



Virginia Register of Regulations

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THE VIRGINIA REGISTER INFORMATION PAGE

THE VIRGINIA REGISTER OF REGULATIONS is an official state publication issued every other week throughout the year. Indexes are published quarterly, and are cumulative for the year. The *Virginia Register* has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in the *Virginia Register*. In addition, the *Virginia Register* is a source of other information about state government, including petitions for rulemaking, emergency regulations, executive orders issued by the Governor, the Virginia Tax Bulletin issued periodically by the Department of Taxation, and notices of 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 intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

Following publication of the proposal in the *Virginia Register*, the promulgating agency receives public comments for a minimum of 60 days. The Governor reviews the proposed regulation to determine if it is necessary to protect the public health, safety and welfare, and if it is clearly written and easily understandable. If the Governor chooses to comment on the proposed regulation, his comments must be transmitted to the agency and the Registrar no later than 15 days following the completion of the 60-day public comment period. The Governor's comments, if any, will be published in the *Virginia Register*. Not less than 15 days following the completion of the 60-day public comment period, the agency may adopt the proposed regulation.

The Joint Commission on Administrative Rules (JCAR) or the appropriate standing committee of each house of the General Assembly may meet during the promulgation or final adoption process and file an objection with the Registrar and the promulgating agency. The objection will be published in the *Virginia Register*. Within 21 days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative body, and the Governor.

When final action is taken, the agency again publishes the text of the regulation as adopted, highlighting all changes made to the proposed regulation and explaining any substantial changes made since publication of the proposal. A 30-day final adoption period begins upon final publication in the *Virginia Register*.

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate legislative body and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*. If the Governor finds that changes made to the proposed regulation have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*.

The agency shall suspend the regulatory process for 30 days when it receives requests from 25 or more individuals to solicit additional public comment, unless the agency determines that the changes have minor or inconsequential impact.

A regulation becomes effective at the conclusion of the 30-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 21-day objection period; (ii) the Governor exercises his authority to require the agency to

provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

Proposed regulatory action may be withdrawn by the promulgating agency at any time before the regulation becomes final.

FAST-TRACK RULEMAKING PROCESS

Section 2.2-4012.1 of the Code of Virginia provides an exemption from certain provisions of the Administrative Process Act for agency regulations deemed by the Governor to be noncontroversial. To use this process, Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations will become effective on the date noted in the regulatory action if no objections to using the process are filed in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. 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 to no more than 12 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not 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 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 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. **23:7 VA.R. 1023-1140 December 11, 2006**, refers to Volume 23, Issue 7, pages 1023 through 1140 of the *Virginia Register* issued on December 11, 2006.

The Virginia Register of Regulations is published pursuant to Article 6 (§ 2.2-4031 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia.

Members of the Virginia Code Commission: **R. Steven Landes**, Chairman; **John S. Edwards**, Vice Chairman; **Ryan T. McDougle**; **William R. Janis**; **Robert L. Calhoun**; **Frank S. Ferguson**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **James F. Almand**; **Jane M. Roush**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **June T. Chandler**, Assistant Registrar.

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the *Register's* Internet home page (<http://register.state.va.us>).

March 2010 through January 2011

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
INDEX 1 Volume 26		January 2010
26:14	February 24, 2010	March 15, 2010
INDEX 2 Volume 26		April 2010
26:15	March 10, 2010	March 29, 2010
26:16	March 24, 2010	April 12, 2010
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27:7	November 16, 2010 (Tuesday)	December 6, 2010
27:8	December 1, 2010	December 20, 2010
27:9	December 14, 2010 (Tuesday)	January 3, 2011
27:10	December 29, 2010	January 17, 2011

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF VETERINARY MEDICINE

Initial Agency Notice

Title of Regulation: **18VAC150-20. Regulations Governing the Practice of Veterinary Medicine.**

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

Name of Petitioner: Elaine Sottile.

Nature of Petitioner's Request: To amend regulations to prohibit a veterinarian from charging a fee to write a prescription; a written prescription is necessary for consumer to be able to obtain medicines from less costly sources.

Agency's Plan for Disposition of the Request: The board will request comment on the petition and following the comment period will consider the petitioner's request at its meeting scheduled for 9 a.m. on July 20, 2010, at the Conference Center, 2nd Floor, 9960 Mayland Drive, Richmond, VA.

Public Comment Deadline: April 6, 2010.

Agency Contact: Leslie Knackel, Executive Director, Board of Veterinary Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4468, FAX (804) 525-4471, or email leslie.knackel@dhp.virginia.gov

VA.R. Doc. No. R10-40; Filed February 22, 2010, 12:16 p.m.

Agency's Plan for Disposition of the Request: VDOT plans to review the proposal in conjunction with input received during the 21-day public comment period and will render a decision within the 90-day period specified by law.

Public Comment Deadline: April 5, 2010.

Agency Contact: Keith M. Martin, Agency Regulatory Coordinator, Department of Transportation, Policy Division, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830 or email keithm.martin@vdot.virginia.gov.

VA.R. Doc. No. R10-41; Filed March 2, 2010, 10:35 a.m.



TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

Initial Agency Notice

Title of Regulation: **24VAC30-121. Comprehensive Roadside Management Program Regulations.**

Statutory Authority: §§ 33.1-12 and 33.1-223.2:9 of the Code of Virginia.

Name of Petitioner: Proctor S. Harvey.

Nature of Petitioner's Request: Amend provisions of regulations as follows: (i) in 24VAC30-121-30, add new subsection C to allow Virginia Department of Transportation (VDOT) District Administrator or designees to review issues arising from a permit application, and make recommendations and decisions for resolution; and (ii) in 24VAC30-121-40 D 4 concerning location of acknowledgement signs, change criteria in subdivisions a, b, c, and d from 45 mph to 60 mph to allow for greater locations for gardens.

REGULATIONS

For information concerning the different types of regulations, see the Information Page.

Symbol Key

Roman type indicates existing text of regulations. Underscored language indicates proposed new text. Language that has been stricken indicates proposed text for deletion. Brackets are used in final regulations to indicate changes from the proposed regulation.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

REGISTRAR'S NOTICE: The following regulations filed by the Marine Resources Commission are exempt from the Administrative Process Act in accordance with § 2.2-4006 A 12 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Final Regulation

Title of Regulation: **4VAC20-490. Pertaining to Sharks (amending 4VAC20-490-20, 4VAC20-490-40, 4VAC20-490-41).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: March 1, 2010.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

These amendments require all recreational fishermen to land smooth dogfish with head, tail, and all fins attached and any individual granted an exemption permit for the harvest of shark for research or display to meet specific reporting requirements. These amendments are necessary to maintain Virginia's compliance with the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Atlantic Coastal Sharks.

4VAC20-490-20. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

"Carcass length" means that length measured in a straight line from the anterior edge of the first dorsal fin to the posterior end of the shark carcass.

"COLREGS Line" means the COLREGS Demarcation lines, as specified in Coastal Pilot, 35th and 36th editions by Lighthouse Press.

"Commercial shark fishermen" means any commercially permitted fisherman who has landed and sold one pound of

shark or more (excludes spiny dogfish) in that calendar year (January 1 through December 31).

"Commercially permitted nonsandbar large coastal shark species" means any of the following species:

Blacktip, *Carcharhinus limbatus*
Bull, *Carcharhinus leucas*
Great hammerhead, *Sphyrna mokarran*
Lemon, *Negaprion brevirostris*
Nurse, *Ginglymostoma cirratum*
Scalloped hammerhead, *Sphyrna lewini*
Silky, *Carcharhinus falciformis*
Smooth hammerhead, *Sphyrna zygaena*
Spinner, *Carcharhinus brevipinna*
Tiger, *Galeocerdo cuvier*

"Commercially permitted pelagic species shark" means any of the following species:

Blue, *Prionace glauca*
Oceanic whitetip, *Carcharhinus longimanus*
Porbeagle, *Lamna nasus*
Shortfin mako, *Isurus oxyrinchus*
Thresher, *Alopias vulpinus*

"Commercially permitted small coastal shark species" means any of the following species:

Atlantic sharpnose, *Rhizoprionodon terraenovae*
Blacknose, *Carcharhinus acronotus*
Bonnethead, *Sphyrna tiburo*
Finetooth, *Carcharhinus isodon*

"Commercially prohibited species shark" means any of the following species:

Atlantic angel, *Squatina dumeril*
Basking, *Cetorhinus maximus*
Bigeye sand tiger, *Odontaspis noronhai*
Bigeye sixgill, *Hexanchus nakamurai*
Bigeye thresher, *Alopias superciliosus*

Bignose, *Carcharhinus altimus*
Caribbean reef, *Carcharhinus perezii*
Caribbean sharpnose, *Rhizoprionodon porosus*
Dusky, *Carcharhinus obscurus*
Galapagos, *Carcharhinus galapagensis*
Longfin mako, *Isurus paucus*
Narrowtooth, *Carcharhinus brachyurus*
Night, *Carcharhinus signatus*
Sand tiger, *Carcharias taurus*
Sevengill, *Heptranchias perlo*
Sixgill, *Hexanchus griseus*
Smalltail, *Carcharhinus porosus*
Whale, *Rhincodon typus*
White, *Carcharodon carcharias*

"Control rule" means a time-certain date, past, present or future, used to establish participation in a limited entry fishery and may or may not include specific past harvest amounts.

"Dressed weight" means the result from processing a fish by removal of head, viscera, and fins, but does not include removal of the backbone, halving, quartering, or otherwise further reducing the carcass.

"Finning" means removing the fins and returning the remainder of the shark to the sea.

"Fork length" means the straight-line measurement of a fish from the tip of the snout to the fork of the tail. The measurement is not made along the curve of the body.

"Movable gill net" means any gill net other than a staked gill net.

"Large mesh gill net" means any gill net having a stretched mesh equal to or greater than five inches.

"Longline" means any fishing gear that is set horizontally, either anchored, floating or attached to a vessel, and that consists of a mainline or groundline, greater than 1,000 feet in length, with multiple leaders (gangions) and hooks, whether retrieved by hand or mechanical means.

"Permitted commercial gear" means rod and reel, handlines, shark shortlines, small mesh gill nets, large mesh gill nets, pound nets, and weirs.

"Recreational shore angler" means a person not fishing from a vessel nor transported to or from a fishing location by a vessel.

"Recreational vessel angler" means a person fishing from a vessel or transported to or from a fishing location by a vessel.

"Recreationally permitted ~~species~~ shark" means any of the following species:

Atlantic sharpnose, *Rhizoprionodon terraenovae*
Blacknose, *Carcharhinus acronotus*
Blacktip, *Carcharhinus limbatus*
Blue, *Prionace glauca*
Bonnethead, *Sphyrna tiburo*
Bull, *Carcharhinus leucas*
Finetooth, *Carcharhinus isodon*
Great hammerhead, *Sphyrna mokarran*
Lemon, *Negaprion brevirostris*
Nurse, *Ginglymostoma cirratum*
Oceanic whitetip, *Carcharhinus longimanus*
Porbeagle, *Lamna nasus*
Scalloped hammerhead, *Sphyrna lewini*
Shortfin mako, *Isurus oxyrinchus*
Smooth dogfish, *Mustelus canis*
Smooth hammerhead, *Sphyrna zygaena*
Spinner, *Carcharhinus brevipinna*
Thresher, *Alopias vulpinus*
Tiger, *Galeocerdo cuvier*

"Recreationally prohibited ~~species~~ shark" means any of the following species:

Atlantic angel, *Squatina dumeril*
Basking, *Cetorhinus maximus*
Bigeye sand tiger, *Odontaspis noronhai*
Bigeye sixgill, *Hexanchus nakamurai*
Bigeye thresher, *Alopias superciliosus*
Bignose, *Carcharhinus altimus*
Caribbean reef, *Carcharhinus perezii*
Caribbean sharpnose, *Rhizoprionodon porosus*
Dusky, *Carcharhinus obscurus*
Galapagos, *Carcharhinus galapagensis*
Longfin mako, *Isurus paucus*
Narrowtooth, *Carcharhinus brachyurus*
Night, *Carcharhinus signatus*
Sand tiger, *Carcharias taurus*

Regulations

Sandbar, *Carcharhinus plumbeus*

Sevengill, *Heptanchias perlo*

Silky, *Carcharhinus falciformis*

Sixgill, *Hexanchus griseus*

Smalltail, *Carcharhinus porosus*

Whale, *Rhincodon typus*

White, *Carcharodon carcharias*

"Research only ~~species~~ shark" means any of the following species:

Sandbar, *Carcharhinus plumbeus*

"Shark shortline" means a fish trotline that is set horizontally, either anchored, floating or attached to a vessel, and that consists of a mainline or groundline, 1,000 feet in length or less, with multiple leaders (gangions) and no more than 50 corrodible circle hooks, whether retrieved by hand or mechanical means.

"Small mesh gill net" means any gill net having a stretched mesh less than five inches.

"Smooth dogfish" means any shark of the species *Mustelus canis*.

"Spiny dogfish" means any shark of the species *Squalus acanthias*.

4VAC20-490-40. Recreational catch limitations.

A. Recreational fishing vessels are allowed a maximum possession limit of one recreationally permitted shark ~~described in the recreationally permitted species list~~, excluding smooth dogfish, per trip, regardless of the number of people on board the vessel. In addition, each recreational vessel angler may possess one bonnethead and one Atlantic sharpnose per trip. The possession aboard a vessel of more than one recreationally permitted shark ~~described in the recreationally permitted species list~~, excluding smooth dogfish, or the possession of more than one Atlantic sharpnose shark ~~and~~ or one bonnethead shark, per person, shall constitute a violation of this regulation. When fishing from any boat or vessel where the entire catch is held in a common hold or container, the possession limits for Atlantic sharpnose shark or bonnethead shark shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish, plus one additional recreationally permitted shark ~~described in the recreationally permitted species list~~. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limits.

B. A recreational shore angler is allowed a maximum possession limit of one recreationally permitted shark ~~described in the recreationally permitted species list~~, excluding smooth dogfish, per calendar day. In addition a recreational shore angler may harvest one additional

bonnethead and one additional Atlantic sharpnose per calendar day. The possession of more than one recreationally permitted shark ~~described in the recreationally permitted species list~~, excluding smooth dogfish, or the possession of more than one bonnethead and one Atlantic sharpnose, by any person, shall constitute a violation of this regulation.

C. It shall be unlawful for any person to possess any recreationally prohibited shark ~~described in the recreationally prohibited species list~~.

D. It shall be unlawful for any person to possess any recreationally permitted shark, ~~described in the recreationally permitted species list~~, landed under the recreational catch limitations described in this section that is less than 54 inches fork length except Atlantic sharpnose, bonnethead, finetooth, blacknose, and smooth dogfish.

E. It shall be unlawful for any person to take, harvest, land, or possess any blacktip, bull, great hammerhead, lemon, nurse, scalloped hammerhead, smooth hammerhead, spinner or tiger shark from May 15 through July 15 of any calendar year.

F. All sharks, ~~except smooth dogfish~~, must have heads, tails and fins attached naturally to the carcass. Anglers may gut and bleed the carcass as long as the head and tail are not removed. Filleting sharks, ~~except smooth dogfish~~, at sea is prohibited.

4VAC20-490-41. Commercial catch limitations.

A. It shall be unlawful for any person to possess on board a vessel or to land in Virginia more than 33 commercially permitted nonsandbar large coastal sharks in one 24-hour period. The person who owns or operates the vessel is responsible for compliance with the provisions of this subsection.

B. It shall be unlawful for any person to fillet a shark at sea, except smooth dogfish as provided in subsection C of this section. A licensed commercial fisherman may eviscerate and remove the head of any shark, but the tail and all fins of any shark, except smooth dogfish as provided in subsection C of this section, shall remain naturally attached to the carcass through landing. The fins of any shark, except smooth dogfish, may be partially cut but some portion of the fin shall remain attached, until the shark is landed.

C. From July 1 through the end of February, commercial fishermen may process smooth dogfish at sea, except the first dorsal fin shall remain attached naturally to the carcass until landed. From March 1 through June 30, commercial fishermen may completely process smooth dogfish at sea prior to landing.

D. It shall be unlawful to possess, on board a vessel, or to land in Virginia any species of shark, after NOAA Fisheries has closed the fishery for that species in federal waters.

E. There are no commercial trip limits or possession limits for smooth dogfish or sharks on the lists of commercially permitted pelagic species or commercially permitted small coastal species.

F. Except as described in this section, it shall be unlawful for any person to take, harvest, land, or possess in Virginia any blacktip, bull, great hammerhead, lemon, nurse, scalloped hammerhead, silky, smooth hammerhead, spinner or tiger shark from May 15 through July 15. These sharks may be transported by vessel, in Virginia waters, during the closed season provided the sharks were caught in a legal manner consistent with federal regulations outside Virginia waters and:

1. The vessel does not engage in fishing, in Virginia waters, while possessing the above species; and
2. All fishing gear aboard the vessel is stowed and not available for immediate use.

G. It shall be unlawful for any person to retain, possess or purchase any commercially prohibited shark ~~described in the commercially prohibited species list or any research only shark, except as provided in subsection I of this section.~~

H. All sharks harvested from state waters or federal waters, for commercial purposes, shall be sold to a federally permitted shark dealer.

I. The commissioner may grant exemptions from the seasonal closure, quota, possession limit, size limit, gear restrictions and prohibited species restrictions. Exemptions shall ~~only~~ be granted only for display or research purposes. ~~The exempted fishermen or owner of the fishing vessel~~ Any person granted an exemption for the harvest of the shark for research or display shall report the species, weight, location caught and gear used for each shark collected for research or display within 30 days. Any person granted a permit to possess any shark for research or display shall provide the commissioner, on an annual basis, information on the location and status of the shark throughout the life of the shark.

VA.R. Doc. No. R10-2300; Filed March 1, 2010, 10:00 a.m.

Final Regulation

Title of Regulation: 4VAC20-530. Pertaining to American Shad (amending 4VAC20-530-31).

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: March 1, 2010.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Ave., 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

The amendment extends the 2009 provision for an American shad commercial bycatch fishery to the 2010 season.

4VAC20-530-31. Bycatch fishery.

A. Any registered commercial fisherman meeting the conditions described in this subsection shall be eligible to participate in the American shad bycatch fishery in ~~2009~~ 2010:

1. The registered commercial fisherman shall apply for a VMRC American Shad Bycatch Permit and possess that permit while fishing, landing, or selling his catch of American shad.
2. The registered commercial fisherman shall complete the VMRC American Shad Bycatch Survey form to describe his pending fishing activity.

B. It shall be unlawful for any person to possess aboard a vessel more than 10 American shad. When more than one registered and permitted fisherman is fishing on the same vessel, it shall be unlawful to possess more than 10 American shad aboard that vessel.

