

3VAC5-10-40. Communications.

Communications regarding hearings before hearing officers upon licenses and applications for licenses should be addressed to the Chief Hearing Officer, ~~Administrative Hearings Section~~ Hearings and Appeals Division.

3VAC5-10-50. Complaints.

The board, in its discretion and for good cause shown, may arrange a hearing upon the complaint of any aggrieved party(s) against the continuation of a license. The complaint shall be in writing directed to the Director, ~~Division of Enforcement and Regulation~~ Bureau of Law Enforcement Operations, 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.

3VAC5-10-60. Continuances.

Motions to continue a hearing will be granted as in actions at law. Requests for continuances should be addressed to the Chief Hearing Officer, ~~Administrative Hearings Section~~ Hearings and Appeals Division, or the hearing officer who will preside over the hearing.

3VAC5-10-130. Motions or requests.

Motions or requests for ruling made prior to the hearing before a hearing officer shall be in writing, addressed to the Chief Hearing Officer, ~~Administrative Hearings Section~~ Hearings and Appeals Division, 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.

3VAC5-10-150. 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 shall 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 3VAC5-10-160 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.

3VAC5-10-230. Agency representation.

The ~~deputy department director for regulation~~ Director, Bureau of Law Enforcement Operations or his designee may (i) represent the ~~Division of Enforcement and Regulation~~ Bureau of Law Enforcement Operations before the board or any hearing officer; (ii) petition the board for modification of the hearing officer's decision; or (iii) request a ruling on other motions as may be necessary. This authority does not extend to complaints under the Franchise Acts.

3VAC5-10-360. Complaints.

Complaints shall be referred in writing to the secretary to the board. ~~The secretary's office, in consultation with the deputy department director for regulation, will determine if reasonable cause exists to believe a violation of the Wine or Beer Franchise Acts, Chapter 4 (§4.1-400 et seq.) or 5 (§4.1-500 et seq.) of Title 4.1 of the Code of Virginia, has occurred, and, if so, a hearing on the complaint will be scheduled in due course. If no reasonable cause is found to~~

~~exist, the complainant will be informed of the reason for that decision and given the opportunity to request a hearing as provided by statute.~~

3VAC5-10-400. Discovery, prehearing procedures and production at hearings; definitions.

~~A. Introduction. The rules in this section~~ Rules of the Supreme Court of Virginia, Part Four, shall apply in all proceedings under the Wine and Beer Franchise Acts, Chapters 4 (§4.1-400 et seq.) and 5 (§4.1-500 et seq.) of Title 4.1 of the Code of Virginia, including arbitration proceedings when necessary pursuant to §§4.1-409 and 4.1-508 of the Code of Virginia. Any references to a "court" contained in the Rules shall be deemed to mean the hearing officer or officers of the board conducting the proceeding.

~~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 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 Part III of this chapter (3VAC5-10-360 et seq.) means the date of the board's notice to the complainant(s) and the~~

~~respondent(s), pursuant to 3VAC5-10-360, 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 §§4.1-401 and 4.1-500, respectively, of the Code of Virginia.~~

~~"Person" means a winery, brewery, importer or wholesaler, as well as those entities designated as "persons," within the meaning of §§4.1-401 and 4.1-500 of the Code of Virginia.~~

~~"Secretary" means the Secretary to the Virginia Alcoholic Beverage Control Board.~~

~~C. General provisions governing discovery.~~

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

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

~~A party may obtain without the required showing a statement concerning the proceeding or its subject matter previously made by that party. For purposes of~~

~~this subdivision, a statement previously made is (i) a written statement signed or otherwise adopted or approved by the person making it, or (ii) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.~~

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

~~(1) (i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at the hearing, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion; (ii) upon motion, the board may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision 2 d (3), 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); and (ii) with respect to discovery obtained under subdivision d(1)(ii) the board may require, and with respect to discovery obtained under subdivision d(2) the board shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.~~

