected by the district or local health department, corrections made if necessary, and the owner has been issued an operation permit by the district or local health department.

§ 2.22. Issuance of the operation permit.

Upon satisfactory completion of the requirements of §§ 2.20, 2.21 and 3.12.B, the commissioner shall issue an operation permit to the owner. The issuance of an operation permit does not denote or imply any warranty or guarantee by the department that the discharging system will function for any specified period of time. It shall be the responsibility of the owner or any subsequent owner to maintain, repair, upgrade, or replace the discharging system.

A. **Inspection fees.** A fee of fifty dollars shall be charged to the owner for each annual inspection of an alternative discharging sewage treatment system conducted by the Department in accordance with § 3.11.E. The fee shall be paid to the Virginia Department of Health by the owner or his agent within thirty days of receipt of the inspection results from the Department. Each inspection fee shall apply to one site specific inspection of only one discharging system.

B. **Waiver of fees.** An owner whose income of his family is at or below the 1988 Poverty Income Guidelines For All States (Except Alaska and Hawaii) And The District of Columbia established by the Department of Health and Human Services, 53 Fed. Reg. 4213(1988), or any successor guidelines, shall not be charged a fee for the annual inspection of an alternative discharging sewage treatment system conducted by the Department of Health in accordance with § 3.11.E.

C. Determining eligibility.

1. An owner seeking a waiver of an inspection fee shall request the waiver in writing. The Department will require information as to income, family size, financial status and other related data.

2. It is the owner's responsibility to furnish the Department with the correct financial data in order to be appropriately classified according to income level and to determine eligibility for a waiver of an inspection fee. The owner shall be required to provide written verification of income such as check stubs, written letter from an employer, W-2 forms, etc., in

order to provide documentation for the file.

3. The proof of income must reflect current income which is expected to be available during the next twelve month period. Proof of income must include: Name of employer, amount of gross earnings, pay period for stated earnings. If no pay stub, a written statement must include the name, address, telephone number and title of person certifying the income.

§ 2.23. Suspension of an operation permit.

A. **Suspension.** The district health director or district sanitarian manager may suspend the operation permit held by the owner of any discharging system which discharges effluent in violation of the effluent limitations set forth in the General Permit provided the following conditions have been met:

1. The owner has received written notification, either in person or by certified mail, of the violation at least seven working days prior to the suspension;

2. The owner has been advised of the nature of the violation and, if known, what actions are necessary to correct the violation;

3. The owner has been advised of his right to a hearing pursuant to § 2.8.B to appeal the suspension of the operation permit;

4. The owner has taken no demonstrable action to identify and correct the problem causing the system to fail; and

5. The owner has been issued a temporary pump and haul permit, or given another alternative method of sewage disposal, at least 24 hours prior to the suspension of the operation permit.

B. **Discharge suspended.** Upon suspension of an operation permit the owner shall immediately cease discharging effluent until corrections have been made to the discharging system which may be expected to bring the system into compliance with these regulations. The owner shall demonstrate to the health department that interim sewage disposal methods are in compliance with all federal, state and local laws governing public health and the environment. In the case of pump and haul the owner shall be required to indicate the name, address and phone number of the hauler and the frequency of pumping.

C. **Modifications, alterations, or extensions.** In addition to the remedies under §§ 2.23A and 2.23B, when any individual discharging system has exceeded its permitted discharge limitations three times in any one year or five times in any two consecutive years, the district health director or district sanitarian manager may require modifications, alterations or extensions to the system in order to improve the effectiveness of the system.

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§ 2.24. Reinstatement of an operation permit.

Upon completion of repairs, modifications, alterations, or extensions to the discharging system, which may be reasonably expected to correct the cause of the violation, the Department shall reinstate the operation permit. Upon reinstating the operation permit, the pump and haul permit shall be rescinded. The notice of reinstatement of the operation permit and rescinding of the pump and haul permit shall be made in writing and delivered in person or by certified mail.

§ 2.25. Preliminary system approval.

Preliminary approval of a particular model of a discharging system indicates that the specific model uses a method, technology, process or combination of methods, technologies or processes that has been demonstrated in full scale systems under controlled test conditions. The results of these tests indicate that the system has potential to treat residential sewage under actual residential conditions. Continued satisfactory performance is necessary to maintain system approval. The following general types of systems may be approved for use provided their approval has not been suspended or revoked pursuant to § 2.26.B or § 2.26.D. Further, no system may be approved for use which allows the discharge of raw or partially treated sewage as specified in § 3.5.B. Approval of generic system designs or of individual proprietary systems will be made by the Division.

A. *Aerobic treatment unit.* All aerobic treatment units certified by the National Sanitation Foundation as meeting Standard 40 shall have preliminary approval. All stand alone ATU's shall be capable of meeting the effluent limitations established by the State Water Control Board for discharges serving single family dwellings with flows less than or equal to 1,000 gallons per day on a yearly average and shall comply with all other design and construction requirements contained in these regulations. Other independent third party testing may be substituted provided the testing is equivalent in scope, detail, and rigor to the NSF procedure as determined by the Division.

1. *Product registration.* All aerobic treatment units shall be registered with the Division of Sanitarian Services in order to receive preliminary approval. In order to register a product, the manufacturer shall submit documentation showing the results of the NSF Standard 40 testing, a letter or other proof that NSF recognizes the product as complying with their Standard 40, and detailed plans and specifications of the product. Detailed plans and specifications shall include at a minimum a plan view of the ATU, a cross section of the ATU and any supplementary views which together with the specification and general installation guidelines will provide sufficient information for sanitarians to issue permits.

2. *Health department review.* The Division of Sanitarian Services will review requests for

preliminary approval within 30 work days of receipt and respond to the applicant in writing. The Department may approve, deny, conditionally approve, or request additional information on any request. When addition information is requested the Division shall respond to the additional information within 30 days of receipt.

B. *Intermittent sand filter.* All plans for an intermittent sand filter must use a design prepared by a professional engineer licensed to practice in Virginia, except for generic system designs approved by the Division which may be submitted by a nationally registered environmental health sanitarian. All plans and specifications shall bear the name, address, and occupation of the author and date of design.

C. *Recirculating sand filter.* All recirculating sand filters must use a design prepared by a professional engineer licensed to practice in Virginia, except for generic system designs approved by the Division which may be submitted by a nationally registered environmental health sanitarian. All plans and specifications shall bear the name, address, and occupation of the author and date of design.

D. *Constructed wetlands.* Constructed wetlands are considered experimental and will be considered on a case by case basis by the Department. All constructed wetland systems shall be designed to meet or exceed 10 mg/l BOD5 and 10 mg/l suspended solids.

E. *Other systems.* Systems not listed above are considered to be experimental and will not be considered for use under these emergency regulations.

§ 2.26. Suspension and revocation of preliminary system approval.

A. *General.* Preliminary approval of the systems cited in § 2.25 is based on the capability of a particular technology to treat sewage under controlled conditions. In order to protect public health and the environment, these systems must also be capable of working properly under normal field conditions.

B. *Suspension of preliminary approval.* Anytime more than 5%, as measured statewide, of the discharging systems of any approved generic system or of any approved proprietary system design are found to be failing for two consecutive quarters, the approval of that design or model shall be suspended. Failure for the purposes of this section means the discharge of effluent that does not meet the effluent limitations set forth in the State Water Control Board's General Permit for all constituents except residual chlorine.

1. When less than 100 systems of a single design have been installed, Table 2.1 shall be used determine the maximum acceptable failure rate. The 5% rule shall not apply because a small number of failures, or even a single failure, may violate this percentage without

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unduly endangering public health or the environment.

2. When the approval of a system has been suspended, no additional systems of that design or model shall be installed or approved unless construction or installation is already in progress and the system or materials to construct the system are already on the job site.

Table 2.1

Number of systems Installed in VA	# not to exceed for suspension	# not to exceed for revocation
0-10	1	3
11-25	2	6
26-50	3	9
51-75	4	12
76-99	5	15

C. Reinstatement of approval for a suspended system. The approval of a system under suspension may be reinstated by the Division after the following conditions have been met:

1. repairs have been made to all failing systems, and
2. follow-up testing, performed in accordance with § 3.11.D.1, reveals that less than 2% of the systems are failing. When less than 100 systems have been installed, approval may be reinstated when repairs and testing as described above has been completed on all failing systems and the number of failures is less than that shown in Table 2.1.

D. Revocation of approval. Anytime more than 15%, as measured statewide, of the discharging systems of any approved generic system or of any approved proprietary system design are found to be failing for two consecutive quarters, the approval of that design shall be revoked. Failure for the purposes of this section means the discharge of effluent that does not meet the effluent limitations set forth in the State Water Control Board's General Permit for all constituents except residual chlorine.

1. When less than 100 systems of a single design have been installed, Table 2.1 shall be used determine the maximum acceptable failure rate. The 15% rule shall not apply because a small number of failures, or even a single failure, may violate this percentage without unduly endangering public health or the environment.
2. When the approval of a system has been revoked, no additional systems of that type shall be installed or approved.

E. Reinstatement of a revoked system. The approval of a system that has had its approval revoked may be reinstated by the Division after the following conditions have been met.

1. Design flaws which led to the excessive failure rate have been corrected, and

2. Repairs have been made to all systems to correct the design flaws, and

3. Follow-up testing, performed in accordance with § 3.11.D.1 reveals that less than 2% of the systems are failing. When less than 100 systems have been installed, approval may be reinstated when repairs and testing as described above has been completed on all failing systems and the number of failures is less than that shown in Table 2.1.

F. Notification by the Department. When the preliminary approval for a system is suspended, or is revoked, the Department will send notice of the suspension to all Regional and District offices of the Health Department, the manufacturer (if applicable), and other interested parties who have notified the Department in writing that they wish to be notified. The notice shall include the system name, failure rate, location of failing systems and what actions are necessary to return to an approved status.

PART III. LOCATION, DESIGN, CONSTRUCTION, OPERATION AND MAINTENANCE CRITERIA.

Article 1. Location Requirements.

§ 3.1. General. All discharging systems shall be located so that the treatment system, the point of discharge, all appurtenances, and the effluent leaving the system are sited in a manner that protects public health and minimizes environmental impacts.

§ 3.2. Classifications of discharge point.

The nature of the discharge point will determine what precautions must be taken to protect public health and environmental resources. These regulations identify two classifications of discharge points.

A. All weather stream required if possible. The preferred point of discharge is an all weather stream where effluent can be readily diluted at least 10:1 as measured during a 7 consecutive day average of a 10 year low flow (7-Q-10) and thereby minimize public health and water quality impacts. Where an all weather stream is available for use it shall be used rather than discharging to an intermittent stream or dry ditch.

B. Intermittent streams or dry ditches. Discharges into intermittent streams or dry ditches which do not have the dilution capability cited in § 3.2.A shall be located entirely within the owner's property, or within a recorded easement as described in § 3.7.C or a combination of the two.

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C. Stream type identification on USGS maps. An all weather stream may generally be identified by a solid blue line on the most recently published 7.5 minute United States Geologic Survey (U.S.G.S.) topographic map. The USGS map shall not be the sole and final factor used to determine if a stream is an all weather stream when the Department observes otherwise. Intermittent streams may be identified by a dotted and dashed blue line on the most recently published 7.5 minute United States Geologic Survey topographic map.

D. Other means of determining stream flow. An owner may submit to the Division, additional hydrologic data, including but not limited to stream records and anecdotal evidence of long time residents, to support that a stream can provide a dilution ratio of 10:1. When in the opinion of the Division, the evidence warrants a change, the Division may determine that a stream is an all weather stream for the purposes of these regulations.

§ 3.3. Subdivisions.

A. Existing subdivisions. Discharging systems may be permitted in existing subdivisions when the system discharges to an all weather stream. This limitation shall not apply to repair of a failing on-site sewage disposal system.

B. New Subdivisions. No discharging system shall be permitted in any subdivision created after the effective date of these regulations when a central sewer system is available or may be permitted to serve the subdivision. If the SWCB determines that no central sewage facilities are reasonably available in accordance with the General Permit Regulation and that each proposed site is eligible for registration under the General Permit, then the locality, in which the proposed subdivision is located, may request that the Department review the plan for compliance with these regulations. No plan will be considered unless all discharging systems will discharge to an all weather stream. An environmental analysis and impact of all proposed discharges on surface and ground waters may be required from the locality by the Department prior to its review of the proposed subdivision.

§ 3.4. Setback distances.

A. Water supply intakes and recreational uses. Discharges proposed within one mile (upstream) of any public water intake or any swimming area designated for public use shall not be permitted. The determination of areas used for recreational purposes shall be made by the district health director or district sanitarian manager. The location of recreational use areas shall be delineated on a map of the area and supported by written justification for the designation.

B. Private and public water supplies. The treatment system (ATU, sandfilter etc.), discharge point and the channel of treated effluent flow shall be located in

accordance with the distances given in Table 3.1 from private and public water supplies. The set back distances between the water supply and the downstream channel established in Table 3.1 shall apply for 50 feet downstream of the discharge point for all weather streams and 500 feet downstream for intermittent stream or dry ditch discharges.

C. Springs. No discharging system nor any portion of the channel carrying the treated effluent flow shall be within 100 feet of a spring. Further no discharging system shall discharge within 1,500 feet upstream or 250 feet downstream of any spring used for human consumption.

D. Sink holes. Discharging systems are prohibited from discharging into sink holes, streams or other waterways that flow into sink holes within one mile from the point of discharge, and dry ditches that flow into sink holes within one mile from the point of discharge.

E. Proximity to other discharge points. The Department will not approve discharging systems except where discharge points will be at least 500 feet apart. If the proposed system utilizes aerobic biological treatment followed by sand filtration this distance may be reduced to 250 feet apart.

Table 3.1

Setback Distances from Private and Public Water Supplies (All distances are in feet)

Type of Water Supply	Point of Discharge	Downstream Channel With 7-Q-10	Downstream Channel Intermittent Stream or Dry Ditch
Class II ¹	100	100	100
Class IIIA	50	50	50
Class IIIB	50	50	50
Class IIIC	100	50	100
Class IV	100	25	50
Cistern	100	50	100

¹ Class II well specifications are found in the Waterworks Regulations. All other well specifications may be found in the Private Well Regulations.

Article 2.

Design Requirements.

§ 3.5. Performance Requirements.

A. Discharge limits. All systems operated under these regulations shall meet the effluent limitations set forth by the State Water Control Board in the General Permit.

B. Bypass flow. No system shall be approved for use which provides a bypass pipe, or otherwise allows untreated or partially treated effluent to discharge in the event of a system failure.

§ 3.6. Factors Affecting System Design.

Each type of discharging system has its own unique advantages and disadvantages. These unique characteristics define the situations where a system may be used to advantage. The design of the system must be appropriate for the intended use and the site conditions where it is placed.

A. *Discharge to a dry ditch or intermittent stream.* When a discharge is proposed to a dry ditch, the Department shall require restricted access to the dry ditch or intermittent stream to protect public health.

B. *Intermittent use.* Intermittent use for the purposes of these regulations constitutes use of the system for less than three consecutive months. Systems serving weekend cottages, or other intermittent uses will not reliably treat effluent prior to discharge. Therefore, the use of discharging systems for dwellings subject to intermittent use is prohibited.

C. *Infiltration.* When a discharging system is proposed to be located in an area subject to infiltration by surface water or shallow ground water, the Department may require additional protection from infiltration, including placement of the system above natural grade.

D. *Erosion.* Erosion must be controlled by the owner of the discharging system in accordance with any local erosion control ordinances or the Soil Conservation Services recommendations.

E. *Sewage design flows.* All systems shall normally be designed to treat the BOD₅ loading rate of 0.4 lbs/day per bedroom for systems up to three bedrooms. Systems serving single family dwellings having more than three bedrooms shall be permitted and designed to treat the anticipated loading rate based on BOD₅ and be capable of handling anticipated peak loading rates. When a system is permitted with a design less than the maximum capacity of the dwelling, the owner of any conditional construction permit shall have the permit recorded and indexed in the grantee index under the owner's name in the land records of the clerk of the circuit court having jurisdiction over the site of the discharging system.

§ 3.7. Criteria for the use of intermittent streams or dry ditches.

All owners of systems discharging to an intermittent stream or dry ditch shall ensure the following conditions are met:

A. *Restricted access.* Direct contact between minimally diluted effluent and humans must be restricted for the life of the system. This will be achieved by reducing the chance of ponding and run-off and limiting access to the effluent. The Department may require fencing, rip-rap, or other barriers to restrict access to effluent discharging to a dry ditch. The restricted access area shall begin at the point where the effluent is discharged and continue for 500 feet or until the effluent discharges into an all

weather stream.

B. *Slope.* The average slope for any intermittent stream or dry ditch discharge receiving effluent from a discharging system shall be between 4% and 15% for the first 500 feet from the point of discharge. Further, the minimum slope shall not be less than 2% at any point.

C. *Ownership and easements.* When effluent is discharged to a dry ditch or intermittent stream, the owner shall either own the land or have an easement to discharge on all land below the point of discharge for the distance shown in Table 3.1. All easements must be in perpetuity and shall be recorded with the clerk of the circuit court prior to issuance of the construction permit.

§ 3.8. Disinfection.

All discharging systems shall be equipped with a means of disinfecting the effluent which is acceptable to the Division.

A. All discharging systems utilizing chlorine as a disinfectant shall be equipped with a chlorinator and contact chamber capable of maintaining a total chlorine residual between 1.0 mg/l and 3.0 mg/l in the effluent within the chlorine contact chamber for 30 minutes.

B. All chlorine used to disinfect effluent from a discharging system shall be approved by the Environmental Protection Agency for use as a sewage disinfectant.

C. Other methods of disinfection for the removal of bacteria and viruses, which have been demonstrated effective under field use, may be approved by the Division.

Article 3. Construction Requirements.

§ 3.9. Installation review.

A. *General.* No portion of any system may be covered prior to the department conducting an inspection.

B. *Slope.* Gravity sewer lines shall have a minimum grade of 1.25" per 10' for 3" and 4" sewer lines. Discharge lines after primary or secondary treatment units shall have a minimum grade of 6" per 100'. Where minimum grades cannot be maintained, detailed pump specifications shall be shown on the site plan.

C. *Location.* The treatment unit and all piping and appurtenances shall be located in conformance with the approved plans. All changes in location shall be approved by the local department prior to the installation of the system.

D. *Pumps.* All pumps and appurtenances to the pump shall be installed according to the plans and specifications

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approved by the department and referenced in the permit.

E. Electrical. All wiring shall be approved by the local building official and shall be weather tight and permanent in nature.

F. Controls. The control panel for the system shall be located within 15 feet of the treatment unit and shall be provided with a manual override switch.

G. Alarm. All mechanical treatment units shall be provided with an alarm system on a separate electrical circuit from the remainder of the treatment unit. The alarm shall be both audio and visual and shall be located in an inhabited portion of the dwelling.

1. *Sand filter systems.* All sand filters shall be equipped with a high water alarm over the sand bed to alert the occupant when the sand has become clogged.

2. *Aerobic treatment units.* All ATU's shall be equipped with an alarm that detects aerator failure and a high water alarm to warn against the back-up or overflow of sewage.

H. Flood Plain. Except for the discharge pipe, and step type post aeration if required, no portion of the discharging system may be located in the 100 year flood plain.

I. Sampling ports. All discharging systems shall be equipped with a six inch (or larger) sampling port connected to an approved effluent collection box after the chlorine contact chamber. Additionally, a separate sampling port shall be required after the dechlorination unit. Other sampling ports may be required elsewhere on a case by case basis as required by the system design.

J. Clean out port. All discharging systems shall have a clean out port, accessible from the surface of the ground within 10' of the influent invert of the treatment unit.

K. Frost free spigot. A frost free spigot, with a permanent backflow preventer, shall be provided within 15 feet of the clean-out required in § 3.9.J.

§ 3.10. Compliance with plans.

Prior to the issuance of an operation permit all discharging systems must be inspected by the health department and found to substantially comply with the intent of the regulations. Minor deviations from the permit or proposed plans and specifications (excluding the manufacturer's design and installation specifications) that do not affect the quality of the sewage treatment process or endanger public health or the environment may be approved.

Article 4. Monitoring and Maintenance Requirements.

§ 3.11. Monitoring.

A. General. Discharging systems that discharge improperly treated effluent can endanger public health and threaten environmental resources. All discharging systems shall be routinely inspected and the effluent sampled to determine compliance with the effluent limitations set forth by the State Water Control Board in the General Permit. All testing requirements contained in these regulations are the responsibility of the system owner to have collected, analyzed, and reported to the Department.

B. Types of testing. There are two types of testing recognized by these regulations: Formal compliance testing and informal testing. Formal testing is conducted to determine either compliance or non-compliance with these regulations. Informal testing is conducted to determine compliance with these regulations and to determine when additional formal compliance testing is necessary. Informal testing may support but shall not be the sole basis for suspending an operation permit pursuant to § 2.23 or to suspend or revoke the approval of the system pursuant to § 2.26 of these regulations.

1. *Formal compliance testing.* Effluent from all discharging systems shall be tested for the following parameters: Five day biochemical oxygen demand (BOD5), total suspended solids, fecal coliform bacteria, dissolved oxygen and total chlorine residual (measured at the outfall and in the chlorine contact chamber if dechlorination is required). The tests shall be analyzed by a laboratory certified by the E.P.A. or the Division of Consolidated Laboratory Services. Samples shall be collected, stored, transported and analyzed in accordance with requirements set forth in Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act as published in the Federal Register (40 CFR 136).

2. *Informal testing.* The following tests will be conducted on the effluent, except as noted, at a frequency specified in § 3.11.C.2; 30 minute settleable solids (conducted on the mixed liquor suspended solids), odor, color, pH, and chlorine (after the chlorine contact chamber). In addition, systems requiring effluent dechlorination shall be tested for dechlorination at the point of discharge. These tests shall be run in the field during routine monitoring inspections. The criteria for satisfactory informal testing are contained in Table 3.2.

Table 3.2

Informal Testing Criteria (for all classes of discharging systems)

Settleable solids	Less than 45% (mixed liquor suspended solids)
Odor	Slight musky odor (MLSS not septic)
Color	Less than 15 units (measured at outfall/no solids present)
pH	Same as formal compliance test limits

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Chlorine 1.0 mg/l to 3.0 mg/l (measured after chlorinator) None detected (measured at the outfall of Class A systems)

C. Frequency of routine testing and inspection.

1. *Formal compliance testing.* Formal compliance testing as described in § 3.11.B.1, shall be conducted semi-annually on all discharging systems for all constituents listed under § 3.11.B.1. Additionally, formal compliance testing may be required anytime informal testing indicates a discharging system appears to be discharging effluent that exceeds the effluent limitations set forth in the State Water Control Board's General Permit. Compliance monitoring conducted pursuant to the SWCB General Permit requirements may be submitted for one of the semi annual tests to comply with these regulations.

2. *Informal testing.* Informal testing, as described in 3.11.B.2, shall be used as an inexpensive screening method to identify systems that are potentially in violation of the effluent limitations set forth in the State Water Control Board's General Permit. Informal testing shall be conducted monthly for at least six consecutive months beginning the second full month after the issuance of the operation permit. After a discharging system has met the permit limits for six consecutive months the testing shall be conducted quarterly.

D. *Non-routine testing and inspection.* The district health director or district sanitarian manager may require additional formal compliance testing or informal testing, or both, as necessary to protect public health and the environment. Additional testing shall be based on observed problems and shall not be implemented routinely on all discharging systems unless required by a local ordinance.

1. Anytime a discharging system is found to exceed the effluent limitations of the General Permit, follow-up formal compliance testing shall be repeated between 45 and 90 days after the original samples were collected and the results reported to the local health department.

2. Anytime an informal test reveals an apparent problem, additional formal or informal testing may be conducted to review the effectiveness of any repairs or adjustments.

3. Anytime the results of two consecutive formal compliance tests as specified in 3.11.B.1 result in a violation of the effluent limitations of the General Permit, informal testing shall revert to monthly frequency until satisfactory results are obtained for six consecutive months. Nothing in this section shall preclude requiring the collection of samples for formal compliance testing as described in §§ 3.11.B.1 and 3.11.C.1 to determine compliance with the effluent limitations set forth in the General Permit.

E. *Responsibility for testing.* The owner of each system is responsible for ensuring that the collection, analysis, and reporting of all effluent sample tests are completed in a timely fashion and in accordance with §§ 3.11 and 3.13. In addition to the mandated testing requirements contained in these regulations, the Department shall conduct, at a minimum, annual informal testing. Nothing contained herein shall be construed to prohibit the Department from conducting additional formal and informal testing as deemed appropriate by the Department.

§ 3.12. Maintenance.

A. *General.* Due to the potential for degrading surface water and ground water quality or jeopardizing the public health, or both, routine maintenance of discharging systems is required. In order to assure maintenance is performed in a timely manner a maintenance contract between the permit holder and a person capable of performing maintenance is required.

B. *Maintenance contract.* A maintenance contract shall be kept in force at all times. Failure to obtain or renew a maintenance contract shall result in the suspension or revocation of the operation permit as described in § 2.18 of these regulations. The operation permit holder shall be responsible for ensuring that the local health department has a current copy of a valid maintenance agreement. When a maintenance contract expires or is cancelled or voided, by any party to the contract, the owner shall report the occurrence to the local health department within ten work days.

C. *Elements of a maintenance contract.* At a minimum each maintenance contract shall provide for the following:

1. Performance of all testing required in § 3.11.B of these regulations.

2. Full and complete repairs to the system within 48 hours of notification that repairs are needed. Any deductible provision in a maintenance agreement shall not exceed \$200.00 in any given year for repairs (including parts and labor).

3. Twenty-four months of consecutive coverage shall be the minimum time period a maintenance contract may be valid.

D. *Public utility.* In localities where a public service authority, sanitary district, or other public utility exists which monitors and maintains the systems permitted under these regulations, the requirements for a maintenance contract may be waived by the Division provided the owner of the system subscribes to the service and the utility meets the minimum elements described in §§ 3.12.C.1 and 3.12.C.2.

E. *Qualifications to perform maintenance.* In order to competently evaluate system performance, collect and

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interpret sample results, as well as repair and maintain discharging systems, an individual must be knowledgeable in sewage treatment processes. Therefore, after July 1, 1993 all individuals who perform maintenance on discharging systems are required to hold a valid Class IV license issued by the Board For Waterworks and Wastewater Works Operators. Until July 1, 1993, individuals that can demonstrate two years of practical experience with discharging systems, with flows under 1,000 GPD, may conduct maintenance on all systems.

§ 3.13. Information to be reported.

A. Who is responsible for reporting. All owners issued an operation permit for a discharging system are responsible for reporting the results of all mandated testing to the Department.

B. What must be reported. All formal compliance testing, informal testing, repairs, modifications, alterations, expansions and routine maintenance must be reported.

C. When reports are due. All reports and test results must be submitted within 15 working days of the sample collection.

D. Where to report results. All reports and test results shall be submitted to the local or district office of the health department.

§ 3.14 Failure to submit information.

Failure to conduct monitoring and to report monitoring results as required in § 3.11 and § 3.13 may result in the suspension or revocation of the of the owner's operation permit.