C. It shall be unlawful for any person to possess aboard a vessel or land any American shad unless that person possesses at least an equal number of fish of only the following food-grade species: spot, croaker, bluefish, catfish, striped bass or white perch.

D. Possession of American shad by any person permitted in accordance with this section shall be lawful only when those American shad were harvested from the bycatch area. Possession of any American shad harvested in Virginia waters that are outside of the bycatch area shall constitute a violation of this regulation, except as described in 4VAC20-530-32.

E. American shad harvested only as bycatch by anchored gill nets and staked gill nets may be possessed or retained for sale in accordance with the provisions of this regulation. It shall be unlawful for any person to harvest, land or possess any American shad taken by any commercial gear, except anchored gill net or staked gill net, or any recreational gear.

F. Every fisherman permitted for the American shad bycatch fishery shall contact the commission's interactive voice response system once weekly to report the following for the preceding weekly period: name, registration number, number of fishing trips taken, water body fished, number of nets set, number of American shad caught and number retained.

VA.R. Doc. No. R10-2305; Filed March 1, 2010, 8:58 a.m.

Regulations

Final Regulation

Title of Regulation: 4VAC20-620. Pertaining to Summer Flounder (amending 4VAC20-620-40, 4VAC20-620-50, 4VAC20-620-60, 4VAC20-620-75).

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: March 1, 2010.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Ave., 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

The amendments make it unlawful for any person commercially harvesting Summer Flounder outside of Virginia's waters to do any of the following, except during defined open seasons:

1. Possess aboard any vessel in Virginia waters any amount of Summer Flounder in excess of 10% by weight of Atlantic croaker or the combined landings, on board a vessel, of black sea bass, scup, squid, scallops, and Atlantic mackerel.
2. Possess aboard any vessel in Virginia waters any amount of Summer Flounder in excess of 1,500 pounds landed in combination with Atlantic croaker.
3. Fail to land and sell the vessel's entire harvest at the point of landing.

The amendments also establish an 18-1/2-inch minimum size limit and a personal recreational possession limit of four Summer Flounder.

4VAC20-620-40. Commercial vessel possession and landing limitations.

A. ~~From January 1 through the day preceding the last Monday in February, it~~ It shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to ~~possess aboard any vessel in Virginia any amount of Summer Flounder in excess of 10% by weight of all other landed species on board the vessel; do any of the following, except as described in subsections B and C of this section:~~

1. Possess aboard any vessel in Virginia waters any amount of Summer Flounder in excess of 10% by weight of Atlantic croaker or the combined landings, on board a vessel, of black sea bass, scup, squid, scallops, and Atlantic mackerel.
2. Possess aboard any vessel in Virginia waters any amount of Summer Flounder in excess of 1,500 pounds landed in combination with Atlantic croaker.
3. Fail to sell the vessel's entire harvest of all species at the point of landing.

B. From the last Monday in February through the day preceding the last Monday in November, or until it has been projected and announced that 85% of the allowable landings have been taken, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of Summer Flounder in excess of 15,000 pounds.
2. Land Summer Flounder in Virginia for commercial purposes more than twice during each consecutive 12-day period, with the first 12-day period beginning on the last Monday in February.
3. Land in Virginia more than 7,500 pounds of Summer Flounder during each consecutive 12-day period, with the first 12-day period beginning on the last Monday in February.
4. Land in Virginia any amount of Summer Flounder more than once in any consecutive five-day period.
5. ~~Possess aboard any vessel in Virginia any amount of Summer Flounder, in excess of 10%, by weight, of all other landed species on board the vessel once it has been projected and announced that 85% of the allowable landings have been taken. The Marine Resources Commission will give timely notice of any changes in possession limits.~~

C. From the last Monday in November through December 31 of each year, or until it has been projected and announced that 85% of the allowable landings have been taken, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of Summer Flounder in excess of 15,000 pounds.
2. Land Summer Flounder in Virginia for commercial purposes more than twice during each consecutive 12-day period, with the first 12-day period beginning on the last Monday in November.
3. Land in Virginia more than a total of 7,500 pounds of Summer Flounder during each consecutive 12-day period, with the first 12-day period beginning on the last Monday in November.
4. Land in Virginia any amount of Summer Flounder more than once in any consecutive five-day period.
5. ~~Possess aboard any vessel in Virginia any amount of Summer Flounder, in excess of 10%, by weight, of all other landed species on board the vessel once it has been projected and announced that 85% of the allowable landings described in 4VAC20-620-30 D have been taken, except as described in subdivision 6 of this subsection. The Marine Resources Commission will give timely notice of any changes in possession limits.~~

~~6. Possess aboard any vessel in Virginia any amount of Summer Flounder once it has projected and announced that 100% of the quota described in 4VAC20-620-30 A, has been taken.~~

D. Upon request by a marine police officer, the seafood buyer or processor shall offload and accurately determine the total weight of all Summer Flounder aboard any vessel landing Summer Flounder in Virginia.

E. Any possession limit described in this section shall be determined by the weight in pounds of Summer Flounder as customarily packed, boxed and weighed by the seafood buyer or processor. The weight of any Summer Flounder in pounds found in excess of any possession limit described in this section shall be prima facie evidence of violation of this chapter. Persons in possession of Summer Flounder aboard any vessel in excess of the possession limit shall be in violation of this chapter unless that vessel has requested and been granted safe harbor. Any buyer or processor offloading or accepting any quantity of Summer Flounder from any vessel in excess of the possession limit shall be in violation of this chapter, except as described by subsection H of this section. A buyer or processor may accept or buy Summer Flounder from a vessel that has secured safe harbor, provided that vessel has satisfied the requirements described in subsection H of this section.

F. If a person violates the possession limits described in this section, the entire amount of Summer Flounder in that person's possession shall be confiscated. Any confiscated Summer Flounder shall be considered as a removal from the appropriate commercial harvest or landings quota. Upon confiscation, the marine police officer shall inventory the confiscated Summer Flounder and, at a minimum, secure two bids for purchase of the confiscated Summer Flounder from approved and licensed seafood buyers. The confiscated fish will be sold to the highest bidder and all funds derived from such sale shall be deposited for the Commonwealth pending court resolution of the charge of violating the possession limits established by this chapter. All of the collected funds will be returned to the accused upon a finding of innocence or forfeited to the Commonwealth upon a finding of guilty.

G. It shall be unlawful for a licensed seafood buyer or federally permitted seafood buyer to fail to contact the Marine Resources Commission Operation Station prior to a vessel offloading Summer Flounder harvested outside of Virginia. The buyer shall provide to the Marine Resources Commission the name of the vessel, its captain, an estimate of the amount in pounds of Summer Flounder on board that vessel, and the anticipated or approximate offloading time. Once offloading of any vessel is complete and the weight of the landed Summer Flounder has been determined, the buyer shall contact the Marine Resources Commission Operations Station and report the vessel name and corresponding weight of Summer Flounder landed. It shall be unlawful for any person

to offload from a boat or vessel for commercial purposes any Summer Flounder during the period of 6 p.m. to 7 a.m.

H. Any boat or vessel that has entered Virginia waters for safe harbor shall only offload Summer Flounder when the state that licenses that vessel requests to transfer quota to Virginia, in the amount that corresponds to that vessel's possession limit, and the commissioner agrees to accept that transfer of quota.

I. After any commercial harvest or landing quota as described in 4VAC20-620-30 has been attained and announced as such, any boat or vessel possessing Summer Flounder on board may enter Virginia waters for safe harbor but shall contact the Marine Resources Commission Operation Center in advance of such entry into Virginia waters.

J. It shall be unlawful for any person harvesting Summer Flounder outside of Virginia waters to possess aboard any vessel, in Virginia, any amount of Summer Flounder, once it has been projected and announced that 100% of the quota described in 4VAC20-620-30 A has been taken.

4VAC20-620-50. Minimum size limits.

A. The minimum size for Summer Flounder harvested by commercial fishing gear shall be 14 inches, total length.

B. The minimum size of Summer Flounder harvested by recreational fishing gear, including but not limited to hook and line, rod and reel, spear and gig, shall be ~~19~~ 18-1/2 inches, total length, except that the minimum size of Summer Flounder harvested in the Potomac River tributaries shall be the same as established by the Potomac River Fisheries Commission for the mainstem Potomac River.

C. Length shall be measured in a straight line from tip of nose to tip of tail.

D. It shall be unlawful for any person to possess any Summer Flounder smaller than the designated minimum size limit.

E. Nothing in this chapter shall prohibit the landing of Summer Flounder in Virginia that were legally harvested in the Potomac River.

4VAC20-620-60. Possession limit.

A. It shall be unlawful for any person fishing in any tidal waters of Virginia, except the Potomac River tributaries, with recreational hook and line, rod and reel, spear, gig or other recreational gear to possess more than ~~five~~ four Summer Flounder. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by ~~five~~ four. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any Summer Flounder taken after the

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possession limit has been reached shall be returned to the water immediately.

B. It shall be unlawful for any person fishing in the Potomac River tributaries with recreational hook and line, rod and reel, spear, gig or other recreational gear to possess more Summer Flounder than the possession limit established by the Potomac River Fisheries Commission for the mainstem Potomac River. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by the possession limit established by the Potomac River Fisheries Commission for the mainstem Potomac River. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any Summer Flounder taken after the possession limit has been reached shall be returned to the water immediately.

C. Possession of any quantity of Summer Flounder that exceeds the possession limit described in subsections A and B of this section shall be presumed to be for commercial purposes.

4VAC20-620-75. Research exemptions to possession and size limits.

Nothing in this chapter shall preclude any person who is legally eligible to fish from possessing any Summer Flounder tagged by the Virginia Institute of Marine Science (VIMS) with two different types of tags in each of 260 Summer Flounder. One tag is a white data recording tag of 1/2-inch diameter and 1-1/2 inches in length that VIMS affixed to the Summer Flounder. That tag is inscribed with "VIMS \$200 reward" and the VIMS telephone contact number. The second tag is a yellow "T-bar" or "spaghetti" type tag that VIMS affixed to the dorsal area of these double-tagged Summer Flounder. The yellow T-bar tag is inscribed with "reward" and the VIMS contact telephone number. Possession of these VIMS-tagged Summer Flounder shall not count towards the personal recreational possession limit of ~~five~~ four Summer Flounder, ~~19~~ 18-1/2 inches or greater in total length. Possession of any undersized flounder that has any affixed VIMS tag, as described above, shall not constitute a violation of the minimum size limit of ~~19~~ 18-1/2 inches in total length. It shall be unlawful for any person to remove either type of tag from any caught or harvested Summer Flounder without having contacted VIMS. It shall be unlawful for any person to retain any of these VIMS-tagged Summer Flounder for a period of time that is longer than necessary to provide the VIMS-tagged Summer Flounder to a VIMS representative. Under no circumstances shall any VIMS-tagged flounder be stored for future use or sale or delivered to any person who is not a VIMS representative.

VA.R. Doc. No. R10-2308; Filed March 1, 2010, 9:54 a.m.

Final Regulation

Title of Regulation: **4VAC20-720. Pertaining to Restrictions on Oyster Harvest (amending 4VAC20-720-40, 4VAC20-720-50).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: March 1, 2010.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

This amendment reopens the Rappahannock River Rotation Area 5 harvest season from March 1, 2010, through March 31, 2010, to the harvest of oysters.

4VAC20-720-40. Open season and areas.

The lawful seasons and areas for the harvest of oysters from the public oyster grounds and unassigned grounds are as follows:

1. James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area: October 1, 2009, through April 30, 2010.
2. Seaside of Eastern Shore: for clean cull oysters only, November 1, 2009, through February 28, 2010.
3. Rappahannock River Area 8; Rappahannock River Area 9; the Upper Chesapeake Bay (Blackberry Hangs Hand Scrape Area); the York River and Mobjack Bay Hand Scrape Areas; and Deep Rock Patent Tong Area (Lower Chesapeake Bay): December 1, 2009, through February 28, 2010.
4. Rappahannock River Rotation Area 3: November 1, 2009, through November 30, 2009. The Rappahannock River Rotation Area 5: October 1, 2009, through October 31, 2009, and March 1, 2010, through March 31, 2010.
5. Tangier - Pocomoke Sounds Rotation Area 1: December 1, 2009, through February 28, 2010.
6. The James River Hand Scrape Area and the Thomas Rock Hand Scrape Area (James River): October 1, 2009, through December 1, 2009.
7. The Great Wicomico River Hand Scrape area: November 1, 2009, through January 31, 2010.

4VAC20-720-50. Closed harvest season and areas.

It shall be unlawful for any person to harvest oysters from the following areas during the specified periods:

1. All public oyster grounds and unassigned grounds in the Chesapeake Bay and its tributaries, including the

tributaries of the Potomac River, except those areas listed in 4VAC20-720-40, are closed: October 1, 2009, through September 30, 2010.

2. James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area: May 1, 2010, through September 30, 2010.

3. All public oyster grounds and unassigned grounds on the Seaside of Eastern Shore: for clean cull oysters, October 1, 2009, through October 31, 2009, and March 1, 2010, through September 30, 2010, and for seed oysters, all year.

4. Rappahannock River Area 8; Rappahannock River Area 9; Deep Rock Patent Tong Area (Lower Chesapeake Bay); the Upper Chesapeake Bay (Blackberry Hangs Hand Scrape Area); and the York River and Mobjack Bay Hand Scrape Areas: October 1, 2009, through November 30, 2009, and March 1, 2010, through September 30, 2010.

5. The Rappahannock River Rotation Area 3: October 1, 2009, through October 31, 2009, and December 1, 2009, through September 30, 2010. Rotation Area 5: November 1, 2009, through February 28, 2010, and April 1, 2010, through September 30, 2010.

6. Tangier - Pocomoke Sounds Rotation Area 1: October 1, 2009, through November 30, 2009, and March 1, 2010, through September 30, 2010.

7. The James River Hand Scrape Area and the Thomas Rock Hand Scrape Area (James River): January 1, 2010, through September 30, 2010.

8. The Great Wicomico River Hand Scrape Area: October 1, 2009, through October 31, 2009, and February 1, 2010, through September 30, 2010.

VA.R. Doc. No. R10-2312; Filed February 26, 2010, 10:28 a.m.

Final Regulation

Title of Regulation: 4VAC20-910. **Pertaining to Scup (Porgy) (amending 4VAC20-910-45).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: March 1, 2010.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Ave., 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

The amendment establishes the commercial scup harvest quota for May 1 through October 31 of each year at 6,861 pounds.

4VAC20-910-45. Possession limits and harvest quotas.

A. During the period January 1 through April 30 of each year, it shall be unlawful for any person to do any of the following:

1. Possess aboard any vessel in Virginia more than 30,000 pounds of scup.
2. Land in Virginia more than a total of 30,000 pounds of scup during each consecutive 14-day landing period, with the first 14-day period beginning on January 2.

B. When it is projected and announced that 80% of the coastwide quota for this period has been attained, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than a total of 1,000 pounds of scup.

C. During the period November 1 through December 31 of each year, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than 2,000 pounds of scup.

D. During the period May 1 through October 31 of each year, the commercial harvest and landing of scup in Virginia shall be limited to ~~2,887~~ 6,861 pounds.

E. For each of the time periods set forth in this section, the Marine Resources Commission will give timely notice to the industry of calculated poundage possession limits and quotas and any adjustments thereto. It shall be unlawful for any person to possess or to land any scup for commercial purposes after any winter period coastwide quota or summer period Virginia quota has been attained and announced as such.

F. It shall be unlawful for any buyer of seafood to receive any scup after any commercial harvest or landing quota has been attained and announced as such.

G. It shall be unlawful for any person fishing with hook and line, rod and reel, spear, gig, or other recreational gear to possess more than 50 scup. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by 50. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any scup taken after the possession limit has been reached shall be returned to the water immediately.

VA.R. Doc. No. R10-2310; Filed March 1, 2010, 8:53 a.m.

Final Regulation

Title of Regulation: 4VAC20-950. **Pertaining to Black Sea Bass (amending 4VAC20-950-45, 4VAC20-950-47, 4VAC20-950-48).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: March 1, 2010.

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Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Ave., 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

These amendments establish the 2010 commercial black sea bass quotas as 311,722 pounds for the directed fishery and 40,000 pounds for the bycatch fishery. In addition, a split black sea bass recreational open season is established from May 22 through August 8 and from September 4 through October 4.

4VAC20-950-45. Recreational possession limits and seasons.

A. It shall be unlawful for any person fishing with hook and line, rod and reel, spear, gig or other recreational gear to possess more than 25 black sea bass. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for that boat or vessel and shall be equal to the number of persons on board legally eligible to fish, multiplied by 25. The captain or operator of the boat or vessel shall be responsible for that boat or vessel possession limit. Any black sea bass taken after the possession limit has been reached shall be returned to the water immediately.

B. Possession of any quantity of black sea bass that exceeds the possession limit described in subsection A of this section shall be presumed to be for commercial purposes.

C. The open recreational fishing season shall be ~~year-round~~ from May 22 through August 8 and from September 4 through October 4.

4VAC20-950-47. Commercial harvest quotas.

A. The ~~2009~~ 2010 commercial black sea bass directed fishery quota is ~~168,638~~ 311,722 pounds. When it has been announced that the directed fishery quota has been projected as reached and the directed fishery has been closed, it shall be unlawful for any directed commercial black sea bass fishery permittee to possess aboard any vessel or land in Virginia any black sea bass.

B. The ~~2009~~ 2010 commercial black sea bass bycatch fishery quota is 40,000 pounds from January 1 through April 30. From May 1 through December 31, ~~2009~~ 2010, the commercial black sea bass bycatch fishery quota is the lesser of 10,000 pounds or the remaining amount of black sea bass bycatch fishery quota as of May 1, ~~2009~~ 2010. When it has been announced that the bycatch fishery quota has been projected as reached and the bycatch fishery has been closed, it shall be unlawful for any bycatch commercial black sea bass fishery permittee to possess aboard any vessel or land in Virginia any black sea bass. In the event the bycatch fishery

quota is exceeded, the amount the quota overage shall be deducted from the following year's bycatch fishing quota.

4VAC20-950-48. Individual fishery quotas; bycatch limit; at sea harvesters; exceptions.

A. Each person possessing a directed fishery permit shall be assigned an individual fishery quota, in pounds, for each calendar year. Except as provided in subsection F of this section, a person's individual fishery quota shall be equal to that person's percentage of the total landings of black sea bass in Virginia from July 1, 1997, through December 31, 2001, multiplied by the directed commercial fishery black sea bass quota for the calendar year. Any directed fishery permittee shall be limited to landings in the amount of his individual fishery quota, in pounds, in any calendar year and it shall be unlawful for any permittee to exceed his individual fishery quota. In addition to the penalties prescribed by law, any overages of an individual's fishery quota shall be deducted from that permittee's individual fishery quota for the following year.