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

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

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

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

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

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

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

~~6. Service under this part. Except for the service of the notice required under subdivision D 1 b of this section, any notice or document required or permitted to be served under this section by one party upon another shall be served as provided in Rule 1:12 of the Rules of the Supreme Court of Virginia. Any notice or document required or permitted to be served under this section by the board upon one or more parties shall be served as provided in 3VAC5-10-70, 3VAC5-10-140, 3VAC5-10-280, 3VAC5-10-320.~~

~~7. Filing. Any request for discovery under this section and the responses thereto, if any, shall be filed with the secretary except as otherwise herein provided.~~

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

~~D. Depositions before proceeding or pending appeal.~~

~~1. Before proceeding.~~

~~a. Petition. A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable before the board under this section may file a verified petition before the board. The petition shall be entitled in the name of the petitioner and shall show: (i) that the petitioner expects to be a party to a proceeding under this part but is presently unable to bring it or cause it to be brought; (ii) the subject matter of the expected action and his interest therein; (iii) the facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it; (iv) the names or a~~

~~description of the persons he expects will be adverse parties and their addresses so far as known; and (v) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.~~

~~b. Notice and service. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the board, at a time and place named therein, for the order described in the petition. At least 21 days before the date of hearing the notice shall be served in the manner provided in 3VAC5-10-140, 3VAC5-10-320; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the board may make such order as is just for service by publication or otherwise.~~

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

~~d. Cost. The cost of such depositions shall be paid by the petitioner, except that the other parties in interest who produce witnesses on their behalf or who make use of witnesses produced by others shall pay their proportionate part of the cost of the transcribed testimony and evidence taken or given on behalf of each of such parties.~~

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

~~f. Use of deposition. If a deposition to perpetuate testimony is taken under these provisions or if, although not so taken, it would be admissible in evidence in the courts of the state in which it is taken, it may be used in any proceeding involving the same subject matter subsequently brought before the board pursuant to Part III (3VAC5-10-360 et seq.) of this chapter in accordance with subsection C.~~

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

~~character provided for by subsection M of this section and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in this section for depositions taken in pending actions.~~

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

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

~~E. Persons before whom depositions may be taken.~~

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

~~2. Within the United States. In any other state of the United States or within any territory or insular possession subject to the dominion of the United States, depositions under this section may be taken before any officer authorized to take depositions in the jurisdiction wherein the witness may be, or before any commissioner appointed by the Governor of this Commonwealth.~~

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

~~4. In foreign countries. In a foreign state or country, depositions under this section shall be taken (i) before any American minister plenipotentiary, charge d'affaires, secretary of embassy or legation, consul general, consul, vice-consul,~~

~~or commercial agent of the United States in a foreign country, or any other representative of the United States therein, including commissioned officers of the armed services of the United States, or (ii) before the mayor, or other magistrate of any city, town or corporation in such country, or any notary therein.~~

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

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

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

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

~~G. Depositions upon oral examination.~~

~~1. When depositions may be taken. Twenty-one days after commencement of the proceeding, any party may take the testimony of any person, including a party, by~~

~~deposition upon oral examination. The attendance of witnesses may be compelled by subpoena. The deposition of a person confined in prison may be taken only by leave of the board upon such terms as the board prescribes, subject to any authorization and limitations that may be imposed by any court within the Commonwealth.~~

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

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

~~b. (Reserved)~~

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

~~d. (Reserved)~~

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

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

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

~~3. Examination and cross-examination; record of examination; oath; objections. Examination and cross-examination of witnesses may proceed as permitted at the hearing. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means authorized by this section. If requested by one of the parties, the testimony shall be transcribed. All objections made at time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall~~

~~be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examinations, parties may serve written questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.~~

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

~~5. Submission to witness; changes; signing. When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition~~

~~shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 21 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under subdivision J 4 d of this section the board holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.~~

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

~~a. The officer shall certify on the deposition that 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 and all parties of such action. Depositions taken pursuant to this subsection G or subsection H shall not be filed with the secretary until the board so directs, either on its own initiative or upon the request of any party prior to or during the hearing.~~

~~Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (i) the person producing the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and (ii) if the person producing~~

~~the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the board, pending final disposition of the case.~~