Appendix I

**VIRGINIA DEPARTMENT OF HEALTH
DISCHARGING SYSTEM APPLICATION**

_____ County Health Department Date: _____, 19__

Types of Application: ___ New, ___ Repair, ___ Other

* Owner of Property: _____ Phone _____
Address _____

* Name of Purchaser (if applicable): _____
Address: _____

Phone: _____ Realtor: _____

* Location of Property: _____
_____ Tax Map # _____

Subdivision: _____ Sect/Block: _____ Lot #: _____

* Size of Parcel: _____ acres

* Proposed Use (# of bedrooms): _____

* Proposed Type of System: _____ NSF Class 1 Aerobic Treatment Plant
_____ Septic Tank & Lined Biological Sandfilter
_____ Aerobic Treatment Plant & Lined Biological Sandfilter
_____ Other

1. Has property been denied a permit for a septic tank system? Yes No
_____ . _____

Sanitarian: _____ Date of Denial _____

Consultant: _____ SD- _____

- | | Yes | No | N/A |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|-------|-------|
| 2. Have all possible onsite sewage treatment systems been considered?
Specifically: Pump System? _____
Low Pressure Distribution System? _____
Elevated sand mound? _____
Conditional permit requiring:
Limit on Number of Occupants? _____
Water Saving Plumbing Devices? _____
Easement to Adjacent Property? _____ | _____ | _____ | _____ |
| 3. Is this application for a system to replace a failing septic system? | _____ | _____ | _____ |
| 4. Is this property a new subdivision (2 or more lots from 1 parcel)? | _____ | _____ | _____ |
| 5. Is this property in an existing subdivision? | _____ | _____ | _____ |
| 6. Will discharge be directly to a year-round, all-weather stream? | _____ | _____ | _____ |
| 7. If discharge is to an intermittent or seasonal stream or to a dry ditch,
how far will discharge flow before leaving this property? _____ ft _____ | _____ | _____ | _____ |
| 8. If discharge is to an intermittent or seasonal stream or to a dry ditch and discharge will flow less
than 500 feet (250 feet if NSF Class 1 aerobic plant and sand filter are used together) on this
property, can an easement be obtained for the portion of the first 500 feet (250 feet) not on this
property? _____ | _____ | _____ | _____ |
| 9. If discharge is to an intermittent stream or to a dry ditch, what is slope in % for each fifty foot
distance in the first 500 feet of the discharge path?
1) _____ 2) _____ 3) _____ 4) _____ 5) _____
6) _____ 7) _____ 8) _____ 9) _____ 10) _____
Does the slope exceed 1% for all of the fifty foot segments? _____
Is the average slope not more than 15% _____ | _____ | _____ | _____ |
| 10. In the first 500 feet will path of wastewater flow within
100 feet of any well or domestic water supply? _____ | _____ | _____ | _____ |
| 11. Is there any public water supply intake within one mile
downstream from the proposed discharge point? _____ | _____ | _____ | _____ |
| 12. Is there any public water supply intake within five miles
downstream from the proposed discharge point? _____ | _____ | _____ | _____ |

- | | Yes | No | N/A |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|-----|-----|
| 13. Is there any swimming area designated for public use within one mile downstream from the proposed discharge point? | --- | --- | |
| 14. Would this discharge result in the condemnation of any shellfish water? | --- | --- | --- |
| 15. Is the receiving stream a trout stream? | --- | --- | |
| 16. Are there any other existing or proposed VPDES discharges within 500 feet (250 feet if aerobic plant and sand filter are used together) of this proposed discharge point? | --- | --- | |
| 17. Will any part of the proposed treatment system (excluding the discharge pipe and any aeration steps) be within the 100 year flood plain? | --- | --- | |
| 18. Will any part of the proposed treatment system (excluding the discharge pipe and any aeration steps) be in a topographically low, wet, or swampy area? | --- | --- | |
| 19. Will the building served by this system be used seasonally, just on weekend, or be subject to frequent interruptions in power? | --- | --- | |
| 20. Name of Proposed Receiving Stream: _____ | | | |

PLEASE ATTACH A SITE SKETCH TO THIS APPLICATION SHOWING:

1. THE BOUNDARIES OF THE PROPERTY.
2. THE SPECIFIC LOCATION OF THE PROPERTY INCLUDING THE COUNTY TAX MAP NUMBER (where available), A COPY OF THE UNITED STATES GEOLOGICAL SURVEY 7.5 MINUTE TOPOGRAPHIC MAP SHOWING THE DISCHARGE POINT AND DOWNSTREAM FOR ONE MILE, AND DIRECTIONS TO THE PROPERTY.
3. THE LOCATION AND DISTANCE TO ANY EXISTING OR PROPOSED BUILDINGS, WELLS, SEWAGE TREATMENT SYSTEMS, VPDES DISCHARGES, WATER SOURCES, WATER LINES, EASEMENTS, OR UTILITIES WITHIN 600 FEET OF ANY PART OF THE PROPOSED SEWAGE DISPOSAL SYSTEM.
3. THE IMPORTANT TOPOGRAPHIC FEATURES OF THE SITE (drainways, sinkholes, ponds, lakes, streams) INCLUDING THE LIMITS OF THE 100-YEAR FLOOD PLAIN.
4. THE PATH OF WASTEWATER FLOW TO THE RECEIVING YEAR-ROUND STREAM.
5. A WRITTEN STATEMENT FROM THE SWCB THAT THE OWNER'S REGISTRATION STATEMENT

HAS BEEN APPROVED UNDER THE GENERAL PERMIT REGULATION.

I hereby give permission to the Health Department to enter onto the above referenced property for the purpose of processing this application. I certify that the property lines and the proposed location of the treatment system and discharge point are clearly marked and that the property is sufficiently visible to see the topography.

Signature of Property Owner

Date

As the applicant for a construction permit on the above referenced property, I certify that, to the best of my knowledge, the above information is and the attached site sketch and topographic map are true, correct, and complete. I understand that if the department finds a satisfactory site in response to this application that I will be required to submit a site plan and correct plans and specifications for the treatment system prepared by an engineer, certified copies of any necessary easements, and a letter from the local governing body (county or city) stating that they have no objection to this discharge.

Signature of Applicant

Date

As the applicant for a construction and operations permit on the above referenced property, I hereby give permission to the Health Department, or their authorized agent, to enter onto the above referenced property for the purpose of inspecting the construction of and monitoring the operation and quality of effluent from my sewage treatment plant.

Signature of Applicant

Date

APPENDIX II

Discharging System Construction Permit

Page ___ of ___

Commonwealth of Virginia
Department of Health

Department

Health Department
Identification Number _____
Map Reference _____

General Information

New ___ Repair ___ Expanded ___ Conditional ___ FHA ___ VA ___ Case No. _____

Based on the application for a discharging system construction permit filed in accordance with Alternative Discharging Sewage Treatment System Regulations for Individual Single Family Dwellings a construction permit is hereby issued to:

Owner: _____ Telephone: _____
Address: _____
Subdivision _____ Section/Block _____ Lot _____
Actual or estimated water use _____

DESIGN

NOTE: INSPECTION RESULTS

Water supply, existing:
(describe) _____

Water supply location:
Satisfactory yes ___ no ___
Comments _____
G.W.2 Received: yes ___ no ___
n/a ___

To be installed: class _____
cased _____
grouted _____

Building sewer:
I.D. PVC 40 or
equivalent. _____
Slope 1.25" per 10' (minimum) _____
Other _____

Building sewer: yes ___ no ___
comments _____
Satisfactory _____

Pretreatment unit: Capacity _____
gals (minimum). _____
Other _____

Pretreatment unit: yes ___ no ___
comments _____
Satisfactory _____

Inlet-outlet structure:
PVC 40, 4" tees or equivalent. _____
Other _____

Inlet-outlet structure: yes ___ no ___
comments _____
Satisfactory _____

Pump and pump station:
No ___ Yes ___ describe and
show design. _____
If yes: _____

Pump & pump station: yes ___
no ___ comments _____
Satisfactory _____

Health Department
Identification Number _____

Schematic drawing of sewage disposal system and topographic features. PAGE ___ OF ___

___ The information required has been drawn on the attached copy of the sketch submitted with the application. Attach additional sheets as necessary to illustrate the design.

The discharging system is to be constructed as specified by the permit ___ or attached plans and specifications ___.

This discharging system construction permit is null and void if (a) conditions are changed from those shown on the application (b) conditions are changed from those shown on the construction permit.

No part of any installation shall be covered or used until inspected, corrections made if necessary, and approved, by the local health department or unless expressly authorized by the local health department. Any part of any installation which has been covered prior to approval shall be uncovered, if necessary, upon the direction of the Department.

Date: _____ Issued by: _____
Sanitarian

Date: _____ Reviewed by: _____
Supervisory Sanitarian

If FFLA or VTLA financing:
Reviewed by Date _____ Date _____
Supervisory Sanitarian Regional Sanitarian

Emergency Regulations

Appendix III

PAGE 75 OF 77

Completion Statement
Commonwealth of Virginia
Virginia Department of Health

Health Department
Identification Number: _____

_____ Health Department

Name of Company/Corporation/Individual: _____

Address: _____ Telephone: _____

Owner's Name: _____

Owner's Address: _____

Location of Installation: Lot _____ Block _____

Section: _____ Subdivision: _____

Other: _____

I hereby certify that the discharging system has been installed in accordance with the construction permit issued (date) _____ and is in compliance with Part III of the Alternative Discharging Sewage Treatment System Regulations for Individual Single Family Dwelling.

_____ Date

_____ Signature and Title


PAGE 77 OF 77

APPENDIX IV

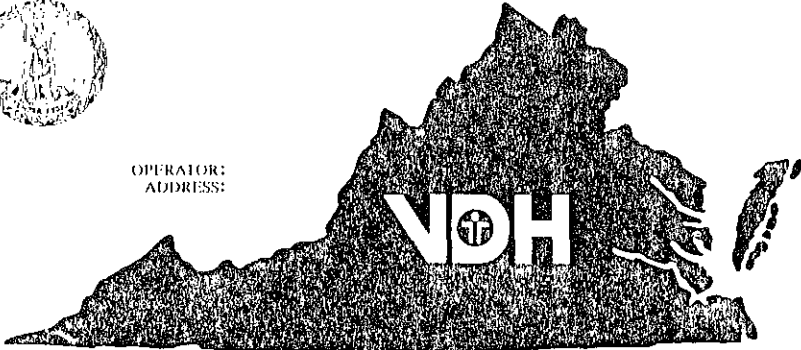
No _____

PERMIT
COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HEALTH

THIS PERMIT EXPIRES ON _____
DATE OF ISSUE _____



OPERATOR:
ADDRESS: _____



The above operator has made application and in accordance with the regulations of the Board of Health of the Commonwealth of Virginia is authorized by the Health Department to operate a

HEALTH OFFICIAL _____

THIS PERMIT IS NOT TRANSFERABLE FROM ONE INDIVIDUAL OR CORPORATION TO ANOTHER

STATE LOTTERY DEPARTMENT

DIRECTOR'S ORDER NUMBER EIGHTEEN (91)

VIRGINIA'S NINETEENTH INSTANT GAME LOTTERY;
"JOKER'S WILD," FINAL RULES FOR GAME
OPERATION; REVISED.

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the revised rules for game operation in Virginia's nineteenth instant game lottery, "Joker's Wild." These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of instant game 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 supersedes Director's Order Number Sixteen (91), issued June 28, 1991. The 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: July 24, 1991

GOVERNOR

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.12:9.1 of the Code of Virginia)

BOARD FOR ACCOUNTANCY

Title of Regulation: **VR 105-01-02. Board for Accountancy Regulations.**

Governor's Comment:

The proposed regulations would institute continuing education requirements for licensed accountants in Virginia. In accordance with the Callahan Act, the regulations also would enable the Department of Commerce to cover administrative expenses associated with the continuing education requirements. Pending public comment and the Department's reduction of estimated costs to implement the continuing education requirements, I recommend approval of the regulations.

/s/ Lawrence Douglas Wilder
Governor
Date: August 1, 1991

* * * * *

Title of Regulation: **VR 105-01-03. Continuing Professional Education Sponsor Registration Rules and Regulations.**

Governor's Comment:

The proposed regulations would institute continuing education requirements for licensed accountants in Virginia. In accordance with the Callahan Act, the regulations also would enable the Department of Commerce to cover administrative expenses associated with the continuing education requirements. Pending public comment and the Department's reduction of estimated costs to implement the continuing education requirements, I recommend approval of the regulations.

/s/ Lawrence Douglas Wilder
Governor
Date: August 1, 1991

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Title of Regulation: **VR 394-01-06. Virginia Statewide Fire Prevention Code/1990.**

Governor's Comment:

These regulations authorize the Department of Housing and Community Development to collect fees for certifying persons who handle explosives. The regulations also authorize the State Fire Marshal's office to collect fees for

explosive permits in localities where that office enforces the Statewide Fire Prevention Code. Pending public comment, I recommend approval of the regulations.

/s/ Lawrence Douglas Wilder
Governor
Date: August 5, 1991

* * * * *

Title of Regulation: **VR 394-01-21. Virginia Uniform Statewide Building Code, Volume I - New Construction Code/1990.**

Governor's Comment:

The proposed regulations are intended to amend Virginia's Statewide Building Code to incorporate flood-proofing provisions that are consistent with the National Flood Insurance Program. Pending public comment, I recommend approval.

/s/ Lawrence Douglas Wilder
Governor
Date: August 5, 1991

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **VR 460-03-4.1921. Maximum Obstetric and Pediatric Payments.**

Governor's Comment:

I concur with the form and content of this proposal. My final approval will be contingent upon a review of the public's comments.

/s/ Lawrence Douglas Wilder
Governor
Date: August 13, 1991

The Legislative RECORD

number four

Published in the Commonwealth of Virginia

august 1991

THIS ISSUE . . .

- 1** *SJR 118: Commission on Health Care for All Virginians*
- 3** *HJR 337: Joint Subcommittee Studying Comparative Price Advertising*
- 4** *HJR 310: Regulation of Underground Injection Wells*
- 6** *HJR 334: Joint Subcommittee Studying the Use of Vehicles Powered by Clean Transportation Fuels*
- 7** *HJR 293: Game Protection Fund*
- 8** *HJR 448: Joint Subcommittee Studying the Incentives and Obstacles Facing Businesses When Making Location Decisions in Virginia*
- 10** *State Water Commission*
- 13** *HJR 433: Joint Subcommittee Studying Measures Necessary to Assure Virginia's Economic Recovery*
- 14** *HJR 300: Southside Economic Development Commission*
- 16** *Subcommittee No. 4: House Committee on Roads and Internal Navigation, Study of Maximum Age for School Bus Drivers*

SJR 118: Commission on Health Care for All Virginians



July 16, 1991, Washington, D.C.

Established in 1977, the Health Care Financing Administration (HCFA) is a division of the United States Department of Health and Human Services. Currently under the direction of Dr. Gail Wilensky, HCFA is responsible for administering the Medicare program, the federal portion of the Medicaid program, and related quality assurance activities.

On July 16, the commission heard briefings from Constance Horner, deputy secretary of Health and Human Services; Dr. Wilensky; Dr. Lou Rossiter, HCFA senior policy advisor; Christina Nye, director of the Medicaid Bureau; and Jeff Sanders, director of the Office of Legislation and Policy. Following these briefings at HCFA offices, the commission met with the Virginia congressional delegation in the afternoon on Capitol Hill. Key issues in the HCFA presentations were health care financing, Medicaid issues, and health care reform proposals.

Overall Health Care System

According to HCFA officials, the current American health system, with third party payers, generally shields consumers from the true costs of health care. Tort reform is needed to address malpractice issues and liability. There are no incentives in the current system to preclude physicians from doing more. Indeed, all forces push for patients to want more, for physicians to do more, for both consumers and providers to have more. Health policy decisions must come from the country as a whole, and we must decide such issues as who is responsible for the uninsured and what is the appropriate role of governments in providing care.

DIVISION OF LEGISLATIVE SERVICES 

While the American public is beginning a national debate on appropriate solutions to health care concerns, and several groups have offered their proposals for increasing coverage, a consensus among consumers, providers, payers, and legislators has yet to be reached. Any significant changes to present policies and programs inherently carry cost, dislocation, and discomfort.

Further, health economics studies reveal that people do respond to cost sharing measures for health care, and provider incentives for efficiency and quality are important factors in behavior. Health care spending per person, however, is extremely skewed.

Concern about health care issues has grown considerably among Americans recently. HCFA administrators commented that any significant health care reform at the national level is unlikely to occur before 1993. The federal government has great interest in states' serving as models for possible innovations and initiatives. HCFA is studying states' experiments in resolving health care issues.

Medicaid and Medicare Issues

In fiscal year 1991, HCFA will spend an estimated \$168 billion, approximately 12% of federal outlays, to provide health care services to 57 million elderly, disabled, and poor Americans in the Medicare and Medicaid programs.

Personal health care spending in the U.S. totaled almost \$531 billion in 1989, with the largest portion of those dollars attributed to hospital care at \$232.8 billion, and the next largest portion attributed to physician services at \$117.6 billion (see Figure 1).

HCFA paid 30%, or \$159.2 billion, of the 1989 total of \$530.7 billion, through Medicare and Medicaid moneys. HCFA's share of funding for sectors of the health industry included

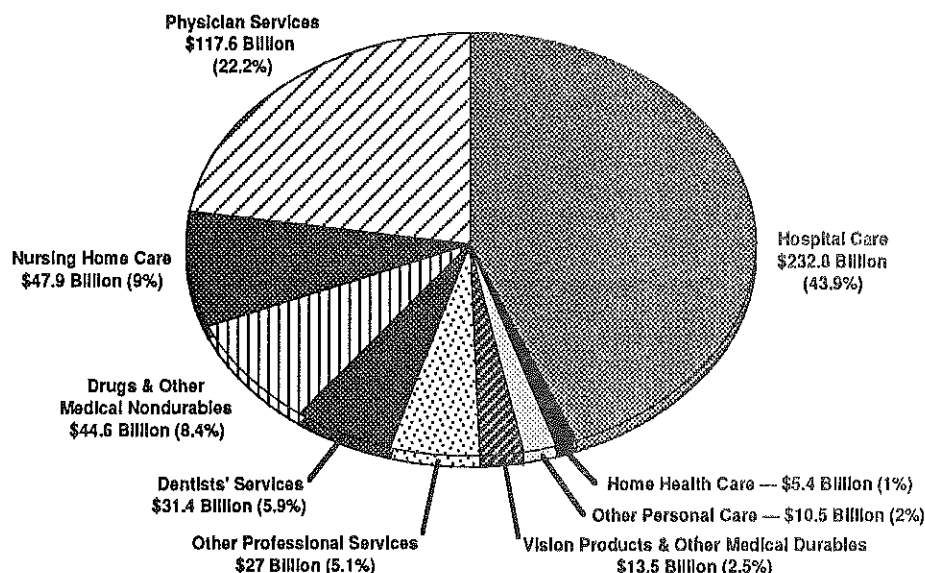


Figure 1. Personal Health Care Spending, 1989

Source: Health Care Financing Administration

74.1% of all home health care; 50.5% of all nursing home care; 36.5% of all hospital care; and 27.0% of all physician services.

Currently viewed by many health professionals and analysts as a critical means to ensure quality of care and contain costs through appropriate use of services, managed care offers the primary care provider as gatekeeper to patients' utilization of care and services by directing patients to the most appropriate site for their health care, thus affording a health care coordinating strategy.

Administrators commented that while managed care may not necessarily be the most effective cost containment means, it improves access to care for Medicaid clients. HCFA is studying the cost impacts of managed care programs for Medicaid clients in several states. Presently, 10.1% of Medicaid clients are enrolled in managed care programs.

In the Commonwealth, the Appropriations Act of the 1990 Session requested the Department of Medical Assistance Services (DMAS) to develop a plan to test the feasibility of establishing a statewide managed care system for Medicaid clients. Following DMAS' report, the commission endorsed its proposal of testing the managed care concept in two localities before implementing a statewide program. Development of those pilots by DMAS is presently underway.

The commission will meet on August 29 in Southwest Virginia.

The Honorable Stanley C. Walker, *Chairman*

Legislative Services contact: Lillian W. Raible

HJR 337: Joint Subcommittee Studying Comparative Price Advertising

July 29, 1991, Richmond

1990 Review

At its first meeting of 1991, the subcommittee heard a summary of its deliberations and findings during its first year. Comparative price advertising, in general, is the advertising by a retailer of a product's or service's price in relation to (i) its previous price, (ii) its price as charged by another retailer, (iii) the price of comparable goods, or (iv) its price as established by a manufacturer's suggested retail list.

Under Virginia criminal law, price comparison advertising is allowed only when the former or comparison price is legitimately established by substantial sales made at that price within the same trade area, when the product or service was offered for sale at the previous price for at least 30 days during the preceding four-month period, or when the advertisement contains the date on which substantial sales were made at the former or comparison price. Virginia's criminal statute generally is applicable to all sales to the public without regard to the type of merchandise or service. Comparative price advertising is also subject to the Virginia Consumer Protection Act (VCPA).

Last year, the subcommittee held several public hearings to give retailers and consumers an opportunity to comment on the use of comparative price advertising. Not surprisingly, both the business and consumer public expressed the need to revise the standards regulating comparison advertising. Consumers are confused by price comparisons, and retailers are economically disadvantaged by competitors' misleading comparisons. Retailers are concerned about the requirement that goods be offered for sale for a certain amount of time before a price comparison can be advertised, contending that they are unable to comparatively advertise a sale that resulted from overbuying, manufacturer close-outs, or just plain poor judgment by the retailer.

The difficulty in compliance with Virginia's statute also damages consumers, who are highly susceptible to advertised bargains. Several consumer advocates testified that the term "sale" has lost its original meaning; comparative price advertising abuses have become so commonplace that many consumers have lost confidence in sales promotions; and consumers can no longer depend on advertising to help them compare items and prices. Abuses of comparative price advertising only serve to make consumers cynical and to stifle competitive marketing by businesses willing to provide genuine price comparisons.

Most retailers testifying last year advocated the adoption of the Federal Trade Commission (FTC) Guidelines on Comparison Price Advertising in statute form. The FTC guidelines are common-sense descriptions of intentional and unintentional deceptive price comparisons which retailers should avoid. However, the FTC guidelines are not written in statute form, do not contain suggested penalties, and are perhaps too common sense—they do not reveal the more difficult or complicated regulatory methods used to restrain deceptive price comparisons. Most importantly, the guidelines simply do not define what is deceptive comparison price advertising.

Retailers Testify

E. J. Strelitz, president of Haynes Furniture Company, testified that comparative price advertising is constructive for business and benefits consumers by giving them more options from which to choose. Most retailers must compete with out-of-state discounters, especially in the furniture business. Increased restrictions on comparative price advertising could impair Virginia merchants' ability to successfully withstand such competition. The use of comparisons to manufacturers' list prices and market value allows retailers to advise consumers of reductions in prices that are relevant to the pricing standards of retailers throughout the trade area. In answer to questioning, Mr. Strelitz explained that Haynes' market value is a proxy for a combination of competitors' regular prices. He suggested that the subcommittee recommend a repeal of Virginia's criminal statute, leaving enforcement to the civil remedies under the VCPA. He disagreed with a suggestion that price comparisons be limited to customary markup, reasoning that a retailer's break-even point is more ambiguous to the consumer than comparisons to market values.

Sumpter Priddy, former director of the Virginia Retail Merchants Association, asked that the subcommittee, when drafting any amendment to the current law, consider the impact of such amendment on perishable goods retailers, the use of special purchases, and competition between Virginia and its surrounding states. He suggested that the FTC Guidelines be used as the standard for Virginia.

Consumer Advocates' View

Betty Blakemore and Andy Hantwerker, from the State Office of Consumer Affairs, advised the subcommittee of their concern with the use of terms such as "manufacturer's suggested retail price" in comparative price advertising. Research shows that such prices do not reflect the price at which goods are

actually offered for sale. They also suggested that the term "value" be linked to "price" in any revision of Virginia's law and that these terms and others be defined in statute (e.g., trade area, advertisement, sale).

Agreeing with Ms. Blakemore's comments, Jean Ann Fox, Virginia Citizens Consumer Council, added that regular prices should be established by bona fide offers for sale for at least 51% of the offering time period. She commented that terms such as "manufacturer's suggested retail price" and "market value" should be restricted unless a product was actually offered for sale at the price. Ms. Fox also suggested a major addition to the VCPA to provide strict regulation of comparative price advertising (e.g., burden of proof on retailer, record keeping requirements, definitions).

Issues Under Consideration

The subcommittee will consider the following issues during the final phase of its study:

- Should Virginia maintain a criminal penalty for violation of comparative price advertising standards?
- Should the VCPA more expressly describe and regulate comparative price advertising?
- Should separate categories of retailers be established in order to provide specific standards relative to type of retail product?
- Is there a need to regulate the use of terms such as "manufacturer's suggested retail price," "list price," and "market price"?
- Are Virginia's standards comparable to those in surrounding states where, presumably, some Virginians are apt to shop for retail goods?

Meeting Schedule

During its next meeting on September 19, the subcommittee will draft recommendations in the form of statutes, disseminating the drafts shortly after the meeting. On October 16, the subcommittee will hold a public hearing on the final adoption of the drafts. Both meetings will be held in the General Assembly Building in Richmond, beginning at 10:00 a.m.



The Honorable S. Wallace Stieffen, *Chairman*
Legislative Services contact: Mary K. Geisen

HJR 310: Regulation of Underground Injection Wells



July 8, 1991, Richmond

Under HJR 310 (1991), the House Committee on Mining and Mineral Resources and the Senate Committee on Agriculture, Conservation and Natural Resources were directed to determine how underground injection wells are regulated in Virginia, whether current laws and regulations governing the construction and use of these wells are adequate to protect water quality, and the costs, benefits, and desirability of Virginia's seeking delegation of the Underground Injection Control (UIC) program from the United States Environmental Protection Agency (EPA). On July 8, 1991, these committees met jointly in Richmond and began the study by reviewing the history of the EPA-administered UIC program in Virginia, the current and future priorities of this program, and the reasons for and against assuming primacy (primary enforcement responsibility) of the federal program.

History of the UIC Program in Virginia

Staff informed committee members that the federal regulation of underground injection wells in Virginia started in 1984, when EPA promulgated and began administering the UIC program in the Commonwealth. The 1974 Safe Drinking Water Act required EPA to (i) develop regulations for the protection of underground sources of drinking water from contamination by underground injection and (ii) develop or approve a UIC program for each state. Virginia, along with fourteen other states, has never sought primacy of the UIC program.

As defined under the 1974 Act, underground injection wells are holes dug in the ground (that are deeper than their widest dimension) into which fluids are injected (either forcibly or with the assistance of gravity). Consequently, the definition covers many structures not commonly thought of as "wells" (e.g., the drainfields of large capacity commercial or industrial septic systems).

EPA's regulations establish five classes of underground injection wells; prescribe minimum technical requirements for the proper siting, construction, operation, monitoring, plugging, and abandonment of these wells; and outlaw underground injection unless specifically authorized by a permit or rule. While Class IV injection wells (used for the disposal of certain hazardous or radioactive wastes) are now prohibited, Class V wells (a catchall category including such diverse types as air-conditioning/cooling water return wells, mass drainfields, stormwater drainage wells, etc.) are authorized by rule. Authorization by rule does not mean that a permit may not be required, because the administrator of a UIC program can always require a well operator to submit a permit application if (i) the injection well is not complying with the provisions of the authorizing rules, (ii) the well has ceased to be in the category of wells authorized by the rule, or (iii) the protection of underground sources of drinking water requires

additional regulation by permit. Owners or operators of underground injection wells are required to report the existence of these wells to EPA, which is continuously updating an inventory of these wells in each state.

Staff reported that in addition to the federal regulation of underground injection wells in Virginia, the Department of Waste Management, the Department of Mines, Minerals and Energy, the Department of Health, and the State Water Control Board also administer regulatory programs which in some way cover these wells. When the issue of assuming primacy over the federal UIC program was last considered in 1987, these agencies unanimously agreed that it would not be advisable to seek primacy at that time. Instead, they and the Council on the Environment suggested that as the groundwater management situation in the Commonwealth evolved, the State Groundwater Protection Steering Committee should periodically review the UIC program to see if it might fit some well-defined state program needs. The State Water Control Board was designated as the primary contact with EPA on matters relating to the federal UIC program.

Current and Future Priorities of the Federal UIC Program

EPA's Region III expert on underground injection control, Steve Platt, described the current and future priorities of the federal UIC program in Virginia. EPA's current inventory of underground injection wells in the Commonwealth shows that there are 2,800 of these wells. Mr. Platt predicted that this total would increase to 3,500 in the near future. Of the 2,800 reported wells, 1,773 are Class V air-conditioning/cooling water return wells, most of which are located in Tidewater. Up to 490 of the remaining reported wells are septic system drainfields, which also fall under the Class V well category. He explained that in 1990, EPA permitted a Class II injection well in Dickenson County for the disposal of brines generated during the process of coalbed methane gas production, and predicted that more brine disposal injection wells would be proposed in the near future as coalbed methane gas recovery activities increase.

According to Mr. Platt, the types of injection wells located in Virginia are important for several reasons. First, funding for federal UIC programs is based on the number and class type of wells located in the state. The funding formula weights Class II wells more heavily than Class V wells. Secondly, EPA is now focusing its efforts on Class V wells, particularly those that have the most potential to pollute groundwater. EPA inspectors in Virginia are now looking closely at service stations that rely on septic systems for bay drain disposal. These systems are not designed to treat the contaminants (e.g., benzene) which flow into the drains. EPA is now developing regulations aimed at curbing the pollution potential of these and other types of Class V wells. These regulations are expected to be published in their final form in January 1993.

Assuming Primacy

Mr. Platt told committee members that there are a number of reasons why Virginia should consider seeking primacy of the federal UIC program. EPA's Region III is currently allocated \$87,000 annually to run the program in Virginia. Were the Commonwealth to assume primacy, he predicted that three or four full-time employees could run the program. If primacy were assumed, Virginia would have to provide 25% matching funds. Mr. Platt indicated that allocations for the Virginia program had increased each year

of the program and that consideration was now being given to changing the funding formula so that Class V wells are weighted more heavily. He also intimated that from a manageability standpoint, Virginia could more readily administer the program, because Region III's offices are located over 400 miles away. He explained that it was physically impossible for EPA to be everywhere in the Commonwealth and to inspect each well.

Richard Burton, executive director of the State Water Control Board, told committee members that Virginia should not assume primacy of the program at this time. He indicated that current state programs were adequate to control any threat to the quality of state waters and that seeking delegation of the federal program would result in duplicative antipollution efforts, which are unnecessary and unaffordable. He stated that \$87,000 would not cover the cost of administering the program and questioned how three or four full-time employees would be adequate to administer the program, when Mr. Platt had already indicated that the same number of employees at Region III could not possibly provide consistent statewide coverage. Mr. Burton emphasized that to date, Virginia had experienced no problems in working with EPA on the federally administered UIC program.