B. In the determination of a person's percentage of total landings, the commission shall use the greater amount of landings from either the National Marine Fisheries Service Dealer Weigh-out Reports or National Marine Fisheries Service Vessel Trip Reports that have been reported and filed as of November 26, 2002. If a person's percentage of the total landings of black sea bass is determined by using the Vessel Trip Reports as the greater amount, then the person shall provide documentation to the Marine Resources Commission to verify the Vessel Trip Reports as accurate. This documentation may include dealer receipts of sales or other pertinent documentation, and such documentation shall be submitted to the commission by December 1, 2004. In the event the commission is not able to verify the full amount of the person's Vessel Trip Reports for the qualifying period, the commission shall use the greater amount of landings, from either the Dealer Weigh-Out Reports or the verified portion of the Vessel Trip Reports to establish that person's share of the quota.

C. It shall be unlawful for any person permitted for the bycatch fishery to possess aboard a vessel, or to land in Virginia, in any one day, more than 200 pounds of black sea bass, except that any person permitted in the bycatch fishery may possess aboard a vessel, or land in Virginia, more than 200 pounds of black sea bass, in any one day, provided the total weight of black sea bass on board the vessel does not exceed 10%, by weight, of the total weight of summer flounder, scup, Loligo squid and Atlantic mackerel on board the vessel. When it is projected and announced that 75% of the bycatch fishery quota has been taken, it shall be unlawful for any person permitted for the bycatch fishery to possess aboard a vessel, or to land in Virginia, more than 100 pounds of black sea bass.

D. It shall be unlawful for any person to transfer black sea bass from one vessel to another while at sea.

E. Any hardship exception quota granted by the commission prior to October 27, 2009, shall be converted to a percentage of the directed fishery quota based on the year in which that hardship exception quota was originally granted. The hardship exception quota shall not be transferred for a period of five years from the date the commission granted that hardship exception quota.

F. An individual fishery quota, as described in subsection A of this section, shall be equal to an individual's current percentage share of the directed fishery quota, as described in 4VAC20-950-47 A. As of May 1, ~~2009~~ 2010, should the remaining amount of black sea bass bycatch fishery quota exceed 10,000 pounds, that excess quota shall be allocated to commercial black sea bass directed fishery permit holders who have landed at least 500 pounds of black sea bass in at least two of three years, starting in ~~2005~~ 2006 and ending in ~~2007~~ 2008. The basis for that allocation shall be the same as used to determine an individual directed fishery quota as described in subsection A of this section.

VA.R. Doc. No. R10-2311; Filed March 1, 2010, 10:04 a.m.



TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 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 Medical Assistance Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: 12VAC30-30. Groups Covered and Agencies Responsible for Eligibility Determination (amending 12VAC30-30-10).

12VAC30-40. Eligibility Conditions and Requirements (amending 12VAC30-40-170).

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

Effective Date: April 14, 2010.

Agency Contact: Cindy Olson, Policy Division, Department of Medical Assistance Services, 600 East Broad Street,

Richmond, VA 23219, telephone (804) 225-4282, FAX (804) 786-1680, or email cindy.olson@dmas.virginia.gov.

Summary:

These amendments to the State Plan for Medical Assistance are a result of passage of the federal Medicare Improvements for Patient and Providers Act of 2008 (MIPPA). MIPPA mandates that state Medicaid programs increase the resource limits for their Medicare Savings Programs groups effective January 1, 2010, as set out in Section 112 of MIPPA, entitled "Application of Full LIS Subsidy Assets Test Under Medicare Savings Program":

"Section 1905(p)(1)(C) of such Act (42 U.S.C. 1396d(p)(1)(C)) is amended by inserting before the period at the end the following: 'or, effective beginning with January 1, 2010, whose resources (as so determined) do not exceed the maximum resource level applied for the year under subparagraph (D) of section 1860D-14(a)(3) (determined without regard to the life insurance policy exclusion provided under subparagraph (G) of such section) applicable to an individual or to the individual and the individual's spouse (as the case may be).'"

Section 1905(p)(1)(C) of the Social Security Act referenced above defines a "qualified Medicare beneficiary" to be an individual whose resources "do not exceed twice the maximum amount of resources that an individual may have and obtain benefits under that program." MIPPA inserts a new mandatory resource limit effective January 1, 2010, as resources that "do not exceed the maximum resource level applied for the year under subparagraph (D) of section 1860D-14(a)(3)." Section D of 1860D-14(a)(3) is in the Medicare Part D section of the Social Security Act and is entitled "Resource Standard Applied to Full Low-Income Subsidy to be Based on Three Times SSI Resource Standard." This section sets the resource limit for the Medicare D Low Income Subsidy Program implemented by MIPPA as of January 1, 2010, as:

"the resource limitation established under this clause for the previous year increased by the annual percentage increase in the consumer price index (all items; U.S. city average) as of September of such previous year. Any resource limitation established under clause (ii) that is not a multiple of \$10 shall be rounded to the nearest multiple of \$10."

For clarity and ease of use, DMAS incorporates this rather complicated federal statutory formula into the regulations by simply referring to "the resource limit set for the Medicare Part D Low Income Subsidy Program."

Medicare Savings Programs groups are comprised of the current Medicaid groups of qualified Medicare beneficiaries (QMB), special low income Medicare beneficiaries and qualifying individuals. Medicaid services

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for individuals in these groups consist of payment of Medicare premiums and, for the QMB group, payment of Medicare coinsurances and deductibles.

Current Medicaid regulations state that the resource limits for the Medicare Savings Program groups are equal to twice the resource standard for the Supplementary Security Income program. Section 112 in MIPPA (§ 1905 (p)(1)(C) of the Act) mandates that, effective January 1, 2010, the resource limits for the Medicare Savings Program groups be increased to the same limit used for the Medicare Part D Low Income Subsidy Program (also known as Extra Help). For 2010, these limits will be \$6,600 for a single individual and \$9,910 for a couple. The resource amounts for the Medicare Savings Programs will increase each time the Low Income Subsidy Program resource limits change for consistency with that program's resource limits. Virginia must change the current Medicaid regulations to comply with the federal mandates of MIPPA.

12VAC30-30-10. Mandatory coverage: Categorically needy and other required special groups.

The Title IV-A agency or the Department of Medical Assistance Services Central Processing Unit determines eligibility for Title XIX services.

1. Recipients of AFDC.

a. The approved state AFDC plan includes:

(1) Families with an unemployed parent for the mandatory six-month period and an optional extension of 0 months.

(2) AFDC children age 18 who are full-time students in a secondary school or in the equivalent level of vocational or technical training.

b. The standards for AFDC payments are listed in 12VAC30-40-220.

2. Deemed recipients of AFDC.

a. Individuals denied a Title IV-A cash payment solely because the amount would be less than \$10.

b. Effective October 1, 1990, participants in a work supplementation program under Title IV-A and any child or relative of such individual (or other individual living in the same household as such individuals) who would be eligible for AFDC if there were no work supplementation program, in accordance with § 482(e)(6) of the Act.

c. Individuals whose AFDC payments are reduced to zero by reason of recovery of overpayment of AFDC funds.

d. An assistance unit deemed to be receiving AFDC for a period of four calendar months because the family becomes ineligible for AFDC as a result of collection or

increased collection of support and meets the requirements of § 406(h) of the Act.

e. Individuals deemed to be receiving AFDC who meet the requirements of § 473(b)(1) or (2) for whom an adoption of assistance agreement is in effect or foster care maintenance payments are being made under Title IV-E of the Act.

3. Effective October 1, 1990, qualified family members who would be eligible to receive AFDC under § 407 of the Act because the principal wage earner is unemployed.

4. Families terminated from AFDC solely because of earnings, hours of employment, or loss of earned income disregards entitled up to 12 months of extended benefits in accordance with § 1925 of the Act.

5. Individuals who are ineligible for AFDC solely because of eligibility requirements that are specifically prohibited under Medicaid. Included are:

a. Families denied AFDC solely because of income and resources deemed to be available from:

(1) Stepparents who are not legally liable for support of stepchildren under a state law of general applicability;

(2) Grandparents;

(3) Legal guardians; and

(4) Individual alien sponsors (who are not spouses of the individual or the individual's parent);

b. Families denied AFDC solely because of the involuntary inclusion of siblings who have income and resources of their own in the filing unit.

c. Families denied AFDC because the family transferred a resource without receiving adequate compensation.

6. Individuals who would be eligible for AFDC except for the increases in OASDI benefits under P.L. 92-336 (July 1, 1972), who were entitled to OASDI in August 1972 and who were receiving cash assistance in August 1972.

a. Includes persons who would have been eligible for cash assistance but had not applied in August 1972 (this group was included in the state's August 1972 plan).

b. Includes persons who would have been eligible for cash assistance in August 1972 if not in a medical institution or intermediate care facility (this group was included in this state's August 1972 plan).

7. Qualified pregnant women and children.

a. A pregnant woman whose pregnancy has been medically verified who:

(1) Would be eligible for an AFDC cash payment if the child had been born and was living with her;

(2) Is a member of a family that would be eligible for aid to families with dependent children of unemployed parents if the state had an AFDC-unemployed parents program; or

(3) Would be eligible for an AFDC cash payment on the basis of the income and resource requirements of the state's approved AFDC plan.

b. Children born after September 30, 1973 (specify optional earlier date), who are under age 19 and who would be eligible for an AFDC cash payment on the basis of the income and resource requirements of the state's approved AFDC plan.

12VAC30-40-280 and 12VAC30-40-290 describe the more liberal methods of treating income and resources under § 1902(r)(2) of the Act.

8. Pregnant women and infants under one year of age with family incomes up to 133% of the federal poverty level who are described in §§ 1902(a) (10)(A)(i)(IV) and 1902(l)(A) and (B) of the Act. The income level for this group is specified in 12VAC30-40-220.

9. Children:

a. Who have attained one year of age but have not attained six years of age, with family incomes at or below 133% of the federal poverty levels.

b. Born after September 30, 1983, who have attained six years of age but have not attained 19 years of age, with family incomes at or below 100% of the federal poverty levels.

Income levels for these groups are specified in 12VAC30-40-220.

10. Individuals other than qualified pregnant women and children under subdivision 7 of this section who are members of a family that would be receiving AFDC under § 407 of the Act if the state had not exercised the option under § 407(b)(2)(B)(i) of the Act to limit the number of months for which a family may receive AFDC.

11. a. A woman who, while pregnant, was eligible for, applied for, and receives Medicaid under the approved state plan on the day her pregnancy ends. The woman continues to be eligible, as though she were pregnant, for all pregnancy-related and postpartum medical assistance under the plan for a 60-day period (beginning on the last day of her pregnancy) and for any remaining days in the month in which the 60th day falls.

b. A pregnant women who would otherwise lose eligibility because of an increase in income (of the family in which she is a member) during the pregnancy or the postpartum period which extends through the end of the month in which the 60-day period (beginning on the last day of pregnancy) ends.

12. a. A child born to a woman who is eligible for and receiving Medicaid on the date of the child's birth. The child is deemed eligible for one year from birth.

b. A child born to a woman under the age of 19 who is eligible for and receiving Title XXI coverage through the Family Access to Medical Insurance Security Plan (FAMIS) as of the date of the child's birth and who is screened to be income eligible for coverage under Medicaid. The child is deemed Medicaid eligible for one year from his date of birth.

13. Aged, blind and disabled individuals receiving cash assistance.

a. Individuals who meet more restrictive requirements for Medicaid than the SSI requirements. (This includes persons who qualify for benefits under § 1619(a) of the Act or who meet the eligibility requirements for SSI status under § 1619(b)(1) of the Act and who met the state's more restrictive requirements for Medicaid in the month before the month they qualified for SSI under § 1619(a) or met the requirements under § 1619(b)(1) of the Act. Medicaid eligibility for these individuals continues as long as they continue to meet the § 1619(a) eligibility standard or the requirements of § 1619(b) of the Act.)

b. These persons include the aged, the blind, and the disabled.

c. Protected SSI children (pursuant to § 1902(a)(10)(A)(i)(II) of the Act) (P.L. 105-33 § 4913). Children who meet the pre-welfare reform definition of childhood disability who lost their SSI coverage solely as a result of the change in the definition of childhood disability, and who also meet the more restrictive requirements for Medicaid than the SSI requirements.

d. The more restrictive categorical eligibility criteria are described below:

(1) See 12VAC30-30-40.

(2) Financial criteria are described in 12VAC30-40-10.

14. Qualified severely impaired blind and disabled individuals under age 65 who:

a. For the month preceding the first month of eligibility under the requirements of § 1905(q)(2) of the Act, received SSI, a state supplemental payment under § 1616 of the Act or under § 212 of P.L. 93-66 or benefits under § 1619(a) of the Act and were eligible for Medicaid; or

b. For the month of June 1987, were considered to be receiving SSI under § 1619(b) of the Act and were eligible for Medicaid. These individuals must:

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(1) Continue to meet the criteria for blindness or have the disabling physical or mental impairment under which the individual was found to be disabled;

(2) Except for earnings, continue to meet all nondisability-related requirements for eligibility for SSI benefits;

(3) Have unearned income in amounts that would not cause them to be ineligible for a payment under § 1611(b) of the Act;

(4) Be seriously inhibited by the lack of Medicaid coverage in their ability to continue to work or obtain employment; and

(5) Have earnings that are not sufficient to provide for himself or herself a reasonable equivalent of the Medicaid, SSI (including any federally administered SSP), or public funded attendant care services that would be available if he or she did have such earnings.

The state applies more restrictive eligibility requirements for Medicaid than under SSI and under 42 CFR 435.121. Individuals who qualify for benefits under § 1619(a) of the Act or individuals described above who meet the eligibility requirements for SSI benefits under § 1619(b)(1) of the Act and who met the state's more restrictive requirements in the month before the month they qualified for SSI under § 1619(a) or met the requirements of § 1619(b)(1) of the Act are covered. Eligibility for these individuals continues as long as they continue to qualify for benefits under § 619(a) of the Act or meet the SSI requirements under § 1619(b)(1) of the Act.

15. Except in states that apply more restrictive requirements for Medicaid than under SSI, blind or disabled individuals who:

- a. Are at least 18 years of age;
- b. Lose SSI eligibility because they become entitled to OASDI child's benefits under § 202(d) of the Act or an increase in these benefits based on their disability. Medicaid eligibility for these individuals continues for as long as they would be eligible for SSI, absent their OASDI eligibility.
- c. The state does not apply more restrictive income eligibility requirements than those under SSI.

16. Except in states that apply more restrictive eligibility requirements for Medicaid than under SSI, individuals who are ineligible for SSI or optional state supplements (if the agency provides Medicaid under § 435.230 of the Act), because of requirements that do not apply under Title XIX of the Act.

17. Individuals receiving mandatory state supplements.

18. Individuals who in December 1973 were eligible for Medicaid as an essential spouse and who have continued, as spouse, to live with and be essential to the well-being of a recipient of cash assistance. The recipient with whom the essential spouse is living continues to meet the December 1973 eligibility requirements of the state's approved plan for OAA, AB, APTD, or AABD and the spouse continues to meet the December 1973 requirements for have his or her needs included in computing the cash payment.

In December 1973, Medicaid coverage of the essential spouse was limited to: the aged; the blind; and the disabled.

19. Institutionalized individuals who were eligible for Medicaid in December 1973 as inpatients of Title XIX medical institutions or residents of Title XIX intermediate care facilities, if, for each consecutive month after December 1973, they:

- a. Continue to meet the December 1973 Medicaid State Plan eligibility requirements;
- b. Remain institutionalized; and
- c. Continue to need institutional care.

20. Blind and disabled individuals who:

- a. Meet all current requirements for Medicaid eligibility except the blindness or disability criteria; and
- b. Were eligible for Medicaid in December 1973 as blind or disabled; and
- c. For each consecutive month after December 1973 continue to meet December 1973 eligibility criteria.

21. Individuals who would be SSI/SSP eligible except for the increase in OASDI benefits under P.L. 92-336 (July 1, 1972), who were entitled to OASDI in August 1972, and who were receiving cash assistance in August 1972.

This includes persons who would have been eligible for cash assistance but had not applied in August 1972 (this group was included in this state's August 1972 plan), and persons who would have been eligible for cash assistance in August 1972 if not in a medical institution or intermediate care facility (this group was included in this state's August 1972 plan).

22. Individuals who:

- a. Are receiving OASDI and were receiving SSI/SSP but became ineligible for SSI/SSP after April 1977; and
- b. Would still be eligible for SSI or SSP if cost-of-living increases in OASDI paid under § 215(i) of the Act received after the last month for which the individual was eligible for and received SSI/SSP and OASDI, concurrently, were deducted from income.

The state applies more restrictive eligibility requirements than those under SSI and the amount of increase that caused SSI/SSP ineligibility and subsequent increases are deducted when determining the amount of countable income for categorically needy eligibility.

23. Disabled widows and widowers who would be eligible for SSI or SSP except for the increase in their OASDI benefits as a result of the elimination of the reduction factor required by § 134 of P.L. 98-21 and who are deemed, for purposes of Title XIX, to be SSI beneficiaries or SSP beneficiaries for individuals who would be eligible for SSP only, under § 1634(b) of the Act.

The state does not apply more restrictive income eligibility standards than those under SSI.

24. Disabled widows, disabled widowers, and disabled unmarried divorced spouses who had been married to the insured individual for a period of at least 10 years before the divorce became effective, who have attained the age of 50, who are receiving Title II payments, and who because of the receipt of Title II income lost eligibility for SSI or SSP which they received in the month prior to the month in which they began to receive Title II payments, who would be eligible for SSI or SSP if the amount of the Title II benefit were not counted as income, and who are not entitled to Medicare Part A.

The state applies more restrictive eligibility requirements for its blind or disabled than those of the SSI program.

25. Qualified Medicare beneficiaries:

- a. Who are entitled to hospital insurance benefits under Medicare Part A (but not pursuant to an enrollment under § 1818 of the Act);
- b. Whose income does not exceed 100% of the federal level; and
- c. Whose resources do not exceed twice the maximum standard under SSI or, effective January 1, 2010, the resource limit set for the Medicare Part D Low Income Subsidy Program.

(Medical assistance for this group is limited to Medicare cost sharing as defined in item 3.2 of this plan.)

26. Qualified disabled and working individuals:

- a. Who are entitled to hospital insurance benefits under Medicare Part A under § 1818A of the Act;
- b. Whose income does not exceed 200% of the federal poverty level;
- c. Whose resources do not exceed twice the maximum standard under SSI; and
- d. Who are not otherwise eligible for medical assistance under Title XIX of the Act.