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

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

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

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

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

~~(Ref: Rule 4:5, Rules of Virginia Supreme Court.)~~

~~H. Deposition upon written questions.~~

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

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

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

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

~~3. Notice of filing. When the deposition is filed, the party taking it shall promptly give notice thereof to all other parties.~~

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

~~I. Limitation on depositions. No party shall take the deposition of more than five witnesses for any purpose without leave of the board for good cause shown.~~

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

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

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

~~a. (Reserved)~~

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

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

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

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

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

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

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

~~interest, all depositions lawfully taken and duly filed in the one action may be used in a proceeding before the board as if originally taken therefor.~~

~~2. Objections to admissibility. Subject to subdivision 4 c, 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. 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 this section are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within five days after service of the last questions authorized.~~

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

5. (Reserved)

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

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

~~K. Audio-visual depositions.~~

~~1. When depositions may be taken by audio-visual means. Any depositions permitted under these rules may be taken by audio-visual means as authorized by and when taken in compliance with law.~~

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

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

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

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

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

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

~~L. Interrogatories to parties.~~

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

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

~~3. Filing. The interrogatories and answers and objections thereto shall not be filed in the office of the secretary unless the board directs their filing on its own initiative or upon the request of any party prior to or during the hearing. For the~~

~~purpose of any consideration of the sufficiency of any answer or any other question concerning the interrogatories, answers or objections, copies of those documents shall be made available to the board by counsel.~~

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

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

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

~~6. Option to produce business records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom~~

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

~~7. Limitation on interrogatories. No party shall serve upon any other party, at any one time or cumulatively, more than 30 written interrogatories, including all parts and subparts without leave of the board for good cause shown.~~

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

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

~~1. Scope. Any party may serve on any other party a request (i) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phone records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, any tangible things which constitute or contain matters within the scope of subdivision 2 of subsection C and which are in the possession, custody, or control of the party upon whom the request is served; or (ii) to produce any such documents to~~

~~the board at the time of the hearing; or (iii) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection, surveying, and photographing the property or any designated object or operation thereon, within the scope of subdivision C 2 of this section.~~

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

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

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

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

~~3. Production by a person not a party. Upon written 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, issue a person not a party therein a subpoena which shall command the person to whom it is directed, or someone acting on his behalf, to produce the documents and tangible things (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form) designated and described in said request, and to permit the party filing such request, or someone acting in his behalf, to inspect and copy any tangible things which constitute or contain matters within the scope of subdivision C 2 which are in the possession, custody or control of such person to whom the subpoena is directed, at a time and place and for the period specified in the subpoena; but, the board, upon written motion promptly made by the person so required to produce, or by the party against whom such production is sought, may (i) quash or modify the subpoena if it is unreasonable and oppressive or (ii) condition~~

~~denial of the motion to quash or modify upon the advancement by the party in whose behalf the subpoena is issued of the reasonable cost of producing the documents and tangible things so designated and described.~~

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

~~4. Certain officials. No request to produce made pursuant to subdivision 2 shall be served, and no subpoena provided for in subdivision 3 shall issue, until prior order of the board is obtained when the party upon whom the request is to be served or the person to whom the subpoena is to be directed is the Governor, Lieutenant Governor, or Attorney General of this Commonwealth, or a judge of any court thereof; the President or Vice President of the United States; any member of the President's Cabinet; any ambassador or consul; or any military officer on active duty holding the rank of admiral or general.~~

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

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

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

N. Requests for admission.

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

Each matter of which an admission is requested shall be separately set forth.