Public Hearing Scheduled

In response to HJR 310's mandate that a public hearing be held in Dickenson County during the course of the study, Co-Chairmen Smith and Anderson appointed a nine-member subcommittee to hold a public hearing in Dickenson County at 7:30 p.m. on September 5. The subcommittee is to report its findings to both committees at their next joint meeting.



The Honorable Alson H. Smith, Jr.,
Co-Chairman

The Honorable Howard P. Anderson,
Co-Chairman

Legislative Services contact: John T. Heard

HJR 334: Joint Subcommittee Studying the Use of Vehicles Powered by Clean Transportation Fuels



July 29, 1991, Richmond

Staff reviewed for the members the subcommittee's findings and recommendations as submitted to the 1991 Session of the General Assembly, presented revised data on payments made to fuel-grade alcohol producers under Virginia's Fuel Production Incentive Program, and provided a brief summary of provisions of the federal 1990 Clean Air Act amendments relating to "clean fuels" and "clean fuel" vehicles.

Clean Fuel Demonstration Project

Assistant Chief Engineer David Gehr of the Department of Transportation briefed the members on the department's clean fuel demonstration projects, which were recommended by the subcommittee and approved by the 1991 General Assembly. Mr. Gehr explained that the project would involve 100 vehicles at three locations (20 stationed at Newington, 40 at Colonial Heights, and 40 at Suffolk), with half the vehicles at each location operating on traditional fuels and half operating on compressed natural gas (CNG). Each group of 50 vehicles will consist of the same mix of vehicle types: 16 passenger cars, 33 pickup trucks, and one van. Detailed logs will be kept on the fueling and operation of the vehicles, their exhaust emissions closely monitored, and their lubricating oil analyzed in order to compare the fuel efficiency, exhaust emissions, and impact on lubricants of the CNG-powered vehicles with the traditionally fueled vehicles. Arrangements for establishment of fueling stations and conversion of the vehicles to be fueled with CNG are underway, and actual test operations are expected to begin between November 1991 and July 1992. Vehicles will be evaluated over an 18-month operating period.

Future Subcommittee Agenda

The subcommittee then discussed items to be placed on its agenda for the remainder of the year and agreed to meet again in late August or

early September in order (i) to receive a more detailed briefing from Department of Air Pollution Control staff on the 1990 amendments to the federal Clean Air Act, actions now being taken by Virginia to meet the requirements of the act, programs which Virginia may undertake pursuant to the act, and legislative actions Virginia will be required to take in order to comply with the act; and (ii) discuss with representatives of the Virginia Department of Education, Fairfax County, and other concerned parties opportunities for and obstacles to use of alternative fuels by school bus fleets. The subcommittee also instructed staff to draft a letter to the State Corporation Commission requesting the commission to identify and remove impediments to the use of CNG as a motor fuel.

Mr. Richard Taylor, representing the Consolidated Natural Gas Company, drew the subcommittee's attention to pending federal legislation related to alternative fuels and their use by school buses. In particular, he urged the subcommittee and its members to contact members of Congress to support an amendment (sponsored by Senator Don Nickles of Oklahoma) to the Senate Surface Transportation Efficiency Act of 1991 (S. 1204). The Nickles amendment would permit states to use a portion of discretionary funds received from the federal government to cover incremental costs associated with the use of alternative fuels by school buses.



The Honorable Arthur R. Giesen, Jr., *Chairman*

Legislative Services contact: Alan B. Wambold

Garka Selected for SLC Award

John A. Garka, Finance and Government Manager with the Division's staff, was selected to receive the SLC's 1991 Sam Carter Award for Staff Excellence. The award was announced during the annual state dinner at the July meeting of the Southern Legislative Conference in New Orleans.

The award is presented annually to a senior staff candidate nominated by the legislative service agency directors of the member states.

The award, a pewter platter, will be presented to Mr. Garka at the Legislative Agency Directors' fall meeting in Atlanta.

HJR 293: Game Protection Fund

June 25, 1991, Richmond

1990 Recommendations/Impact

The subcommittee began its second year of assessing the long-range financial status of the Game Protection Fund (GPF) by reviewing the anticipated impact of legislation passed during the 1991 Session. Four pieces of legislation recommended by the subcommittee in 1990 were enacted into law by the 1991 General Assembly. According to personnel at the Department of Game and Inland Fisheries (DGIF), this legislation (interest earned on the GPF to be credited back to the GPF, bonus deer

short of breaking even during fiscal year 1991-92. Therefore, in order to support DGIF's boating program, which annually expends approximately \$414,000 on nonpowered boating activities alone, the agency must divert moneys from its other programs.

Subcommittee members were reminded that results of the telephone survey conducted by

DGIF personnel during 1990 showed that the conservation permit proposal, anticipated to raise in excess of \$3.1 million in additional annual revenues, had received the support of nearly three-fourths of Virginia residents surveyed. Chairman Thomas suggested that the subcommittee should look closely at the concept of requiring all hunters, fisherman, trappers, and boaters to purchase these permits.

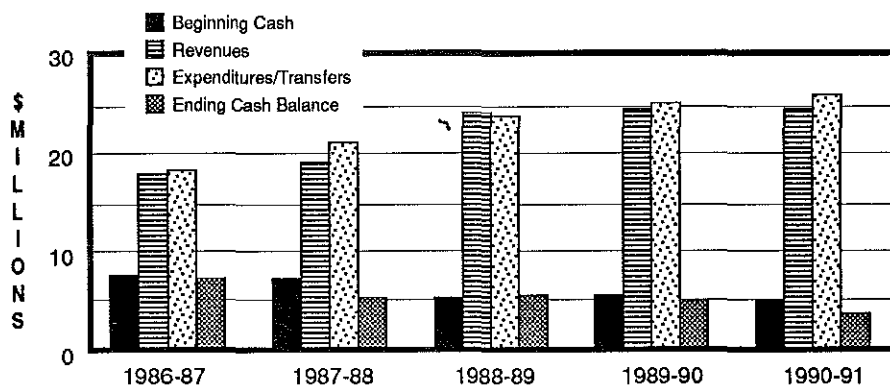


Figure 1. Summary of Revenues, Expenditure and Cash Balances for the Department of Game and Inland Fisheries

permits, wildlife conservationist license plates, and trip fishing licenses) will provide the agency with slightly less than \$500,000 in additional annual revenues.

Subcommittee members were informed that while these new revenues will certainly be helpful, DGIF's current level of services cannot be maintained without substantial additional assistance. As of June 1991, the agency was financially incapable of filling 50 of its authorized 456 positions. Going into last year's fall hunting session, DGIF was 28 game wardens short. Since that time, 12 more game wardens have taken early retirement, and the agency is uncertain whether funding will allow any of these positions to be refilled. During fiscal year 1991-92, the agency believes it will have funding for only 400 of its authorized 458 positions. Furthermore, over 50% of the agency's vehicles now need to be replaced.

Information provided by staff indicated that DGIF's boating program continues to be far from self-sufficient. Although current law mandates that this program pay for itself with revenues generated from the sale of numbers and certificates of title, the agency's boating program will be \$1.3 million

Past and Present Condition of the Game Protection Fund

Bud Bristow, director of DGIF, provided the subcommittee with detailed information on the history and current level of agency revenues and expenditures. He emphasized that while the 1980 and 1988 license fee increases had helped, inflation almost immediately negated their positive impact. Furthermore, as evidenced by Figure 1, annual agency expenses/transfers have exceeded annual revenues, resulting in a consistent decline of the year-end cash balances of the Game Protection Fund. For example, the fund's year-end cash balance used to be sufficient to support six months of DGIF expenditures. Now the ending cash balance provides only six weeks of expenditure

coverage. Mr. Bristow emphasized that this is a critical problem, because DGIF relies on the previous fiscal year's ending cash balance to get through the months of August and September before hunting license revenues once again pick-up in October.

Mark Monson, chief of the agency's Administrative Services Division, described the department's current program and capital outlay needs. While DGIF will need revenues for fiscal year 1991-92 totaling \$32.5 million to preserve the integrity of its current programs, net revenues available to the department (revenues less mandated transfers) total \$25 million. Mr. Monson explained that as a result, the agency will be unable to fund \$4.7 million in maintenance and operation needs and \$2.8 million in capital outlay needs. He indicated that the lack of revenue for capital outlay projects will pose particular problems for the agency in several areas: hatchery, dam, and boat ramp repairs and the construction or repair of bridges and roads. He also predicted that inflation would cost the agency 20 positions in fiscal year 1991-92. Finally, he emphasized that public demand for new departmental services is rapidly escalating. To respond to these new demands, DGIF is now being forced to divert resources away from its traditional programs.

In summary, DGIF personnel told the subcommittee that in order to continue providing current services, the agency will need an additional \$1 million in revenues each year. Mr. Bristow explained that the agency had no particular recommendation as to how these additional revenues should be raised.

Public Comment

Chairman Thomas allowed the public to address the subcommittee at the end of the meeting. Several individuals, including representatives of the Virginia Bass Federation and the Virginia Wildlife Federation, voiced support for the concept of a conservation stamp, provided that revenues derived from the sale of these stamps are not diverted from the Game Protection Fund. A spokesman for the Float Fisherman of Virginia told subcommittee members that his organization would be in a position by early September 1991 to present its views on whatever proposals were forthcoming from the study. He suggested that his organization would be more likely to support proposals if they generated revenues earmarked for purposes of opening up rivers west of Richmond for nonpowered boat use.

Future Meetings

Chairman Thomas has tentatively scheduled a public hearing for September 10 at Christopher Newport Community College in Newport News.



The Honorable A. Victor Thomas, *Chairman*
Legislative Services contact: John T. Heard

**HJR 448:
Joint Subcommittee Studying the Incentives and Obstacles
Facing Businesses When Making Location Decisions in Virginia**



July 29, 1991, Richmond

Subcommittee Focus

Delegate Diamonstein opened the subcommittee's first meeting with a two-fold statement of purpose: (i) the review of the incentives and identification of the obstacles facing businesses locating in Virginia, and (ii) the review of the various permitting processes involved in establishing and expanding businesses in Virginia. For the first of these categories, the following issues were identified for further study:

■ Are there obstacles that need to be removed by legislation?

- Are existing incentives sufficient to attract business to Virginia?
- Should additional incentives be added to keep Virginia competitive with other states?

On the issue of the permitting processes, the subcommittee raised the following questions:

- Is legislation necessary to streamline or expedite the permitting processes?
- Are business opportunities being lost because the permitting process is too cumbersome?
- Is there sufficient coordination between the permitting agencies?

Organizationally, the subcommittee discussed the possibility of creating two work groups — one to analyze the obstacles facing businesses and a second to review the incentives offered by the Commonwealth. The subcommittee agreed to break down businesses into three categories:

Small: those companies with 1 to 25 employees,

Medium: 26 - 200 employees,

Large: more than 200 employees.

Government Incentives

Mark Kilduff, director of the Division of Trade and Industrial Development, Department of Economic Development, provided an overview of the programs offered by the Department of Economic Development (DED) to attract new business to Virginia and to encourage existing businesses to expand. Mr. Kilduff noted that on the direct incentive front, Virginia is light but competitive with other states (North Carolina, West Virginia, Georgia and Tennessee). The major programs or services provided by DED are work force services, including industrial training; industrial services (Access Road Program); the Shell Building Program; the Community Certification Program for assisting localities in attracting business; and the Virginia Revolving Loan Fund, to assist in infrastructure development. Mr. Kilduff indicated that as a result of SB 590 (1991), the Permit Assistance Group (PAG) has been formed to act as an informational resource for nongovernmental applicants for state environmental regulatory permits. PAG membership includes representatives of the major environmental permitting agencies and representatives of DED.

Businessman's Views

Thomas Blackburn, president of West Point Operations of the Chesapeake Corporation, also addressed the subcommittee. Mr. Blackburn noted that his remarks were broad in nature and did not exclusively reflect the experience of the Chesapeake Corporation. Among his opinions and suggestions:

- On the matter of incentives, the biggest problem appears to be that businesses are unaware of what Virginia has to offer. A national advertising campaign might enhance Virginia's marketing efforts.
- Businesses could be used as consultants to establish a more cooperative effort between business and government.
- A more refined targeting of businesses Virginia wishes to attract is needed.
- A more "user-friendly" permitting process is needed, with greater regulatory flexibility in economically depressed areas, which could be attractive to small businesses.
- Single-source coordination between state and local governments, especially where small businesses are concerned, would save time and money.
- A survey of present industry might better identify the day-to-day needs of Virginia's industrial community.

■ Specific tax incentives should be geared toward businesses that practice energy conservation or support vocational education.

■ Tennessee and Alabama currently offer the best business incentives within the framework of a reasonable regulatory climate.

With the consensus of the subcommittee, Mr. Blackburn agreed to be an advisor to the subcommittee.

Council on the Environment

The subcommittee then focused their discussion on § 10.1-1206 of the Code of Virginia, enacted in 1976, which allows an applicant who is required to obtain a permit from more than one state environmental regulatory agency to make a single unified application to the administrator of the Council on the Environment. This section also provides a timetable for the review of the single unified application, if requested, and grants to the council the authority to promulgate the necessary regulations. There was concern among the subcommittee members that the law was not being followed by the environmental permitting agencies. Mr. Kilduff indicated that he is unaware of businesses going to the Council on the Environment. The subcommittee requested more information on this issue and questioned whether the long permitting process is a function of a systemic, unhealthy attitude of the environmental regulators or a function of state budget cutbacks resulting in reduced staff.

The next meeting of the subcommittee is scheduled for Friday, August 23, at 2:00 p.m. in Richmond.



The Honorable Alan A. Diamonstein,

Chairman

Legislative Services contact:

Maria J.K. Everett

State Water Commission

June 26, 1991, Newport News

At its initial meeting of 1991, the State Water Commission considered two resolutions passed by the 1991 Session of the General Assembly: SJR 264, a study of the feasibility of creating a Hampton Roads regional water strategy, and HJR 460, an examination of the application and enforcement of regulations for water and wastewater treatment. The State Water Commission also received testimony regarding the revision of the Groundwater Act of 1973 and continued its efforts in formulating a comprehensive water policy.

SJR 264: Feasibility of a Hampton Roads Regional Water Strategy

Senator Mark L. Earley, patron of SJR 264, explained that the study resolution had its genesis in a report on the future of Virginia, written during Governor Robb's administration. One of the recommendations in the report was that the state encourage localities to cooperate in the use of natural resources, specifically water. Senator Earley said that three of the five cities of Hampton Roads have experienced tremendous increases in population and at the same time have implemented "very successful" economic development strategies. He said because of the growth and prospects for continued development it becomes obvious that there must be cooperation regarding natural resources.

To carry out the charge of SJR 264, Senator Earley proposed that a steering committee oversee the study and coordinate special interest groups. The State Water Commission voted in favor of a motion that the Hampton Roads Legislative Caucus be requested to coordinate the study efforts and present the findings to the State Water Commission.

HJR 460: Water and Wastewater Treatment Regulations

HJR 460, approved by the 1991 Session of the General Assembly, requests the State Water Control Board (SWCB) and the State Board of

Health to examine the application and enforcement of regulations for water and wastewater treatment. The study includes several important aspects: the toxicity program of the SWCB; staffing requirements of the Virginia Health Department; monitoring and testing requirements of both the SWCB and the Department of Health; sludge handling requirements of the Virginia Health Department; the definition of minimum in-stream standards of the SWCB; and the degree of treatment required for water quality standards for the drinking water and waterways of the Commonwealth. The findings and recommendations of the board and the department will be made to the 1993 Session of the General Assembly. As an interim report, the State Water Commission received testimony from representatives of the Health Department and the SWCB regarding implementation of the regulations.

Drinking Water

Tom Gray, assistant chief of technical services, Division of Water Supply Engineering of the Virginia Department of Health, explained that to maintain control, flexibility and discretion, the Virginia Department of Health has accepted primary enforcement authority for the drinking water program, or primacy. For a state to retain primacy its regulations must be as stringent as the federal regulations. He emphasized that there is little flexibility in the administration of the program, the only option being relinquishing it to the EPA. The Department of Health receives "limited" federal support for its efforts in the form of a Public Water Supply Supervision Grant. While the amount of the grant has increased over the last fifteen years, the increase has not kept pace with the costs of regulatory and reporting requirements established under the 1986 amendments to the Safe Drinking Water Act.

The 1986 amendments require the promulgation of nine major sets of regulations and cover topics such as volatile organic chemicals, public notification, a total coliform rule, surface water treatment rule, synthetic organic chemicals, lead and copper, contaminants, radionuclides, and disinfectants and disinfectant byproducts. Of these topics the EPA has promulgated rules on the first six. Additional funding at the state level has been provided for the implementation of the rules on volatile organic chemicals and public notification. These rules have been incorporated in the waterworks regulations. The 1990 Session of the General Assembly provided funding for 19 additional full-time employees and a general fund increase of \$600,000 for both fiscal year 1991 and 1992. Additionally, 45 full-time employees were authorized for 1992, but the positions were not funded.

Mr. Gray concluded that increased funding to the Department of Health is necessary to implement the safe drinking water program, and additional funding is also needed at the Division of Consolidated Laboratory Services and the Office of the Attorney General. He encouraged the State Water Commission to support primacy and increased funding.

Sludge Management

Dr. Cal Sawyer, director of the Division of Wastewater Engineering of the Department of Health, explained that his program is responsible for the design and operation of central sewage collection and treatment facilities. Forty-two positions are authorized and 38 of those are funded, which will be streamlined to 35 as three positions are transferred to another division. The division is also responsible for the review of sludge treatment, handling and management plans.

Water Quality Standards

Richard Burton, executive director of the SWCB, reviewed federal actions that will affect state programs. In 1987, when amending the Clean Water Act, Congress directed the EPA to address toxics control, sludge management, and stormwater management. Mr. Burton explained that because the 1987 amendments were very comprehensive, Virginia has only begun to meet the requirements on toxics control. Because the EPA has not set the standards for the 126 priority pollutants (toxics), the state has been placed in the position of developing its own standards.

The 1987 amendments also require establishment of a stormwater discharge permit. Currently there are about 4,000 National Pollutant Discharge Elimination System (NPDES) permits, and a stormwater discharge program may require permits for as many as 10,000 facilities, including

many served by central sewer systems, as well as cities and counties with populations of 100,000 or more. Mr. Burton said that the impact of establishing a stormwater discharge permit program on the department's resources is "staggering."

Mr. Burton stated that Virginia is "better served almost always by taking primacy or taking delegation of programs and operating them at the state level." He said the SWCB is working toward incorporating the stormwater program and has begun assessing the program's impact on SWCB resources. During the 1990-91 fiscal year, two full-time positions were authorized but were lost in budget reductions. Six others were approved for 1991-92, and Mr. Burton hoped that those positions would be preserved.

Revision of the Ground Water Act of 1973

Terry Wagner of the SWCB discussed the history of the Ground Water Act. Concerns about the availability of ground water led to its enactment in 1973; it required permitting of industrial and commercial users withdrawing more than 50,000 gallons per day in designated ground water management areas. A ground water management area can be established when there is reason to believe that ground water levels in the area are declining, that there is substantial well interference, that the aquifer may be depleted, or that the ground water may be polluted. After an area is established, all existing users are eligible to file a statement documenting their continuing right to withdraw and are issued a Certificate of Ground Water Right. These certificated rights may be limited upon a finding that the unrestricted uses of ground water contribute to shortage or pollution of ground water. Permits are required (i) for withdrawals above what is established in the certificate and (ii) by any subsequent users.

Because of concerns about significant withdrawals and the management of the resource, the act was amended in 1986 to include municipal withdrawals and to reduce the threshold for permitting from 50,000 gallons per day to 300,000 gallons per month. Withdrawals for agricultural purposes remained exempt.

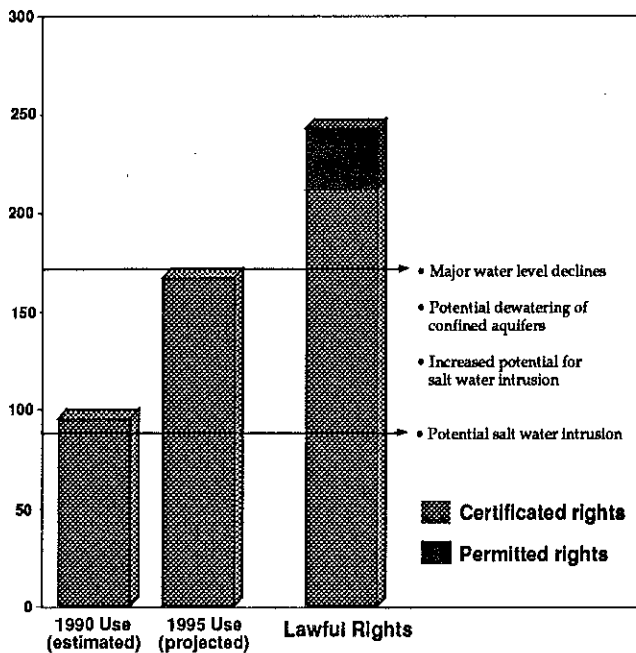


Figure 1. Ground Water Withdrawal Rights (in million gallons per day).

Certificates account for 212 million gallons per day and permits authorize withdrawals of 31 million gallons per day, for a total of 243 million gallons per day. The largest stress which has been evaluated is 167 million gallons per day.

In 1989 it became apparent that additional information on ground water was needed; a modeling project completed by the United States Geological Survey (USGS) demonstrated that a withdrawal of 88 million gallons per day indicated the potential for salt water intrusion (see Figure 1). A modeled withdrawal of 167 million gallons per day predicted several negative impacts: declines in ground water levels, increased potential for salt water intrusion, and dewatering of confined aquifers in the western coastal plain.

Presently, there are certificated rights of 212 million gallons per day, with additional permits for 31 million gallons per day, for a total of 243 million gallons per day. While current actual use is estimated to be 95 million gallons per day, the total authorized withdrawal is a 45% increase over the largest daily withdrawal evaluated by the USGS. At the time the act was passed, individuals obtained withdrawal rights which exceeded actual need. If all users were to exercise their authorized withdrawals, (i) the aquifer would be stressed and the possibility would exist for salt water intrusion and (ii) further development would be hindered. Mr. Wagner concluded that it is doubtful that the aquifer system can support the established withdrawal rights.

Rick Weeks highlighted the proposed changes to the act:

- Users would be permitted for their maximum withdrawal for any consecutive twelve-month period;
- Agricultural withdrawals exceeding 300,000 gallons per month would no longer be exempt; and
- Preference would be given to public water supply users when conflict among users exists or there is insufficient ground water supply.

Delegate Councill pointed out that using a consecutive twelve-month period to determine permitted agricultural withdrawals does not take into account the particular need of agriculture, in that a farmer may not have withdrawn any water for several years but in time of drought may need a great deal. Determining the permit base may need to be done differently for farmers in order to accommodate their unique situation.

State and Local Role in Water Policy

The State Water Commission heard testimony from two county administrators as background for its formulation of a comprehensive water policy. Randy Cooke, Spotsylvania County, explained that last year a resolution had been requested to study the role and authority of the SWCB in water resource planning and management. He supported consideration of such a policy. Larry Davis, county attorney for Spotsylvania, described the county's need for water as "urgent." He stated that Spotsylvania is looking to the state for assistance in acquiring permits needed at the federal level to develop alternate water sources.

Dave Whitlow, King William County, advocated the allocation of the resource by the state. He outlined issues he believed the State Water Commission will need to address in formulating a state water policy: determining compensation to water suppliers, considering the interrelation of surface and ground waters, eliminating impediments to interbasin transfers, and establishing priorities of usage.

The State Water Commission will hold a public hearing in Roanoke during August to formulate a comprehensive water policy.



The Honorable Lewis W. Parker, Jr., *Chairman*

Legislative Services contact: Deanna C. Sampson

Youth Services Commission Begins Operations

Created by the 1989 Session of the General Assembly, the Youth Services Commission has hired an executive director and has begun formal meetings.

The eight-member commission was established to examine the needs of Children in Need of Services (CHINS); to study and provide recommendations addressing the needs of and services to the Commonwealth's youth and families; to encourage the development of uniform policies and services to youth; to provide a forum for continuing review and study of youth services; and to coordinate the proposals and recommendations of all commissions and agencies regarding legislation affecting youth.

The commission met on July 17 and is scheduled to meet again on August 21 and September 13. The educational focus of these initial meetings will be used to help the commission shape its agenda for the 1992 Session.

The Honorable J. Samuel Glasscock, *Chairman*

Contact: Nancy Ross, (804) 371-2481

HJR 433: Joint Subcommittee Studying the Measures Necessary to Assure Virginia's Economic Recovery

July 30, 1991, Fairfax

The Economic Recovery Council, chaired by Lieutenant Governor Donald S. Beyer, Jr., met in the Student Union II Building, George Mason University, on July 30th to continue its work. The agenda included the chairman's progress report and four speakers.

The Cost of Capital

Margo Thorning, chief economist for the American Council for Capital Formation, made the first presentation, dealing with "The Cost of Capital—the Impact of Environmental Policies and Capital Gains Taxes." Dr. Thorning began by noting that her organization is supported primarily by business corporations, although its contributors represent a wide cross-section of American society, and that the organization is probably best known for its active position on lower capital gains tax rates. The council was started in the 1970s to focus on how to increase America's low savings and investment rates, low as compared to the rest of the industrialized world. Although the American rate of savings was low in the 1970s, it continued to decline through the 1980s.

The United States has a high cost of capital when compared with most countries in the world, including Japan; that is, American borrowers must pay higher rates of return to obtain funding for their projects. Our capital costs are high for two reasons: (i) our rate of savings is low and (ii) our taxes on capital (capital-intensive businesses) are high. In addition, business must compete against its own government to obtain funds. The tax burden on business substantially increased with the passage by Congress of the Tax Reform Act of 1986. Besides repealing accelerated depreciation and the 10% investment tax credit, Congress created a corporate alternative minimum tax (AMT), which may now subject 40% of American companies to the payment of AMT. Our capital gains tax rate, which used to be 20%, is now 33%, about the highest in the world. Most countries exempt the sale of securities, held long term, from taxation; Japan's rate is now 1%, and prior to 1988 there was no tax imposed.

Finally, our policy to protect the environment materially increases the costs of doing business in the United States and affects business location and expansion decisions. While the need to protect the environment is unquestioned, and Congress' policy direction probably irreversible, our national environmental policy should be integrated with our tax policy. The requirements imposed on business to comply with our stricter environmental laws necessitate the devotion of a substantial amount of capital to new projects, and our tax laws may penalize companies which make such capital-intensive investments. Many other countries allow business to rapidly depreciate pollution control equipment over a two or three year period; the United States needs to compare itself to the rest of the world in terms of environmental *and* tax policy.

To increase America's savings and investment rates, Dr. Thorning made the following suggestions: reduce the taxes on capital investment by accelerating depreciation schedules, reinstate investment tax credits, modify the AMT as it may affect capital-intensive companies, lower the capital gains tax rate, bring back individual retirement accounts (IRAs) as they existed in 1985-1986, and make our tax policy more favorable to savings. If limitations are thought to be necessary, these more favorable tax aspects could be restricted to pollution control equipment investment.

In response to questions, Dr. Thorning stated that the estimated annual \$40 billion cost of the above tax law changes could be recouped by imposing a broad-based consumption tax (value-added tax or VAT), with tax credits for low income taxpayers to insulate them from the inherent regressivity of the VAT. VATs are prevalent in other industrialized countries. Upon further questioning, Dr. Thorning did say that it was unlikely Congress would enact any significant tax law changes in the near future.

The Virginia Economy

Sam Lopoulos, economist for Virginia Power, described the five factors responsible for Virginia's 1990-1991 recession: (i) real estate problems, (ii) banking problems and the resulting reluctance of banks to lend, (iii) the Federal Reserve's tight fiscal policy, (iv) the higher value of the dollar internationally, which hurt exports, and (v) the Persian Gulf crisis. In the past, Virginia has been insulated from recessions by defense spending, which helped Virginia to enter recessions later, not sink as deep, and rebound more quickly than the nation as a whole. The 1990-1991 recession is very different; Virginia entered the recession before the rest of the nation and plunged deeper, and Northern Virginia bore the brunt of the fall.

Dr. Loposata then discussed the level of the federal deficit and pointed out that even if all federal grants to states and local governments were eliminated, the deficit would still exist. The federal deficit is bigger than the nondefense spending part of the federal budget, and there is no simple solution. The solution entails raising taxes and cutting spending, and we know that defense spending will be cut. Virginia will have a rough upcoming decade as a result because of defense spending's importance to the Virginia economy; Virginia's historical growth in wages tracks defense spending. In addition, state and local government expenses are bound to grow as Congress continues to mandate programs and to pass on the costs.