(Medical assistance for this group is limited to Medicare Part A premiums under §§ 1818 and 1818A of the Act.)

27. Specified low-income Medicare beneficiaries:

- a. Who are entitled to hospital insurance benefits under Medicare Part A (but not pursuant to an enrollment under § 1818A of the Act);
- b. Whose income for calendar years 1993 and 1994 exceeds the income level in subdivision 25 b of this section, but is less than 110% of the federal poverty level, and whose income for calendar years beginning 1995 is less than 120% of the federal poverty level; and
- c. Whose resources do not exceed twice the maximum standard under SSI or, effective January 1, 2010, the resource limit set for the Medicare Part D Low Income Subsidy Program.

(Medical assistance for this group is limited to Medicare Part B premiums under § 1839 of the Act.)

28. a. Each person to whom SSI benefits by reason of disability are not payable for any month solely by reason of clause (i) or (v) of § 1611(e)(3)(A) shall be treated, for purposes of Title XIX, as receiving SSI benefits for the month.

b. The state applies more restrictive eligibility standards than those under SSI.

Individuals whose eligibility for SSI benefits are based solely on disability who are not payable for any months solely by reason of clause (i) or (v) of § 1611(e)(3)(A) and who continue to meet the more restrictive requirements for Medicaid eligibility under the state plan, are eligible for Medicaid as categorically needy.

12VAC30-40-170. Resource standard; qualified Medicare beneficiaries and specified low-income Medicare beneficiaries.

For qualified Medicare beneficiaries covered under § 1902(a)(10)(E)(i) of the Act, and specified low-income Medicare beneficiaries covered under § 1902(a)(10)(E)(iii) of the Act, the resource standard is twice the SSI standard or, effective January 1, 2010, the resource limit set for the Medicare Part D Low Income Subsidy Program.

VA.R. Doc. No. R10-2301; Filed February 24, 2010; 11:36 a.m.



TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Titles of Regulations: 14VAC5-360. Rules Governing Local Government Group Self-Insurance Pools (amending 14VAC5-360-10 through 14VAC5-360-160, 14VAC5-360-180, 14VAC5-360-190; adding 14VAC5-360-45).

14VAC5-370. Rules Governing Group Self-Insurers of Liability Under the Virginia Workers Compensation Act (amending 14VAC5-370-10 through 14VAC5-370-150, 14VAC5-370-170, 14VAC5-370-180; adding 14VAC5-370-145).

Statutory Authority: §§ 12.1-13, 38.2-223, and 65.2-802 of the Code of Virginia.

Effective Date: March 1, 2010.

Agency Contact: Raquel C. Pino-Moreno, Principal Insurance Analyst, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9499, FAX (804) 371-9511, or email racquel.pino-moreno@scc.virginia.gov.

Summary:

The amendments provide for the merger of group self-insurance associations, consisting solely of political subdivisions, into local government group self-insurance pools. The amendments are necessary due to Chapter 336 of the 2009 Acts of Assembly, which amended §§ 15.2-2703, 65.2-801 and 65.2-1203 of the Code of Virginia, relating to the merger of group self-insurance associations into local government group self-insurance pools.

In response to public comment, additional revisions were made to the service agreement provisions in 14VAC5-360-120 C, which provides the commission with the flexibility to consider and approve alternate compensation arrangements.

AT RICHMOND, FEBRUARY 19, 2010

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2009-00273

Ex Parte: In the matter of Adopting Amendments to the Rules Governing Local Government Group Self-Insurance Pools and the Rules Governing Group Self-Insurers of Liability Under the Virginia Workers' Compensation Act

ORDER ADOPTING RULES

By Order To Take Notice entered December 17, 2009, all interested persons were ordered to take notice that subsequent to February 1, 2010, the State Corporation Commission ("Commission") would consider the entry of an order adopting amendments to the regulations entitled "Rules Governing Local Government Group Self-Insurance Pools" and "Rules Governing Group Self-Insurers of Liability Under the Virginia Workers' Compensation Act" ("Regulations"), proposed by the Bureau of Insurance ("Bureau") which amend the regulations at 14VAC5-360-10 through 14VAC5-360-160, 14VAC5-360-180 and 14VAC5-360-190, and 14VAC5-370-10 through 14VAC5-370-150, and 14VAC5-370-170 and 14VAC5-370-180, unless on or before February 1, 2010, any person objecting to the adoption of the proposed amendments to the Regulations filed a request for a hearing with the Clerk of the Commission ("Clerk").

The Order to Take Notice also required all interested persons to file their comments in support of or in opposition to the proposed amendments to the Regulations on or before February 1, 2010.

No request for a hearing was filed with the Clerk. By letter dated January 15, 2010, the Virginia Municipal Liability Pool and VML Insurance Programs (collectively, "VML") filed comments with the Clerk. The comments filed by VML suggested changes to 14VAC5-360-120 which currently requires that the contract between a liability pool and service agent must state that the service agent will handle all claims incurred during the contract period to their conclusion without additional compensation. The amendment suggested by VML requires that the contract between a liability pool and service agent must state that the service agent will handle all claims incurred during the contract period to their conclusion without additional compensation while allowing the Commission to approve alternative compensation methodology.

The Bureau has recommended that the changes suggested by VML be accepted.

NOW THE COMMISSION, having considered the Bureau's recommendation, is of the opinion that the attached amendments to the Regulations should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The amendments to the regulations entitled Rules Governing Local Government Group Self-Insurance Pools and Rules Governing Group Self-Insurers of Liability Under the Virginia Workers' Compensation Act at 14VAC5-360-10 through 14VAC5-360-160, 14VAC5-360-180 and 14VAC5-360-190, and 14VAC5-370-10 through 14VAC5-370-150, and 14VAC5-370-170 and 14VAC5-370-180 which are attached hereto and made a part hereof, should be, and they are hereby, ADOPTED to be effective March 1, 2010.

(2) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the attached rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(3) The Commission's Division of Information Resources shall make available this Order and the adopted rules on the Commission's website, <http://www.scc.virginia.gov/case>.

(4) AN ATTESTED COPY hereof, together with a copy of the amended regulations, shall be sent by the Clerk of the Commission to the Bureau in care of Deputy Commissioner Douglas C. Stolte, who forthwith shall give further notice of the amendments to the regulations by mailing a copy of this Order, together with the amended regulations, to all licensed group self-insurance associations, local government group self-insurance pools and certain interested parties designated by the Bureau.

(5) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (4) above.

14VAC5-360-10. Purpose.

The purpose of this chapter is to set forth rules, forms and procedural requirements that the ~~Commission~~ commission deems necessary for the approval and monitoring of pools created pursuant to Local Government Group Self-Insurance Pools, Chapter ~~41.1~~ (~~§ 15.1-503.4:1 et seq.~~) 27 (§ 15.2-2700 et seq.) of Title ~~15.1~~ 15.2 of the Code of Virginia.

14VAC5-360-20. Definitions.

"Act" means Chapter ~~41.1~~ (~~§ 15.1-503.4:1 et seq.~~) 27 (§ 15.2-2700 et seq.) of Title ~~15.1~~ 15.2 of the Code of Virginia.

"Actuary," for coverages other than group life, accident and health, means a person who is a member of the American Academy of Actuaries qualified in loss reserves and rate making according to professional guides, recommendations, interpretations, and opinions of the Academy, or a member of the Casualty Actuarial Society. For group life, accident and

health coverages, "actuary," means a person who is a member of the American Academy of Actuaries qualified in group life, accident and health reserves or a fellow of the Society of Actuaries.

"Administrator" means the individual, partnership, corporation or other entity authorized to serve as a representative of a pool and its members in carrying out the policies of the board and managing the pool's activities.

"Commission" means the State Corporation Commission.

"Contribution" means the amount of payments required of each member in order to fund the pool's obligations under the ~~Plan~~ plan.

"Group self-insurance pool" or "pool" means a pool organized by two or more political subdivisions for the purpose of forming a group self-insurance pool to provide for joint or cooperative action relative to their financial and administrative resources for the purpose of providing to the participating political subdivisions risk management and liability insurance coverage for pool members and employees of pool members for acts or omissions arising out of the scope of their employment, including any or all of the following:

1. Casualty insurance, including workers' compensation under the Virginia Workers' Compensation Act (§ 65.2-100 et seq. of the Code of Virginia), employers' liability, general and professional and public officials liability coverage; but not including group self-insurers of liability under the Virginia Workers' Compensation Act;
2. Property insurance, including marine insurance and inland marine and transportation insurance coverage;
3. Group life, accident and health coverages including hospital, medical, surgical and dental benefits to the employees of member political subdivisions and their dependents;
4. Automobile insurance, including motor vehicle liability insurance coverage and collision and security for motor vehicles owned or operated, as required by Title ~~46.1~~ 46.2 of the Code of Virginia, and protection against other liability and loss associated with the ownership and use of motor vehicles;
5. Surety and fidelity insurance coverage; and
6. Umbrella and excess insurance coverages.

"Insolvent" means (i) the condition of a pool that has liabilities in excess of assets or (ii) the inability of a pool to pay its obligations as they become due in the usual course of business.

"Member" means a political subdivision which has entered into a member agreement and thereby becomes a member in a group self-insurance pool.

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"Member agreement" means the written agreement executed between each member and the pool which sets forth the conditions of membership in the pool, the obligations, if any, of each member to the other members and the terms, coverages, limits, and deductibles of the ~~Plan~~ plan.

"Members' supervisory board" or "board" means the governing authority of the pool selected by the members to be responsible for fixing contributions to the pool, maintaining reserves, levying and collecting assessments for deficiencies, disposing of surpluses, and administration of the pool in the event of termination or insolvency.

"Plan" means the plan of self-insurance offered by the pool to its members as specifically designated in the member agreement.

"Political subdivision" means any county, city, or town, school board, transportation district commission, or any other local governmental authority or local agency or public service corporation owned, operated or controlled by a locality or local government authority, with power to enter into contractual undertakings.

"Service agent" means any individual, partnership, corporation or other entity that may provide any or all of the insurance services including, but not limited to, claims adjustment, safety engineering, compilation of statistics, the preparation of contribution payments, loss reports, and other required self-insurance reports, and the administration of a claims fund.

14VAC5-360-30. Application for license as group self-insurance pool; requirements; approval; review.

A. Two or more political subdivisions may be licensed by the ~~Commission~~ commission as a group self-insurance pool for the purpose of entering into agreements to pool their liabilities under the Act. The application for a license shall be made on a form prescribed by the ~~Commission~~ commission and shall contain answers to all questions and shall be verified by the oath or affidavit of at least one member of the board of the pool, and the administrator.

B. The ~~Commission~~ commission may disapprove an application for the formation of a group self-insurance pool and may suspend or withdraw approval whenever it finds that applicant or pool:

1. Has refused to submit its books, papers, accounts, or affairs to the reasonable inspection of the ~~Commission~~ commission or its representative;
2. Has refused, or its officers or agents have refused, to furnish satisfactory evidence of its financial and business standing or solvency;
3. Is insolvent, or is in such condition that its further transaction of business in this Commonwealth is hazardous

to its members and creditors in this Commonwealth, and to the public;

4. Has refused or neglected to pay a valid final judgment against it within 60 days after its rendition;

5. Has violated any law of this Commonwealth or has violated or exceeded the powers granted by its members;

6. Has failed to pay any fees, taxes or charges imposed in this Commonwealth within 60 days after they are due and payable, or within 60 days after final disposition of any legal contest with respect to liability therefor; or

7. Has been found insolvent by a court of any other state, or by the insurance commissioner or other proper officer or agency of any other state, and has been prohibited from doing business in such state.

C. If after review of the pool's application and other additional information required by this chapter, the ~~Commission~~ commission is satisfied that the pool's financial condition and method of operation are such that the pool may reasonably be expected to meet the obligations which it has undertaken, and has fully disclosed to its members or potential members the coverages and obligations of membership in the plan, then the ~~Commission~~ commission shall issue a license to the pool. The ~~Commission~~ commission shall act on the application as promptly as practical under the existing circumstances.

D. If the ~~Commission~~ commission rejects the pool's application, notice shall be served personally, or by certified or registered mail, upon all interested parties stating the reason for the rejection. The pool shall be provided an opportunity to introduce evidence and be heard in a hearing convened within a timely manner. Such hearing may be formal or informal.

14VAC5-360-40. Application for license; additional requirements.

A. An application submitted by a pool shall be accompanied by the following items which shall be subject to the approval of the ~~Commission~~ commission:

1. A copy of the articles of incorporation, constitution, or other instrument which sets forth the powers of the pool.

2. A copy of the bylaws or the governing rules of the proposed pool which may be included as part of the documents provided pursuant to subdivision 1 ~~above~~ of this subsection.

3. A copy of the forms used for the member agreement and power of attorney, if any.

4. A copy of the forms used for the indemnity agreement and power of attorney, if any.

5. A copy of a financial plan which sets forth in general terms:

- a. The insurance coverages to be offered by the group self-insurance pool, applicable deductible levels, and the maximum liability which the pool will retain;
- b. The amount of reserves to be set aside for the payment of claims;
- c. The amount, if any, of specific excess insurance to be purchased by the pool; and
- d. The amount, if any, of aggregate excess insurance coverage to be purchased and maintained.

Such items may be contained in other documents submitted to the ~~Commission~~ commission in lieu of inclusion in a financial plan.

~~5.~~ 6. A copy of a plan of management which provides for all of the following:

- a. The means of establishing the governing authority of the pool;
- b. The responsibility of the governing authority for fixing contributions to the pool, maintaining reserves, levying and collecting assessments for deficiencies, disposing of surpluses, and administration of the pool in the event of termination or insolvency;
- c. The basis upon which new members may be admitted to, and existing members may leave, the pool;
- d. The identification of reserves by exposure areas; and
- e. Such other provisions as are necessary or desirable for the operation of the pool.

Such items may be contained in other documents in lieu of inclusion in a plan of management.

~~6.~~ 7. Designation of the initial or interim board and the administrator, together with pertinent biographical information for each member of the board and for the administrator or the principal officers of the corporation serving as administrator. This information is to be submitted on a form prescribed by the ~~Commission~~ commission.

~~7.~~ 8. The address in this Commonwealth where the books and records of the pool will be maintained at all times.

~~8.~~ 9. Information showing that the pool has, within its own organization or by contract with an approved service agent, ample facilities and competent personnel to service its program with respect to underwriting matters, compilation of statistics, loss prevention, safety engineering and claims adjusting. Copies of all executed service agreements shall be filed with the ~~Commission~~ commission.

~~9.~~ 10. A confirmation of a fidelity bond covering the administrator and its employees in a form and amount acceptable to the ~~Commission~~ commission.

~~10.~~ 11. A projection of administrative expenses for the first year of operation in an amount and as a percentage of the estimated annual contributions.

~~11.~~ 12. Proof of payment of contributions by members of at least ~~\$250,000~~ 25% of its estimated first year's contribution into a designated depository. This amount shall not be less than \$250,000.

13. The application shall be accompanied by any other information the commission requires.

B. An application submitted by a group self-insurance pool shall be accompanied by a composite listing of the estimated annual gross contributions to be developed by each organizing member of the pool individually and in the aggregate for the pool. The aggregate amount of annual contributions must be at least ~~\$500,000~~ \$ 1 million unless otherwise approved by the ~~Commission~~ commission.

C. Any subsequent revisions to items submitted under the provisions of 14VAC5-360-30 and 14VAC5-360-40 ~~of this chapter~~ shall be filed with and subject to approval by the ~~Commission~~ commission.

14VAC5-360-45. Security deposit requirement.

Each pool licensed by the commission to offer workers compensation shall maintain with the State Treasurer a security deposit of acceptable securities in an amount of \$250,000 for the first plan year, or such other amount as the commission prescribes, and for succeeding plan years such amount as the commission deems reasonable taking into account the financial condition of the association and any excess insurance carried by the association. The commission may, from time to time, increase, release, or reduce the security deposit or surety bond requirement. The security deposit shall be subject to the provisions of Article 7 (§ 38.2-1045 et seq.) of Chapter 10 of Title 38.2 of the Code of Virginia.

For the purposes of this chapter, acceptable securities shall be (i) investments allowed by § 2.2-4500 of the Code of Virginia (legal investments for public sinking funds) and § 2.2-4501 of the Code of Virginia (legal investments for other public funds); (ii) securities issued by states, other than Virginia, and their municipalities or political subdivisions rated A or better by Moody's Investors Services, Inc., or Standard and Poor's, Inc.; (iii) revenue bonds rated Aa (AA) or better by Moody's Investors Services, Inc., or Standard and Poor's, Inc. that are bonds issued by municipalities or political subdivisions of this Commonwealth or any other state; (iv) securities issued by the Federal Home Loan Banks; and (v) securities issued by the Federal Intermediate Credit Banks.

14VAC5-360-50. Investments.

The board of a pool may, in its discretion, invest funds in any type of investments authorized by §§ ~~38.2-14115~~ 38.2-1415, 38.2-1418, 38.2-1419, 38.2-1421, and 38.2-1432 of the

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Code of Virginia. Investments may also include (i) investments allowed by ~~§ 2.1-327~~ § 2.2-4500 of the Code of Virginia (legal investments for public sinking funds) and ~~§ 2.1-328~~ § 2.2-4501 of the Code of Virginia (legal investments for other public funds), (ii) securities issued by states, other than Virginia, and their municipalities or political subdivisions rated A or better by Moody's Investors Services, Inc., or Standard and Poor's, Inc., (iii) revenue bonds rated Aa (AA) or better by Moody's Investors Services, Inc., or Standard and Poor's, Inc. that are bonds issued by municipalities or political subdivisions of this Commonwealth or any other state, (iv) securities issued by the Federal Home Loan Banks, and (v) securities issued by the Federal Intermediate Credit Banks. Other investments may be made subject to the approval of the ~~Commission~~ commission. All such investments shall be authorized or approved by the board in the manner contemplated by the provisions of § 38.2-1408 of the Code of Virginia.

14VAC5-360-60. Filing of reports; examination by ~~Commission~~ commission.

A. Each pool shall file annually with the ~~Commission~~ commission and with the members of the pool within ~~120 days~~ six months after the end of the pool's fiscal year, audited financial ~~statements~~ reports for the most recently completed fiscal year certified by an independent certified public accountant. The financial ~~statement~~ report shall be considered filed on the date the ~~statement~~ report was sent by mail as shown by the postmark. If the pool fails to file such audited financial ~~statements~~ reports, the ~~Commission~~ commission may perform the audit and the pool shall reimburse the ~~Commission~~ commission for such cost.