The matter is admitted unless, within 21 days after service of the request, or within such shorter or longer time as the board may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has

~~made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for hearing may not, on that ground alone, object to the request; he may, subject to the provisions of subdivision O 3, deny the matter or set forth reasons why he cannot admit or deny it.~~

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

~~2. Effect of admission. Any matter admitted under this rule is conclusively established unless the board on motion permits withdrawal or amendment of the admission. Subject to 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 section shall constitute ground for action by the board under §4.1-225-1 c of the Code of Virginia.~~

~~b. Sanctions by the board. If a party or an officer, director, or managing agent of a party or a person designated under subdivision 2 f of subsection G or subdivision 1 of subsection H to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision 1, 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; and~~

~~(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). In lieu of any order or in addition thereto, if the board finds that a party in bad faith failed to act, the board shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the~~

~~board finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.~~

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

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

~~P. Prehearing procedure; formulating issues.~~

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

~~a. A determination or clarification of the issues;~~

~~b. A plan and schedule of discovery;~~

~~c. Any limitations on the scope and methods of discovery, including deadlines for the completions of discovery;~~

~~d. The necessity or desirability of amendments to the pleadings;~~

~~e. The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, as well as obtaining stipulations as to the evidence;~~

~~f. The limitation of the number of expert witnesses;~~

~~g. The possibility of filing bills of particulars and grounds of defense by the respective parties; and~~

~~h. Such other matters as may aid in the disposition of the action.~~

~~2. The hearing officer(s) or the board shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, the~~

~~agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the hearing to prevent manifest injustice.~~

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

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

~~R. Interlocutory appeals to the board. If any party to a proceeding under 3VAC5-10-360 et seq. 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 3VAC5-10-240.~~

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

3VAC5-10-480. Public participation guidelines in regulation development; applicability; initiation of rulemaking; rulemaking procedures.

A. Applicability. These guidelines shall apply to all regulations subject to the Administrative Process Act which are administered by the Department of Alcoholic Beverage Control, except as provided in subsection G of this section.

B. Initiation of rulemaking (Step 1). The board shall publish notice of the commencement or initiation of any rulemaking process. Rulemaking procedures may be initiated at any time by the board ~~but shall be initiated at least once each calendar year~~. At the commencement of any rulemaking process, the board may invite proposals for regulations or regulation changes from any interested person or may limit the process to selected proposals. All initial proposals to be considered shall be in the form of a written petition for the adoption, amendment or repeal of any regulation. Petitions shall be filed with the board within any time limitation as may be specified by the board. A petition may be submitted at any time, by any person, but it shall be at the board's discretion to initiate rulemaking procedures as a result of such petition or petitions. All petitions shall be considered and responded to within 180 days. Each petition shall contain the following information, if available:

1. Name of petitioner;
2. Petitioner's mailing address and telephone number;
3. General description of proposal, with recommendations for adoption, amendment or repeal of specific regulation(s);
4. Why is change needed? What problem is it meant to address?;
5. What is the anticipated effect of not making the change?;
6. Estimated costs or savings, or both, to regulated entities, the public, or others incurred by this change as compared to current regulations;
7. Who is affected by recommended change? How affected?;
8. Draft language; and

9. Supporting documents.

C. Notices - in general.

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

2. Notice to listed persons. Each person on the general mailing list shall be sent, by U.S. mail or electronic mail using the Agency Mailing List feature of the Virginia Regulatory Town Hall, a copy of all notices pertaining to rulemaking for the board as are published in the Virginia Register. In lieu of such copy, the board may notify those on the mailing list of the publication of the notice and, if lengthy, offer to forward a copy upon payment of reasonable costs for copying and mailing.

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

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

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

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

- a. Publication in The Virginia Register of Regulations;
- b. Distribution by mail or electronic 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; and
- d. Posting on the Virginia Regulatory Town Hall.

3. The board may form an ad hoc advisory panel or consult with groups and individuals who have expressed an interest in participating in the development of specific rules and regulations to consider regulation proposals, to make recommendations, assist in development of draft language, and provide such advice as the board may request. The board may request the panel or interested groups and individuals to participate in a meeting to develop or consider regulation proposals.

The board's use of ad hoc advisory panels or consultation with interested groups and individuals shall be based on, but not limited to, the following criteria: The proposed regulation's:

- a. Complexity;
- b. Controversy;
- c. Degree of substantive change;
- d. Impact on the board, its licensees, and the public; or
- e. Enactment required by state or federal mandate.

4. The board may conduct a regulation development public meeting to receive views and comments and answer questions of the public.

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

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

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

F. Public hearing (Step 4).

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

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