John Accordino, professor of urban planning at Virginia Commonwealth University, began by noting that Virginia's regions and localities are very different from each other and that economic recovery means different things for different parts of the Commonwealth. For example, the unemployment rates in Northern Virginia in recession are lower than the rates in existence in the rest of the state before the recession began. Professor Accordino then looked at the various economic indicators for Virginia's 21 planning districts and concluded by saying that as Virginia plans its economic recovery, we must be aware of these regional differences and account for them.

Professor Roy Pearson, director of the Bureau of Business Research at the College of William and Mary, was the final speaker and provided an economic forecast through 1995. Professor Pearson pointed out that Virginia peaked in 1986 and that our rate of growth had been declining since then, until we entered the recession in the first quarter of 1990, a full three months ahead of the rest of the nation and before Iraq's invasion of Kuwait. Virginia's construction boom, especially in Northern Virginia, had been driving the state's economy, and without any basis for believing that construction will strongly rebound (combined with a 20% to 25% cut in defense spending in Northern Virginia), the 1990s will experience growth at less than half the rate of the 1980s. That growth rate will be less than the rest of the nation's.

The only real strength in Virginia's economy is that sector denominated as private services by the U.S. Department of Commerce. Included in this category, and the leaders of its growth, are the health care services and private business services industries. However, economists do not know enough about the make-up and characteristics of the private services sector to make any predictions about its continuing growth with any confidence. Professor Pearson concluded by saying that through 1995, it is projected that Virginia's economy will grow at the adjusted rate of 1.5% to 1.7% a year, and that calendar year 1991 would reflect lesser growth.

The subcommittee will next meet on August 21 in Roanoke.



The Honorable Donald S. Beyer, Jr.,
Lieutenant Governor, *Chairman*

Legislative Services contact: John G. MacConnell

HJR 300: Southside Economic Development Commission



July 26, 1991, Danville

The fourth meeting of the HJR 300 Southside Economic Development Commission was called to order by Delegate Whittington W. Clement, Vice Chairman. The commission's four task forces, having completed their work at morning meetings, presented their final recommendations for consideration by the full commission.

Agriculture, Forestry, and Natural Resources

Reporting on behalf of the task force on agriculture, forestry, and natural resources was

Delegate Paul Council, task force chairman. The task force submitted a total of 32 recommendations, focusing on planning and research; diversification, value-added processing, and marketing of agricultural products; promotion of the forestry industry; tourism; and balance in the regulatory environment. Specific recommendations included the creation of regional forests products and agribusiness industrial parks, funding for capital improvements at Occoneechee, Staunton River, and Twin Lakes state parks, and research targeting the use of wood wastes for fuels and other products. The task force also recommended funding for planning for the Southeast Virginia Regional Farmers' Market, establishment of a loan program for agricultural diversification, and creation of a conservation trust fund to be used for capital outlay projects.

Education, Training, and the Workforce

Delegate Ted Bennett, chairman of the task force on education, training, and the workforce, then addressed the commission. Among the recommendations of the education task force were the establishment of a regional, multi-site school focusing on applied learning; funding for school divisions demonstrating limited fiscal capacity for computer-enhanced instructional programs; and annual appropriations for the Southside Virginia Business and Education Commission. Primary among the task force recommendations was the reduction of educational disparities in Southside Virginia. The task force recommended that the Governor and the General Assembly include in their efforts to reduce substantially regional disparities in education funding, facilities, and programs consideration of the special needs of school divisions beyond basic requirements and the adjustment of current funding formulas to reflect more accurately local capacity and willingness to pay for public education. Support for adult basic education and teacher and workforce recruitment also received task force focus.

Finance, Marketing, and Incentives

The recommendations of the task force on finance, marketing, and incentives were presented by Warren Green, task force member. The enactment of a double weighted sales factor apportionment formula for the Virginia corporate income tax was recommended to serve as an income tax incentive for all companies to locate and expand in Virginia. In addition, the task force supported the establishment of a 13-member Southside Virginia Marketing Council to promote Southside Virginia, to help attract development prospects to Southside, and to encourage localities to work cooperatively to promote strengths and advantages of the region. The new council would be authorized to spend funds generated by local voluntary per capita assessments, not to exceed \$1 per resident annually, for regional promotion. The Commonwealth would provide matching appropriations for these funds by allocating three percent of the state's cigarette tax. The task force also recommended the creation of a twelve-member Southside Virginia Development Authority to administer a \$25 million low-interest loan pool to provide water, sewer, gas and other infrastructure needs to assist in Southside prospect locations.

Infrastructure

Senator Virgil Goode, chairman of the task force on infrastructure, presented 13 recommendations, including the development of a two-tiered advertising program that would jointly promote industrial site locations in rural areas and throughout the state; restoration of the Virginia Housing Partnership Fund in the general fund budget at a level of \$50 million for the 1992-94 biennium; and the establishment of a \$25 million Southside Infrastructure Grant Program to provide for economic diversification throughout Southside Virginia and to enable local governments to improve their water treatment, waste water, and solid waste disposal facilities. The Task Force also endorsed the creation of a public marketing program to promote commercial air services and to encourage Southside residents, businesses, and industries to utilize fully existing air transportation services in the region. The continuation of the Department of Economic Development's

Industrial Shell Building Program and the restoration of the Commonwealth's funding and construction schedule for U.S. 58 to their status prior to Virginia's funding shortfall were also recommended. The task force also supported the inclusion of U.S. 15, 29, 58, and 460; U.S. 220 from Roanoke to the North Carolina border; U.S. 360 from Danville to Richmond; Route 49 from Kenbridge to the North Carolina border; Route 501 from Lynchburg to South Boston; and all of Virginia Route 40 in the federal Highways of National Significance plan to enhance Southside's highway infrastructure and to promote rapid access to commercial markets.

Public Hearings

The commission adopted the task force recommendations on a preliminary basis and will develop its final recommendations following a series of public hearings, scheduled for the following dates and locations:

Monday, August 26, 9:00 a.m.:
Paul D. Camp Community College,
Franklin

Monday, August 26, 3:00 p.m.:
Longwood College, Farmville

Tuesday, August 27, 9:00 a.m.:
Patrick Henry Community College,
Martinsville

The commission expects to circulate the task force recommendations to Southside localities, local chambers of commerce, school superintendents, institutions of higher education, and other economic development organizations prior to the public hearings.



The Honorable A.L. Philpott,
Speaker, House of Delegates, *Chairman*

Legislative Services contact:

Kathleen G. Harris

Subcommittee No. 4:
House Committee on Roads and Internal Navigation
Study of Maximum Age for School Bus Operators



June 7, 1991, Richmond

Delegate Robert Bloxom, Andy Henderson, transportation supervisor for Accomack County public schools, and Rewell A. Bynum, associate director for pupil transportation services in the Virginia Department of Education reviewed for the subcommittee the events that precipitated the present study.

Reason for the Study

In 1988, Accomack County had employed several school bus drivers over the age of 69, and while driving a school bus, one of these drivers had been involved in an accident in which a child was injured. The county had been sued by the parents of the injured child, and in the course of the suit, it was pointed out that state law (subdivision 5 of subsection A of § 22.1-178 of the Code) prohibited the employment of school bus drivers over the age of 69. As a result of the suit, the county had dismissed its over-age school bus drivers, one of whom then lodged an age discrimination complaint with the federal Equal Employment Opportunity Commission, which found in favor of the driver and required the county to reemploy those drivers it had discharged for being over 69 years old.

Delegate Bloxom, Mr. Henderson, and Mr. Bynum pointed out that while the Code prohibits the employment of school bus drivers over the age of 69, no such limit is contained either in regulations of the Department of Education or in state statutes dealing with licensure of school bus drivers. They all agreed that any limitation on employment of school bus drivers based on age alone was likely to conflict with federal law, particularly the federal Age Discrimination in Employment Act of 1967, as amended.

Speaking on behalf of the Department of Motor Vehicles (DMV), Assistant Commissioner Ann Ober explained that federal law governing the issuance of commercial driver's licenses does not provide for any maximum age limit for licensees and that DMV has not found age alone to be sufficient grounds for denying applications for driver's licenses or placing restrictions on licensees.

Committee Action

Following a brief discussion, the subcommittee unanimously agreed to have staff draft legislation to amend § 22.1-178 of the Code to (i) remove the maximum age for employment of school bus drivers and (ii) change the minimum age from 16 to 18 to comport with § 46.2-919 of the Code and with federal law.



The Honorable S. Wallace Stieffen, *Chairman*

Legislative Services contact: Alan B. Wambold

The Legislative Record summarizes the activities of all Virginia legislative study commissions and joint subcommittees. Published monthly in Richmond, Virginia, by the Division of Legislative Services, an agency of the General Assembly of Virginia.

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The Legislative Record is also published monthly in *The Virginia Register of Regulations*, available from the Virginia Code Commission, 910 Capitol Street, 2nd Floor, Richmond, Virginia 23219. Notices of upcoming meetings of all legislative study commissions and joint subcommittees appear in the Calendar of Events in *The Virginia Register of Regulations*.

GENERAL NOTICES/ERRATA

Symbol Key †

† Indicates entries since last publication of the Virginia Register

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Pesticide Control Board

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Pesticide Control Board intends to consider amending regulations entitled: **VR 115-04-20. Rules and Regulations Governing the Pesticide Fees Charged by the Department of Agriculture and Consumer Services under the Virginia Pesticide Control Act.** The purpose of the proposed action is to amend regulation VR 115-04-20, § 2.1 Pesticide Product Registration Fee, to establish a cut-off date for the renewal of product registrations and to establish a penalty when payment for renewal of registration is made after the cut-off date.

Statutory Authority: § 3.1-249.30 of the Code of Virginia.

Written comments may be submitted until 5 p.m. September 30, 1991.

Contact: Dr. Marvin A. Lawson, Program Manager, Office of Pesticide Management, P. O. Box 1163, Room 401, 1100 Bank Street, Richmond, VA 23209, telephone (804) 371-6558.

CHILD DAY-CARE COUNCIL

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Child Day-Care Council intends to consider promulgating regulations entitled: **VR 175-08-01. Minimum Standards for Licensed Child Care Centers, Nursery Schools, and Child Day Care Camps Serving Children of Preschool Age or Younger.** The purpose of the proposed action is to develop minimum standards that are appropriate for child care centers, nursery schools, and child day care camps serving children of preschool age or younger. This notice represents a conversion of the notices of intent for: VR 175-02-01 (Minimum Standards for Licensed Child Care Centers), VR 175-05-01 (Minimum Standards for Licensed Child Day Care Camps) and VR 175-06-01 (Minimum Standards for Licensed Preschools and Nursery Schools). These previous notices of intent were published September 10, 1990, in Volume Six of Issue 25 of the Virginia Register.

Statutory Authority: §§ 63.1-202 and 63.1-202.1 of the Code of Virginia.

Written comments may be submitted until August 29, 1991.

Contact: Peggy Friedenber, Legislative Analyst, Office of Governmental Affairs, Department of Social Services, 8007 Discovery Drive, Richmond, VA 23229-8689, telephone (804) 662-9217.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Child Day-Care Council intends to consider promulgating regulations entitled: **VR 175-09-01. Minimum Standards for Licensed Child Care Centers, Before School and After School Child Care Programs, and Child Day Care Camps Serving School Age Children.** The purpose of the proposed action is to develop minimum standards that are appropriate for child care centers, before school and after school child care programs, and child day care camps serving school age children. This notice represents a conversion of the notices of intent for: VR 175-02-01 (Minimum Standards for Licensed Child Care Centers), VR 175-05-01 (Minimum Standards for Licensed Child Day Care Camps) and VR 175-07-01 (Minimum Standards for Licensed Before School and After School Day Care Programs). These previous notices of intent were published September 10, 1990, in Volume Six of Issue 25 of the Virginia Register.

Statutory Authority: §§ 63.1-202 and 63.1-202.1 of the Code of Virginia.

Written comments may be submitted until August 29, 1991.

Contact: Peggy Friedenber, Legislative Analyst, Office of Governmental Affairs, Department of Social Services, 8007 Discovery Drive, Richmond, VA 23229-8689, telephone (804) 662-9217.

BOARD OF CORRECTIONS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Corrections intends to consider amending regulations entitled: **VR 230-30-002. Community Diversion Program Standards.** The purpose of the proposed action is to establish minimum standards for the development, operation and evaluation of programs and services

General Notices/Errata

provided under the Community Diversion Incentive Act.

Statutory Authority: §§ 53.1-5 and 53.1-180 et seq. of the Code of Virginia.

Written comments may be submitted until September 10, 1991.

Contact: Dee Malcan, Chief of Operations, 6900 Atmore Drive, P. O. Box 26963, Richmond, VA 23261, telephone (804) 674-3242.

DEPARTMENT OF CRIMINAL JUSTICE SERVICES (BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Criminal Justice Services Board intends to consider amending regulations entitled: **Rules Relating to Certification of Criminal Justice Instructors**. The purpose of the proposed action is to amend and revise the Rules Relating to Certification and Recertification of Criminal Justice Instructors.

Statutory Authority: § 9-170 of the Code of Virginia.

Written comments may be submitted until August 29, 1991, to L.T. Eckenrode, Department of Criminal Justice Services, 805 East Broad Street, Richmond, Virginia 23219.

Contact: Paula Scott, Staff Executive, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-4000.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Criminal Justice Services Board intends to consider amending regulations entitled: **Rules Relating to Compulsory In-Service Training Standards for Law-Enforcement Officers, Jailors or Custodial Officers, Courtroom Security Officers, Process Services Officers and Officers of the Department of Corrections, Division of Adult Institutions**. The purpose of the proposed action is to amend and revise the Rules Relating to Compulsory In-Service Training Standards for Law-Enforcement Officers, Jailors or Custodial Officers, Courtroom Security Officers, Process Service Officers and Officers of the Department of Corrections, Division of Adult Institutions.

Statutory Authority: § 9-170 of the Code of Virginia.

Written comments may be submitted until August 29, 1991, to L.T. Eckenrode, Department of Criminal Justice Services, 805 East Broad Street, Richmond, Virginia 23219.

Contact: Paula Scott, Staff Executive, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-4000.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Criminal Justice Services Board intends to consider promulgating regulations entitled: **Rules Relating to the Court Appointed Special Advocate Program (CASA)**. The purpose of the proposed action is to develop and administer rules regarding the administration and operation of local Court Appointed Special Advocate Programs (CASA)

Statutory Authority: § 9-173.6 of the Code of Virginia.

Written comments may be submitted until September 30, 1991, to Francine Ecker, Department of Criminal Justice Services, 805 East Broad Street, 10th Floor, Richmond, Virginia 23219.

Contact: Paula Scott, Staff Executive, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-8730.

DEPARTMENT OF GENERAL SERVICES

Division of Forensic Science

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of General Services intends to consider promulgating regulations entitled: **VR 330-05-01. Regulations for the Approval of Field Tests for Detection of Drugs**. The purpose of the proposed action is to establish requirements for approval of field tests for drugs by the Division of Forensic Science, Department of General Services. This approval will permit any law enforcement officer to use these field tests and testify to their results in any preliminary hearing on a drug violation.

Statutory Authority: § 19.2-188.1 of the Code of Virginia.

Written comments may be submitted until September 9, 1991.

Contact: Paul B. Ferrara, Ph.D., Division Director, Division of Forensic Science, 1 North 14th Street, Richmond, VA 23219, telephone (804) 786-2281.

DEPARTMENT OF HEALTH (STATE BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider amending regulations entitled: **VR 355-18-000. Waterworks Regulations**. The purpose of the proposed action is to make appropriate amendments to make state regulations as stringent as federal for Total

Coliform Rule and Surface Water Treatment Rule, Lead and Copper Rule, Standardized Monitoring Rule, and Phase II (SOC & IOC).

786-6371.

Statutory Authority: § 32.1-170 of the Code of Virginia.

Written comments may be submitted until September 9, 1991.

Contact: Allen R. Hammer, Division Director, Virginia Department of Health, Division of Water Supply Engineering, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-5566.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider amending regulations entitled: **VR 355-33-02. Regulations for the Licensure of Home Health Agencies.** The purpose of the proposed action is to amend existing regulations governing the licensure of home health agencies to incorporate statutory revisions to Article 7.1 of Chapter 5 of Title 32.1 that now provide for the licensure of home care organizations.

Statutory Authority: § 32.1-162.12 of the Code of Virginia.

Written comments may be submitted until August 28, 1991.

Contact: Stephanie A. Sivert, Division of Licensure and Certification, Assistant Director, Acute Care, 3600 W. Broad St., Suite 216, Richmond, VA 23230, telephone (804) 367-2104.

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Health Services Cost Review Council intends to consider amending regulations entitled: **VR 370-01-001. Rules and Regulations of the Virginia Health Services Cost Review Council.** The purpose of the proposed action is to amend §§ 6.1 and 6.7 of the rules and regulations to require health care institutions to file certified audited financial statements with the council no later than 120 days after the end of the institution's fiscal year. A 30-day extension could be granted for extenuating circumstances. A late charge of \$10 per working day would be assessed for filings submitted past the due date.

Statutory Authority: §§ 9-159(A)(i) and 9-164(2) of the Code of Virginia.

Written comments may be submitted until August 26, 1991.

Contact: G. Edward Dalton, Deputy Director, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804)

BOARD OF MEDICINE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medicine intends to consider amending regulations entitled: **VR 465-07-01. Regulations Governing the Licensure and Practice of Nurse Practitioners** (issued jointly with the Board of Nursing). The purpose of the proposed action is to establish standards governing the prescriptive authority of nurse practitioners as are deemed reasonable and necessary to ensure appropriate standard of care for patients.

Statutory Authority: §§ 54.1-2400 and 54.1-2957 of the Code of Virginia.

Written comments may be submitted until September 16, 1991.

Contact: Hilary H. Conner, M.D., Executive Director, Board of Medicine, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9908.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medicine intends to consider amending regulations entitled: **VR 465-09-01. Certification for Optometrists to Prescribe for and Treat Certain Diseases or Abnormal Conditions of the Human Eye and Its Adnexa with Certain Therapeutic Pharmaceutical Agents.** The purpose of the proposed action is to review the regulations in response to the Governor's request. The board will entertain written comments for consideration on the present regulations.

Copies of the present regulations may be secured by phone request at (804) 662-9925.

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

Written comments may be submitted until September 3, 1991.

Contact: Eugenia K. Dorson, Deputy Executive Director, Board of Medicine, 1601 Rolling Hills Drive, Richmond, VA 23229-5005, telephone (804) 662-9925.

General Notices/Errata

BOARD OF NURSING

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Nursing intends to consider amending regulations entitled: **VR 495-02-1. Regulations Governing the Licensure of Nurse Practitioners** (adopted jointly with the Board of Medicine). The purpose of the proposed regulation is to establish standards governing the prescriptive authority of nurse practitioners as are deemed reasonable and necessary to ensure an appropriate standard of care for patients.

Statutory Authority: §§ 54.1-2400 and 54.1-2957 of the Code of Virginia.

Written comments may be submitted until September 16, 1991.

Contact: Corinne F. Dorsey, R.N., Executive Director, Virginia Board of Nursing, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9909.

REAL ESTATE BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Real Estate Board intends to consider amending regulations entitled: **Real Estate Board Regulations**. The purpose of the proposed action is to undertake a review and seek public comments on all its regulations for promulgation, amendment and repeal as is deemed necessary in its mission to regulate Virginia real estate licensees.

Statutory Authority: §§ 54.1-200 and 54.1-21- et seq, of the Code of Virginia.

Written comments may be submitted until October 1, 1991.

Contact: Joan L. White, Assistant Manager, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8552.

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Social Services intends to consider promulgating regulations entitled: **VR 615-34-01. Minimum Standards for the Voluntary Registration of Small Family Day Care Homes**. The purpose of the proposed action is to develop minimum standards for voluntarily registered small family day care homes and to develop standards for the issuance of contracts to qualified local agencies and community

organizations that register these homes. Emergency regulations will initially be developed to meet the legislative deadline of January 1, 1992.

Statutory Authority: § 63.1-196.04 of the Code of Virginia.

Written comments may be submitted until September 26, 1991.

Contact: Peggy Friedenber, Legislative Analyst, Department of Social Services, Bureau of Governmental Affairs, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Social Services intends to consider repealing regulations entitled: **Child Day Care Scholarship Program**. These regulations provide administrative regulations guiding the procedures for the award of child day care scholarships.

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

Written comments may be submitted until September 12, 1991, to Catherine A. Loveland, Division of Licensing Programs, 8007 Discovery Drive, Richmond, Virginia 23229-8699.

Contact: Peggy Friedenber, Executive Assistant, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

DEPARTMENT OF TRANSPORTATION (COMMONWEALTH TRANSPORTATION BOARD)

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Commonwealth Transportation Board intends to consider amending regulations entitled: **VR 385-01-09. Public Participation Guidelines**. The purpose of the proposed action is to revise the agency's guidelines to facilitate timelines in promulgating regulations while preserving public awareness of the new or amended regulations.

Statutory Authority: §§ 33.1-12 and 9-6.14:1 of the Code of Virginia.

Written comments may be submitted until September 26, 1991.

Contact: Larry D. Jones, Division Administrator, Management Services Division, Room 712, Hwy. Annex, 1401 E. Broad Street, Richmond, VA 23219, telephone (804) 786-7712.

GENERAL NOTICES

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

† Guidelines for Enforcement of the Virginia Weights and Measures Act - Civil Penalty Assessment Decision Matrix

STATEMENT OF BASIS - STATUTORY AUTHORITY - Chapter 35, Title 3.1, § 3.1-966.1 (b) OF THE CODE OF VIRGINIA

STATEMENT OF PURPOSE - This guideline provides direction to the agency personnel in determining the amount of the penalty that shall be considered to be appropriate for various violations. It is designed to insure, to the extent practicable, that similar violations will be assessed generally comparable penalties in as uniform manner as possible.

§ 1.1 Definitions.

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

“Act” means the Virginia Weights and Measures Act, Chapter 35 of Title 3.1 (§§ 3.1-919 through 3.1-969) of the Code of Virginia (1950), as amended.

“Board” means the Board of Agriculture and Consumer Services.

“Previous violation” means any violation of the Virginia Weights and Measures Act, or regulations adopted pursuant thereto, cited within the two-year period preceding the current violation.

“Repeat violation” means another violation following the first violation of the same provision of the Virginia Weights and Measures Act, or regulations adopted pursuant thereto, committed within a two-year period commencing with the date of official notification of the first violation of the provision.

§ 1.2 Provision for Civil Penalties Generally.

Any person violating a provision of this chapter or regulations adopted thereunder may be assessed a civil penalty by the Board in an amount not to exceed \$1,000.

§ 1.3 Assessment of separate violations.

A. Each violation of the Act shall be assessed separately for the purpose of determining the total civil penalty assessment.

B. In cases of continued violation, a civil penalty may be assessed separately for each day of violation beginning with the day of notification of the violation and ending with the date of abatement.

§ 1.4 Penalty Point System.

The point system described in this section shall be used to determine the amount of the civil penalty.

A. Type of Violation

A person or firm in violation of the Act, or regulations adopted pursuant thereto, shall be assigned up to 10 points for the type of violation described in one of the following categories:

Points	Type of Violation
1 - 5	Failure to notify Agency personnel of the installation of any weighing or measuring equipment prior to its introduction into commercial use.
1 - 5	Failure of any livestock market operator to comply with the provisions contained in §§ 3.1-958, 3.1-959, and 3.1-961
2 - 4	Failure to stamp upon or affix to a consumer item or post at or adjacent to the display, the selling price of the item.
2 - 6	Failure to meet all requirements regarding labelling of commodities in package form.
2 - 6	Sell, or offer or expose for sale, any commodity in a manner contrary to established methods of sale.
2 - 6	Advertise any commodity, thing, or service in a manner contrary to law.
2 - 6	Display a commodity in package form in a manner that misleads the buyer or prospective buyer as to the quantity of its contents.
3 - 7	Failure to make necessary repairs to rejected equipment in specified period of time.
3 - 7	Failure to identify petroleum storage tanks, by product, as prescribed by law or regulation.
4 - 8	Position a weighing or measuring device in a manner that obstructs the observation of the indicating elements or the operation of the device.
4 - 8	Operate a weighing or measuring device in a manner contrary to its intended operating design.
4 - 8	Failure to maintain weighing and measuring equipment in proper operating condition.
4 - 8	Use or operate any weighing or measuring device

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beyond its nominal rated capacity.

- 4 - 8 Failure to notify agency personnel of modification to weighing and measuring devices, when such modification has a direct effect on the performance of the equipment.
- 5 - 10 Sell, or offer or expose for sale, less than the quantity represented for any commodity, thing, or service.
- 5 - 10 Dispose of any rejected or condemned weight or measure in a manner contrary to law or regulation.
- 5 - 10 Take more than the quantity represented of any commodity, thing, or service when, as buyer, furnishes the weight or measure by means of which the amount of the commodity, thing, or service is determined.
- 5 - 10 Failure to weigh vehicles or coupled vehicle combinations as single-drafts.
- 5 - 10 Failure to give any advertised discounts.
- 6 - 10 Failure of any livestock operator to weigh animals on the day of sale as required by law.
- 6 - 10 Failure to maintain proper security seals on the adjusting mechanism designed to be sealed.
- 6 - 10 Failure of the equipment operator to return indications to a zero setting prior to its next operation. (Exemption given to self-service operations)
- 6 - 10 Failure to retain records as required by law or regulation.
- 8 - 10 Remove from any weight or measure, contrary to law or regulation, any tag, seal, or mark placed thereon by the appropriate authority.
- 10 Violate a stop sale, use, or removal order.
- 10 Interfere with the Commissioner or his duly authorized agents in the performance of duties.
- 10 Impersonate any federal, state, county or city weights and measures inspector or official.
- 10 Use or have in possession for the purpose of using any weighing or measuring device or instrument used to or calculated to falsify any weight or measure.
- 10 Operate mobile equipment (i.e., vehicle tank meters and LPG meters) on the public streets with a ticket inserted in the printing device of the meter.

B. Seriousness of Violation

A person or firm in violation of the Act, or regulations adopted pursuant thereto, shall be assigned up to 10 points

for the seriousness of the violation, taking into consideration any one of the following factors:

- (a) Potential monetary consequences.
- (b) Potential of impact to competitors
- (c) Degree of inconvenience or deception to a buyer or prospective buyer.
- (d) Degree of disregard for the law.

Points Serious Category

- 1 - 3 Minor violations; those having minimal impact on the consumer or competitors.
- 4 - 6 Moderate violations; those having a measurable impact on the consumer or competitors.
- 7 - 10 Serious violation; those having an adverse impact on the consumer or competitors.

C. Culpability

A person or firm in violation of the Act, or regulations adopted pursuant thereto, shall be assigned up to 6 points, from one of the following categories, based on the degree of fault of the person to whom the violation is attributed:

Points Culpability Category

- 0 No fault attributed; an inadvertent violation which was unavoidable by the exercise of reasonable care.
- 1 - 2 Lack of knowledge; a violation which is the result of the individual being unaware of the statutory requirements.
- 3 - 4 Negligent.
- 5 - 6 Knowing, aware of actions.

D. Repeat violation

The period of time in determining the frequency of violation shall be 24 months. If a person or firm has not committed the same violation in 24 months, the next offense shall be considered as a first violation. However, a person or firm that has committed the same violation three times in a five-year period shall not be protected by the 24-month limitation.

A person or firm found to have repeated a violation of the Act, or regulations adopted pursuant thereto, shall be assigned up to 10 points from one of the following categories:

Points Repeat Violation Category

- 5 - 7 Second occurrence of a violation.
- 8 - 10 Third occurrence of a violation, or violations following this occurrence.

E. Credit for good faith in attempting to achieve compliance.

The demonstrated good faith of the person or firm in attempting to achieve rapid compliance after notification of the violation shall be taken into consideration in determining penalty points. Up to four points shall be deducted from the total points assigned under subsection A, B, C, and D, based on the following categories:

- | Points | Good Faith Credit Category |
|--------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3 - 4 | Immediate action taken to abate the violation, and correct any conditions resulting from the violation, in the shortest possible amount of time. |
| 1 - 2 | Prompt and diligent efforts made to abate the violation, and correct any conditions resulting from the violation, within a reasonable period of time. |
| 0 | No points deducted. |

F. Determination of base civil penalty.

The total penalty point amount shall be determined by adding the points assigned under subsections A, B, C, and D, and subtracting from that subtotal the points assigned under subsection E of this section. The resulting total penalty point amount is converted to a dollar amount, according to the following schedule:

Points	Dollars	Points	Dollars
1-3	0	14	325
4-6	25	15	425
7-9	50	16	525
10	75	17	625
11	100	18	750
12	175	19	875
13	250	20	1,000

G. Consideration of previous violations; reduction of penalty.

All previous violations of a person or firm shall be taken into consideration in determining the base civil penalty. In the case of a less than serious violation where no previous violation exists, the base civil penalty may be reduced by 20%. In the case of a serious violation or a repeat violation the base civil penalty shall not be reduced.

§ 1.5 Waiver of Use of Formula to Determine Civil Penalty.

A. The Virginia Board of Agriculture and Consumer Services may waive the use of the formula contained in § 1.4 to set the civil penalty, if the board determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. The basis for every waiver shall be fully explained and documented in the records of the case.