1. The audited financial ~~statement~~ report shall contain a report in detail of the pool's assets, outstanding liabilities, including the amount of claims paid to date and current reserves for losses, revenues and disbursements during the year, the investments of the pool's assets and all other information which the ~~Commission~~ commission may deem necessary to secure a full and accurate knowledge of the financial affairs and condition of the pool. The working papers of the certified public accountant and other records pertaining to the preparation of the audited financial ~~statements~~ reports may be reviewed by the ~~Commission~~ commission.

2. The audited financial ~~statement~~ report shall be signed on behalf of the pool by two duly authorized officers or a duly authorized officer and the administrator.

3. The ~~Commission~~ commission shall also devise a uniform accounting system to be used by the pool.

4. In addition to the annual audited financial ~~statement~~ report, the ~~Commission~~ commission may require any pool to file additional financial information, including interim financial reports and additional reports, exhibits or

statements considered necessary to secure complete information concerning the condition, solvency, experience, transactions or affairs of the pool. The ~~Commission~~ commission shall establish reasonable deadlines for filing these additional reports, exhibits or statements and may require verification as the ~~Commission~~ commission shall designate.

B. The pool must retain and have available for examination by the ~~Commission~~ commission:

1. All executed copies of the application of each political subdivision for membership in the pool; and

2. A certified copy of each political subdivision's resolution authorizing membership in the pool.

C. Any person who knowingly or willfully makes or files any false or fraudulent statement, report or other instrument shall be charged with a Class 5 felony. If convicted, such person shall be guilty of a Class 5 felony.

D. The ~~Commission~~ commission may examine the affairs, transactions, accounts, records, and assets of the pool as often as it deems necessary. The manner and frequency in which the examination of financial condition shall be conducted and the release of any reports of financial condition shall be as provided in Article 4 (§ 38.2-1317 et seq.) of Chapter 13 of Title 38.2 of the Code of Virginia.

14VAC5-360-70. Reserves.

A. Every pool shall calculate the amount reasonably determined to be sufficient to provide for the payment of every loss or claim whether reported or unreported, arising on or prior to the date of any annual or other ~~statement~~ report and it shall maintain a reserve liability in an amount estimated in the aggregate to provide for the payment of all such losses or claims and any expenses related thereto.

B. Each pool shall maintain reserves equal to the unearned portion of the gross contribution or assessment, if any, on unexpired or unexpired risks.

C. Reserves for coverages based on life expectancy shall be computed according to tables of mortality and rates of interest prescribed in Title 38.2 of the Code of Virginia. The pool shall maintain an active life reserve for accident and health coverages which shall place a sound value on its liabilities under such risks and shall not be less in the aggregate than the pro rata gross unearned contributions for such coverages.

D. Every pool may receive credit for insurance or reinsurance recoverable from an insurance company licensed to transact such insurance in this Commonwealth, or any state of the United States or the District of Columbia and meeting the standards of solvency at least equal to those required in this Commonwealth. A pool may receive credit for insurance or reinsurance with any other insurer to the extent that funds are withheld as security for the payment of obligations

thereunder if such funds are held subject to withdrawal by and are under the control of the pool. Such funds may include letters of credit subject to the approval of the ~~Commission~~ commission. Credit may be received for insurance or reinsurance recoverable on the basis of an agreement entered into with individual unincorporated underwriters having a trusted surplus of at least \$100,000,000.

E. Credit may be received for insurance or reinsurance when the contract is:

1. Not cancellable or terminable for any reason except upon not less than 60 days written notice sent by registered or certified mail to (i) the pool and (ii) the ~~Commission~~ commission;
2. Automatically renewable at the expiration of the policy period except upon 60 days written notice sent by registered or certified mail to (i) the pool, and (ii) the ~~Commission~~ commission.

F. No more than one pool, which shall be defined as the named insured, shall be covered by any contract or policy of excess liability insurance. Any contract of insurance or reinsurance shall be payable by the assuming insurer on the basis of the liability of the pool under the contract or contracts assumed without diminution because of the insolvency of the pool.

G. Copies of the complete contracts or policies of insurance or reinsurance, with all endorsements thereto entered into by the pool for the benefit of the pool, shall be filed with the ~~Commission~~ commission.

H. No pool shall expose itself to any loss on any one risk or hazard in an amount exceeding 10% of the aggregate annual contribution, unless authorized by the ~~Commission~~ commission.

14VAC5-360-80. Responsibilities of members' supervisory board.

A. The members' supervisory board shall be responsible for holding and managing the assets of and directing the affairs of the pool and shall be elected in the manner prescribed by the pool's governing instruments. At least a majority of the board ~~must~~ shall be members of the pool, but a board member shall not be an owner, officer or employee of any service agent, its parent or any of its affiliated companies, under contract with the pool.

B. The board shall fix contributions to the pool and supervise the finances of the pool and the pool's operations to the extent necessary to assure conformity with law, this chapter, the member agreement, and the pool's governing instruments.

C. The board shall take all necessary precautions to safeguard the assets of the pool, including, but not limited to, the following:

1. Doing all acts necessary to assure that each member continues to be able to fulfill the obligations of membership; and also reporting promptly to the ~~Commission~~ commission any grounds or change in circumstances which may affect the pool's ability to meet its obligations such as withdrawal of a member;

2. Designating an administrator to administer the affairs of the pool, to carry out the policies established by the board and to provide day to day management of the pool. The administrator shall furnish a fidelity bond in an amount sufficient to protect the pool against the misappropriation or misuse of any monies or securities. Evidence of the bond shall be filed with the ~~Commission~~ commission, said bond being one of the conditions required for licensing of the pool. The administrator shall not be an owner, officer or employee of any service agent, its parent or any of its affiliated companies, any of which are under contract with the pool;

3. Retaining control of all monies collected for the pool and the disbursement of such monies by the pool. All assets of the pool shall remain in the custody of the board or the authorized administrator. However, a claims fund for payment of benefits due and other related expenses may be established for the use of any authorized service agent; and

4. Actively collecting delinquent accounts resulting from any past due contributions by members. Any member of a pool who fails to make the required contributions after due notice may be declared ineligible for the self-insurance privilege until this past due account, including cost of collection, has been paid or adequately provided for.

D. The board shall assure that, for workers' compensation liability, payroll verifications of all members of the pools are completed within 180 days after the close of a plan year and the board shall require that efforts are made to collect any additional amounts due within 30 days of the completion of each audit.

E. Neither the board nor the administrator shall use any of the monies collected for any purpose unrelated to securing the members' liability or other rights and obligations under the member agreement and any administrative or other necessary expenses of the pool. Further, the board shall be prohibited from borrowing any monies from the pool or in the name of the pool without advising the ~~Commission~~ commission of the nature and purpose of the loan and obtaining the ~~Commission's~~ commission's approval.

~~E.~~ F. The board may dispose of any surplus as provided in 14VAC5-360-100 ~~hereof~~.

F. G. The board shall assure that the office of the administrator of the pool and all pertinent records necessary to verify the accuracy and completeness of all reports submitted to the ~~Commission~~ commission are maintained within this Commonwealth.

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~~G.~~ H. The board may adopt its own rules and procedures as considered necessary for the operation of the pool provided these rules and procedures are not inconsistent with the Act and this chapter.

~~H.~~ I. The board may designate a service agent or agents.

14VAC5-360-90. Contribution requirements.

A. For the purpose of funding the liability of a pool the members shall make contributions to the pool in the manner prescribed in the member agreement.

B. For the purpose of funding the workers' compensation liability of a pool, the members shall make contributions to the pool based on annual payrolls for all employees of each member using rates and stock or nonstock discounts as adopted by the board and approved by the commission. The rates to be used are those in effect as of the inception of each pool's fiscal year. A plan that allows for consideration of past experience in developing a factor to be applied to a member's contribution may be used provided this plan has been approved by the commission.

Nothing contained herein shall be construed to prevent a pool from filing with the commission its own rates or a deviation from these rates or an alternative method of determining contributions that may be used upon approval by the commission.

~~C.~~ At the effective date of a pool's license, \$250,000 shall have been paid into a designated depository. The balance of the first year's contributions shall be paid no later than the end of the ninth month of the pool's fiscal year, either in quarterly or monthly installments at the discretion of the board. For each subsequent year of operation of the pool, the payment schedule shall provide for annual or periodic payments in intervals no more frequently than once a month, at the discretion of the board.

~~C.~~ D. Each pool shall file with the ~~Commission~~ commission the basis for establishing the annual contributions of its members. Such contributions must be based on reasonable assumptions and certified by an actuary or other person satisfactory to the ~~Commission~~ commission as to the sufficiency of such contributions. This subsection shall not apply to a pool's workers' compensation business.

~~D.~~ E. The total amount of each member's annual contribution to the pool shall be certified by the board to the governing body of each member at least one month prior to the beginning of the next fiscal year, if practical.

~~E.~~ F. Each pool may levy upon its members an additional assessment whenever needed to supplement the pool's surplus to assure payment of its obligations. A member may be assessed for any fiscal year during which the member participated in the pool. Such assessment may be made after the end of the pool's fiscal year and after the member has discontinued membership in the pool.

1. The pool may assess each participating member an additional proportionate amount, as provided in the pool's member agreement or as provided in the pool's plan filed with the ~~Commission~~ commission to correct a deficit condition.

2. The board shall submit to the ~~Commission~~ commission a report of the causes of the pool's insufficiency, the assessments necessary to replenish it and the steps taken to prevent a recurrence of such circumstances.

14VAC5-360-100. Distribution of surplus funds.

Any surplus accumulated within a pool's fiscal year, as determined from the annual audited financial ~~statement~~ report, may be declared refundable by the board. No distribution of the surplus funds shall be made earlier than 12 months following the end of the pool's fiscal year for which a surplus was declared. Such distribution shall not be made until certified by an actuary and the plan has been filed with the ~~Commission~~ commission.

Surplus accumulated within a pool's fiscal year shall be used exclusively for the benefit of those members belonging to the pool during that year. The accounting for each pool's fiscal year shall be separate for each year.

Notwithstanding the foregoing paragraph, the ~~Commission~~ commission may require, and shall permit upon application of the pool that does not write workers' compensation, that 5.0%, or such greater an amount as the board may elect, of a pool's surplus accumulated within a fiscal year be allocated to a restricted surplus account at the end of that year. The restricted surplus is to be used at the direction of the pool's board subject to the approval of the ~~Commission~~ commission.

However, for pools that have been merged into by a group self-insurance association consisting solely of political subdivisions licensed pursuant to § 65.2-802 of the Code of Virginia, the commission shall require that 1.0% or more of a pool's earned contributions for each fiscal accounting period be allocated to a contingency reserve. The contingency reserve is to be used at the direction of the pool's board subject to the approval of the commission. When the commission is satisfied that the contingency reserve is adequate for the needs of the pool, adjustments may be made by the commission as necessary to the contingency reserve or to contributions to the contingency reserve to maintain it at an established amount.

14VAC5-360-110. Member agreement.

A. Every member of a group self-insurance pool shall execute a member agreement which shall set forth the rights, privileges and obligations of the member, and the terms, coverages, limits, and deductibles of the ~~Plan~~ plan. This agreement shall be subject to the approval of the ~~Commission~~ commission and shall provide for, in substance, the following:

1. Election by pool members of a governing authority for the pool, a majority of whom shall be elected or appointed officials of pool members;
2. A requirement that the members' supervisory board designate and appoint an administrator empowered to accept service of process on behalf of the pool and authorized to act for and bind the pool and members in all transactions relating to or arising out of the operation of the pool;
3. The right of substitution of the administrator and revocation of the power of attorney and rights thereunder;
4. A financial plan or plan of risk management which is further described in 14VAC5-360-40 A 4 ~~of this chapter 5~~;
5. A management plan which is further described in 14VAC5-360-40 A 5 ~~of this chapter 6~~;
6. A requirement that the pool, at the request of a member, provide without unreasonable delay, to any person designated by the member, proof of the coverages provided by the pool, including any insurance or reinsurance, applicable deductible levels and the maximum liability which the pool will retain; and
7. For group life, accident and health coverages, a requirement that the pool provide to each covered pool member and to employees of pool members a certificate setting forth (i) the coverage, including any limitations, reductions and exclusions applicable to the coverage provided; (ii) to whom benefits are payable; and (iii) any family member or dependent's coverage.

Such member agreement may also contain such other provisions not inconsistent with law or this chapter.

B. The first page of the member agreement shall include a summary that shall disclose:

1. In regard to coverage:
 - a. The coverages provided;
 - b. The period of the coverage;
 - c. The amount of the deductible, if any, per claim or in the aggregate; and
 - d. For each coverage, the maximum amount of coverage to be borne by the pool.
2. In regard to the contribution:
 - a. The contribution and dates payments are due for the political subdivision to become a member of the pool;
 - b. The basis upon which each member's contribution is determined; and
 - c. Whether any additional assessments of the members may be made.

3. In regard to excess coverage of the pool:
 - a. A description of the excess coverage for the pool as to its coverage per occurrence, coverage per occurrence per person, if appropriate, and in the aggregate for each coverage offered; and
 - b. A statement that there is no excess coverage for the pool if the pool has not obtained such coverage.
4. The name of the proposed service agent.

C. The member agreement shall include a prominent disclosure notice that must be signed by a duly authorized officer of the political subdivision. The disclosure notice shall use the following or substantially similar language:

A local government group self-insurance pool is not protected by any Virginia insurance guaranty association against default due to insolvency. In the event of insolvency, members and persons filing claims against members may be unable to collect any amount owed to them by the pool regardless of the terms of the member agreement. In the event the pool is in a deficit position, a member may be liable for any and all unpaid claims against such member.

With regards to workers' compensation liability, each member agrees to assume and discharge, jointly and severally, any liability under the Virginia Workers' Compensation Act of any and all employers party to such agreement and which provides that, in addition to the rights of the pool, in the event of failure of the pool to enforce such rights after reasonable notice to the pool, the commission shall have the right independently to enforce on behalf of the pool the joint and several liability of its members under the Virginia Workers' Compensation Act and the liability of members for any unpaid contributions and assessments.

The member agreement may also contain such other provisions not inconsistent with law or this chapter.

14VAC5-360-120. Servicing of pool.

A. A service agent for a licensed group self-insurance pool shall apply for and shall be subject to the approval of the ~~Commission~~ commission before entering into a contract with a pool and shall satisfy to the ~~Commission~~ commission that it has adequate facilities and competent personnel to fulfill its obligations to the pool and this chapter.

B. A service agent shall maintain a resident agent in this Commonwealth and that agent shall be authorized to act for the service agent on any and all matters covered by the service agreement. All books and records relating to the servicing of the pool shall be maintained in Virginia.

C. A service agent shall file with the ~~Commission~~ commission copies of all contracts entered into with the pool as they relate to the services to be performed. The service contract must state that the service agent agrees to handle all claims covered by the service agreement incurred during the

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contract period to their conclusion without additional compensation unless [~~approval~~ an alternative compensation methodology is approved by the commission. Approval] to transfer [~~them is claims from one service agent to another must be~~] obtained from the ~~Commission~~ commission prior to such transfer.

D. The service agent shall furnish a fidelity bond covering its employees in an amount sufficient to protect all monies placed in the claims fund.

E. Upon satisfactory compliance with the above provisions, a certificate of approval as a recognized and authorized service agent shall be issued to the applicant. Failure to comply with any of the foregoing rules or any order of the ~~Commission~~ commission within the time prescribed shall be considered justification for withdrawing the certificate of approval. The ~~Commission~~ commission shall give 10 days prior notice of such withdrawal. The notice shall be served personally, or by certified or registered mail, upon all interested parties setting forth the reasons for withdrawal, and providing the service agent an opportunity to introduce evidence and be heard. If, after a hearing, which may be formal or informal, the service agent's certificate of approval is revoked this revocation shall become effective 30 days after issuance of the ~~Commission's~~ commission's order or within such shorter or longer period as the ~~Commission~~ commission may consider necessary to protect the interests of the pool, its members and their employees.

F. Each individual, partnership, corporation or other entity approved to act as a service agent for a pool may be required to file with the ~~Commission~~ commission an annual statement of financial condition within four months of the completion of its fiscal year.

G. The pool may through its own personnel provide the services performed by a service agent upon approval by the ~~Commission~~ commission.

14VAC5-360-130. Handling of pool deficit.

If a group self-insurance pool is in a deficit condition, the pool shall promptly file with the ~~Commission~~ commission a financial plan to correct the deficit condition. If the plan is found to be unacceptable by the ~~Commission~~ commission and written notice, thereof, is given to the governing authority of the pool, delinquency proceedings may be commenced and conducted by the ~~Commission~~ commission in accordance with the provisions of Chapter 15 (§ 38.2-1500 et seq.) of Title 38.2 of the Code of Virginia.

14VAC5-360-140. Termination of pool members.

A. A member who fails to make timely contribution payments as provided by the board may be terminated after 10 days written notice has been given to the member and the ~~Commission~~ commission. A member can be terminated

without cause after 30 days written notice has been given to the member.

B. For workers' compensation liability, no member agreement shall be cancelled or nonrenewed except on 30 days notice to the member and the Workers' Compensation Commission, unless the member has obtained other insurance and the Workers' Compensation Commission is notified of that fact by the insurer assuming the risk, or unless, in the event of cancellation, said cancellation is for nonpayment of contributions; then 10 days notice shall be given the member and the Workers' Compensation Commission.

C. The pool shall remain liable for all claims applicable to the period during which the political subdivision was a member of the pool, including the period required for termination of membership.

14VAC5-360-150. Terms of license; voluntary dissolution of pool; ~~merger of pools~~ mergers.

A. A pool's license shall remain in effect until terminated at the request of the board or revoked by the ~~Commission~~ commission pursuant to 14VAC5-360-160.

B. Before a pool can voluntarily dissolve, it must present a plan of dissolution to the ~~Commission~~ commission for approval. Such a plan shall provide for the payment of all incurred losses and expenses of the fund and its members, including all incurred but not reported losses, as certified by an actuary, to the extent of the pool's assets. No assets of the pool may be used for any other purpose until payment of all such losses and expenses is provided for.

C. Subject to the approval of the ~~Commission~~ commission, a pool may merge with another local government group self-insurance pool if the resulting pool assumes in full all obligations of the merging pools. The ~~Commission~~ commission may hold a hearing on the merger and shall do so if any party, including a member of either pool, so requests.

D. Subject to the approval of the commission, a group self-insurance association consisting solely of political subdivisions licensed pursuant to § 65.2-802 of the Code of Virginia may merge with a pool pursuant to § 15.2-2703 of the Code of Virginia if the resulting pool assumes in full all obligations of the group self-insurance association. The commission may hold a hearing on the merger and shall do so if any party, including a member of the group self-insurance association or pool, so requests.

14VAC5-360-160. Revocation or suspension of self-insurance license.

A. The ~~Commission~~ commission may suspend or withdraw a pool's license as provided for in 14VAC5-360-30 B ~~of this chapter~~.