B. If the board waives the use of the formula, it shall

give a full written explanation of the basis for any penalty assessment to the person or firm found in violation.

DEPARTMENT OF LABOR AND INDUSTRY

† Public Notice

The Safety and Health Codes Board adopted the following Federal OSHA Standards at its meeting on July 30, 1991:

1. Hazardous Waste Operations and Emergency Response; Final Rule; Corrections.
2. Air Contaminants, Final Rule; Grant of Partial Stay for Nitroglycerin.
3. Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite; Extension of Partial Stay.
4. Occupational Exposure to Formaldehyde; Extension of Administrative Stay.
5. Occupational Exposure to Lead, 1910.1025; Corrections.

The Safety and Health Codes Board also adopted the following Standards, rules and/or regulations at its July 30, 1991 meeting:

1. Amendment to the Construction Industry Standard for Sanitation, 1926.51; Technical Corrections.
2. Amendment to the Bylaws of the Safety and Health Codes Board.
3. Appeal by Stanley Construction Co., Inc., from the denial of a Variance Request from 1926.51, Construction Sanitation.

Contact: John J. Crisanti, Director of the Office of Enforcement Policy, telephone (804) 786-2384.

† Statement of Final Agency Action

Extension of Partial Stay to Amendment to the General Industry Standard for Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite, 1910.1001, 1926.58 (VR 425-02-10).

On July 30, 1991, the Virginia Safety and Health Codes Board adopted an Extension of the Partial Stay to the Amended Standard to the Final Rule of the Virginia Occupational Safety and Health Standards for General Industry entitled: "VR 425-02-10, Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite, §§ 1910.1001 and 1926.58."

The effective date of the stay is July 31, 1991, and it will remain in effect until August 31, 1991, to allow OSHA to complete supplemental rulemaking limited to the issue of

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whether non-asbestiform tremolite, anthophyllite and actinolite should continue to be regulated in the same standard as asbestos, or should be treated in some other way. OSHA also is making minor conforming amendments to notes to the affected standards.

† Statement of Final Agency Action

Occupational Exposure to Formaldehyde; Extension of Administrative Stay

On July 30, 1991, the Virginia Safety and Health Codes Board adopted an Extension of the Administrative Stay to the Final Rule of the Virginia Occupational Safety and Health Standards for General Industry entitled: "VR 425-02-35, Occupational Exposure to Formaldehyde, § 1910.1048."

The effective date of the stay is July 31, 1991, and it will remain in effect until August 31, 1991.

† Statement of Final Agency Action

Grant of Partial Stay to the General Industry Standard Concerning Air Contaminants: Nitroglycerin, 1910.1000 (VR 425-02-36).

On July 30, 1991, the Virginia Safety and Health Codes Board adopted the Grant of Partial Stay to the General Industry Amended Standard to the Final Rule of the Virginia Occupational Safety and Health Standards for General Industry entitled: "VR 425-02-36, Air Contaminants: Nitroglycerin, § 1910.1000."

The effective date of the partial stay is July 31, 1991.

DEPARTMENT OF WASTE MANAGEMENT

Public Notice

Designation of Regional Solid Waste Management Planning Area

In accordance with the provision of Section 10.1-1411 of the Code of Virginia, and Part V, Regulations for the Development of Solid Waste Management Plans, VR 672-50-01, the Director of the Department of Waste Management intends to designate a solid waste management region for the local governments of the Southern portion of the Crater Planning District comprised of the City of Emporia, the Counties of Dinwiddie, Greensville, Surry and Sussex and the Towns of Claremont, Dendron, Jarratt, McKenney, Stony Creek, Surry, Wakefield and Waverly. The Crater Planning District Commission will be designated contact for development and/or implementation of a regional solid waste management plan and programs for the recycling of solid waste generated within the designated region.

A petition has been received by the Department of Waste Management for the designation on behalf of the local

governments.

Anyone wishing to comment on the designation of this region should respond in writing by 5 p.m. on Friday, September 13, 1991 to Ms. Cheryl Cashman, Legislative Liaison, Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, VA 23219. FAX 804-225-3753 or TDD 804-371-8737.

Immediately following the closing date for comments, the Director of the Department of Waste Management will notify the affected local governments of its approval as a region or of the need to hold a public hearing on the designation.

Any questions concerning this notice should be directed to Ms. Cheryl Cashman, Legislative Liaison, at 1-800-552-2075 or (804) 225-2667.

Public Notice

Designation of Regional Solid Waste Management Planning Area

In accordance with the provision of Section 10.1-1411 of the Code of Virginia, and Part V, Regulations for the Development of Solid Waste Management Plans, VR 672-50-01, the Director of the Department of Waste Management intends to designate a solid waste management region for the local governments of the County of Culpeper and the Town of Culpeper. The County of Culpeper will be designated contact for development and/or implementation of a regional solid waste management plan and programs for the recycling of solid waste generated within the designated region.

A petition has been received by the Department of Waste Management for the designation on behalf of the local governments.

Anyone wishing to comment on the designation of this region should respond in writing by 5 p.m. on Friday, September 13, 1991 to Ms. Cheryl Cashman, Legislative Liaison, Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, VA 23219. FAX 804-225-3753 or TDD 804-371-8737.

Immediately following the closing date for comments, the Director of the Department of Waste Management will notify the affected local governments of its approval as a region or of the need to hold a public hearing on the designation.

Any questions concerning this notice should be directed to Ms. Cheryl Cashman, Legislative Liaison, at 1-800-552-2075 or (804) 225-2667.

Public Notice

Designation of Regional Solid Waste Management Planning Area

In accordance with the provision of Section 10.1-1411 of the Code of Virginia, and Part V, Regulations for the Development of Solid Waste Management Plans, VR 672-50-01, the Director of the Department of Waste Management intends to designate a solid waste management region for the Virginia Peninsulas Public Service Authority comprised of the local governments of the Cities of Hampton, Newport News, Poquoson and Williamsburg, the Counties of Essex, Gloucester, James City, King & Queen, King William, Mathews, Middlesex and York and the Towns of West Point, Urbana and Tappahannock. The Virginia Peninsulas Public Service Authority will be designated contact for development and/or implementation of a regional solid waste management plan and programs for the recycling of solid waste generated within the designated region.

A petition has been received by the Department of Waste Management for the designation on behalf of the local governments.

Anyone wishing to comment on the designation of this region should respond in writing by 5 p.m. on Friday, September 13, 1991 to Ms. Cheryl Cashman, Legislative Liaison, Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, VA 23219. FAX 804-225-3753 or TDD 804-371-8737.

Immediately following the closing date for comments, the Director of the Department of Waste Management will notify the affected local governments of its approval as a region or of the need to hold a public hearing on the designation.

Any questions concerning this notice should be directed to Ms. Cheryl Cashman, Legislative Liaison, at 1-800-552-2075 or (804) 225-2667.

Public Notice

Designation of Regional Solid Waste Management Planning Area

In accordance with the provision of Section 10.1-1411 of the Code of Virginia, and Part V, Regulations for the Development of Solid Waste Management Plans, VR 672-50-01, the Director of the Department of Waste Management intends to designate a solid waste management region for the local governments of the County of Nottoway and the Towns of Blackstone, Burkeville and Crewe. The County of Nottoway will be designated contact for development and/or implementation of a regional solid waste management plan and programs for the recycling of solid waste generated within the designated region.

A petition has been received by the Department of Waste Management for the designation on behalf of the local governments.

Anyone wishing to comment on the designation of this region should respond in writing by 5 p.m. on Friday, September 13, 1991 to Ms. Cheryl Cashman, Legislative Liaison, Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, VA 23219. FAX 804-225-3753 or TDD 804-371-8737.

Immediately following the closing date for comments, the Director of the Department of Waste Management will notify the affected local governments of its approval as a region or of the need to hold a public hearing on the designation.

Any questions concerning this notice should be directed to Ms. Cheryl Cashman, Legislative Liaison, at 1-800-552-2075 or (804) 225-2667.

Public Notice

Designation of Regional Solid Waste Management Planning Area

In accordance with the provision of Section 10.1-1411 of the Code of Virginia, and Part V, Regulations for the Development of Solid Waste Management Plans, VR 672-50-01, the Director of the Department of Waste Management intends to designate a solid waste management region for the local governments of the Peters Mountain Landfill Board comprised of the County of Alleghany, the Town of Iron Gate and the Cities of Clifton Forge and Covington. The Peters Mountain Landfill Board will be designated contact for development and/or implementation of a regional solid waste management plan and programs for the recycling of solid waste generated within the designated region.

A petition has been received by the Department of Waste Management for the designation on behalf of the local governments.

Anyone wishing to comment on the designation of this region should respond in writing by 5 p.m. on Friday, September 13, 1991 to Ms. Cheryl Cashman, Legislative Liaison, Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, VA 23219. FAX 804-225-3753 or TDD 804-371-8737.

Immediately following the closing date for comments, the Director of the Department of Waste Management will notify the affected local governments of its approval as a region or of the need to hold a public hearing on the designation.

Any questions concerning this notice should be directed to Ms. Cheryl Cashman, Legislative Liaison, at 1-800-552-2075 or (804) 225-2667.

General Notices/Errata

Public Notice

Designation of Regional Solid Waste Management Planning Area

In accordance with the provision of Section 10.1-1411 of the Code of Virginia, and Part V, Regulations for the Development of Solid Waste Management Plans, VR 672-50-01, the Director of the Department of Waste Management intends to designate a solid waste management region for the local governments of the Piedmont Planning District Commission comprised of Amelia County, Buckingham County and the Town of Dillwyn, Charlotte County and the Towns of Charlotte Court House, Drakes Branch, Keysville and Phenix, Cumberland County, Lunenburg County and the Towns of Kenbridge and Victoria, and Prince Edward County and the Town of Farmville. The Piedmont Planning District Commission will be designated contact for development and/or implementation of a regional solid waste management plan and programs for the recycling of solid waste generated within the designated region.

A petition has been received by the Department of Waste Management for the designation on behalf of the local governments.

Anyone wishing to comment on the designation of this region should respond in writing by 5 p.m. on Friday, September 13, 1991 to Ms. Cheryl Cashman, Legislative Liaison, Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, VA 23219. FAX 804-225-3753 or TDD 804-371-8737.

Immediately following the closing date for comments, the Director of the Department of Waste Management will notify the affected local governments of its approval as a region or of the need to hold a public hearing on the designation.

Any questions concerning this notice should be directed to Ms. Cheryl Cashman, Legislative Liaison, at 1-800-552-2075 or (804) 225-2667.

Public Notice

Designation of Regional Solid Waste Management Planning Area

In accordance with the provision of Section 10.1-1411 of the Code of Virginia, and Part V, Regulations for the Development of Solid Waste Management Plans, VR 672-50-01, the Director of the Department of Waste Management intends to designate a solid waste management region for the local governments of Pittsylvania County and the Towns of Chatham, Hurt and Gretna. The County of Pittsylvania will be designated contact for development and/or implementation of a regional solid waste management plan and programs for the recycling of solid waste generated within the designated region.

A petition has been received by the Department of Waste Management for the designation on behalf of the local governments.

Anyone wishing to comment on the designation of this region should respond in writing by 5 p.m. on Friday, September 13, 1991 to Ms. Cheryl Cashman, Legislative Liaison, Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, VA 23219. FAX 804-225-3753 or TDD 804-371-8737.

Immediately following the closing date for comments, the Director of the Department of Waste Management will notify the affected local governments of its approval as a region or of the need to hold a public hearing on the designation.

Any questions concerning this notice should be directed to Ms. Cheryl Cashman, Legislative Liaison, at 1-800-552-2075 or (804) 225-2667.

Division of Solid Waste

Notice of Availability of Draft Solid Waste Disposal Facility Permit, Tentative Decision to Grant Variance to Certain Permitting Requirements, and Scheduled Public Hearing on the Draft Permit for the Virginia Fibre Industrial Landfill Proposed by Virginia Fibre Corporation, Amherst County, Virginia.

Pursuant to the requirements of Part VII of the Virginia Solid Waste Management Regulations (Permitting of Solid Waste Management Facilities), the draft Solid Waste Disposal Facility Permit for the development of an industrial landfill, proposed by Virginia Fibre Corporation, is available for public review and comment. The permit allows the proposed facility to accept only authorized, nonhazardous wastes which result from the operations of Virginia Fibre Corporation. The proposal incorporates design elements for a synthetic cap, and synthetic drainage layers for the cap and side slopes of the base liner, which are not provided for in the regulations. Virginia Fibre petitioned for these features pursuant to the requirements of Part IX of the regulations (Rulemaking Petitions and Procedures), and the Department of Waste Management has granted tentative approval.

The Department of Waste Management will hold a public hearing on the draft permit on Wednesday, August 28, 1991, at 7 p.m. in the Board Room of the School Administration Building, Washington Street, Town of Amherst, Virginia. The public comment period shall extend until 5 p.m. on Monday, September 9, 1991. During this period, the Department of Waste Management is soliciting comments on the tentative decision to grant the variance, and on the technical merits of the draft permit as it pertains to this proposed facility. Comments on this draft should be in writing and directed to Hassan Vakili, Technical Services Administrator, Department of Waste Management, Division of Solid Waste, Eleventh Floor

Monroe Building, 101 North Fourteenth Street, Richmond, Virginia 23219. For more information, call E.D. Gillispie at (804) 371-0514.

VIRGINIA CODE COMMISSION

NOTICE TO STATE AGENCIES

Change of Address: Our new mailing address is: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you do not follow-up with a mailed in copy. Our FAX number is: 371-0169.

FORMS FOR FILING MATERIAL ON DATES FOR PUBLICATION IN THE VIRGINIA REGISTER OF REGULATIONS

All agencies are required to use the appropriate forms when furnishing material and dates for publication in the Virginia Register of Regulations. The forms are supplied by the office of the Registrar of Regulations. If you do not have any forms or you need additional forms, please contact: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

FORMS:

NOTICE of INTENDED REGULATORY ACTION - RR01
NOTICE of COMMENT PERIOD - RR02
PROPOSED (Transmittal Sheet) - RR03
FINAL (Transmittal Sheet) - RR04
EMERGENCY (Transmittal Sheet) - RR05
NOTICE of MEETING - RR06
AGENCY RESPONSE TO LEGISLATIVE OR GUBERNATORIAL OBJECTIONS - RR08
DEPARTMENT of PLANNING AND BUDGET (Transmittal Sheet) - DPBRR09

Copies of the Virginia Register Form, Style and Procedure Manual may also be obtained at the above address.

ERRATA

MARINE RESOURCES COMMISSION

Title of Regulation: VR 450-01-0034. Pertaining to the Taking of Striped Bass.

Publication: 7:22 VA.R. 3490-3495 July 29, 1991

Correction to Final Regulation:

Page 3490, Statutory Authority, change 28.1-28 to

28.1-23.

Page 3490, first column, § 1 A, line 2, delete § 28.1-28 and unstrike § 28.1-23.

Page 3492, § 9 C should read in part:

"C. It shall be unlawful for any person harvesting striped bass for commercial purposes to land..."

Calendar of Events

Symbols Key

- † Indicates entries since last publication of the Virginia Register
- ☒ Location accessible to handicapped
- ☎ Telecommunications Device for Deaf (TDD)/Voice Designation

NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the Virginia Register deadline may preclude a notice of such cancellation.

For additional information on open meetings and public hearings held by the Standing Committees of the Legislature during the interim, please call Legislative Information at (804) 786-6530.

VIRGINIA CODE COMMISSION

EXECUTIVE

DEPARTMENT FOR THE AGING

Long-Term Care Ombudsman Program Advisory Council

September 26, 1991 - 9 a.m. - Open Meeting
Medical Society of Virginia, 1606 Santa Rosa Road, Suite 235, Richmond, Virginia. ☒

Business will include discussion of VDA Legislative Studies, including Home Care Ombudsman Presentation, and election of officers.

Contact: Ms. Virginia Dize, State Ombudsman, Department for the Aging, 700 E. Franklin St., 10th Floor, Richmond, VA 23219, telephone (804) 225-2271/TDD ☎ or toll-free 1-800-552-3402.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Pesticide Control Board

† September 12, 1991 - 10 a.m. - Open Meeting
† September 13, 1991 - 9 a.m. - Open Meeting
Sheraton-Fredericksburg Resort & Conference Center, I-95 & Virginia Route 3, P.O. Box 618, Fredericksburg, Virginia. ☒

10 a.m., September 12, 1991 - Pesticide Control Board committee meetings.

4 p.m., September 12, 1991 - Tour of PermaTreat, Inc., hosted by board member Joseph R. Wilson.

9 a.m., September 13, 1991 - Pesticide Control Board will conduct general business meeting.

Portions of the meeting may be held in closed session, pursuant to § 2.1-344 of the Code of Virginia. The public will have an opportunity to comment on any matter not on the Pesticide Control Board's agenda at 9 a.m., September 13, 1991.

Contact: Dr. Marvin A. Lawson, Program Manager, Office of Pesticide Management, Virginia Department of Agriculture and Consumer Services, P. O. Box 1163, Room 401, 1100 Bank Street, Richmond, VA 23209, telephone (804) 371-6558.

VIRGINIA AGRICULTURAL COUNCIL

August 26, 1991 - 9 a.m. - Open Meeting
Holiday Inn - Airport, 5203 Williamsburg Road, Sandston, Virginia.

Annual meeting of the Council to hear new project proposals which are properly supported by the board of directors of a commodity group, review financial statements, and conduct any other business that may come before the members of the council.

Contact: Henry H. Budd, Assistant Secretary, 7th Floor, Washington Building, 1100 Bank Street, Richmond, VA 23219, telephone (804) 371-0266.

DEPARTMENT OF AIR POLLUTION CONTROL

State Advisory Board on Air Pollution

† September 9, 1991 - 9 a.m. - Open Meeting
James Monroe Building, Meeting Room D, Richmond, Virginia. ☒

The board will discuss strategies for reducing nitrogen oxide emissions from both stationary and mobile sources. The meeting is open to the public.

Contact: Dr. Kathleen Sands, Information Services Manager, Department of Air Pollution Control, P. O. Box 10089, Richmond, VA 23240, telephone (804) 225-2722.

Calendar of Events

ALCOHOLIC BEVERAGE CONTROL BOARD

- † September 4, 1991 - 9:30 a.m. – Open Meeting
 - † September 16, 1991 - 9:30 a.m. – Open Meeting
 - † September 30, 1991 - 9:30 a.m. – Open Meeting
 - † October 9, 1991 - 9:30 a.m. – Open Meeting
 - † October 28, 1991 - 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, P. O. Box 27491, 2901 Hermitage Road, Richmond, VA 23261, telephone (804) 367-0616.

* * * * *

- † October 30, 1991 - 10 a.m. – Public Hearing
- 2901 Hermitage Road, First Floor Hearing Room, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Alcoholic Beverage Control Board intends to amend regulations entitled: **VR 125-01-1. Procedural Rules for the Conduct of Hearings Before the Board and Its Hearing Officers and the Adoption or Amendment of Regulations; VR 125-01-2. Advertising; VR 125-01-3. Tied House; VR 125-01-5. Retail Operations; VR 125-01-6. Manufacturers and Wholesalers Operations; and VR 125-01-7. Other Provisions.** The amendments relate to (i) streamlining the rulemaking procedures; (ii) allowing individuals of legal drinking age to place mail orders for alcoholic beverages with Virginia retail licensees; (iii) permitting alcoholic beverage advertising on certain antique vehicles for promotional purposes and on billboards located within facilities used primarily for professional or semiprofessional sporting events; (iv) increasing the wholesale value limit of novelty and specialty items which may be given away; (v) allowing manufacturers of alcoholic beverages to sponsor an entire season of athletic and sporting events; (vi) permitting wholesalers to deliver and merchandise wine and beer on Sundays; (vii) standardizing minimum monthly food sale requirements for retail licenses; (viii) allowing manufacturers, bottlers and wholesalers of alcoholic beverages to place public safety advertisements in college student publications; (ix) permitting retail licensees to use electronic fund transfers to pay wholesale licensees for purchases of alcoholic beverages or beverages; (x) clarifying that the placement of alcoholic beverages in containers of ice near cash registers and doors and public display areas by off-premises licensees is an enticement to purchase alcoholic beverages; (xi) making interior advertising less restrictive for on-premises licensees; and (xii) expanding the types of businesses eligible for off-premises wine and beer licenses by creating a new

category which does not require minimum monthly food sale requirements.

STATEMENT

Pursuant to §§ 9-6.14:7.1 and 9-6.14:22 of the Code of Virginia, notice is given that the Virginia Alcoholic Beverage Control Board will conduct a public hearing on whether the following proposed action should be taken to amend its regulations:

VR 125-01-1 § 5.1. PUBLIC PARTICIPATION GUIDELINES IN REGULATION DEVELOPMENT; APPLICABILITY; INITIATION OF RULEMAKING; RULEMAKING PROCEDURES.

A. **Basis:** §§ 4-7(1), 4-11(a), 4-103(b), 4-98.14 and Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.

B. **Purposes:** 1. To allow the Board discretion in streamlining the rulemaking procedure; and 2. clarification.

C. **Substance:** 1. To make it discretionary rather than mandatory that (i) an ad hoc advisory panel be selected to make recommendations on the proposed regulations, and (ii) a regulation development public meeting to review the comments of the public be conducted by the Board; in addition, the Board may elect to dispense with any required public participation or other required procedure to the extent authorized by the Virginia Administrative Process Act; and 2. to clarify the rulemaking process.

D. **Issues:** 1. Board discretion to streamline the rulemaking procedures versus the public's right to participate in rulemaking procedures; and 2. clarification.

E. **Impact:** Public participation in the rulemaking process may be diminished if an ad hoc advisory panel is not appointed or a regulation development public meeting is not conducted by the Board.

VR 125-01-2 § 1. ADVERTISING; GENERALLY; COOPERATIVE ADVERTISING; FEDERAL LAWS; BEVERAGES AND CIDER; RESTRICTIONS.

A. **Basis:** §§ 4-7(1), 4-11(a), 4-69, 4-98.10(w), 4-98.14 and 4-103(b) and (c) of the Code of Virginia.

B. **Purpose:** 1. To allow Virginia farm wineries and Virginia retail licensees to receive mail orders for alcoholic beverages and beverages; 2. deregulation; and 3. clarification.

C. **Substance:** 1. To permit individuals who are of legal drinking age to place mail orders for alcoholic beverages and beverages with Virginia retail licensees by repealing subdivision F 7; 2. to repeal subdivision

Calendar of Events

F 8 so that sale prices for alcoholic beverages will no longer be required to "significantly conform in size, prominence and content to the advertising of nonalcoholic merchandise"; and 3. to clarify (i) that a purchase may not be required for a contest or sweepstakes, and (ii) that a manufacturer may require the purchase of alcoholic beverages for a refund.

D. Issues: 1. Allowing adults 21 years of age or older to place mail orders for alcoholic beverages by mail from Virginia retail licensees; 2. deregulation; and 3. clarification.

E. Impact: Minimal.

VR 125-01-2 § 2. ADVERTISING; INTERIOR; RETAIL LICENSEES; SHOW WINDOWS.

A. Basis: §§ 4-7(1), 4-11(a), 4-60(i), 4-69, 4-69.2, 4-98.20(w), and 4-98.14 of the Code of Virginia.

B. Purposes: 1. To make interior advertising less restrictive for on-premises and on-and-off premises licensees; 2. to make distinctions in the types of advertising materials off-premises retailers and retail on-premises and on-and-off premises licensees may display in their respective licensed establishments; 3. to expressly state the types and under what conditions and limitations manufacturers and wholesalers of alcoholic beverages may furnish advertising materials to retailers; 4. to provide for certain record requirements in connection with the distribution of advertising materials; 5. to repeal a subsection which constitutes a restatement of a statute; and 6. clarification.

C. Substance: 1. Repeal all current interior advertising provisions and substitute therefor provisions so as to broaden the scope of the types of advertising and advertising material that may be used by retailers for display in their licensed establishments, particularly by on-premises licensees in terms of permanent advertising material; 2. the changes also are designed to somewhat define and make distinctions between permanent and nonpermanent advertising materials and distinguish which of those types of advertising materials may be used by on-premises licensees on the one hand and by off-premises only licensees on the other; 3. the changes further distinguish the sources from which retailers may obtain all such advertising materials and identify conditions and limitations under which they may be obtained if furnished to such retailers by manufacturers, bottlers and wholesalers; the new proposals further would provide that advertising material obtained by retailers from manufacturers, bottlers or wholesalers may be installed in retail establishments by the latter, with exceptions against such installations in exterior windows or in such a manner as to be visible from the exterior of the premises; 4. the proposed changes would impose certain record keeping requirements

upon retailers who obtain permanent advertising materials from manufacturers, bottlers and wholesalers of alcoholic beverages; 5. to repeal subsection C; and 6. to move subsection D from interior advertising to exterior advertising.

D. Issues: 1, 2, and 3. Less restrictive interior advertising for on-premises licensees; 4. record keeping requirements; 5. streamlining A.B.C. regulations by repealing a subdivision which is a restatement of § 4-79.2; and 6. clarification.

E. Impact: Retail licensees favor the concept of liberalization as an extension of the free marketing/enterprise system. Retail licensees with only the off-premises privilege may balk at the distinctions in the restrictions placed upon their operations as compared to the more liberal provisions proposed for the on-premises licensees. Wholesale licensees would oppose such liberal provisions because they would be placed as a conduit between the manufacturers and the retailers. The proposal would permit advertising materials which are permanent in nature and which have significant intrinsic value.

VR 125-01-2 § 3. ADVERTISING; EXTERIOR; SIGNS; TRUCKS; UNIFORMS.

A. Basis: §§ 4-7(1), 4-11(a), 4-69, 4-98.10(w) and 4-98.14 of the Code of Virginia.

B. Purpose: 1. To allow expanded use of alcoholic beverage advertising on vehicles and within facilities that are used primarily for professional or semiprofessional sporting events; 2. to allow the use of otherwise prohibited terms on exterior signs if they are a part of the licensee's certain trade name; and 3. and 4. clarification.

C. Substance: 1. Alcoholic beverage advertising may appear on certain antique vehicles for promotional purposes and on billboards located within facilities used primarily for professional or semiprofessional sporting events; 2. prohibited terms such as "bar," "barroom," "saloon" and "speakeasy" may appear on exterior signs when used as a part of the licensee's trade name; 3. to clarify that an exterior sign may make only one reference to the words and terms appearing on the license; and 4. to move VR 125-01-2 § 2 D (show windows) from interior advertising to exterior advertising.

D. Issue: Expanding the types of exterior alcoholic beverage advertising.

E. Impact: Increased use of exterior alcoholic beverage advertising.

VR 125-01-2 § 4. ADVERTISING; NEWSPAPER, MAGAZINES, RADIO, TELEVISION, TRADE PUBLICATIONS, ETC.

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A. Basis: §§ 4-7(l), 4-11(a), 4-69, 4-79(a), repealed by Acts 1989, 4-98.10(w) and 4-98.14 of the Code of Virginia.

B. Purpose: 1. To conform with proposed amendments for VR 125-01-2 § 3 2 b ; 2. clarification; and 3. to allow manufacturers, bottlers and wholesalers of alcoholic beverages to place public safety advertisements in college student publications.

C. Substance: 1. To allow the terms "bar," "bar room," "saloon" and "speakeasy" to be used in the print or electronic media if they are part of the licensee's trade name; 2. to clarify that advertising placed by a manufacturer, bottler or wholesaler in trade publications of associations of retail licensees or college student publications shall not constitute cooperative advertising; and 3. to allow manufacturers, bottlers and wholesalers of alcoholic beverages to place messages relating solely to public health, safety and welfare, including, but not limited to, moderation and responsible drinking messages, anti-drug use messages and driving under the influence messages, in college student publications.

D. Issues: 1. Usage of the terms "bar," "bar room," "saloon" and "speakeasy" in the print or electronic media when they are part of the licensee's trade name; 2. clarification; and 3. permitting alcoholic beverage industry members to place public safety messages involving alcoholic beverages in college student publications.

E. Impact: Minimal.

VR 125-01-2 § 5. ADVERTISING; NEWSPAPERS AND MAGAZINES; PROGRAMS; DISTILLED SPIRITS.

A. Basis: §§ 4-7(l), 4-11(a) and 4-69 of the Code of Virginia.

B. Purposes: 1. Clarification; and 2. to make distilled spirits advertising less restrictive.

C. Substance: 1. To amend § 5 1 c requiring "information on contrasting background in no smaller than eight-point size type" to "Any written, printed or graphic advertisement shall be in lettering or type size sufficient to be conspicuous and readily legible"; and 2. to repeal the prohibition against statements that refer to "bonded," age and religion.

D. Issues: 1. Clarification; and 2. deregulation.

E. Impact: Minimal.

VR 125-01-2 § 6. ADVERTISING; NOVELTIES AND SPECIALTIES.