B. The ~~Commission~~ commission shall give 10 days prior notice to a pool of the proposed suspension or revocation.

The notice shall be served personally, or by certified or registered mail, upon all interested parties and shall state the reasons for the proposed suspension or revocation and provide the pool with an opportunity to introduce evidence and be heard. If after a hearing, which may be formal or informal, the pool's license is suspended or revoked, such action shall become effective 30 days after the ~~Commission's~~ commission's order is issued.

C. Any suspension may be terminated by the ~~Commission~~ commission upon proof by the pool that the original reasons for suspension have been satisfactorily corrected, and that the pool continues to meet all other requirements for a license.

14VAC5-360-180. Penalties.

Penalties for failure to comply with this chapter may include (i) suspension or revocation of the pool's license as provided in 14VAC5-360-160 ~~of this chapter~~, or (ii) a monetary fine of not more than \$5,000, or (iii) both.

14VAC5-360-190. Severability.

If any ~~provisions~~ provision of this chapter [7] or the application of it ~~thereof~~ to any person or ~~circumstances,~~ circumstance is for any reason held to be invalid, such invalidity shall not affect other provisions of this the remainder of the chapter which can be given effect without the invalid provision or, and the application, and to that end the provisions of this chapter are severable of the provision to other persons or circumstances shall not be affected thereby.

14VAC5-370-10. Purpose.

The purpose of this chapter is to set forth rules, forms and procedural requirements that the ~~Commission~~ commission deems necessary to carry out the provisions of § 65.2-802 of the Code of Virginia.

14VAC5-370-20. Definitions.

"Act" means the Virginia Workers' Compensation Act as provided by Title 65.2 of the Code of Virginia.

"Administrator" means the individual, partnership or corporation authorized to serve as a representative of an association and its members in carrying out the policies of the board and managing the association's activities.

"Commission" means State Corporation Commission.

"Common interest" means employers engaged in the same or substantially similar industry, trade, commerce or profession, including political subdivisions of this Commonwealth. Notwithstanding the foregoing, an employer seeking membership in an association licensed on and before July 1, 2000, has a common interest if the industry, trade, commerce, profession or other business activity of such employer is the same or substantially similar to the business activity of an employer that was a member of the association on and before July 1, 2000. If an association is licensed by the

~~Commission~~ commission, different businesses which are owned or controlled by a member of the association are eligible for membership in such association.

"Contributions" means the amount of payments required of each member in order to fund the association's obligations under the Act.

"Employer" shall have the definition provided by § 65.2-101 of the Code of Virginia.

"Group self-insurance association" or "association" means an association organized by two or more employers having a common interest that have entered into agreements to pool their liabilities under the Virginia Workers' Compensation Act.

"Indemnity agreement and power of attorney" means the written agreement executed by each member of the association in which each member (i) agrees to assume and discharge, jointly and severally, any liability under the Act of any and all members party to such agreement and (ii) grants the administrator power of attorney to act for and bind the members in all transactions relating to or arising out of the operations of the association.

"Member" or "member in good standing" means an employer party to an indemnity agreement for membership in a group self-insurance association who has been approved in accordance with the requirements of 14VAC5-370-50.

"Members' supervisory board," or "board," means the representative body selected by the members to be responsible for holding and managing the assets and directing the affairs of the association and for assuring that the association, through its members, is financially sound and able to meet its obligations under the Act.

"Service agent" means any individual, partnership or corporation that may provide services including, but not limited to, claims adjustment, safety engineering, compilation of statistics and the preparation of contribution payment and loss reports, preparation of other required self-insurance reports and the administration of a claims fund.

14VAC5-370-30. Application for license as group self-insurance association requirements; approval; review.

Two or more employers having a common interest may be licensed by the ~~Commission~~ commission as a group self-insurance association for the purpose of entering into agreements to pool their liabilities under the Act. The application for a license shall be made on the form prescribed by the ~~Commission~~ commission and shall contain answers to all questions and shall be verified by the oath or affidavit of at least one member of the board of the association and the administrator.

If, after review of the association's application as well as the additional information required by 14VAC5-370-40 ~~of this~~

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~~chapter~~, the ~~Commission~~ commission is satisfied that it has satisfactory proof of (i) the solvency of each member of the association, (ii) the financial ability of each employer to meet its obligations as a member and (iii) the ability of the association to pay or cause to be paid the compensation in the amount and manner and when due as provided for in the Act, the ~~Commission~~ commission may issue a license to the association.

The license may be revoked if the association fails to comply with all conditions and requirements set forth in this chapter and the Act.

Continuance of the license will require that the association maintain and produce on request by the ~~Commission~~ commission evidence of continuing compliance with any requirements imposed under 14VAC5-370-60 ~~of this chapter~~.

14VAC5-370-40. Application for license as group self-insurance association; additional requirements.

A. An application submitted by a group self-insurance association shall be accompanied by the following items. These items shall be subject to the approval of the ~~Commission~~ commission:

1. A copy of the members' indemnity agreement and power of attorney required by 14VAC5-370-120 ~~of this chapter~~ binding the association and each member of the association, jointly and severally, to comply with the provisions of the Act and copies of any other governing instruments of the proposed group self-insurance association;
2. An executed copy of the application of each employer for membership in the association on the effective date of the license of the association;
3. Financial statements of all applicants for membership showing that the membership of the proposed association has a combined net worth of at least one million dollars. Political subdivisions of this Commonwealth may combine to form associations without complying with this requirement;
4. Proof of payment by each member of at least 25% of its estimated first year's contribution into a designated depository;
5. A confirmation of excess insurance, if excess insurance is required, by a licensed insurer in an amount acceptable to the ~~Commission~~ commission which complies with the requirements set forth in 14VAC5-370-90 ~~of this chapter~~. However, the ~~Commission~~ commission at its discretion may allow this insurance to be placed with an approved surplus lines insurer;
6. Designation of the board and of the administrator of the association, together with properly executed biographical affidavits for each member of the board and for the

administrator or the principal officers of a corporation serving as an administrator. Affidavits are to be submitted on a form prescribed by the ~~Commission~~ commission;

7. The address in this Commonwealth where the books and records of the pool will be maintained at all times;

8. Information showing that the association has, within its own organization or by contract with an approved service agent, adequate facilities and competent personnel to service its program with respect to underwriting matters, claims adjusting, and industrial safety engineering. Copies of all executed servicing agreements shall be filed with the ~~Commission~~ commission;

~~8.~~ 9. A confirmation of a fidelity bond in a form and amount acceptable to the ~~Commission~~ commission;

~~9.~~ 10. Deposit of securities or a surety bond with the State Treasurer in an amount acceptable to the ~~Commission~~ commission in accordance with the requirements of 14VAC5-370-60 ~~of this chapter~~;

~~10.~~ 11. A projection of administrative expenses for the first year of operation in an amount and as a percentage of the estimated annual contributions;

~~11.~~ 12. A statement regarding the type of business and guidelines to be used to determine common interest; and

~~12.~~ 13. A copy of the association's contracts with the service agent and the administrator which sets forth the terms and obligations of the agreement.

B. An application submitted by a group self-insurance association shall be accompanied by all of the following:

1. A composite listing of the estimated annual gross contribution to be developed by each member of the association individually and in the aggregate for the association, which, in the aggregate, shall be not less than ~~\$350,000~~ \$500,000 for each of the association's first two years and thereafter for subsequent years shall be not less than ~~\$500,000~~ \$1 million, provided that this latter requirement shall not apply to groups licensed prior to May 1, 1988; and
2. The application shall be accompanied by any other information the ~~Commission~~ commission requires.

C. Any subsequent revisions to items submitted under the provisions of 14VAC5-370-30 and ~~14VAC5-370-40~~ of this chapter section will be filed with and subject to approval by the ~~Commission~~ commission. Any subsequent revisions of the items in subsection B of this section will be filed with the ~~Commission~~ commission.

14VAC5-370-50. Approval of members of association.

Application for membership in an association shall be made on a form approved by the ~~Commission~~ commission. The application shall include (i) acknowledgement of the

execution of the indemnity agreement and power of attorney required by 14VAC5-370-120 ~~of this chapter~~, (ii) the applicant's current financial ~~statement report~~ on a form approved by the ~~Commission~~ commission demonstrating the solvency of the applicant and its financial ability to meet its obligations as a member and (iii) the approval by or on behalf of the board of the applicant's membership. A copy of the completed application shall be filed with the ~~Commission~~ commission by the board within seven days after the effective date of coverage whereupon the ~~Commission~~ commission shall be deemed to have granted authorization for the applicant to become a member of the association as of such effective date. The ~~Commission~~ commission may, after notice to an association, require that applications for membership in such association be approved by the ~~Commission~~ commission before the applicant may become a member of the association. The association shall at all times have in its possession, in a form acceptable to the ~~Commission~~ commission, a current financial ~~statement report~~ for each member. The requirement for having a current financial ~~statement report~~ as a condition of membership or otherwise shall not apply to governmental entities which are not required by law to have an annual audit performed.

The ~~Commission~~ commission may, at any time, withdraw approval of any member after giving proper notice if the ~~Commission~~ commission determines that the member is not in compliance with this chapter. Prior to withdrawal of approval by the ~~Commission~~ commission or any revocation or termination by the association, the member will be considered to be a member in good standing with the association. Any member who cannot demonstrate its solvency and its financial ability to meet its obligations as a member shall be removed from membership in the association by the board.

14VAC5-370-60. Security deposit and surety bond requirement.

A. Except as provided in subsection B of this section, each group self-insurance association licensed by the ~~Commission~~ commission shall maintain with the State Treasurer a security deposit of acceptable securities or surety bond in an amount of \$250,000 for the first plan year, or such other amount as the ~~Commission~~ commission prescribes, and for succeeding plan years such amount as the ~~Commission~~ commission deems reasonable taking into account the financial condition of the association and any excess insurance carried by the association. The ~~Commission~~ commission may, from time to time, increase, release or reduce the security deposit or surety bond requirement. The security deposit or surety bond shall be held by the State Treasurer pursuant to § 65.2-801 C of the Code of Virginia, and so far as not inconsistent with the provisions of the Act or these regulations shall be subject to the provisions of Article 7 (§ 38.2-1045 et seq.) of Chapter 10 of Title 38.2 of the Code of Virginia.

For the purposes of this chapter, acceptable securities shall be (i) investments allowed by ~~§ 2.1-327~~ § 2.2-4500 of the Code of Virginia (legal investments for public sinking funds) and ~~§ 2.1-328~~ § 2.2-4501 of the Code of Virginia (legal investments for other public funds), (ii) securities issued by states, other than Virginia, and their municipalities or political subdivisions rated A or better by Moody's Investors Services, Inc., or Standard and Poor's, Inc., (iii) revenue bonds rated Aa (AA) or better by Moody's Investors Services, Inc., or Standard and Poor's, Inc. that are bonds issued by municipalities or political subdivisions of this Commonwealth or any other state, (iv) securities issued by the Federal Home Loan Banks, and (v) securities issued by the Federal Intermediate Credit Banks.

Surety bonds deposited pursuant to this section shall be issued by an insurer duly licensed in this Commonwealth to transact a surety business and shall not either directly or indirectly be under the same ownership or management as the principal on such bonds. The surety bond shall be designated as applying to agreements approved or awards by the Virginia Workers' Compensation Commission made at any time on account of injuries or deaths occurring during the continuance of the principal's license and the continuance of the bond.

In addition to the minimum security deposit or surety bond required by this section, the ~~Commission~~ commission may require additional securities or surety it considers appropriate after giving consideration to such factors as excess insurance and the financial ability of the group to meet its obligations under the Act.

B. As an alternative to the security deposit or surety bond required by subsection A of this section, a group self-insurance association may have an appropriate endorsement attached to its contracts for excess insurance as required in 14VAC5-370-90 ~~of this chapter~~. The endorsement must provide that in the event the group self-insurance association fails to pay to any employee or dependent of any employee any compensation provided by the Act, the excess coverage insurer will become liable immediately for 100% of the compensation and will make payment as directed by the Virginia Worker's Compensation Commission.

C. Any deposit made with the State Treasurer prior to May 1, 1988 must be maintained with the State Treasurer until specifically released in writing by the ~~Commission~~ commission.

14VAC5-370-70. Investment.

The board of an association may, in its discretion, invest funds in any type of investments authorized by §§ 38.2-1415, 38.2-1418, 38.2-1419, 38.2-1421, 38.2-1432 of the Code of Virginia and 14VAC5-370-60 ~~of this chapter~~. Other investments may be made subject to the approval of the ~~Commission~~ commission. All such investments shall be authorized or approved by the board in the manner

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contemplated by the provisions of § 38.2-1408 of the Code of Virginia.

14VAC5-370-80. Filing of reports.

Each association shall file annually with the ~~Commission~~ commission on or before March 1, of each year an annual statement showing its financial operations and condition for the most recently completed calendar year. The ~~Commission~~ commission, for good cause, may extend the time for filing the annual statement by not more than 60 days. In addition, each association shall furnish a copy of an audited ~~statement~~ report of its financial operations and conditions prepared by an independent ~~Certified Public Accountant~~ certified public accountant within six months of the end of the association's fiscal period.

The annual statement shall contain a report in detail of the association's assets, liabilities, revenues and disbursements during the year, and all other information which the ~~Commission~~ commission may deem necessary to secure a full and accurate knowledge of the financial affairs and condition of the association.

The ~~Commission~~ commission may prescribe the form of the annual statement and of any necessary schedules and exhibits. In addition to the annual statement, the ~~Commission~~ commission may require any association to file timely additional financial information, including interim financial reports.

14VAC5-370-90. Contracts for excess insurance.

Specific and aggregate excess insurance may be required as a condition for licensing a group self-insurance association and shall be subject to the following requirements:

1. No contract or policy of excess liability insurance shall be recognized by the ~~Commission~~ commission in considering the ability of an applicant to fulfill its financial obligations under the Act unless this contract or policy:

a. Is issued by an insurer licensed or approved by the ~~Commission~~ commission. However, the ~~Commission~~ commission at its discretion may allow this insurance to be placed with an approved surplus lines insurer;

b. Is not cancellable or terminable for any reason except upon 60 days written notice sent by registered or certified mail to:

(1) The association; and

(2) The ~~Commission~~ commission.

c. Is automatically renewable at the expiration of the policy period except upon 60 days written notice sent, by registered or certified mail to:

(1) The association; and

(2) The ~~Commission~~ commission.

2. If the contract or policy contains any type of commutation clause, it shall provide in substance:

a. That any commutation effected under the policy shall not relieve the underwriter or underwriters of further liability in respect to claims and expenses unknown at the time of such commutation or in regard to claims apparently closed but which may be subsequently revived by or through a competent authority; and

b. That in the event the underwriter proposes to settle liability to the association for any future payments payable as compensation for injuries occurring during the term of the policy by the payment of a lump sum to be fixed as provided in the commutation clause of the policy, not less than 30 ~~days'~~ days prior notice of this commutation shall be given to the ~~Commission~~ commission by registered or certified mail by the underwriter or its agent.

3. In the event any commutation is effected, the ~~Commission~~ commission shall have the right to direct that this sum either:

a. Be placed in trust for the benefit of the injured employee or dependent entitled to the future payment of benefits, or

b. Be invested by the association in the manner permitted by 14VAC5-370-70 ~~of this chapter~~ and held along with any income or gains from the investments in a special reserve subject to further order of the ~~Commission~~ commission to assure the future payment of compensation to the employee or dependent entitled to the compensation.

4. No more than one association, which shall be defined as the named insured, shall be covered by any contract or policy of excess liability insurance. Any reinsurance contract issued on any contract or policy of excess liability shall contain a clause providing that, (i) the reinsurance is written expressly for, and for the protection of, the named insured, and (ii) in the event of the aggregate and/or specific excess underwriter's going into liquidation or being otherwise unable to pay to the named insured, the reinsurer of the aggregate and/or specific excess underwriter will pay benefits as may be due under the terms of the reinsurance contract directly to the named insured;

5. Copies of the complete contracts or policies of excess liability insurance, complete with all endorsements thereto, shall be filed with the ~~Commission~~ commission.

The ~~Commission~~ commission may release the association from the excess insurance requirement if the contingency reserve established by the association is in an amount determined by the ~~Commission~~ commission to be adequate.

14VAC5-370-100. Responsibilities of members' supervisory board.

The members' supervisory board shall be responsible for holding and managing the assets and directing the affairs of the association and shall be elected in the manner prescribed by the association's governing instruments. At least 3/4 of the board must be members of the association, but a supervisory board member shall not be an owner, officer or employee of any service organization, its parent or any of its affiliated companies, under contract with the association. The board shall supervise the finances of the association and the association's operations to the extent necessary to assure conformity with law, this chapter, the members' indemnity agreement and power of attorney, and the association's governing instruments. The members' supervisory board shall take all necessary precautions to safeguard the assets of the association, including, but not limited to, the following:

1. Monitoring the financial condition of each member of the association (unless proof of financial condition is not required under 14VAC5-370-40 A 3), and doing all other acts necessary to assure that each member continues to be able to fulfill the obligations of membership; and also reporting promptly to the ~~Commission~~ commission any grounds for believing that a change in any member's financial condition, withdrawal of a member, or any other circumstances affecting the association's ability to meet its obligations;
2. Designating an administrator to administer the affairs of the association, who shall furnish a fidelity bond with the association as obligee, in an amount sufficient to protect the association against the misappropriation or misuse of any monies or securities. The amount of the bond shall be determined by the ~~Commission~~ commission and evidence of the bond shall be filed with the ~~Commission~~ commission, said bond being one of the conditions required for licensing of the association. The administrator shall not be an owner, officer or employee of any service agent, its parent or any of its affiliated companies, any of which are under contract with the association;
3. Retaining control of all monies collected for the association and the disbursement of such monies by the association. All assets of the association shall remain in the custody of the board or the authorized administrator. However, a claims fund for payment of benefits due and other related expenses may be established for the use of any authorized service agent;
4. Active efforts to collect delinquent accounts resulting from any past due contributions by members. The board shall terminate in the manner provided by § 65.2-804 B of the Code of Virginia any member delinquent for more than 30 days in the payment of any subscription charge or assessment billed to such member;

5. The members' supervisory board or the administrator shall not use any of the monies collected for any purpose unrelated to securing the members' liability under the Act. Further, they shall be prohibited from borrowing any monies from the association or in the name of the association without advising the ~~Commission~~ commission of the nature and purpose of the loan and obtaining ~~Commission~~ commission approval;

6. The members' supervisory board shall assure that the office of the administrator of the association and all pertinent records necessary to verify the accuracy and completeness of all reports submitted to the ~~Commission~~ commission are maintained within this Commonwealth;

7. The members' supervisory board shall assure that payroll verifications of all members of the associations are completed within 180 days after the close of a plan year and the board shall require that efforts are made to collect any additional amounts due within 30 days of the completion of each audit; and

8. The members' supervisory board may adopt its own rules and procedures as considered necessary for the operation of the association provided these rules and procedures are not inconsistent with § 65.2-802 of the Code of Virginia and this chapter.