A. Basis: §§ 4-7(l), 4-11(a), 4-69, 4-98.10(w) and 4-98.14 of the Code of Virginia.

B. Purpose: To increase the wholesale value of novelty and specialty items which may be given away.

C. Substance: To increase from \$2.00 to \$5.00 the wholesale value limit on novelty and specialty items which may be given away by manufacturers, importers, brokers, bottlers, wholesalers or their representatives.

D. Issue: The increase of wholesale value limits on novelty and specialty items to be given away.

E. Impact: Minimal.

VR 125-01-2 § 7. ADVERTISING; FAIRS AND TRADE SHOWS; WINE AND BEER DISPLAYS.

A. Basis: §§ 4-7(l), 4-11(a) and 4-69 of the Code of Virginia.

B. Purpose: To allow distilled spirits to be advertised in the same manner that wine and beer are advertised at fairs and trade shows.

C. Substance: To permit the display of distilled spirits and the distribution of distilled spirits informational brochures and novelty and specialty items at fairs and trade shows.

D. Issue: Distilled spirits advertising at fairs and trade shows.

E. Impact: Minimal.

VR 125-01-2 § 9. ADVERTISING; COUPONS.

A. Basis: §§ 4-7(l), 4-11(a), 4-69, 4-98.10(w), 4-98.14 and 4-103(b) and (c) of the Code of Virginia.

B. Purpose: 1. To conform with proposed amendments to VR 125-01-2 § 1 F 8; and 2. clarification.

C. Substance: 1. To delete the requirement in subdivision B 4 that [c]oupons offered by retail licensees shall appear in an advertisement with nonalcoholic merchandise and conform in size and content to the advertising of such merchandise"; and 2. to clarify that no manufacturer or wholesaler may furnish any coupons or materials regarding coupons to retailers which are customized or designed for discount or refund by the retailer.

D. Issue: 1. Deregulation; and 2. clarification.

E. Impact: Minimal.

VR 125-01-2 § 10. ADVERTISING; SPONSORSHIP OF PUBLIC EVENTS; RESTRICTIONS AND CONDITIONS.

A. Basis: §§ 4-7(l), 4-11(a), 4-69, 4-98.10(w) and 4-98.14 of the Code of Virginia.

Calendar of Events

B. Purpose: 1. To allow manufacturers of alcoholic beverages to sponsor an entire season of athletic or sporting events; and 2. clarification.

C. Substance: 1. Alcoholic beverage manufacturers may sponsor an entire season of athletic or sporting events, rather than individual games; and 2. clarify the word "program" in § 10 B 1.

D. Issue: 1. Permitting the sponsorship of an entire season of athletic and sporting events by manufacturers; and 2. clarification.

E. Impact: Manufacturers will be allowed to sponsor a season of athletic and sporting events rather than individual events.

VR 125-01-3 § 1. ROTATION AND EXCHANGE OF STOCKS OF RETAILERS BY WHOLESALERS; PERMITTED AND PROHIBITED ACTS.

A. Basis: §§ 4-7(l), 4-11(a), 4-22.1, 4-33(D), 4-37 (e), 4-79.1, 4-103(b) and 4-115 of the Code of Virginia.

B. Purposes: 1. To deregulate by allowing wholesalers to decide whether or not they will merchandise wine and beer on Sundays. Currently wholesalers may accept orders for wine and beer and deliver wine and beer to banquet licensees and ships sailing from a port of call outside the Commonwealth on Sundays; 2. to standardize terms used throughout the regulations; 3. to permit wholesalers to replace nationally discontinued products; and 4. to avoid repetition.

C. Substance: 1. To repeal the prohibition that wholesalers may not merchandise wine and beer on Sundays; 2. to delete the term "malt beverage" and substitute the term "beer" in § 1 A 5; 3. to allow nationally discontinued products to be replaced by a wholesaler if the manufacturer makes the decision to discontinue the product; and 4. to repeal § 1 A b which permits a wholesaler to exchange wine or beer on an identical quantity, brand or package basis for quality control purposes because it is repetitious.

D. Issues: 1. The prohibition against wholesalers merchandising wine and beer on Sundays; 2. standardization of terminology; 3. allowing wholesalers to replace nationally discontinued products; and 4. repetition.

E. Impact: Wholesalers indicate their operational costs will increase if Sunday merchandising is permitted because manufacturers and competition from other wholesalers will necessitate operating seven days a week.

VR 125-01-3 § 2. MANNER OF COMPENSATION OF EMPLOYEES OF RETAIL LICENSEES.

A. Basis: §§ 4-7(l), 4-11(a), 4-98.10(t) and 4-103(b) of

the Code of Virginia.

B. Purpose: Clarification.

C. Substance: To move § 2 which deals with the manner of compensation that employees of retail licensees may receive from their employers from Tied House (VR 125-01-3) to Retail Operations (VR 125-01-5).

D. Issue: Clarification.

E. Impact: Minimal.

VR 125-01-3 § 5. CERTAIN TRANSACTIONS TO BE FOR CASH; "CASH" DEFINED; CHECKS AND MONEY ORDERS; REPORTS BY SELLERS; PAYMENTS TO THE BOARD.

A. Basis: §§ 4-7(1), 4-11(a), 4-33, 4-44, 4-60(h) and (j), 4-98.11, 4-98.18, 4-98.19, 4-103(b) and 4-107 of the Code of Virginia.

B. Purpose: To permit retail licensees or permittees to use electronic fund transfers to pay wholesale licensees for purchases of alcoholic beverages or beverages.

C. Substance: To permit retail licensees or permittees to use electronic fund transfers to pay for purchases of alcoholic beverages or beverages if such licensees and permittees have entered into a written agreement with the wholesaler specifying the terms and conditions for use of electronic transfers. The electronic fund transfer should be initiated no later than one business day after delivery of the alcoholic beverages and the wholesaler's account shall be credited no later than the following business day. The wholesaler must provide the retailer with an invoice specifying that payment is to be made by electronic fund transfer. Nothing in this subsection shall be construed to require that the board or any licensee must accept payment by electronic fund transfer.

D. Issue: Use of electronic fund transfer for payment of alcoholic beverages by retailers to wholesalers.

E. Impact: Minimal.

VR 125-01-3 § 7. SOLICITATION OF LICENSEES BY WINE, BEER AND BEVERAGE SOLICITOR SALESMEN OR REPRESENTATIVES.

A. Basis: §§ 4-98.14 and 4-98.16 of the Code of Virginia.

B. Purpose: Clarification.

C. Substance: To clarify that a wine, beer and beverage solicitor salesman may not solicit and promote distilled spirits and mixed beverages unless

such salesman has obtained a distilled spirits solicitor's permit.

D. Issue: Clarification.

E. Impact: Minimal.

VR 125-01-3 § 8. INDUCEMENTS TO RETAILERS; TAPPING EQUIPMENT; BOTTLE OR CAN OPENERS; BANQUET LICENSES; PAPER, CARDBOARD OR PLASTIC ADVERTISING MATERIALS; CLIP-ONS AND TABLE TENTS.

A. Basis: §§ 4-7(1), 4-11(a), 4-69.2, 4-79.1 and 4-98.14 of the Code of Virginia.

B. Purposes: 1. To comply with proposed amendments to VR 125-01-2 § 2 (interior advertising) and VR 125-01-2 § 6 (novelties and specialties); and 2. to repeal all size requirements for paper, cardboard and plastic advertising substituting in its place a \$5.00 wholesale value.

C. Substance: 1. Amend subsection D to increase from \$2.00 to \$5.00 the value of bottle or can openers which may be furnished to retailers by manufacturers, bottlers or wholesalers; 2. amend subsection F to eliminate all size limitations on paper, cardboard and plastic advertising materials substituting a wholesale value not in excess of \$5.00; and 3. amend subsection F regarding the installation of advertising materials in exterior windows of retail establishments so as to conform in style and content with proposed amendments in interior advertising (VR 125-01-2 § 2).

D. Issues: 1. Standardization of the value of all items relating to bottle or can openers, novelty and specialty items, and paper, cardboard or plastic advertising materials which manufacturers, bottlers and wholesalers may sell, lend, buy for or give to retailers; 2. replacing size limitations of paper, cardboard and plastic advertising materials with a wholesale value not in excess of \$5.00; and 3. conformity with proposed amendments.

E. Impact: Minimal.

VR 125-01-5 § 8. ENTREATING, URGING OR ENTICING PATRONS TO PURCHASE PROHIBITED.

A. Basis: §§ 4-7(1), 4-11(a), 4-69, 4-69.2, 4-98.14 and 4-103(b) and (c) of the Code of Virginia.

B. Purpose: To put retail off-premises licensees on notice that placement of alcoholic beverages in containers of ice which are visible, located in public display areas and available on a self-service basis is a violation of this section.

C. Substance: To clarify that placement of alcoholic beverages in containers of ice which are visible,

located in public display areas and available on a self-service basis to patrons of retail establishments licensed for off-premises sales only (i.e. "ice beer/wine to go") is entreating, urging or enticing the purchase of alcoholic beverages.

D. Issue: The placement of alcoholic beverages in containers of ice near cash registers, doors and public display areas by off-premises licensees as an enticement to purchase alcoholic beverages.

E. Impact: The elimination of iced-down individual containers of alcoholic beverages to substantially reduce the impulse for immediate off-premises consumption by pedestrians or drivers.

VR 125-01-5 § 10. DEFINITIONS AND QUALIFICATIONS FOR RETAIL OFF-PREMISES WINE AND BEER LICENSES AND OFF-PREMISES BEER LICENSES; EXCEPTIONS; FURTHER CONDITIONS; TEMPORARY LICENSES.

A. Basis: §§ 4-7(1), 4-11(a), 4-25 and 4-31.A. of the Code of Virginia.

B. Purpose: 1. To standardize monthly sales and inventory costs for all retail licensees for retail off-premises wine and beer licenses; and 2. to standardize monthly sales and inventory costs for all retail licensees for retail off-premises beer licenses.

C. Substance: 1. Reduce the minimum monthly sales and inventory costs for retail off-premises wine and beer licenses from \$3,500 to \$2,000 for drugstores; 2. reduce the minimum monthly sales and inventory costs for retail off-premises beer licenses from \$1,500 to \$1,000 for drugstores; and 3. increase the monthly sales and inventory costs for retail off-premises beer licenses from \$750 to \$1,000 for marina stores.

D. Issue: 1. The standardization of minimum monthly sales and inventory costs to \$2,000 for all retail off-premises wine and beer licenses; and 2. the standardization of minimum monthly sales and inventory costs to \$1,000 for all retail off-premises beer licenses.

E. Impact: Minimal.

VR 125-01-5 § 11. DEFINITIONS AND QUALIFICATIONS FOR RETAIL ON-PREMISES AND ON- AND OFF-PREMISES LICENSES GENERALLY; MIXED BEVERAGE LICENSEE REQUIREMENTS; EXCEPTIONS; TEMPORARY LICENSES.

A. Basis: §§ 4-2(8), 4-7(1), 4-11(a), 4-25, 4-98.2 and 4-98.14 of the Code of Virginia.

B. Purpose: 1. To consolidate minimum monetary qualification standards for wine and beer on- or on-and off-premises and beer on- or on-and

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off-premises retail licensees; 2. to decrease minimum monthly food sales and the amount of monthly food sales which must be in the form of meals with entrees for mixed beverage licensees in order to make it easier for small restaurants to qualify; 3. to make eligibility qualifications less restrictive; and 4. to allow counters to be considered tables for meeting minimum seating requirements.

C. Substance: 1. To standardize the minimum monthly sales for retail on- or on-and off-premises wine and beer licenses at \$2,000; 2. to standardize the minimum monthly sales for retail on- or on-and off-premises beer licenses at \$2,000; 3. to decrease the minimum monthly food sales for mixed beverage licensees to \$4,000; 4. to decrease the amount of monthly food sales that must be in the form of meals with entrees to \$2,000 for mixed beverage licenses; 5. to clarify and combine the two definitions of "designated room"; 6. to repeal the requirements that a. the seating area of a designated room cannot exceed the seating area of dining rooms and b. the seating capacity of such rooms is not included in determining eligibility qualifications; 7. to include the seating capacity of an outside terrace or patio which is used continually during seasonal operation when determining eligibility qualifications; 8. to include a counter or booth under the definition of "table"; and 9. to repeal subdivision D 6 b dealing with counters.

D. Issue: To make eligibility requirements less restrictive for (i) wine and beer on- or on-and off-premises retail licensees; and (ii) mixed beverage licensees.

E. Impact: There will be an increased number of retail businesses eligible for A.B.C. licenses.

VR 125-01-5 § 13. CLUBS; APPLICATIONS; QUALIFICATIONS; RECIPROCAL ARRANGEMENTS; CHANGES; FINANCIAL STATEMENTS.

A. Basis: §§ 4-2(6), 4-7(1), 4-11(a), 4-61.1, 4-98.2, 4-98.14 and 4-118.1 of the Code of Virginia.

B. Purposes: 1. To clarify existing language; and 2. to reduce the amount of paperwork required to be filed with A.B.C.

C. Substance: 1. To clarify that nonmembers using club premises must be individuals, organizations or groups who qualify for banquet or banquet special events licenses; and 2. to require a club to prepare and keep its financial statement on the licensed premises for three years rather than submitting it annually to A.B.C.

D. Issues: 1. Clarifying nonmember qualifications for using club premises; and 2. requiring financial statements to be kept on club premises for three years rather than requiring annual submission of

financial statements to A.B.C.

E. Impact: Minimal.

VR 125-01-5 § 17. CATERER'S LICENSE.

A. Basis: §§ 4-7(1), 4-11(a), 4-98.2(e), 4-98.7, 4-98.11 and 4-98.18. of the Code of Virginia.

B. Purpose: To conform with the proposed amendments for qualifications for mixed beverage licenses (VR 125-01-5 § 11).

C. Substance: To decrease the monthly gross sales average from \$5,000 to \$4,000.

D. Issue: Decreasing the monthly gross sales average for a caterer.

E. Impact: Minimal.

VR 125-01-5 § 19. BED AND BREAKFAST LICENSES.

A. Basis: §§ 4-2, 4-7(1), 4-11(a), 4-25, 4-33, 4-38, 4-98.14 and 4-103 of the Code of Virginia.

B. Purpose: To comply with 1991 statutory changes involving § 4-2 of the Code of Virginia.

C. Substance: To repeal the minimum number of bedrooms (3) that an establishment must have to qualify for a bed and breakfast license.

D. Issue: Compliance with statutory law.

E. Impact: Minimal.

VR 125-01-5 § 20. SPECIALTY STORES; WINE AND BEER OFF-PREMISES LICENSES; CONDITIONS; RECORDS; INSPECTIONS.

A. Basis: §§ 4-7(1), 4-11(a), 4-25 and 4-31.A. of the Code of Virginia.

B. Purpose: To expand the types of businesses eligible for off-premises wine and beer licenses by creating a new category for which there shall be no minimum monthly food sale requirements.

C. Substance: Creation of a new category of a retail business, known as a Specialty Store, for which there shall be no food sale requirements to qualify for a wine and beer off-premises license; establishes the identity of such specialty stores as (i) historical site or museum specialty stores which sell predominately gifts, souvenirs and specialty items of an historical nature or relating to the history of the site and any exhibits, or (ii) handcrafts specialty stores selling predominately handmade arts, collectibles, crafts or other handmade products; gives board discretion in determining whether a particular business may be

considered a specialty store qualified for licensing purposes; such licenses may be granted only to such establishments which have been in operation for a period of at least 12 months next preceding application for a license; such licenses authorize retail sales of wine and beer purchased from wholesale licensees and received at the retail establishment, sales only in closed packages for consumption off the premises, and to make deliveries or shipments of such wine and beer to purchasers thereof; no chilled alcohol may be sold under the specialty store license; the Board may impose reasonable restrictions and conditions upon such licenses so as to ensure orderly distribution of wine and beer and to ensure that such sales are only incidental to the principal business conducted at the establishment; sales of wine and beer may not exceed 25% of total annual gross sales; and all licensees under this regulation must comply where applicable with the record keeping requirements of VR 125-01-7 § 9.

D. Issue: The creation of a license category for wine and beer off-premises licenses that does not require food sales.

E. Impact: Possible proliferation of wine and beer off-premises licenses for persons operating (i) an historical or museum specialty store or (ii) a handcrafts specialty store; increased work load for agents investigating applications for licenses and monitoring specialty store operations.

VR 125-01-5 § 21. MANNER OF COMPENSATION OF EMPLOYEES OF RETAIL LICENSEES.

A. Basis: §§ 4-7(l), 4-11(a), 4-98.10(t) and 4-103(b) of the Code of Virginia.

B. Purpose: Clarification.

C. Substance: To move § 2 which deals with the manner of compensation that employees of retail licensees may receive from their employers from Tied House (VR 125-01-3) to Retail Operations (VR 125-01-5).

D. Issue: Clarification.

E. Impact: Minimal.

VR 125-01-6 § 6. WINE OR BEER IMPORTER LICENSES; CONDITIONS FOR ISSUANCE AND RENEWAL.

A. Basis: §§ 4-7(b) and (l), 4-11, 4-25, 4-118.4 and 4-118.43 of the Code of Virginia.

B. Purpose: To comply with 1991 statutory amendments involving §§ 4-25, 4-118.4 and 4-118.43 of the Code of Virginia.

C. Substance: As a condition of procuring and

maintaining a license, each importer must provide the Board with written authorization from the brand owner for the importers (1) to sell or ship the brand into the Commonwealth and (2) to establish agreements with wholesalers on behalf of the brand owner.

D. Issue: Compliance with statutes.

E. Impact: Importers must obtain a brand owner's written permission to sell or ship the brand into the Commonwealth and to establish agreements with wholesalers on behalf of the brand owner.

VR 125-01-6 § 8. SOLICITATION OF MIXED BEVERAGE LICENSES BY REPRESENTATIVES OF MANUFACTURERS, ETC., OF DISTILLED SPIRITS.

A. Basis: §§ 4-7(1), 4-11(a), 4-98.14 and 4-98.16 of the Code of Virginia.

B. Purpose: Deregulation.

C. Substance: 1. To allow distilled spirits solicitor permittees to solicit mixed beverage licensees on Sundays; and 2. to make less burdensome record keeping requirements for solicitation of mixed beverage licensees by distilled spirits solicitor permittees.

D. Issue: 1. The solicitation of mixed beverage licensees on Sundays; and 2. detailed record keeping for solicitation of mixed beverage licensees by permittees.

E. Impact: Minimal.

VR 125-01-6 § 9. SUNDAY DELIVERIES BY WHOLESALERS PROHIBITED; EXCEPTIONS.

A. Basis: §§ 4-7(1), 4-11(a), and 4-103(b) of the Code of Virginia.

B. Purpose: Deregulation.

C. Substance: To permit wholesalers to make Sunday deliveries of wine and beer to retailers by repealing § 9.

D. Issue: Sunday delivery of wine and beer to retailers.

E. Impact: Wholesalers indicate their costs of operation will increase if Sunday deliveries are permitted because manufacturers and competition from other wholesalers will necessitate operating seven days a week. Retailers like the convenience of Sunday deliveries especially when their wine or beer stock is low or depleted.

VR 125-01-7 § 4. ALCOHOLIC BEVERAGES FOR

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CULINARY PURPOSES; PERMITS; PURCHASES; RESTRICTIONS.

A. Basis: §§ 4-7(a), (b) and (l), 4-11(a) and 4-61.2 of the Code of Virginia.

B. Purpose: 1. To expand the types of businesses eligible for culinary permits; and 2. to incorporate current policy in the regulations.

C. Substance: 1. To allow persons who do not have a dining room on their business premises, but prepare food there, to be eligible for a culinary permit; and 2. to allow a culinary permittee who does not have a license to purchase alcoholic beverages or beverages from a wholesaler to purchase alcoholic beverages from a retailer; however, a culinary permittee who only has a beer license may purchase wine from a retailer.

D. Issues: 1. Expansion of the types of businesses eligible for culinary permits; and 2. incorporation of current policy in the regulations.

E. Impact: Minimal.

VR 125-01-7 § 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. Basis: §§ 4-7(a), (b) and (l), 4-11(a) and 4-98(b) and (e) of the Code of Virginia.

B. Purpose: Clarification.

C. Substance: To clarify that any person who contracts with or engages a licensed distiller to manufacture distilled spirits from products that any person has grown or lawfully produced shall obtain a Board permit before withdrawing the distilled spirits from the distillery's premises.

D. Issue: Clarification.

E. Impact: Minimal.

VR 125-01-7 § 13. SPECIAL MIXED BEVERAGES LICENSES; LOCATION; SPECIAL PRIVILEGES; TAXES ON LICENSES.

A. Basis: §§ 4-98.2, 4-98.14 and 7.1-21.1 of the Code of Virginia.

B. Purpose: To comply with § 4-98.7 of the Code of Virginia.

C. Substance: To remove the sale of wine and beer from the determination of the 45% food to 55% alcoholic beverage ratio.

D. Issue: Compliance with 1990 statutory changes involving § 4-98.7 of the Code of Virginia.

E. Impact: Minimal.

VR 125-01-7 § 16. ALCOHOLIC BEVERAGE CONTROL BOARD.

A. Basis: §§ 4-3 and 4-6.1 of the Code of Virginia.

B. Purpose: To streamline the regulations of the Virginia Department of Alcoholic Beverage Control.

C. Substance: To repeal § 16 which is a restatement of § 4-6.1 of the Code of Virginia.

D. Issue: Streamlining A.B.C. regulations by repealing regulations which are restatements of Virginia statutes.

E. Impact: Minimal.

Statutory Authority: §§ 4-7 (1), 4-11, 4-36, 4-69, 4-69.2, 4-72.1, 4-98.14, and 4-103(b) of the Code of Virginia.

Written comments may be submitted until 10 a.m., October 16, 1991.

Contact: Robert N. Swinson, Secretary to the Board, P. O. Box 27491, 2901 Hermitage Road, Richmond, VA 23261, telephone (804) 367-0616.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS

September 12, 1991 - 10 a.m. – Open Meeting
Department of Commerce, 3600 West Broad Street, Fifth Floor, Conference Room One, Richmond, Virginia.

The board will meet to conduct a formal hearing: File number 90-01734, APELSLA Board v. Davie E. Delew.

Contact: Gayle Eubank, Hearings Coordinator, Department of Commerce, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8524.

ASAP POLICY BOARD - VALLEY

† **September 9, 1991 - 8:30 a.m.** – Open Meeting
Augusta County School Board Office, Fishersville, Virginia.

Ⓜ

A regular meeting of the local policy board to conduct business pertaining to (i) court referrals; (ii) financial reports; (iii) director's reports; and (iv) statistical reports.

Contact: Mrs. Rhoda G. York, Executive Director, 2 Holiday Court, Staunton, Virginia 24401, telephone (703)

886-5616 or (703) 943-4405.

BOARD OF AUDIOLOGY AND SPEECH PATHOLOGY

† **October 24, 1991 - 9:30 a.m.** – Open Meeting
1601 Rolling Hills Drive, Conference Room 2, Richmond,
Virginia. ☒

A regularly scheduled board meeting.

Contact: Meredyth P. Partridge, Executive Director, 1601
Rolling Hills Drive, Richmond, Virginia 23229-5005,
telephone (804) 662-9111.

CHESAPEAKE BAY COMMISSION

† **September 12, 1991 - 1:45 p.m.** – Open Meeting
† **September 13, 1991 - 9 a.m.** – Open Meeting
Cavalier Hotel, Virginia Beach, Virginia.

The agenda includes policy discussions concerning
migratory fish passage, environmental education
requirements for school curricula, and the shad ocean
intercept fishery. Friday's session will focus on
nonpoint source pollution control programs and state,
federal and private evaluations of the Bay program.

Contact: Ann Pesiri Swanson, Executive Director, 60 West
Street, Suite 200, Annapolis, MD 21401, telephone (301)
263-3420.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

† **October 10, 1991 - 10 a.m.** – Open Meeting
General Assembly Building, Senate Room B, 910 Capitol
Street, Richmond, Virginia. ☒ (Interpreter for deaf
provided upon request)

The board will conduct general business, including
review of local Chesapeake Bay Preservation Area
programs. Public comment will be heard early in the
meeting. A tentative agenda will be available from the
Chesapeake Bay Local Assistance Department by
October 3, 1991.

Contact: Receptionist, Chesapeake Bay Local Assistance
Department, 805 E. Broad St., Suite 701, Richmond, VA
23219, telephone (804) 225-3440 or toll-free
1-800-243-7229/TDD ☎

Central Area Review Committee

† **August 26, 1991 - 9:30 a.m.** – Open Meeting
† **September 9, 1991 - 9:30 a.m.** – Open Meeting
† **September 23, 1991 - 9:30 a.m.** – Open Meeting
General Assembly Building, Senate Room B, 910 Capitol
Street, Richmond, Virginia. ☒ (Interpreter for deaf
provided upon request)

The Review Committee will review Chesapeake Bay
Preservation Area programs for the Central Area.
Persons interested in observing should call the
Chesapeake Bay Local Assistance Department to verify
meeting time, location and schedule. No comments
from the public will be entertained at the Review
Committee meetings. However, written comments are
welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance
Department, 805 E. Broad St., Suite 701, Richmond, VA
23219, telephone (804) 225-3440 or toll-free
1-800-243-7229/TDD ☎

Northern Area Review Committee

† **August 28, 1991 - 9 a.m.** – Open Meeting
† **September 11, 1991 - 9 a.m.** – Open Meeting
† **September 25, 1991 - 9 a.m.** – Open Meeting
General Assembly Building, Senate Room B, 910 Capitol
Street, Richmond, Virginia. ☒ (Interpreter for deaf
provided upon request)

The Review Committee will review Chesapeake Bay
Preservation Area programs for the Northern Area.
Persons interested in observing should call the
Chesapeake Bay Local Assistance Department to verify
meeting time, location and schedule. No comments
from the public will be entertained at the Review
Committee meetings. However, written comments are
welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance
Department, 805 E. Broad St., Suite 701, Richmond, VA
23219, telephone (804) 225-3440 or toll-free
1-800-243-7229/TDD ☎

Southern Area Review Committee

† **August 29, 1991 - 9:30 a.m.** – Open Meeting
General Assembly Building, House Room D, 910 Capitol
Street, Richmond, Virginia. ☒ (Interpreter for deaf
provided upon request)

† **September 4, 1991 - 9:30 a.m.** – Open Meeting
† **September 18, 1991 - 9:30 a.m.** – Open Meeting
General Assembly Building, Senate Room B, 910 Capitol
Street, Richmond, Virginia. ☒ (Interpreter for deaf
provided upon request)

† **August 30, 1991 - 9:30 a.m.** – Open Meeting
Norfolk City Hall, 810 Union Street, Norfolk, Virginia. ☒
(Interpreter for deaf provided upon request)

The Review Committee will review Chesapeake Bay
Preservation Area programs for the Southern Area.
Persons interested in observing should call the
Chesapeake Bay Local Assistance Department to verify
meeting time, location and schedule. No comments
from the public will be entertained at the Review
Committee meetings. However, written comments are

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welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701, Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

CHILD-DAY CARE COUNCIL

September 16, 1991 - 3:30 p.m. – Public Hearing
Roanoke Municipal Building, Council Chambers, 4th Floor, 215 Church Avenue, S.W., Roanoke, Virginia.

September 17, 1991 - 3 p.m. – Public Hearing
Washington Gas and Light Company, The Auditorium, 6801 Industrial Road, Springfield, Virginia.

September 19, 1991 - 3 p.m. – Public Hearing
Williamsburg Regional Library, The Arts Center Theatre, 515 Scotland Street, Williamsburg, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Child Day-Care Council intends to adopt regulations entitled: **VR 175-08-01. Minimum Standards for Licensed Child Care Centers, Nursery Schools, and Child Day Care Camps Serving Children of Preschool Age or Younger.** This regulation describes the requirements that child care centers, nursery schools, and child day care camps serving children of preschool age or younger must meet to become licensed. VR 175-08-01 replaces VR 175-02-01, 175-05-01, and 175-07-01 since it was decided to consolidate these regulations. VR 175-02-01 will be repealed effective July 1, 1992.

Statutory Authority: §§ 63.1-202 and 63.1-202.1 of the Code of Virginia.

Written comments may be submitted until September 29, 1991, to Peg Spangenthal, Chair, Child Day-Care Council, 8007 Discovery Drive, Richmond, Virginia 23229.

Contact: Peggy Friedenber, Legislative Analyst, Office of Governmental Affairs, Department of Social Services, 8007 Discovery Drive, Richmond, VA 23229-8699, telephone (804) 662-9217.

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September 16, 1991 - 3:30 p.m. – Public Hearing
Roanoke Municipal Building, Council Chambers, 4th Floor, 215 Church Avenue, S.W., Roanoke, Virginia.

September 17, 1991 - 3 p.m. – Public Hearing
Washington Gas and Light Company, The Auditorium, 6801 Industrial Road, Springfield, Virginia.