14VAC5-370-110. Advance contribution requirements and distribution of surplus funds.

A. 1. For the purpose of funding the liability of the association, the members shall make contributions to the association based on annual payrolls for all employees of each member, except for executive officers where the payroll is to be limited to a maximum of \$300 per week, using rates and stock or nonstock discounts as adopted by the board and approved by the ~~Commission~~ commission. The rates to be used are those in effect as of the inception of each association's fiscal year. A plan which allows for consideration of past experience in developing a factor to be applied to a member's contribution may be used provided this plan has been approved by the ~~Commission~~ commission.

Nothing contained herein shall be construed to prevent an association from filing with the ~~Commission~~ commission its own rates or a deviation from these rates or an alternative method of determining contributions which may be used upon approval by the ~~Commission~~ commission.

2. At the effective date of the license of an association, at least 25% of the first year's estimated annual contribution payable by each member of the association shall have been paid into a designated depository. The balance of the first year's annual contributions shall be paid no later than the end of the ninth month of the association year. For each subsequent year of operation of the association, the payment schedule shall provide an advance payment of at least 15% of the estimated annual contribution with the

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balance payable not later than the end of the tenth month. At no time shall the member's combined payments be less than the total earned estimated annual contribution due at that time.

B. Any surplus assets (i.e. those assets in excess of the amount necessary to fulfill all obligations under the Act and this chapter) accumulated within an association year may be declared refundable by the board. The board shall establish the plan and the dates for payment of these excess assets. Payment of this surplus shall not be made until approved by the ~~Commission~~ commission.

However, the ~~Commission~~ commission shall require that 3.0% or more of an association's earned contributions for each fiscal accounting period be allocated to a contingency reserve. The contingency reserve is to be used at the direction of the association's board subject to the approval of the ~~Commission~~ commission. When the ~~Commission~~ commission is satisfied that the contingency reserve is adequate for the needs of the association, adjustments may be made by the ~~Commission~~ commission as necessary to the contingency reserve or to contributions to the contingency reserve to maintain it at an established amount.

14VAC5-370-120. Indemnity agreement and power of attorney.

Every member of a group self-insurance association shall execute an indemnity agreement and power of attorney which shall set forth the rights, privileges and obligations of the member and the association and the powers and duties of the administrator. The indemnity agreement and power of attorney shall be subject to the approval of the ~~Commission~~ commission and shall contain in substance the following provisions:

1. An agreement under which each member agrees to assume and discharge, jointly and severally, any liability under the Act of any and all employers party to such agreement and which provides that, in addition to the rights of the association, in the event of failure of the association to enforce such rights after reasonable notice to the association, the ~~Commission~~ commission shall have the right independently to enforce on behalf of the association the joint and several liability of its members under the Act and the liability of members for any unpaid contributions and assessments;
2. Provisions requiring that the members' supervisory board designate and appoint an administrator empowered to accept service of process on behalf of the association and authorized to act for and bind the association and members in all transactions relating to or arising out of the operation of the association; and
3. Provisions for the right of substitution of the administrator and revocation of the power of attorney and rights thereunder.

~~All indemnity agreements shall be brought into conformity with the requirements of this section on or before July 1, 1989.~~

Such indemnity agreement may also contain such other provisions not inconsistent with law or this chapter.

14VAC5-370-130. Servicing of association.

A service agent for a licensed workers' compensation group self-insurance association shall apply and shall be subject to the approval of the ~~Commission~~ commission before entering into a contract with an association and shall satisfy the ~~Commission~~ commission that it has adequate facilities and competent personnel to fulfill its obligations to the association and this chapter.

A service agent shall maintain a resident agent in this Commonwealth and that agent shall be authorized to act for the service agent on any and all matters covered by the Act and the ~~Rules~~ rules and ~~Regulations~~ regulations of the ~~Commission~~ commission.

A service agent shall provide to the commission the address in this Commonwealth where the books and records of the association will be maintained at all times.

A service agent shall file with the ~~Commission~~ commission copies of all contracts entered into with the association as they relate to the services to be performed. These contracts shall provide for services necessary to fulfill the employer's obligations under the Act and the ~~Rules~~ rules and ~~Regulations~~ regulations of the ~~Commission~~ commission. In addition, any service contract or letter of intent must state that the servicing organization agrees to handle all claims incurred during the contract period to their conclusion without further remuneration unless approval to transfer them is obtained from the ~~Commission~~ commission prior to such transfer.

The service organization shall furnish a fidelity bond covering its employees, with the association as obligee, in an amount sufficient to protect all monies placed in the claims fund. However, if the bond required of the administrator also covers the monies in the claims fund, a separate bond shall not be required of the servicing organization with respect to the claims fund.

Upon satisfactory compliance with the above provisions, a certificate of approval as a recognized and authorized service agent shall be issued to the applicant. Failure to comply with any of the foregoing rules or any order of the ~~Commission~~ commission within the time prescribed shall be considered justification for withdrawing the certificate of approval. The ~~Commission~~ commission shall give 10 ~~days'~~ days prior notice of such withdrawal. The notice shall be served personally, or by certified or registered mail, upon all interested parties setting forth the reasons for withdrawal and providing the service agent an opportunity to introduce evidence and be heard. If, after a hearing, which may be formal or informal,

the service agent's certificate of approval is revoked this revocation shall become effective 30 days after issuance of the ~~Commission's~~ commission's order or within such shorter or longer period as the ~~Commission~~ commission may consider necessary to protect the interest of the association, its members and their employees.

Each individual, partnership, or corporation approved to act as a service agent for an association shall file with the ~~Commission~~ commission an annual statement, in a form acceptable to the ~~Commission~~ commission, of its financial condition within four months of the completion of its fiscal year.

14VAC5-370-140. Termination of members of association.

No member of an association may be terminated unless at least 30 days written notice has been given to the member, the ~~Commission~~ commission, and the Virginia Workers' Compensation Commission, except as provided in § 65.2-804 of the Code of Virginia.

The association shall remain liable for all claims applicable to the period during which an employer was a member of an association, including the 30 day period required for termination of membership or for a lesser period as provided by § 65.2-804 of the Code of Virginia.

14VAC5-370-145. Mergers.

Subject to the approval of the commission, an association consisting solely of political subdivisions may merge with a local government group self-insurance pool pursuant to § 15.2-2703 of the Code of Virginia if the resulting pool assumes in full all obligations of the association. The commission may hold a hearing on the merger and shall do so if any party, including a member of the association or local government group self-insurance pool, so requests.

14VAC5-370-150. Revocation of self-insurance license.

The ~~Commission~~ commission may revoke an association's license if:

1. The association no longer meets the standards required for the issuance of its license; or
2. The association fails to comply with this chapter, the provisions of the Act or an order of the ~~Commission~~ commission.

The ~~Commission~~ commission shall give 10 ~~days'~~ days prior notice of the proposed revocation to the association. The notice shall be served personally, or by certified or registered mail, upon all interested parties stating the reasons for the proposed revocation and providing the association an opportunity to introduce evidence and be heard. If, after a hearing, which may be formal or informal, the association's license is revoked, this revocation shall become effective 30 days after the ~~Commission's~~ commission's order is issued.

14VAC5-370-170. Examination of association.

If the ~~Commission~~ commission considers it expedient for the protection of the interests of the citizens of this Commonwealth, it may make or direct to be made a financial condition examination into the affairs of any association, or service agent licensed or approved in this Commonwealth.

The manner and frequency in which the examination of financial condition shall be conducted and the release of any reports of financial condition shall be as provided in Article 4 (§ 38.2-1317 et seq.) of Chapter 13 of Title 38.2 of the Code of Virginia.

14VAC5-370-180. Severability.

If any [~~provisions~~ provision] of this chapter [;] or the application of ~~it~~ thereof to any person or ~~circumstances~~, [~~circumstances~~ circumstance] is held to be invalid, ~~such invalidity shall not affect other provisions or applications the remainder of this the chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are severable~~ application of the provision to other persons or circumstances shall not be affected thereby.

VA.R. Doc. No. R10-2060; Filed February 19, 2010, 3:44 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF COUNSELING

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 7 of the Code of Virginia, which excludes regulations of the regulatory boards served by the Department of Health Professions pursuant to Title 54.1 that are limited to reducing fees charged to regulants and applicants. The Board of Counseling will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **18VAC115-20. Regulations Governing the Practice of Professional Counseling (amending 18VAC115-20-20).**

18VAC115-30. Regulations Governing the Certification of Substance Abuse Counselors and Substance Abuse Counseling (amending 18VAC115-30-30).

18VAC115-40. Regulations Governing the Certification of Rehabilitation Providers (amending 18VAC115-40-20).

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18VAC115-50. Regulations Governing the Practice of Marriage and Family Therapy (amending 18VAC115-50-20).

18VAC115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners (amending 18VAC115-60-20).

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

Effective Date: April 14, 2010.

Agency Contact: Evelyn B. Brown, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4488, FAX (804) 527-4435, or email evelyn.brown@dhp.virginia.gov.

Summary:

The Board of Counseling has adopted a one-time reduction in renewal fees due June 30, 2010, to decrease an accumulated surplus in its budget. For licensed professional counselors, marriage and family therapists, and substance abuse treatment practitioners, the active license renewal fee is reduced from \$105 to \$52 and the inactive license renewal fee is reduced from \$55 to \$27. For certified substance abuse counselors and certified rehabilitation providers, the certification renewal fee is reduced from \$55 to \$27. The renewal fee for certified substance abuse counseling assistants is reduced from \$40 to \$20.

18VAC115-20-20. Fees required by the board.

A. The board has established the following fees applicable to licensure as a professional counselor:

Active annual license renewal	\$105
Inactive annual license renewal	\$55
Initial licensure by examination: Application processing and initial licensure	\$140
Initial licensure by endorsement: Application processing and initial licensure	\$140
Registration of supervision	\$50
Add or change supervisor	\$25
Duplicate license	\$5
Verification of licensure to another jurisdiction	\$25
Late renewal	\$35
Reinstatement of a lapsed license	\$165
Replacement of or additional wall certificate	\$15
Returned check	\$35
Reinstatement following revocation or suspension	\$500
One-time fee reduction for renewal of an active license due on June 30, 2007 2010	\$52

One-time fee reduction for renewal of an inactive license due on June 30, ~~2007~~ 2010 \$27

B. All fees are nonrefundable.

C. Examination fees shall be determined and made payable as determined by the board.

18VAC115-30-30. Fees required by the board.

A. The board has established the following fees applicable to the certification of substance abuse counselors and substance abuse counseling assistants:

Substance abuse counselor annual certification renewal	\$55
Substance abuse counseling assistant annual certification renewal	\$40
Substance abuse counselor initial certification by examination: Application processing and initial certification	\$90
Substance abuse counseling assistant initial certification by examination: Application processing and initial certification	\$90
Initial certification by endorsement of substance abuse counselors: Application processing and initial certification	\$90
Registration of supervision	\$50
Add or change supervisor	\$25
Duplicate certificate	\$5
Late renewal	\$20
Reinstatement of a lapsed certificate	\$100
Replacement of or additional wall certificate	\$15
Returned check	\$35
Reinstatement following revocation or suspension	\$500
<u>One-time fee reduction for renewal of certification as a substance abuse counselor due on June 30, 2010</u>	<u>\$27</u>
<u>One-time fee reduction for renewal of certification as a substance abuse counseling assistant due on June 30, 2010</u>	<u>\$20</u>

B. All fees are nonrefundable.

18VAC115-40-20. Fees required by the board.

A. The board has established the following fees applicable to the certification of rehabilitation providers:

Initial certification by examination: Processing and initial certification	\$90
Initial certification by endorsement: Processing and initial certification	\$90
Certification renewal	\$55
Duplicate certificate	\$5
Late renewal	\$20
Reinstatement of a lapsed certificate	\$100
Replacement of or additional wall certificate	\$15
Returned check	\$35
Reinstatement following revocation or suspension	\$500
One-time fee reduction for renewal of certification as a rehabilitation provider due on June 30, 2007 <u>2010</u>	\$27

B. Fees shall be paid to the board or its contractor or both in appropriate amounts as specified in the application instructions. All fees are nonrefundable.

C. Examination fees shall be determined and made payable as determined by the board.

18VAC115-50-20. Fees.

A. The board has established fees for the following:

Registration of supervision	\$50
Add or change supervisor	\$25
Initial licensure by examination: Processing and initial licensure	\$140
Initial licensure by endorsement: Processing and initial licensure	\$140
Active annual license renewal	\$105
Inactive annual license renewal	\$55
Penalty for late renewal	\$35
Reinstatement of a lapsed license	\$165
Verification of license to another jurisdiction	\$25
Additional or replacement licenses	\$5
Additional or replacement wall certificates	\$15
Returned check	\$35
Reinstatement following revocation or suspension	\$500
One-time reduction for renewal of an active license due on June 30, 2007 <u>2010</u>	\$52

One-time reduction for renewal of an inactive license due on June 30, 2007 <u>2010</u>	\$27
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B. Fees shall be paid to the board or its contractor or both in appropriate amounts as specified in the application instructions. All fees are nonrefundable.

C. Examination fees shall be determined and made payable as determined by the board.

18VAC115-60-20. Fees required by the board.

A. The board has established the following fees applicable to licensure as a substance abuse treatment practitioner:

Registration of supervision (initial)	\$50
Add/change supervisor	\$25
Initial licensure by examination: Processing and initial licensure	\$140
Initial licensure by endorsement: Processing and initial licensure	\$140
Active annual license renewal	\$105
Inactive annual license renewal	\$55
Duplicate license	\$5
Verification of license to another jurisdiction	\$25
Late renewal	\$35
Reinstatement of a lapsed license	\$165
Replacement of or additional wall certificate	\$15
Returned check	\$35
Reinstatement following revocation or suspension	\$500
One-time reduction for renewal of an active license due on June 30, 2007 <u>2010</u>	\$52
One-time reduction for renewal of an inactive license due on June 30, 2007 <u>2010</u>	\$27

B. Fees shall be paid directly to the board or its contractor, or both, in appropriate amounts as specified in the application instructions. All fees are nonrefundable.

C. Examination fees shall be determined and made payable as determined by the board.

VA.R. Doc. No. R10-2323; Filed February 23, 2010, 1:13 p.m.

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BOARD OF PSYCHOLOGY

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 7 of the Code of Virginia, which excludes regulations of the regulatory boards served by the Department of Health Professions pursuant to Title 54.1 that are limited to reducing fees charged to regulants and applicants. The Board of Psychology will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **18VAC125-20. Regulations Governing the Practice of Psychology (amending 18VAC125-20-30).**

18VAC125-30. Regulations Governing the Certification of Sex Offender Treatment Providers (amending 18VAC125-30-20).

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

Effective Date: April 14, 2010.

Agency Contact: Evelyn B. Brown, Executive Director, Board of Psychology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4697, FAX (804) 327-4435, or email evelyn.brown@dhp.virginia.gov.

Summary:

The Board of Psychology has adopted a one-time reduction in renewal fees due June 30, 2010, to decrease an accumulated surplus in its budget. For clinical psychologists, applied psychologists, and school psychologists, the active license renewal fee is reduced from \$140 to \$70 and the inactive license renewal fee is reduced from \$70 to \$35. For school psychologists-limited, the active license renewal fee is reduced from \$70 to \$35 and the inactive license renewal is reduced from \$35 to \$17. The renewal fee for certification as a sex offender treatment provider is reduced from \$75 to \$37.

18VAC125-20-30. Fees required by the board.

A. The board has established fees for the following:

	Applied psychologists, Clinical psychologists, School psychologists	School psychologists- limited
1. Registration of residency (per residency request)	\$50	

2. Add or change supervisor	\$25	
3. Application processing and initial licensure	\$200	\$85
4. Annual renewal of active license	\$140	\$70
5. Annual renewal of inactive license	\$70	\$35
6. Late renewal	\$50	\$25
7. Verification of license to another jurisdiction	\$25	\$25
8. Duplicate license	\$5	\$5
9. Additional or replacement wall certificate	\$15	\$15
10. Returned check	\$35	\$35
11. Reinstatement of a lapsed license	\$270	\$125
12. Reinstatement following revocation or suspension	\$500	\$500
13. One-time reduction in fee for annual renewal due on June 30, 2007 <u>2010</u> , for holders of an active license	\$70	\$35
14. One-time reduction in fee for annual renewal due on June 30, 2007 <u>2010</u> , for holders of an inactive license	\$35	\$17

B. The fee for review of a continuing education provider seeking board approval shall be \$200.

C. Fees shall be paid by check or money order made payable to the Treasurer of Virginia and forwarded to the board. All fees are nonrefundable.

D. Examination fees shall be established and made payable as determined by the board.

18VAC125-30-20. Fees required by the board.

A. The board has established the following fees applicable to the certification of sex offender treatment providers:

Registration of supervision	\$50
Add or change supervisor	\$25
Application processing and initial certification fee	\$90
Certification renewal	\$75
Duplicate certificate	\$5
Late renewal	\$25
Reinstatement of an expired certificate	\$125
Replacement of or additional wall certificate	\$15
Returned check	\$35
Reinstatement following revocation or suspension	\$500
One-time reduction in fee for renewal on June 30, 2007 2010	\$37

B. Fees shall be paid by check or money order made payable to the Treasurer of Virginia and forwarded to the Board of Psychology. All fees are nonrefundable.

VA.R. Doc. No. R10-2320; Filed February 17, 2010, 3:13 p.m.

GUIDANCE DOCUMENTS

Sections 2.2-4008 and 2.2-4103 of the Code of Virginia require annual publication in the *Virginia Register* of guidance document lists from state agencies covered by the Administrative Process Act and the Virginia Register Act. A guidance document is defined as "...any document developed by a state agency or staff that provides information or guidance of general applicability to the staff or public to interpret or implement statutes or the agency's rules or regulations..." Agencies are required to maintain a complete, current list of all guidance documents and make the full text of such documents available to the public.

Generally, the format for the guidance document list is: document number (if any), title of document, date issued or last revised, and citation of Virginia Administrative Code regulatory authority or Code of Virginia statutory authority. Questions concerning documents or requests for copies of documents should be directed to the contact person listed by the agency.

STATE BOARD OF ELECTIONS

To obtain copies or to arrange viewing of the following documents, contact the Freedom of Information Act (FOIA) Coordinator at the offices of the State Board of Elections, Washington Building, First Floor, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8901, FAX (804) 371-0194, or email foia@sbe.virginia.gov. Copies authorized to be provided are subject to costs stated in the board's FOIA policy published on its website and may be viewed on regular work days from 8:30 a.m. until 4:30 p.m.

Questions regarding interpretation or implementation of these documents may be directed to the above office address in person, telephone number, email, or fax and will be directed to the appropriate staff member for response.

To obtain the most up-to-date information on many of the State Board of Elections guidance documents visit the board's Internet homepage at <http://www.sbe.virginia.gov>.

Guidance Documents:

1. Handbook for General Registrar and Electoral Board Members - prepared by State Board of Elections staff summarizing relevant laws and policies:

- Chapter 1 The State Board of Elections
- Chapter 2 Electoral Boards
- Chapter 3 General Registrars
- Chapter 4 Officers of Election
- Chapter 5 Registrar Office Operations
- Chapter 6 Files and Record
- Chapter 7 Voter Registration-List Maintenance
- Chapter 8 Accessibility
- Chapter 9 Voter Registration
- Chapter 10 Candidate and Referenda Processing
- Chapter 11 Absentee Voting
- Chapter 12 Permanent vs. Temporary Reference Chart
- Chapter 12 Temporary Registration
- Chapter 13 Establishing A Polling Place
- Chapter 14 Managing Split Precincts
- Chapter 15 Managing Ballots
- Chapter 16 Central Absentee Precinct
- Chapter 17 Election Day Preparation
- Chapter 18 Election Day

- Chapter 19 Canvassing Results
- Chapter 20 Voting Equipment
- Chapter 21 Campaign Finance
- Chapter 22 Recounts and Contested Elections
- Chapter 23 Election Offenses
- Chapter 24 DOJ Preclearance
- Chapter 25 Redistricting
- Chapter 26 The Virginia Freedom of Information Act (FOIA)
- Chapter 27 Emergency Procedures
- Chapter 28 Electronic Records
- Chapter 29 Provisional Ballots
- Chapter 30 Fiscal Operations

2. Forms and instructions.

Absentee Early Voting

Absentee Ballot Applicants-Temporary Voters List (SBE-710(T)), Rev. 6.06

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[SBE Policy-2008-010 - When May a Ballot Box be Emptied](#)

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[SBE Policy-2008-012 - Use of FWAB](#)

[SBE Policy-2008-013 - Calculation of Voters Voting in Precinct](#)

VIRGINIA COMMUNITY COLLEGE SYSTEM

Copies of the following document may be viewed during regular work days from 8 a.m. until 4:30 p.m. in the office of the Virginia Community College System, James Monroe Building, 101 N. 14th Street, 15th Floor, Richmond, VA 23219. Copies may be obtained by contacting Ms. Sharon Hutcheson at the same address, telephone (804) 819-4910, FAX (804) 819-4761, or email shutcheson@vccs.edu. The document may be downloaded from the Virginia Community College System (VCCS) homepage at <http://www.vccs.edu>.

Questions regarding interpretation or implementation of this document may be directed to Dr. Glenn DuBois, Chancellor, Virginia Community College System, 101 N. 14th St., 15th Floor, Richmond, VA 23219, telephone (804) 819-4903, FAX (804) 819-4760, or email gdubois@vccs.edu.

Guidance Document:

Virginia Community College System Policy Manual, (approximately 319 pages), revised July 17, 2008, §§ 23-214 through 23-231.1, \$25.

Copies of Workforce Investment Act (WIA) guidance documents are available on the VCCS's website at

Guidance Documents

<http://myfuture.vccs.edu/WorkforceServices/VirginiaWorkforceNetwork/tabid/693/Default.aspx> or by contacting Willie Blanton, Workforce Services Manager, 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 819-4946, FAX (804) 819-1699, or email wblanton@vccs.edu. Unless otherwise indicated, there is a \$1.00 per document copying charge.

Questions regarding interpretation or implementation of WIA guidance documents may be directed to the above named individual. All WIA guidance documents provide interpretive guidance for P.L. 105-220 and 20 CFR Part 652.

Workforce Investment Act Guidance Documents:

Virginia WIA Policy Statements

[99-1 Designation of Local Workforce Investment Areas](#)

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[00-1 Local Workforce Investment Board Focus, Staffing and Service Restrictions](#)

[00-2 Youth Councils under Title I of the Workforce Investment Act](#)

[00-3 Public Participation and Collaboration in the Development and Implementation of the Commonwealth's Workforce Investment System](#)

[00-5 Youth Programs under Title I of the Workforce Investment Act](#)

[00-6 Universal Access, Adult Eligibility and Priority of Services](#)

[00-7 Certification Process for WIA Training Providers](#)

[00-8 Virginia's Training Voucher System under WIA](#) - Revised October 3, 2005

[00-10 Equal Opportunity Policy](#)

[00-12 Assessment Services for Adult, Dislocated Workers and Youth Programs](#)

[00-14 WIA Policy on Corrective Action or Sanctions for Discrimination](#)

[01-01 WIA Methods Of Administration, 29 CFR Part 37](#)

[Methods of Administration Elements](#)

[01-02 Discrimination Policy](#)

[01-03 National Emergency Grant](#)

[01-04 Process for Additional Funding of Dislocated Worker Activities](#)

[02-01 Processing Grievances and Complaints](#)

[02-02 Recaptured Workforce Investment Act Title I Local Formula Funds](#)

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[03-02 Core Services - Revised January 3, 2005](#)

[03-03 Priority of Service](#)

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[05-02 WIA Incentives](#)

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Virginia WIA Eligibility Guidelines

The guidelines for determining WIA eligibility for adults, dislocated workers, and youth.

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[WIA Definitions for Title I Eligibility](#)

Virginia Guidance to Local Areas

[Virginia Local Oversight/Monitoring Guide](#)

[Self-Sufficiency Standard - Resource](#)

[State Checklist for One Stop Review and Certification](#)

Virginia Workforce Letters

As the state WIA administrative entity, the VCCS issues Virginia Workforce Letters to provide administrative guidance deemed necessary to implement the WIA in Virginia.

[VWL #00-01 Consumer Reports System](#)

[VWL #00-02 Implementation of Interim Data Collection and Reporting System](#)

[VWL #01-01 Follow-Up Services - \(Revised 8-28-03\)](#)

[VWL #01-02 Employed Worker Response](#)

[VWL #01-03 Memoranda of Understanding Guidelines](#)

[VWL #01-04 Local WIA Program Policy Implementation](#)

[VWL #02-01 Board Staff Costs](#)

[VWL #02-02 Clarification of the Term "School Dropout"](#)

[VWL #02-03 Carrying Over WIA Funds](#)

[VWL #02-04 Local Area WIA Funds Transfer Procedures](#)

[VWL #02-05 Sanctions for Unacceptable Performance](#)

[VWL #02-07 Definition of Family](#)

[VWL #02-08 Definition of Family Income](#)

[VWL #02-09 Local Workforce Investment Board \(LWIB\) Recertification](#)

[VWL #03-02 Training Special Populations](#)

[VWL #03-04 Supplemental Data](#)

[VWL #05-01 Compliance Review CAP Guidance](#)

[VWL #05-02 Corrective Action Plans](#)

[VWL #05-03 Youth Work Experience](#)

[VWL #05-04 Timely Data Entry](#)

[VWL #05-05 Expenses Prohibited Under WIA](#)

[VWL #05-06 Program Income](#)

[VWL #05-08 Individual Training Accounts For Out-of-School and/or Older Youth](#)

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[VWL #07-01 Mandatory Co-Enrollment for WIA and Trade](#)

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[VWL #08-04 Clarification on Services Allowed under Funds Received for Additional Dislocated Worker Activities](#)

[VWL #08-05 Needs-Related Payments and Supportive Services Guidance](#)

[VWL #08-06 2009 Poverty and 70% LLSIL Levels w/100% LLSIL](#)

[VWL #08-07 Timely Data Entry](#)

[VWL #08-08 Out-of-School Youth Definition and 30% Expenditure Level](#)

[VWL #08-09 Priority of Service for Veterans](#)

[VWL #08-10 Work Readiness Skills Goal under ARRA Summer Youth Employment Program](#)

[VWL #08-11 Adult and Dislocated Worker Work Experience Guidance](#)

GENERAL NOTICES/ERRATA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Total Maximum Daily Load for Beaver Creek, Campbell County

Purpose of notice: To seek public comment and announce a public meeting on a total maximum daily load (TMDL), or water quality, study by the Department of Environmental Quality (DEQ) for a portion of Beaver Creek located in Campbell County, Virginia.

Public meeting: Tuesday, March 23, 2010, from 5:30 p.m. to 7 p.m. at the City of Lynchburg Information Technology Center, 3550 Young Place, Lynchburg, Virginia.

Meeting description: This public meeting is the second meeting on the study to restore water quality in portions of Beaver Creek. The public will be provided an overview of the TMDL study findings and be provided an opportunity to comment on the study.

Description of study: The Virginia Region 2000 Local Government Council, DEQ, and various agencies and local citizens are working to identify sources of fecal bacteria contamination in portions of Beaver Creek within the James River Watershed in Central Virginia. This stream is listed on the federal 303(d) list of impaired waters. The current contamination level exceeds water quality standards and thus impairs, or decreases, the quality of the water.

The study will develop a TMDL for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, contamination levels for a specified pollutant have to be reduced to the TMDL amount.

Public comment period: The public comment period on the materials presented at the public meeting will extend from March 23, 2010, until 11:59 p.m. on April 23, 2010.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting, and be received during the comment period. DEQ also accepts written and oral comments at the public meeting announced in this notice.

Contact for additional information: Kelly Hitchcock, Virginia's Region 2000 Local Government Council, 828 Main Street, Lynchburg, VA 24504, telephone (434) 845-3491, FAX (434) 845-3493, or email khitchcock@region2000.org.

Total Maximum Daily Load Study in Lower Nansemond River, Suffolk

The Virginia Department of Environmental Quality (DEQ) will host a public meeting on a water quality study for Bleakhorn Creek, Knotts Creek, and Bennett Creek located in the City of Suffolk, Virginia on Tuesday, March 16, 2010.

The meeting will start at 6:30 p.m. in the Creekside Elementary School cafeteria, 1000 Bennetts Creek Park Road, Suffolk. The purpose of the meeting is to provide information and discuss the study with interested local community members and local government.

Bleakhorn Creek (VAT-G13E-10), Knotts Creek (VAT-G13E-11), and Bennett Creek (VAT-G13E-12) were identified in Virginia's 1998 § 303(d) TMDL Priority List and Report as impaired for not supporting the shellfishing use. The impairment is based on the shellfish harvesting condemnation of Growing Area 46 (063-046A, B, and C Lower Nansemond River) imposed by the Virginia Department of Health, Division of Shellfish Sanitation.

Section 303(d) of the federal Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop total maximum daily loads (TMDLs) for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report and subsequent water quality assessment reports.

During the study, DEQ will develop a TMDL for the impaired water. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL amount.

The public comment period on materials presented at this meeting will extend from March 17, 2010, through April 15, 2010. For additional information or to submit comments, contact Jennifer Howell, Virginia Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2111 or email jennifer.howell@deq.virginia.gov.

Additional information is also available on the DEQ website at www.deq.virginia.gov/tmdl.

DEPARTMENT OF LABOR AND INDUSTRY

Notice of Periodic Review

Pursuant to Executive Order 107 (2009), the Virginia Department of Labor and Industry (DOLI) and the Safety and Health Codes Board (Board) will review Safety Standards for Fall Protection in Steel Erection, Construction Industry, (16VAC25-145). The purpose of the review is to determine whether this regulation should be amended or retained in its current form. The review of this regulation will be guided by the principles listed in Executive Order 107 (2009). The purpose of this regulation is to provide protection for steel erection workers from falls at or above 10 feet. (See § 40.1-22 of the Code of Virginia) DOLI and the board seek public comment on the review of issues related to this regulation, especially the following:

1. Does the regulation meet the following goals?

(a) Reduce the incidence of material impairment of the health of Virginians due to workplace exposure to known hazards.

(b) Provide protection to workers in the construction industry equal to that provided to workers in other industries.

(c) Protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.

2. Is the regulation clearly written and easy to understand?

Comments on this regulation are welcome and will be accepted until April 5, 2010. Comments may be posted online on the Virginia Regulatory Town Hall website at <http://townhall.virginia.gov>.

Comments may also be mailed to Reba O'Connor, Regulatory Coordinator, Virginia Department of Labor and Industry, Powers-Taylor Building, 13 South 13th Street, Richmond, VA 23219 or emailed to reba.oconnor@doli.virginia.gov.

Each commenter should include his or her full name and mailing address.

Notice of Periodic Review

Pursuant to Executive Order 107 (2009), the Virginia Department of Labor and Industry (DOLI) and the Safety and Health Codes Board (Board) will review Virginia Construction Industry, General Requirements for Clearances, Construction of Electric Transmission and Distribution Lines and Equipment (16VAC25-155). The purpose of the review is to determine whether this regulation should be amended or retained in its current form. The review of this regulation will be guided by the principles listed in Executive Order 107 (2009). The purpose of this regulation is to provide safety protections for construction electrical transmission workers equivalent to those already afforded general industry electrical transmission workers. (See § 40.1-22 of the Code of Virginia) DOLI and the board seek public comment on the review of issues related to this regulation, especially the following:

1. Does the regulation meet the following goals?

(a) Reduce the incidence of material impairment of the health of Virginians due to workplace exposure to known hazards.

(b) Provide protection to workers in this industry equal to that provided to workers in other industries.

(c) Protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.

2. Is the regulation clearly written and easy to understand?

Comments on this regulation are welcome and will be accepted until April 5, 2010. Comments may be posted online on the Virginia Regulatory Town Hall website at <http://townhall.virginia.gov>.

Comments may also be mailed to Reba O'Connor, Regulatory Coordinator, Virginia Department of Labor and Industry, Powers-Taylor Building, 13 South 13th Street, Richmond, VA 23219 or emailed to reba.oconnor@doli.virginia.gov.

Each commenter should include his or her full name and mailing address.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on February 15, 2010, February 16, 2010, February 22, 2010, February 24, 2010, and February 25, 2010. The order may be viewed at the State Lottery Department, 900 East Main Street, Richmond, VA, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, VA.

Final Rules for Game Operation:

Director's Order Number Twelve (10)

Virginia Lottery's "American Idol™ Facebook Sweepstakes" Final Rules for Game Operation (effective 2/16/10)

Director's Order Number Thirteen (10)

Virginia Lottery's "American Idol™ Richmond Coliseum VIP Concert Experience Sweepstakes" Final Rules for Game Operation (effective 2/12/10)

Director's Order Number Sixteen (10)

Virginia's Instant Game Lottery 1166; "\$250,000 Jackpot" Final Rules for Game Operation (effective 2/20/10)

Director's Order Number Seventeen (10)

Virginia's Instant Game Lottery 1168; "Smokin' Hot Cash" Final Rules for Game Operation (effective 2/20/10)

Director's Order Number Eighteen (10)

Virginia's Instant Game Lottery 1174; "Fat Cat" Final Rules for Game Operation (effective 2/20/10)

Director's Order Number Nineteen (10)

Virginia's Instant Game Lottery 1176; "Lucky 7's" Final Rules for Game Operation (effective 2/20/10)

Director's Order Number Twenty (10)

Virginia's Instant Game Lottery 1181; "Crossword Puzzle" Final Rules for Game Operation (effective 2/20/10)

General Notices/Errata

Director's Order Number Twenty-Two (10)

Virginia Lottery's "Megapower Sweepstakes" Final Rules for Game Operation (effective 2/15/10)

Director's Order Number Twenty-Three (10)

Virginia's Instant Game Lottery 1170; "Double Platinum Doubler" Final Rules for Game Operation (effective 2/20/10)

Director's Order Number Twenty-Four (10)

Virginia's Instant Game Lottery 1189; "Virginia's \$5 Million Club" Final Rules for Game Operation (effective 2/20/10)

Director's Order Number Twenty-Seven (10)

Virginia's Lottery's "\$50,000,000 Redskins Mania Sweepstakes" Final Rules for Game Operation (effective 2/24/10)

Director's Order Number Twenty-Eight (10)

"Farmer Foods" Virginia Lottery Retailer Incentive Program Rules (effective 2/23/10)

Director's Order Number Twenty-Nine (10)

"\$5 Million Club" Virginia Lottery Retailer Incentive Program Rules for 7-Eleven (effective 2/23/10)

Director's Order Number Thirty (10)

"\$5 Million Club" Virginia Lottery Retailer Incentive Program Rules for Virginia Oil (effective 2/23/10)

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Proposed Consent Special Order - Foxcrest Developers, Inc.

Purpose of notice: To seek public comment on a proposed consent special order (order) issued to Foxcrest Developers, Inc.

Public comment period: March 15, 2010, through April 13, 2010.

Summary of proposal: The proposed order describes a settlement between the Virginia Soil and Water Conservation Board and Foxcrest Developers to resolve alleged past violations of the Virginia Stormwater Management Act and Regulations at the Stokes Ivy Creek Farm Development construction site located in Lynchburg, Virginia. The proposed order requires payment of an \$8,000 civil charge.

How to comment: The Virginia Department of Conservation and Recreation accepts written comments from the public by mail, email, or facsimile. All comments must include the name, address, and telephone number of the person commenting. Comments must be received before the end of

the comment period. A copy of the proposed order is available on request from the person identified directly below as the contact.

Contact for documents or additional information: Edward A. Liggett, Virginia Department of Conservation and Recreation, 900 Natural Resources Drive, Suite 800-DCR, Charlottesville VA 22903, telephone (434) 220-9067, FAX (804) 786-1798, or email ed.liggett@dcr.virginia.gov.

Contact Information: David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, or email david.dowling@dcr.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Mailing Address: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed

Beginning with Volume 26, Issue 1 of the Virginia Register of Regulations dated September 14, 2009, the Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed will no longer be published in the Virginia Register of Regulations. The cumulative table may be accessed on the Virginia Register Online webpage at <http://register.dls.virginia.gov/cumultab.htm>.

Filing Material for Publication in the Virginia Register of Regulations

Agencies are required to use the Regulation Information System (RIS) when filing regulations for publication in the Virginia Register of Regulations. The Office of the Virginia Register of Regulations implemented a web-based application called RIS for filing regulations and related items for publication in the Virginia Register. The Registrar's office has worked closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

The Office of the Virginia Register is working toward the eventual elimination of the requirement that agencies file print copies of regulatory packages. Until that time, agencies may file petitions for rulemaking, notices of intended regulatory actions and general notices in electronic form only; however, until further notice, agencies must continue to file print copies of proposed, final, fast-track and emergency regulatory packages.