September 19, 1991 - 3 p.m. – Public Hearing
Williamsburg Regional Library, The Arts Center Theatre, 515 Scotland Street, Williamsburg, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Child Day-Care Council intends to adopt regulations entitled: **VR 175-09-01. Minimum Standards for Licensed Child Care Centers, Before School and After School Child Care Programs, and Child Day Care Camps Serving School Age Children.** This regulation describes the requirements that child care centers, before school and after school child care programs, and child day care camps serving school age children must meet to become licensed. VR 175-08-01 replaces VR 175-02-01, 175-05-01, and 175-07-01 since it was decided to consolidate these regulations. VR 175-02-01 will be repealed effective July 1, 1992.

Statutory Authority: §§ 63.1-202 and 63.1-202.1 of the Code of Virginia.

Written comments may be submitted until September 29, 1991, to Peg Spangenthal, Chair, Child Day-Care Council, 8007 Discovery Drive, Richmond, Virginia 23229.

Contact: Peggy Friedenber, Legislative Analyst, Office of Governmental Affairs, Department of Social Services, 8007 Discovery Drive, Richmond, VA 23229-8699, telephone (804) 662-9217.

INTERAGENCY CONSORTIUM ON CHILD MENTAL HEALTH

September 4, 1991 - 9:15 a.m. – Open Meeting
Youth and Family Services, 700 Centre, 7th & Franklin Streets, Richmond, Virginia. ☒

A meeting to (i) discuss technical assistant position; (ii) set date for quarterly review; (iii) review fiscal report; (iv) review old applications, and (v) review new applications.

Contact: Dian M. McConnell, Chair, P.O. Box 3AG, Richmond, VA 23208-1108, telephone (804) 371-0700.

STATE BOARD FOR COMMUNITY COLLEGES

† **September 11, 1991 - Time to be Determined – Open Meeting**

† **September 12, 1991 - 9 a.m. – Open Meeting**
Board Room, 15th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia.

A regularly scheduled meeting of the board. (Agenda available by September 3, 1991.)

Contact: Mrs. Joy Graham, 15th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia, telephone (804) 225-2126.

MIDDLE VIRGINIA BOARD OF DIRECTORS AND THE MIDDLE VIRGINIA COMMUNITY CORRECTIONS RESOURCES BOARD

September 5, 1991 - 7 p.m. - Open Meeting
October 3, 1991 - 7 p.m. - Open Meeting
502 South Main Street #4, Culpeper, Virginia.

From 7 p.m. until 7:30 p.m. the board of directors will hold a business meeting to discuss DOC contract, budget, and other related business. Then the CCRB will meet to review cases before for eligibility to participate with the program. It will review the previous month's operation (budget and program related business).

Contact: Lisa Ann Peacock, Program Director, 502 South Main Street #4, Culpeper, Virginia 22701, telephone (703) 825-4562

COMPENSATION BOARD

August 28, 1991 - 5 p.m. - Open Meeting
September 26, 1991 - 5 p.m. - Open Meeting
Room 913/913A, 9th Floor, Ninth Street Office Building,
202 North Ninth Street, Richmond, Virginia. ☒ (Interpreter
for deaf provided upon request)

A routine meeting to conduct business of the board.

Contact: Bruce W. Haynes, Executive Secretary, P.O. Box 3-F, Richmond, Virginia 23206-0686, telephone (804) 786-3886/TDD ☎

BOARD ON CONSERVATION AND DEVELOPMENT OF PUBLIC BEACHES

September 18, 1991 - 10:30 a.m. - Open Meeting
Virginia Institute of Marine Sciences, Director's Office,
Gloucester Point, Virginia.

A general business meeting.

Contact: Jack E. Frye, Shoreline Program Manager,
Department of Conservation and Recreation, P. O. Box
1024, Gloucester Point, VA 23062, telephone (804) 842-7121.

DEPARTMENT OF CONSERVATION AND RECREATION

Falls of the James Scenic River Advisory Board

† September 20, 1991 - Noon - Open Meeting
Planning Commission Conference Room, Fifth Floor, City
Hall, Richmond, Virginia.

A meeting to review river issues and programs.

Contact: Richard G. Gibbons, Environmental Program

Manager, Department of Conservation and Recreation,
Division of Planning and Recreation Resources, 203
Governor St., Suite 326, Richmond, VA 23219, telephone
(804) 786-4172 or (804) 786-2121/TDD ☎

Soil and Water Conservation Board

September 18, 1991 - 6 p.m. - Dinner Meeting
The Ground Round, 102 Tower Drive, Danville, Virginia.

The board will hold its regular bi-monthly meeting.

Contact: Donald L. Wells, Assistant Director, Department
of Conservation and Recreation, 203 Governor St., Suite
206, Richmond, VA 23219, telephone (804) 786-4356.

BOARD FOR CONTRACTORS

Regulatory and Statutory Review Committee

† August 28, 1991 - 9 a.m. - Open Meeting
3600 West Broad Street, Richmond, Virginia. ☒

A meeting to review the board's regulations to
determine needed changes/additions/revisions in
procedures, requirements and standards applicable to
licensed contractors.

Contact: Martha S. LeMond, Assistant Director, 3600 West
Broad Street, Richmond, VA 23230, telephone (804)
367-8567.

BOARD OF CORRECTIONS

September 11, 1991 - 10 a.m. - Open Meeting
6900 Atmore Drive, Board of Corrections Board Room,
Richmond, Virginia. ☒

A regular monthly meeting to consider such matters
as may be presented to the board.

Contact: Mrs. Vivian T. Toler, Secretary to the Board, 6900
Atmore Drive, Richmond, VA 23225, telephone (804)
674-3235.

Liaison Committee

September 12, 1991 - 9:30 a.m. - Open Meeting
6900 Atmore Drive, Board of Corrections Board Room,
Richmond, Virginia. ☒

The committee will continue to address criminal
justice issues.

Contact: Louis E. Barber, Sheriff, Montgomery County, P.
O. Drawer 149, Christiansburg, VA 24073, telephone (703)
382-2951.

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CRIMINAL JUSTICE SERVICES BOARD

October 2, 1991 - 9 a.m. – Public Hearing
General Assembly Building, 910 Capitol Street, Richmond,
Virginia. ☒

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Criminal Justice Services Board intends to amend regulations entitled: **VR 240-03-1. Rules Relating to Compulsory Minimum Training Standards for Private Security Services Business Personnel.** The regulations set forth minimum training standards and in-service training requirements for private security services personnel.

Statutory Authority: § 9-182 of the Code of Virginia.

Written comments may be submitted until September 16, 1991, to L.T. Eckenrode, Department of Criminal Justice Services, 805 East Broad Street, Richmond, Virginia 23219.

Contact: Paula Scott, Administrative Assistant, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-4000.

STATE BOARD OF EDUCATION

September 25, 1991 - 8 a.m. – Open Meeting
September 26, 1991 - 8 a.m. – Open Meeting
October 30, 1991 - 8 a.m. – Open Meeting
October 31, 1991 - 8 a.m. – Open Meeting
James Monroe Building, Conference Rooms D & 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. Public comment will not be received at the meeting.

Contact: Margaret Roberts, Executive Director, Board of Education, State Department of Education, P.O. Box 6-Q, Richmond, VA 23216, telephone (804) 225-2540.

LOCAL EMERGENCY PLANNING COMMITTEE - CHESTERFIELD COUNTY

September 5, 1991 - 5:30 p.m. – Open Meeting
October 3, 1991 - 5:30 p.m. – Open Meeting
Chesterfield County Administration Building, 10001 Ironbridge Road, Chesterfield, Virginia. ☒

A meeting to meet requirements of Superfund Amendment and Reauthorization Act of 1986.

Contact: Linda G. Furr, Assistant Emergency Services, Chesterfield Fire Department, P.O. Box 40, Chesterfield, VA 23832, telephone (804) 748-1236.

LOCAL EMERGENCY PLANNING COMMITTEE - COUNTY OF MONTGOMERY/TOWN OF BLACKSBURG

† **September 10, 1991 - 3 p.m.** – Open Meeting
Montgomery County Courthouse, 3rd Floor, Board of Supervisors Room, Christiansburg, Virginia. ☒

A meeting to develop a Hazardous Materials Emergency Response Plan for Montgomery County and the Town of Blacksburg.

Contact: Steve Via, New River Valley Planning District Commission, P. O. Box, 3726, Radford, VA 24143, telephone (703) 639-9313.

LOCAL EMERGENCY PLANNING COMMITTEE - COUNTY OF PRINCE WILLIAM, CITY OF MANASSAS, AND CITY OF MANASSAS PARK

September 16, 1991 - 1:30 p.m. – Open Meeting
1 County Complex Court, Prince William, Virginia. ☒

The Local Emergency Planning Committee will meet 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.

VIRGINIA EMERGENCY RESPONSE COUNCIL

September 11, 1991 - 10 a.m. – Open Meeting
Conference Room B, Monroe Building, 101 North 14th Street, Richmond, Virginia. ☒

This meeting will update the VERC on new developments in SARA Title III, Emergency Planning and Community "Right-to-Know"; and will discuss the impact of waste minimization and pollution prevention initiatives on program activities.

Contact: Cathy L. Harris, Environmental Program Manager, Department of Waste Management, 14th Floor, Monroe Bldg., 101 N. 14th Street, Richmond, VA 23219, telephone (804) 225-2513, (804) 225-2631, toll-free 1-800-552-2075 or (804) 371-8737/TDD ☒

COUNCIL ON THE ENVIRONMENT

September 4, 1991 - 7 p.m. – Public Hearing
King George County Volunteer Fire Department, Route 3, King George, Virginia.

September 5, 1991 - 7 p.m. – Public Hearing
Tappahannock Elementary School, Route 17, Auditorium, Tappahannock, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1

of the Code of Virginia that the Council on the Environment intends to adopt regulations entitled: **VR 305-02-01. Guidelines for the Preparation of Environmental Impact Assessments for Oil or Gas Well Drilling Operations in Tidewater Virginia.** The proposed regulation establishes criteria and procedures to be followed by applicants preparing and persons reviewing an environmental impact assessment for an oil or gas well drilling operation and related activities in Tidewater Virginia.

Statutory Authority: § 62.1-195.1 of the Code of Virginia.

Written comments may be submitted until September 13, 1991.

Contact: Jay Roberts, Environmental Planner, 202 N. Ninth St., Suite 900, Richmond, VA 23219, telephone (804) 786-4500.

* * * * *

September 13, 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 Council on the Environment intends to adopt regulations entitled: **VR 305-01-001. Public Participation Guidelines.** The proposed regulation establishes the Council on the Environment's procedures for soliciting public participation in the formulation and development of regulations.

Statutory Authority: §§ 9-6.14:7.1, 10.1-1206, and 62.1-195.1 of the Code of Virginia.

Written comments may be submitted until September 13, 1991.

Contact: Jay Roberts, Environmental Planner, 202 N. Ninth St., Suite 900, Richmond, VA 23219, telephone (804) 786-4500 or (804) 367-7604/TDD ☎ .

VIRGINIA FIRE SERVICES BOARD

Department of Fire Programs

† August 26, 1991 - 7:30 p.m. – Public Hearing
Holiday Inn, US Alternate 58, Norton, Virginia.

† August 28, 1991 - 7:30 p.m. – Public Hearing
Salem Civic Center, 1001 Boulevard, Salem, Virginia.

† August 29, 1991 - 7:30 p.m. – Public Hearing
Fire Station #1, 80 Maryland Avenue, Harrisonburg, Virginia.

† September 23, 1991 - 7:30 p.m. – Public Hearing
Fire Station #7, 423 Airport Drive, Danville, Virginia.

† September 25, 1991 - 7:30 p.m. – Public Hearing
Fire Station #1, 361 Effingham Street, Portsmouth, Virginia.

† September 26, 1991 - 7:30 p.m. – Public Hearing
Eastern Shore Community College, Lecture Hall, Melfa, Virginia.

The purpose of the public hearing is to discuss House Bill 2000 (1991) which directs the Department of Fire Programs and the Virginia State Police to establish regulations for inspection of fire apparatus. The public is encouraged to attend and participate.

Contact: Anne J. Bales, Executive Secretary Senior, 2807 Parham Road, Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

† August 27, 1991 - 9 a.m. – Open Meeting
1601 Rolling Hills Drive, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

Informal conference hearings.

Contact: Meredyth P. Partridge, Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9907.

BOARD OF GAME AND INLAND FISHERIES

August 29, 1991 - 9:30 a.m. – Open Meeting
4010 West Broad Street, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

Committees of the Board of Game and Inland Fisheries will meet, beginning at 9:30 a.m. with the Planning Committee, followed by the Finance Committee, then the Liaison Committee, Wildlife and Boat Committee and the Law and Education Committee. Each committee will review those agenda items appropriate to its authority, and make recommendations for adoption or advertisement of such to the full board at its meeting on August 30, 1991.

August 30, 1991 - 9:30 a.m. – Open Meeting
NOTE: CHANGE IN LOCATION
Holiday Inn Crossroads, 2000 Staples Mill Road, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

The Board will meet to adopt the 1991-92 migratory waterfowl seasons and to propose fish regulations. In addition, consideration will be given to modifications to the list of new state endangered and threatened species and changing the status of several species currently on this list. Other general and administrative matters, as necessary, will be discussed.

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Contact: Belle Harding, Secretary to Bud Bristow, 4010 W. Broad St., P. O. Box 11104, Richmond, VA 23230, telephone (804) 367-1000.

HAZARDOUS MATERIALS TRAINING COMMITTEE

† **September 25, 1991 - 1 p.m.** – Open Meeting
Radisson Hotel, Pavillion Drive, Virginia Beach, Virginia.

The purpose of this meeting will be to discuss curriculum course development and review existing hazardous materials courses.

Contact: Mr. N. Paige Bishop, 2873 Moyer Road, Powhatan, VA 23139, telephone (804) 598-3370.

DEPARTMENT OF HEALTH PROFESSIONS

Task Force on the Need for Medication Technicians

† **September 5, 1991 - 1 p.m.** – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Conference Room 2, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

A meeting to review the draft of the Task Force Report and other additional comments.

Contact: Richard Morrison, Executive Director, Department of Health Professions, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9904.

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

August 27, 1991 - 9:30 a.m. – Open Meeting
Blue Cross/Blue Shield, Virginia Room, 2015 Staples Mill Road, Richmond, Virginia. ☒

The council will conduct its monthly meeting to address financial, policy or technical matters which may have arisen since the last meeting. The council's current bylaws will also be discussed and possibly amended.

† **September 24, 1991 - 9:30 a.m.** – Open Meeting
Blue Cross/Blue Shield, Virginia Room, 2015 Staples Mill Road, Richmond, Virginia. ☒

The council will conduct its 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 ☎

STATE BOARD OF HEALTH

† **September 17, 1991 - Noon** – Open Meeting
† **September 18, 1991 - 9 a.m.** – Open Meeting
OBICI Hospital, 1900 North Main Street, Suffolk, Virginia.
☒ (Interpreter for deaf provided upon request)

A work session is planned for Tuesday, September 17, 1991. Informal dinner to be held at Front Street Restaurant, 434 North Main Street, Suffolk, Virginia, at 7:30 p.m. Business meeting is planned for Wednesday, September 18, 1991.

Contact: Susan R. Rowland, Assistant to the Commissioner, Virginia Department of Health, P. O. Box 2448, Suite 214, Richmond, VA 23218, telephone (804) 786-3561.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

September 3, 1991 - 1 p.m. – Open Meeting
September 4, 1991 - 1 p.m. – Open Meeting
The Airfield 4-H Center, Wakefield, Virginia. ☒

A general business meeting. For more information call the council.

Contact: Mike Mullen, Associate Director, 101 N. 14th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2610.

VIRGINIA HISTORIC PRESERVATION FOUNDATION

September 11, 1991 - 11 a.m. – Open Meeting
530 Amherst Street, Winchester, Virginia.

A general business meeting.

Contact: Margaret Peters, 221 Governor Street, Richmond, Virginia 23219, telephone (804) 786-3143 or (804) 786-1935/TDD ☎

HOPEWELL INDUSTRIAL SAFETY COUNCIL

September 3, 1991 - 9 a.m. – Open Meeting
Hopewell Community Center, Second & City Point Road, Hopewell, Virginia. ☒ (Interpreter for the deaf provided upon request)

Local Emergency Preparedness Committee Meeting on Emergency Preparedness as required by SARA Title III.

Contact: Robert Brown, Emergency Services Coordinator, 300 North Main Street, Hopewell, VA 23860, telephone (804) 541-2298.

Calendar of Events

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

September 9, 1991 - 1 p.m. – Public Hearing
Virginia Housing Development Authority, 601 South
Belvidere Street, Richmond, Virginia. ☒

September 11, 1991 - 10 a.m. – Public Hearing
Prince William Department of Social Services, 7987 Ashton
Avenue, Manassas, Virginia. ☒

September 12, 1991 - 10 a.m. – Public Hearing
Hampton Public Library, 4207 Victoria Boulevard,
Hampton, Virginia. ☒

September 13, 1991 - 10 a.m. – Public Hearing
Virginia Tech Donaldson Brown Center, Otey Street,
Blacksburg, Virginia. ☒

The Department of Housing and Community Development is holding four public hearings throughout the state to receive comments on the proposed Comprehensive Housing Affordability Strategy (CHAS) which is a statewide housing plan mandated by the National Affordable Housing Act of 1990. The proposed CHAS identifies needs, resources, and strategies for developing affordable housing and will serve as a guide for the expenditure of all federal and state housing assistance.

Comments on the proposed CHAS may be made at any of the public hearings or may be submitted in writing through September 30, 1991. Copies of the proposed CHAS may be obtained by calling or writing Ms. Sharon Kelleher, Department of Housing and Community Development, 205 North Fourth Street, Richmond, VA 23219, (804) 786-7891.

Contact: Alice Fascitelli, Program Manager, Department of Housing and Community Development, 205 North Fourth Street, Richmond, VA 23219, telephone (804) 225-4299 or (804) 786-5405/TDD ☎

COUNCIL ON INFORMATION MANAGEMENT

† **September 13, 1991 - 9 a.m.** – Open Meeting
1100 Bank Street, Suite 901, Richmond, Virginia. ☒

A regular business meeting. The council will consider approval of Information Security Standard and Information Systems Development Policy and Standards.

Contact: Linda Hening, Administrative Assistant, Washington Building, 1100 Bank Street, Suite 901, Richmond, VA 23219, telephone (804) 225-3622 or (804) 225-3624/TDD ☎

VIRGINIA INTERAGENCY COORDINATING COUNCIL ON EARLY INTERVENTION

† **September 11, 1991 - 9 a.m.** – Open Meeting
Martha Washington Inn, 150 West Main Street, Abingdon,
Virginia. (Interpreter for deaf provided if requested)

The Virginia Interagency Coordinating Council according to PL 101-476, Part H, early intervention program for disabled infants and toddlers and their families, is meeting to advise and assist the Department of Mental Health, Mental Retardation and Substance Abuse Services as lead agency to develop and implement a statewide interagency early intervention program.

Contact: Michael Fehl, Director MR Children/Youth Services, Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services, P. O. Box 1797, Richmond, VA 23214, telephone (804) 786-3710.

DEPARTMENT OF LABOR AND INDUSTRY

† **January 14, 1992 - 7 p.m.** – Public Hearing
Fourth Floor Conference Room, Powers-Taylor Building, 13
South 13th 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 adopt regulations entitled: **VR 425-01-81. Regulations Governing the Employment of Minors on Farms, in Gardens, and in Orchards.** Provision of regulations concerning child labor in agriculture.

STATEMENT

The 1991 session of the Virginia General Assembly enacted House Bill 1794, effective July 1, 1991, which amended §§ 40.1-78 and 40.1-79 of the Code of Virginia.

The 1991 amendments to the above Code sections remove the exemption for minors employed on farms, in gardens and in orchards. Pursuant to §§ 40.1-6(3), 40.1-100 A 9, and 40.1-114, the Commissioner of the Department of Labor and Industry has the authority and duty, effective July 1, 1991, to regulate such previously exempted areas of child labor.

Beyond compliance with the previously mentioned requirements of the Code, the need for protection of Virginia farm children is substantial. Agriculture is generally recognized as one of the most hazardous industries in which children are employed.

This standard must be established by regulation in order for the Department of Labor and Industry to administer its regulatory responsibility after July 1, 1992. As insufficient time existed to promulgate this regulation through the full APA procedure prior to July 1, 1991, the

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department has promulgated an interim emergency regulation to implement the above Code sections as amended during the July 1, 1991 - July 1, 1992, period.

Absence of this regulation will result in the department's failure to comply with a direct mandate from the General Assembly following the expiration of the current emergency regulation.

No additional cost or other substantive impact is expected for individual agricultural employers by the adoption of this rulemaking.

Statutory Authority: § 40.1-6(3), 40.1-100 A 9, and 40.1-114 of the Code of Virginia.

Written comments may be submitted until October 28, 1991.

Contact: John J. Crisanti, Director, Office of Enforcement Policy, Powers-Taylor Building, Department of Labor and Industry, 13 South 13th Street, Richmond, VA 23219, telephone (804) 786-2384.

STATE LAND EVALUATION ADVISORY COUNCIL

September 9, 1991 - 10 a.m. – Open Meeting
Department of Taxation, 2220 West Broad Street, Richmond, Virginia. ☒

The council will meet to adopt suggested ranges of values for agricultural, horticultural, forest and open space land use and the use value assessment program.

Contact: David E. Jordan, Assistant Division Director, Virginia Department of Taxation, Property Tax Division, P.O. Box 1-K, Richmond, VA 23201, telephone (804) 367-8020.

LIBRARY BOARD

† September 10, 1991 - 10 a.m. – Open Meeting
Virginia State Library and Archives, 3rd Floor, Supreme Court Room, 11th Street at Capitol Square, Richmond, Virginia. ☒

A meeting to discuss administrative matters of the Virginia State Library and Archives.

Contact: Jean H. Taylor, Secretary to the State Librarian, Virginia State Library and Archives, 11th Street at Capitol Square, Richmond, Virginia 23219, telephone (804) 786-2332.

LONGWOOD COLLEGE

Executive Committee

† September 5, 1991 - 9:30 a.m. – Open Meeting
Longwood College, Ruffner Building, Virginia Room, Farmville, Virginia. ☒

A meeting to conduct routine business of the Executive Committee.

Contact: William F. Dorrill, President, Longwood College, Farmville, Virginia 23901, telephone (804) 395-2001.

STATE LOTTERY BOARD

August 26, 1991 - 10 a.m. – Open Meeting
† September 23, 1991 - 10 a.m. – Open Meeting
State Lottery Department, Conference Room, 2201 West Broad Street, Richmond, Virginia. ☒

A regular monthly meeting of the board. Business will be conducted according to items listed on the agenda which has not yet been determined. Two periods for public comment are scheduled.

Contact: Barbara L. Robertson, Lottery Staff Officer, State Lottery Department, 2201 West Broad Street, Richmond, VA 23201, telephone (804) 367-9433.

VIRGINIA MARINE PRODUCTS BOARD

† September 3, 1991 - 5:30 p.m. – Open Meeting
The Ramada Inn, 950 J. Clyde Morris Boulevard, Newport News, Virginia.

The board will meet to receive reports from the Executive Director of the Virginia Marine Products Board on: finance, marketing, past and future program planning, publicity/public relations, old/new business.

Contact: Shirley Estes Berg, 97 Main Street, Suite 103, Newport News, VA 23601, telephone (804) 594-7261.

MARINE RESOURCES COMMISSION

August 27, 1991 - 9:30 a.m. – Open Meeting
2600 Washington Avenue, 4th Floor, Room 403, Newport News, Virginia. ☒ (Interpreter for deaf provided if requested)

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

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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 and licensing. Public comments are taken on resource matters, regulatory issues, and items scheduled for public hearing. The commission is empowered to promulgate regulations in the areas of marine environmental management and marine fishery management.

Contact: Cathy W. Everett, Secretary to the Commission, P.O. Box 756, Room 1006, Newport News, VA 23607, telephone (804) 247-8088 or (804) 247-2292/TDD ☎

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

September 13, 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 460-04-29, 460-01-29.1, 460-01-31.1, 460-02-3.2100, and 460-03-4.1922. Coordination of Title XIX with Part A and Part B of Title XVIII.** The purpose of the proposed action is to limit the payment of coinsurance amount by Medicaid so that the combined payments of Medicare Part B and Medicaid would not exceed the Medicaid allowance for a particular procedure.

Statutory Authority: § 32.1-324 of the Code of Virginia.

Written comments may be submitted until September 13, 1991, to C.M. Brankley, Director, Division of Client Services, 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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September 13, 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: **State Plan for Medical Assistance Relating to Home Health Services. VR 460-03-3.1100. Amount, Duration and Scope of Services; VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality of Care.** The purpose of the proposed

action is to promulgate permanent regulation to control the use of home health services.

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

Written comments may be submitted until September 13, 1991, to Mary Chiles, Manager, Division of Quality Care Assurance, 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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September 27, 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: **State Plan for Medical Assistance Relating to Elimination of Medicaid Payment for Reserving Nursing Home Bed for Hospitalized Patients. VR 460-02-4.1930. Basis for Payment for Reserving Beds During a Recipient's Absence from an Inpatient Facility.** The purpose of the proposed action is to promulgate permanent regulations to supersede the emergency regulation which provides for the same policy.

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

Written comments may be submitted until September 27, 1991, to Betty Cochran, Director, Division of Quality Care Assurance, 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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September 27, 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 460-03-3.1100. VR 460-02-3.1300. VR 460-04-3.1300. Outpatient Rehabilitative Services.** The purpose of the proposed action is to promulgate permanent regulations to supersede the existing emergency regulation which provides for substantially the same policies, requirements, and limitations.

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

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Written comments may be submitted until September 27, 1991, to Mary Chiles, Manager, Division of Quality Care Assurance, 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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October 12, 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 460-04-8.3. Client Medical Management Program**. This action more clearly defines the amount, duration, and scope of certain medical services to expedite the utilization review process.

Statutory Authority: § 32.1-324 of the Code of Virginia.

Written comments may be submitted until 4:30 p.m., October 12, 1991, to Ms. Sharon Long, Division of Program Compliance, 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.

GOVERNOR'S ADVISORY BOARD ON MEDICARE AND MEDICAID

August 27, 1991 - 2 p.m. – Open Meeting
Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, Virginia.

Report and discussion of the Advisory Board's subcommittee meeting with the Board of Medical Assistance Services representatives.

Contact: Sue Jowdy, Executive Assistant, 600 E. Broad Street, Suite 1300, Richmond, Virginia 23219, telephone (804) 786-8099 or 1-800-343-0634/TDD ☎ .

BOARD OF MEDICINE

September 13, 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 465-09-01. Certification for Optometrists to Prescribe for and**

Treat Certain Diseases Including Abnormal Conditions of the Human Eye and Its Adnexa with Certain Therapeutic Pharmaceutical Agents. These amendments replace emergency regulations in §§ 2.1-(3) and 6.1 of the regulations to provide alternate pathways for graduates of optometric training programs to be eligible to sit for the certification exam to treat ocular diseases with therapeutic pharmaceutical agents.

Statutory Authority: §§ 54.1-2400, 54.1-2957.1, and 54.1-2957.2 of the Code of Virginia.

Written comments may be submitted until September 13, 1991.

Contact: Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9925.

Advisory Committee on Optometry

September 13, 1991 - 10 a.m. – Open Meeting
Department of Health Professions, Board Room 2, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

The committee will meet to review public written comments received on the Optometry Regulations VR 465-09-01, Certification for Optometrists to prescribe for and treat certain diseases or abnormal conditions of the human eye and its adnexa with certain therapeutic pharmaceutical agents. The committee will propose recommendations for presentation to the full board. Public comments will not be received.

Contact: Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9925.

Advisory Board on Physical Therapy

September 6, 1991 - 9 a.m. – Open Meeting
Department of Health Professions, Board Room 2, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

A meeting to review and discuss regulations, bylaws, procedural manuals, and to receive reports and other items which may come before the advisory board. The advisory board will not receive public comments.

Contact: Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9925.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

Joint Board Liaison Committee

† **September 6, 1991 - 10 a.m.** – Open Meeting

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Department of Rehabilitative Services, 4901 Fitzhugh Avenue, Richmond, Virginia. ☒

A quarterly meeting of the committee comprised of representatives of the Boards of Corrections, Education, Health, Medical Assistance Services, Mental Health, Mental Retardation and Substance Abuse Services, Rehabilitative Services, Social Services, Youth and Family Services and The Advisory Board of the Department for Children. Agenda items include topics of common interest and the development of joint policies relative to clients who are mutually served.

Contact: Jane V. Helfrich, Administrative Staff, Department of Mental Health, Mental Retardation and Substance Abuse Services, P. O. Box 1797, Richmond, Virginia 23214, telephone (804) 786-3921.

MIGRANT AND SEASONAL FARMWORKERS BOARD

August 28, 1991 - 10 a.m. – Open Meeting
State Capitol Building, House Room I, Richmond, Virginia. ☒

A regular meeting of the board. Immediately following the conclusion of the regular meeting, the Subcommittee on Complaint Resolution Process will meet.

Contact: Marilyn Mandel, Director, Office of Planning and Policy, Department of Labor and Industry, Powers-Taylor Building, 13 South 13th Street, Richmond, Virginia 23219, telephone (804) 786-2385.

VIRGINIA MILITARY INSTITUTE

Board of Visitors

September 7, 1991 - 8:30 a.m. – Open Meeting
Smith Hall Board Room, Virginia Military Institute, Lexington, Virginia. ☒

A regular meeting of the VMI Board of Visitors to (i) elect president for 1991-1992; and (ii) consider committee reports.

The BOV provides an opportunity for public comment at this meeting, immediately after the superintendent's comments (about 9 a.m.).

Contact: Colonel Edwin L. Dooley, Jr., Secretary to BOV, Virginia Military Institute, Lexington, Virginia 24450, telephone (703) 464-7206.

DEPARTMENT OF MINES, MINERALS AND ENERGY

September 13, 1991 - 10 a.m. – Public Hearing
Department of Mines, Minerals and Energy, Division of

Mined Land Reclamation, 622 Powell Avenue, AML Conference Room, Big Stone Gap, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Mines, Minerals and Energy intends to amend regulations entitled: **VR 480-03-19. Virginia Coal Surface Mining Reclamation Regulations**. This action amends standards for protection of historic, fish, and wildlife resources; administrative procedures to reinstate individuals who have forfeited bond; appeals of the director's decisions; review of lands unsuitable petitions and notification of bond release.

Statutory Authority: §§ 45.1-3.4 and 45.1-230 of the Code of Virginia.

Written comments may be submitted until September 13, 1991.

Contact: Bill Edwards, Policy Analyst, Department of Mines, Minerals and Energy, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-0330 or toll-free 1-800-552-3831.

BOARD OF NURSING

Special Conference Committee

August 26, 1991 - 8:30 a.m. – Open Meeting
Department of Health Professions, Conference Room 3, 1601 Rolling Hills Drive, Richmond, Virginia. ☒
(Interpreter for deaf provided upon request)

A Special Conference Committee, comprised of three members of the Virginia Board of Nursing, will conduct informal conferences with licensees to determine what, if any, action should be recommended to the Board of Nursing.

Public comment will not be received.

Contact: Corinne F. Dorsey, R.N. Executive Director, 1601 Rolling Hills Drive, Richmond, Virginia 23229, telephone (804) 662-9909, toll-free 1-800-533-1560 or (804) 662-7197/TDD ☒

BOARD OF NURSING HOME ADMINISTRATORS

September 4, 1991 - 8:30 a.m. – Open Meeting
1601 Rolling Hills Drive, Richmond, Virginia.

The Informal Conference Committee will be hearing informal conferences.

September 5, 1991 - 8:30 a.m. – Open Meeting
1601 Rolling Hills Drive, Richmond, Virginia.

A regularly scheduled board meeting.

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Contact: Meredyth P. Partridge, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-7390.

VIRGINIA OUTDOORS FOUNDATION

August 26, 1991 - 10:30 a.m. - Open Meeting
House Room 4, State Capitol, Richmond, Virginia. ☐

A general Business meeting.

Contact: Tyson B. Van Auken, Executive Director, 221 Governor Street, Richmond, VA 23219, telephone (804) 786-5539.

REAL ESTATE APPRAISER BOARD

September 17, 1991 - 11 a.m. - Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia.

A board meeting to adopt proposed regulations.

Contact: Demetra Y. Kontos, Assistant Director, Department of Commerce, Services, 3600 West Broad Street, Richmond, Virginia 23230, telephone (804) 367-2175.

* * * * *

September 16, 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 Real Estate Appraiser Board intends to adopt regulations entitled: **VR 583-01-01. Real Estate Appraiser Board Public Participation Guidelines.** The proposed regulation outlines the procedures for solicitation of input from interested parties in the formation and development of Appraiser Board Regulations.

Statutory Authority: § 54.1-2013 of the Code of Virginia.

Written comments may be submitted until September 16, 1991.

Contact: Demetra Y. Kontos, Assistant Director, Real Estate Appraiser Board, Department of Commerce, 3600 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 367-2175.

REAL ESTATE BOARD

August 28, 1991 - 10 a.m. - Open Meeting
Tysons Corner Marriott, 8028 Leesburg Pike, Vienna, Virginia.

The board will meet to conduct a formal hearing: File

Number 90-01807, Real Estate Board v. Becker, Harriet J.

† September 5, 1991 - 10 a.m. - Open Meeting
Virginia Department of Alcoholic Beverage Control, 501 Montgomery Street, Alexandria, Virginia.

The board will meet to conduct a formal hearing: File Number 90-01501, Real Estate Board v. Duke, John V.

Contact: Gayle Eubank, Hearings Coordinator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8524.

STATE SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

† August 28, 1991 - 10 a.m. - Open Meeting
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

The board shall hear all administrative appeals of denials on on-site sewage disposal system permits and render its decision on any such appeal, which the decision shall be the final administrative decision.

Contact: Mrs. Deborah G. Pegram, Division of Sanitarian Services, Main Street Station, Suite 109-32, Richmond, VA 23219, telephone (804) 786-3559.

DEPARTMENT OF SOCIAL SERVICES (BOARD OF) AND CHILD DAY-CARE COUNCIL

September 16, 1991 - 3:30 p.m. - Public Hearing
Roanoke Municipal Building, Council Chambers, 4th Floor, 215 Church Avenue, S.W., Roanoke, Virginia.

September 17, 1991 - 3 p.m. - Public Hearing
Washington Gas and Light Company, Auditorium, 6801 Industrial Road, Springfield, Virginia.

September 19, 1991 - 3 p.m. - Public Hearing
Williamsburg Regional Library, Arts Center Theatre, 515 Scotland Street, Williamsburg, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Social Services and Child Day-Care Council intend to amend regulations entitled: **VR 615-30-01 and 175-03-01. General Procedures and Information for Licensure.** The regulations are being revised to incorporate new legislation and to simplify and clarify licensing procedures.

Statutory Authority: §§ 63.1-174 and 63.1-202 of the Code of Virginia.

Written comments may be submitted until October 12, 1991.

Contact: Peggy Friedenber, Legislative Analyst, Office of Governmental Affairs, Department of Social Services, 8007 Discovery Drive, Richmond, VA 23229-8699, telephone (804) 662-9217.

BOARD OF SOCIAL WORK

September 20, 1991 - 9 a.m. – Open Meeting
September 21, 1991 - 9 a.m. – Open Meeting
1601 Rolling Hills Drive, Suite 200, Richmond, Virginia. ☒

A meeting to (i) conduct general board business; (ii) review and plan for the board for the next year; (iii) review long-range goals of the board; and (iv) respond to correspondence. No public comment will be received.

Contact: Evelyn B. Brown, Executive Director, 1601 Rolling Hills Drive, Suite 200, Richmond, VA 23229, telephone (804) 662-9914.

VIRGINIA'S TRANSITION TASK FORCE

† **September 19, 1991 - 10 a.m. – Open Meeting**
Virginia Department of Rehabilitative Services, 4901 Fitzhugh Avenue, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

Virginia's Transition Task Force, comprised of representatives of 12 state agencies and the community, will meet to discuss and develop strategies to coordinate and implement transition services for youth with disabilities across the Commonwealth of Virginia. The general business meeting begins at 10 a.m. A period for public comment, oral or written, is provided from 11:30 a.m. until 12:30 p.m.

Contact: Dr. Sharon deFur, Associate Specialist/Transition, P. O. Box 6Q, Monroe Building, 23rd Floor, Richmond, VA 23219, telephone (804) 225-3242 or 1-800-422-1098/TDD ☎

COMMONWEALTH TRANSPORTATION BOARD

September 18, 1991 - 2 p.m. – Open Meeting
Virginia Department of Transportation, 1401 East Broad Street, Board Room, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

A joint work session of the Commonwealth Transportation Board and the Department of Transportation staff.

September 19, 1991 - 10 a.m. – Open Meeting
Virginia Department of Transportation, 1401 East Broad Street, Board Room, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

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: John G. Milliken, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-6670.

TRANSPORTATION SAFETY BOARD

September 26, 1991 - 10 a.m. – Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia. ☒

A meeting to discuss several topics which pertain to transportation safety to include approval of FY92-402 Grant applications.

Contact: William H. Leighty, Deputy Commissioner for Transportation Safety, Department of Motor Vehicles, 2300 W. Broad St., Richmond, VA 23219-0001, telephone (804) 367-6614 or (804) 367-1752/TDD ☎

COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

† **September 11, 1991 - 1 p.m. – Open Meeting**
† **September 12, 1991 - 9 a.m. – Open Meeting**
Omni-Charlottesville, Charlottesville, Virginia.

A regularly scheduled meeting.

Contact: William T. McCollum, Executive Director, Commission on VASAP, telephone (804) 786-5895.

DEPARTMENT FOR THE VISUALLY HANDICAPPED

Advisory Committee on Services

† **October 19, 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 services for blind and visually impaired citizens of the Commonwealth.

Contact: Barbara G. Tyson, Executive Secretary, 397

Calendar of Events

Azalea Avenue, Richmond, Virginia 23227, telephone (804) 371-2155 or (804) 371-3140/TDD ☎

VIRGINIA VOLUNTARY FORMULARY BOARD

August 29, 1991 - 10 a.m. – Public Hearing
109 Governor Street, Main Floor Conference Room,
Richmond, Virginia.

The Virginia Voluntary Formulary Board will hold a public hearing on this date. The purpose of this hearing is 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 February 15, 1991 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 August 29, 1991 will be made a part of the hearing record.

September 19, 1991 - 10:30 a.m. – Open Meeting
109 Governor Street, Main Floor Conference Room,
Richmond, Virginia.

A meeting to consider public hearing comments and review new products pertaining to the Virginia Voluntary Formulary.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, 109 Governor Street, Room B1-9, Richmond, VA 23219, telephone (804) 786-4326 or SCATS (804) 786-3596.

DEPARTMENT OF WASTE MANAGEMENT (VIRGINIA WASTE MANAGEMENT BOARD)

August 28, 1991 - 7 p.m. – Open Meeting
The Board Room of the School Administration Building,
Washington Street, Amherst, Virginia.

Pursuant to the requirements of Part VII of the Virginia Solid Waste Management Regulations (Permitting of Solid Waste Management Facilities), the draft Solid Waste Disposal Facility Permit for the development of an industrial landfill, proposed by Virginia Fibre Corporation, is available for public review and comment. The permit allows the proposed facility to accept only authorized, nonhazardous waste which result from the operations of Virginia Fibre Corporation. The proposal incorporates design elements for a synthetic cap, and synthetic drainage layers for the cap and side slopes of the base liner, which are not provided for in the regulations. Virginia Fibre petitioned for these features pursuant to the

requirements of Part IX of the regulations (Rulemaking Petitions and Procedures), and the Department of Waste Management has granted tentative approval.

September 12, 1991 - 7 p.m. – Open Meeting
Operations Building, Municipal Center, Room 330, Virginia Beach, Virginia.

Pursuant to the requirements of Part VII of the Virginia Solid Waste Management Regulations (Permitting of Solid Waste Management Facilities), the draft permit for the development of a solid waste transfer station, proposed by Southeastern Public Service Authority (SPSA), is available for public review and comment. The permit allows SPSA to store or collect at the proposed facility authorized, nonhazardous solid waste collected from its service area for transportation to a permitted solid waste disposal facility. This transfer station is one of several components of SPSA's Regional Solid Waste and Resources Recovery Project currently serving the communities of Chesapeake, Franklin, Isle of Wright, Norfolk, Portsmouth, Southampton, Suffolk, and Virginia Beach.

Contact: E. D. Gillispie, Environmental Engineering Consultant, Department of Waste Management, 11th Floor, Monroe Building, 101 N. 14th Street, Richmond, VA 23219, telephone (804) 371-0514.

* * * * *

September 16, 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 Virginia Waste Management Board intends to adopt regulations entitled: **VR 672-20-32. Yard Waste Composting Facility Regulation.** This regulation provides for certain exemptions from the permitting requirements for solid waste management facilities contained in Part VII of the "Virginia Solid Waste Management Regulations" (VR 672-20-10) and certain substantive facility standards contained in § 6.1 of the same regulations.

Statutory Authority: §§ 10.1-1402 and 10.1-1408.1 of the Code of Virginia.

Contact: Michael P. Murphy, Environmental Program Manager, Department of Waste Management, 11th Floor, 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-0044/TDD ☎ or toll-free 1-800-533-7488

STATE WATER CONTROL BOARD

September 4, 1991 - 7 p.m. – Public Hearing
James City County Board of Supervisors Room, Building C,

Calendar of Events

101C Mounts Bay Road, Williamsburg, Virginia.

September 9, 1991 - 7 p.m. – Public Hearing
Prince William County Board Room, I County Complex,
McCourt Building, 4850 Davis Ford Road, Prince William,
Virginia.

September 11, 1991 - 7 p.m. – Public Hearing
Roanoke County Administration Center Community Room,
3738 Brambleton Avenue, S.W., Roanoke, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-14-07. Oil Discharge Contingency Plans and Administrative Fees for Approval.** The purpose of this proposal is to establish requirements for facility and tank vessel contingency plans and fees for approval of contingency plans.

Statutory Authority: §§ 62.1-44.34:15 and 62.1-44.34:21 of the Code of Virginia.

Written comments may be submitted until 4 p.m., September 30, 1991, to Doneva Dalton, Hearing Reporter, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Mr. David Ormes, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230, telephone (804) 527-5197.

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September 4, 1991 - 7 p.m. – Public Hearing
James City County Board of Supervisors Room, Building C,
101C Mounts Bay Road, Williamsburg, Virginia.

September 9, 1991 - 7 p.m. – Public Hearing
Prince William County Board Room, I County Complex,
McCourt Building, 4850 Davis Ford Road, Prince William,
Virginia.

September 11, 1991 - 7 p.m. – Public Hearing
Roanoke County Administration Center Community Room,
3738 Brambleton Avenue, S.W., Roanoke, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-14-08. Tank Vessel Financial Responsibility Requirements and Administrative Fees for Approval.** The purpose of this proposal is to establish requirements for financial responsibility on the part of operators of tank vessel's transporting or transferring oil upon state waters and fees for approval.

Statutory Authority: §§ 62.1-44.34:16 and 62.1-44.34:21 of the Code of Virginia.

Written comments may be submitted until 4 p.m.,

September 30, 1991, to Doneva Dalton, Hearing Reporter, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Mr. David Ormes, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230, telephone (804) 527-5197.

* * * * *

September 30, 1991 - 7 p.m. – Public Hearing
York County General District Courtroom, Alexander
Hamilton Boulevard, Courts and Office Center, Second
Floor, Yorktown, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled: **VR 680-16-05. York River Basin Water Quality Management Plan.** The purpose of the proposed amendment is to remove the waste load allocations in stream segment 8-12 for American Oil, York and James Sanitary District #1, and York Regional wastewater treatment plants.

Statutory Authority: §§ 62.1-44.15(3a), 62.1-44.15(10), and 62.1-44.15(13) of the Code of Virginia.

Written comments may be submitted until 4 p.m., October 18, 1991, to Doneva Dalton, Tidewater Regional Office, State Water Control Board, 287 Pembroke Office Park, Suite 310, Pembroke II, Virginia Beach, Virginia 23462.

Contact: Robert F. Jackson, Jr., Tidewater Regional Office, State Water Control Board, 287 Pembroke Office Park, Suite 310, Pembroke II, Virginia Beach, Virginia 23462, telephone (804) 552-1840.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

September 26, 1991 - 10 a.m. – Public Hearing
Department of Commerce, 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 Board for Waterworks and Wastewater Works Operators intends to amend regulations entitled: **VR 675-01-03. Board for Waterworks and Wastewater Works Operators Regulations.** The proposed amendments clarify, reorganize the requirements for education and operator experience and establish criteria for approval of specialized training courses.

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

Written comments may be submitted until October 15, 1991.

Calendar of Events

Contact: Mr. Geralde W. Morgan, Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.



STATE BOARD OF YOUTH AND FAMILY SERVICES

August 26, 1991 - 10 a.m. - Open Meeting
Virginia Beach Resort Hotel and Conference Center, 2800 Shore Drive, Virginia Beach, Virginia.

A general business meeting.

Contact: Paul Steiner, Policy Coordinator, Department of Youth and Family Services, 700 Centre, 4th Floor, 7th & Franklin Sts., Richmond, VA 23219, telephone (804) 371-0692.

LEGISLATIVE

JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION

Subcommittee Studying the Administrative Process Act

September 9, 1991 - 2 p.m. - Public Hearing
General Assembly Building, Senate Room A, Capitol Square, Richmond, Virginia.

The mandate for the JLARC study of the Administrative Process Act, HJR 397, raises the following issues:

- the efficiency and effectiveness of the Act,
- business community concerns about the implementation of the provisions of the Act by members of boards or commissions and their administrative staffs, and the economic impact of regulations upon business,
- the meaningfulness of public participation under the Act.

In an effort to clarify the nature and substance of these issues, a subcommittee of the Joint Legislative Audit and Review Commission will hold a public hearing on the Administrative Process Act in Richmond, on September 9, 1991, at 2 p.m. in Senate Room A of the General Assembly Building. All interested persons are invited to attend the public hearing and to submit written and oral remarks

regarding their experiences and concerns with the Administrative Process Act. Information received during the public hearing will be used by JLARC staff throughout its review of the Administrative Process Act.

For more information or to register in advance, please call Stephen Fox at (804) 786-1258.

Contact: Stephen Fox, telephone (804) 786-1258.

JOINT SUBCOMMITTEE STUDYING COMPARATIVE PRICE ADVERTISING

† **September 19, 1991 - 10 a.m. - Open Meeting**
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

The joint subcommittee will meet for the purpose of developing legislation. (HJR 337)

† **October 16, 1991 - 10 a.m. - Public Hearing**
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

Joint subcommittee will receive public comments regarding proposed legislation. (HJR 337)

Contact: Mary Geisen, Research Associate, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING PROPOSED LEGISLATION RELATING TO COVERS ON COAL-CARRYING RAILROAD CARS

† **September 4, 1991 - 10 a.m. - Open Meeting**
General Assembly Building, Senate Room A, 910 Capitol Street, Richmond, Virginia.

An open meeting. (SB566/HB1163)

Contact: Thomas C. Gilman, Senate of Virginia, P. O. Box 396, Richmond, Virginia 23203, telephone (804) 786-3838 or Mark C. Pratt, Research Associate, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING THE ENVIRONMENTAL IMPACT OF OIL AND GAS DRILLING UNDER THE CHESAPEAKE BAY

September 19, 1991 - 2 p.m. - Open Meeting
General Assembly Building, Sixth Floor Conference Room, 910 Capitol Street, Richmond, Virginia. ☐

The joint subcommittee will meet for additional study of the environmental impact of oil and gas drilling.

under the Chesapeake Bay. (HJR 251)

Contact: Deanna Sampson, Staff Attorney, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

COMMISSION STUDYING THE MEASURES NECESSARY TO ASSURE VIRGINIA'S ECONOMIC RECOVERY

† **September 16, 1991 - 2:30 p.m.** – Open Meeting
Christopher Newport College, Room 150, Campus Center, Newport News, Virginia.

The main focus of the meeting will be workforce skills and export issues. (HJR 433)

† **October 2, 1991 - 9 a.m.** – Open Meeting
Martha Washington Inn, Ballroom, Abingdon, Virginia.

The main focus of the meeting will be government as catalyst and regulatory climate issues. (HJR 433)

† **October 30, 1991 - 10 a.m.** – Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

Issues concerning innovation will be discussed in addition to public hearing on the commission's report. (HJR 433)

Contact: John MacConnell, Staff Attorney, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING SOCIAL SERVICE DELIVERY SYSTEMS

† **August 29, 1991 - 10 a.m.** – Open Meeting
General Assembly Building, Senate Room B, 910 Capitol Street, Richmond, Virginia.

A meeting of the Joint Legislative Subcommittee Studying the Need for Restructuring the Commonwealth's Local Social Service Delivery Systems. (SJR 213/HJR 3147)

Contact: Thomas C. Gilman, Senate of Virginia, P. O. Box 396, Richmond, Virginia 23203, telephone (804) 786-3838 or Jessica Bolecek, Staff Attorney, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

SUBCOMMITTEE STUDYING THE REGULATION OF UNDERGROUND INJECTION WELLS IN THE COMMONWEALTH

September 5, 1991 - 7:30 p.m. – Public Hearing
Circuit Courtroom, Dickenson County Courthouse, Main

Street, Clintwood, Virginia.

The subcommittee will hold a public hearing concerning the regulation of underground injection wells in the Commonwealth. (HJR 310)

Contact: John Heard, Staff Attorney, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING UNEMPLOYMENT COMPENSATION

† **September 5, 1991 - 10 a.m.** – Open Meeting
General Assembly Building, Senate Room A, 910 Capitol Street, Richmond, Virginia.

An open meeting.

Contact: Thomas C. Gilman, Senate of Virginia, P. O. Box 396, Richmond, Virginia 23203, telephone (804) 786-3838 or Mark Pratt, Research Associate, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

VIRGINIA CODE COMMISSION

September 4, 1991 - 8:45 a.m. – Open Meeting
September 5, 1991 - 8:45 a.m. – Open Meeting
The Tides Inn, Irvington, Virginia.

The Commission will begin its work on the revision of Title 28.1 (Fish, Oysters, Shellfish, etc.) and conduct general business.

Contact: Joan W. Smith, Virginia Code Commission, General Assembly Building, 910 Capitol Street, Richmond, VA 23219, telephone (804) 786-3591.

YOUTH SERVICES COMMISSION

September 13, 1991 - 10 a.m. – Open Meeting
General Assembly Building, 5th Floor West Conference Room, Richmond, Virginia. ☐

General commission meeting.

Contact: Mary Simmons, Youth Services Commission, General Assembly Building, 910 Capitol St., Suite 517B, Richmond, VA 23219, telephone (804) 371-2481.

CHRONOLOGICAL LIST

OPEN MEETINGS

August 26
Agricultural Council, Virginia

Calendar of Events

† Chesapeake Bay Local Assistance Board
- Central Area Review Committee
Lottery Board, State
Nursing, Board of
- Special Conference Committee
Outdoors Foundation, Virginia
Youth and Family Services, State Board of

August 27

† Funeral Directors and Embalmers, Board of
Health Services Cost Review Council, Virginia
Marine Resources Commission
Medicare and Medicare, Governor's Advisory Board on

August 28

† Chesapeake Bay Local Assistance Board
- Northern Area Review Committee
Compensation Board
† Contractors, Board for
- Regulatory and Statutory Review Committee
Migrant and Seasonal Farmworkers Board
Real Estate Board
† Sewage Handling and Disposal Appeals Review
Board, State
Waste Management, Department of

August 29

† Chesapeake Bay Local Assistance Board
- Southern Area Review Committee
Game and Inland Fisheries, Board of
† Social Services Delivery Systems, Joint Subcommittee
Studying

August 30

† Chesapeake Bay Local Assistance Board
- Southern Area Review Committee
Game and Inland Fisheries, Board of

September 3

Higher Education for Virginia, State Council of
† Marine Products Board, Virginia
Hopewell Industrial Safety Council

September 4

† Alcoholic Beverage Control Board
† Chesapeake Bay Local Assistance Board
- Southern Area Review Committee
Child Mental Health, Interagency Consortium on
Code Commission, Virginia
† Covers on Coal-Carrying Railroad Cars, Joint
Subcommittee Studying Proposed Legislation Relating
to
Higher Education for Virginia, State Council of
Nursing Home Administrators, Board of

September 5

Code Commission, Virginia
Community Corrections Resources Board, Middle
Virginia Board of Directors and the Middle Virginia
Emergency Planning Committee, Local - Chesterfield
County

† Health Professions, Department of
- Task Force on the Need for Medication
Technicians
† Longwood College
- Executive Committee
Nursing Home Administrators, Board of
† Real Estate Board
† Unemployment Compensation, Joint Subcommittee
Studying

September 6

Medicine, Board of
- Advisory Board on Physical Therapy
† Mental Health, Mental Retardation and Substance
Abuse Services, Department of
- Joint Board Liaison Committee

September 7

Military Institute, Virginia
- Board of Visitors

September 9

† ASAP Policy Board - Valley
† Air Pollution, State Advisory Board on
† Chesapeake Bay Local Assistance Board
- Central Area Review Committee
Land Evaluation Advisory Council, State

September 10

† Emergency Planning Committee, Local - County of
Montgomery/Town of Blacksburg
† Library Board

September 11

† Chesapeake Bay Local Assistance Board
- Northern Area Review Committee
† Community Colleges, State Board for
Corrections, Board of
Emergency Response Council, Virginia
Historic Preservation Foundation, Virginia
† Interagency Coordinating Council on Early
Intervention, Virginia
† Virginia Alcohol Safety Action Program, Commission
on the

September 12

† Agriculture and Consumer Services, Department of
- Pesticide Control Board
Architects, Professional Engineers, Land Surveyors and
Landscape Architects, Board for
† Chesapeake Bay Commission
† Community Colleges, State Board for
Corrections, Board of
- Liaison Committee
† Virginia Alcohol Safety Action Program, Commission
on the
Waste Management, Department of

September 13

† Agriculture and Consumer Services, Department of
- Pesticide Control Board

Calendar of Events

† Chesapeake Bay Commission
† Information Management, Council on
Medicine, Board of
- Advisory Committee on Optometry
Youth Services Commission

September 16

† Alcoholic Beverage Control Board
Emergency Planning Committee, Local - County of
Prince William, City of Manassas, and City of
Manassas Park
† Measures Necessary to Assure Virginia's Economic
Recovery, Commission Studying the

September 17

† Health, State Board of
Real Estate Appraiser Board

September 18

† Chesapeake Bay Local Assistance Board
- Southern Area Review Committee
Conservation and Development of Public Beaches,
Board on
Conservation and Recreation, Department of
- Virginia Soil and Water Conservation Board
† Health, State Board of
Transportation Board, Commonwealth

September 19

† Comparative Price Advertising, Joint Subcommittee
Studying
Oil and Gas Drilling Under the Chesapeake Bay, Joint
Subcommittee Studying the Environmental Impact of
† Transition Task Force, Virginia's
Transportation Board, Commonwealth
Voluntary Formulary Board, Virginia

September 20

† Conservation and Recreations, Department of
- Falls of the James Scenic River Advisory Board
Social Work, Board of

September 21

Social Work, Board of

September 23

† Chesapeake Bay Local Assistance Board
- Central Area Review Committee
† Lottery Board, State

September 24

† Health Services Cost Review Council, Virginia

September 25

† Chesapeake Bay Local Assistance Board
- Northern Area Review Committee
Education, Board of
† Hazardous Materials Training Committee

September 26

Aging, Department for the

- Long-Term Care Ombudman Program Advisory
Council
Compensation Board
Education, Board of
Transportation Safety Board

September 30

† Alcoholic Beverage Control Board

October 2

† Measures Necessary to Assure Virginia's Economic
Recovery, Commission Studying the

October 3

Emergency Planning Committee, Local - Chesterfield
County
Community Corrections Resources Board, Middle
Virginia Board of Directors and the Middle Virginia

October 9

† Alcoholic Beverage Control Board

October 10

† Chesapeake Bay Local Assistance Board

October 19

† Visually Handicapped, Department for the
- Advisory Committee on Services

October 24

† Audiology and Speech Pathology, Board of

October 28

† Alcoholic Beverage Control Board

October 30

Education, Board of

October 31

Education, Board of

PUBLIC HEARINGS

August 26

† Fire Services Board, Virginia

August 28

† Fire Services Board, Virginia

August 29

† Fire Services Board, Virginia
Voluntary Formulary Board, Virginia

September 4

Environment, Council on the
Water Control Board, State

September 5

Calendar of Events

Environment, Council on the
Underground Injection Wells in the Commonwealth,
Subcommittee Studying the Regulation of

September 9

Administrative Process Act, Joint Legislative Audit and
Review Commission (JLARC) to Study the
Housing and Community Development, Department of
Water Control Board, State

September 10

Housing and Community Development, Department of

September 11

Housing and Community Development, Department of
Water Control Board, State

September 12

Housing and Community Development, Department of

September 13

Housing and Community Development, Department of
Mines, Minerals and Energy, Department of

September 16

Child Day-Care Council
Social Services and Child Day-Care Council,
Department of

September 17

Child Day-Care Council
Social Services and Child Day-Care Council,
Department of

September 19

Child Day-Care Council
Social Services and Child Day-Care Council,
Department of

September 23

† Fire Services Board, Virginia

September 25

† Fire Services Board, Virginia

September 26

† Fire Services Board, Virginia
Waterworks and Wastewater Works Operators, Board
for

September 30

Water Control Board, State

October 2

Criminal Justice Services Board

October 16

† Comparative Price Advertising, Joint Subcommittee
Studying

October 28

† Measures Necessary to Assure Virginia's Economic
Recovery, Commission Studying the

October 30

† Alcoholic Beverage Control Board

January 14, 1992

† Labor and Industry, Department of