



# VIRGINIA

## REGISTER OF REGULATIONS

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Virginia Code Commission

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# VIRGINIA REGISTER INFORMATION PAGE

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**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, and notices of public hearings on regulations.

## **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.

A 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 18 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. **29:5 VA.R. 1075-1192 November 5, 2012**, refers to Volume 29, Issue 5, pages 1075 through 1192 of the *Virginia Register* issued on November 5, 2012.

*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.

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## PUBLICATION SCHEDULE AND DEADLINES

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This schedule is available on the *Register's* Internet home page (<http://register.dls.virginia.gov>).

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### April 2015 through May 2016

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
31:17	April 1, 2015	April 20, 2015
31:18	April 15, 2015	May 4, 2015
31:19	April 29, 2015	May 18, 2015
31:20	May 13, 2015	June 1, 2015
31:21	May 27, 2015	June 15, 2015
31:22	June 10, 2015	June 29, 2015
31:23	June 24, 2015	July 13, 2015
31:24	July 8, 2015	July 27, 2015
31:25	July 22, 2015	August 10, 2015
31:26	August 5, 2015	August 24, 2015
32:1	August 19, 2015	September 7, 2015
32:2	September 2, 2015	September 21, 2015
32:3	September 16, 2015	October 5, 2015
32:4	September 30, 2015	October 19, 2015
32:5	October 14, 2015	November 2, 2015
32:6	October 28, 2015	November 16, 2015
32:7	November 11, 2015	November 30, 2015
32:8	November 24, 2015 ( <b>Tuesday</b> )	December 14, 2015
32:9	December 9, 2015	December 28, 2015
32:10	December 21, 2015 ( <b>Monday</b> )	January 11, 2016
32:11	January 6, 2016	January 25, 2016
32:12	January 20, 2016	February 8, 2016
32:13	February 3, 2016	February 22, 2016
32:14	February 17, 2016	March 7, 2016
32:15	March 2, 2016	March 21, 2016
32:16	March 16, 2016	April 4, 2016
32:17	March 30, 2016	April 18, 2016
32:18	April 13, 2016	May 2, 2016
32:19	April 27, 2016	May 16, 2016
32:20	May 11, 2016	May 30, 2016

\*Filing deadlines are Wednesdays unless otherwise specified.

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# REGULATIONS

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

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## 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.

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## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### MARINE RESOURCES COMMISSION

#### Final Regulation

**REGISTRAR'S NOTICE:** The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

**Title of Regulation:** **4VAC20-20. Pertaining to the Licensing of Fixed Fishing Devices (amending 4VAC20-20-20, 4VAC20-20-30).**

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

**Effective Date:** April 1, 2015.

**Agency Contact:** Robert O'Reilly, Chief, Fisheries Management Division, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2247, FAX (757) 247-2002, or email rob.oreilly@mrc.virginia.gov.

**Summary:**

*The amendments modify gear management measures and definitions pertaining to pound nets to include the year-round use of modified pound net leaders for offshore Virginia pound nets in the federal Bottlenose Dolphin Pound Net Regulated Area, the seasonal use of modified pound net leaders in federal Pound Net Area II, and compliance requirements.*

**4VAC20-20. Definitions.**

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

"Bottlenose Dolphin Pound Net Regulated Area" means all Virginia marine waters of the Atlantic Ocean within three nautical miles (5.56 km) of shoreline and all adjacent tidal waters bounded on the north by the Maryland-Virginia state line from 38° 00.85' N. latitude, 75° 22.70' W. longitude seaward to 38° 02.03' N. latitude, 75° 09.80' W. longitude; on the south by the North Carolina-Virginia state line from 36° 33.03' N. latitude, 75° 48.27' W. longitude landward to 36° 33.02' N. latitude, 75° 52.05' W. longitude; and all waters of the mainstem of the Chesapeake Bay, James River (Hampton Roads), York River, and Mobjack Bay; seaward of the Hampton Roads Bridge-Tunnel (U.S. Route 60/I-64) on the James River; seaward of the George P. Coleman Memorial

Bridge (U.S. Route 17) on the York River; and south of a line beginning at a point at 37° 19.0' N. latitude, 76° 26.75' W. longitude, a point on the Severn River fork, near Stump Point; thence easterly to a point at 37° 19.0' N. latitude, 76° 13.0' W. longitude; thence southerly to a point at 37° 13.0' N. latitude, 76° 13.0' W. longitude; thence easterly to a point at 37° 13.0' N. latitude, 76° 00.75' W. longitude near Elliotts Creek.

"Fixed fishing device" means any fishing device used for the purpose of catching fish and requiring the use of more than two poles or stakes that have been pushed or pumped into the bottom.

"Fyke net" means a round stationary net distended by a series of hoops or frames, covered by web netting or wire mesh and having one or more internal funnel-shaped throats whose tapered ends are directed away from the mouth of the net. The net, leader, or runner is held in place by stakes or poles that have been pushed or pumped into the bottom and has one or two wings and a leader or runner to help guide the fish into the net.

"Hard lay lines" mean lines that are at least as stiff as 5/16 inch (0.8 cm) diameter line composed of polyester wrapped around a blend of polypropylene and polyethylene and 42 visible twists of strands per foot of line.

~~"Inshore pound net" means a pound net that has a leader or runner that originates within 10 horizontal feet from the mean low water line.~~

"Modified pound net leader" means a ~~fixed fishing device~~ pound net leader that is affixed to or resting on the sea floor and made of a lower portion of mesh and an upper portion of only vertical lines such that (i) the mesh size is equal to or less than eight inches stretched mesh; (ii) at any particular point along the leader, the height of the mesh, from sea floor to the top of the mesh, is no more than one-third the depth of the water at mean low water directly above that particular point; (iii) the mesh is held in place by a bottom chain that forms the lowermost part of the pound net leader and the vertical lines that extend from the top of the mesh up to the a top of the line, which is a line that forms the uppermost part of the fixed fishing device pound net leader; (iv) the vertical lines are equal to or greater than 5/16 inch in diameter and strung vertically at least a minimum of every two feet; and (v) the vertical lines are hard lay lines ~~with a vertical stiffness equivalent to the stiffness of a 5/16 diameter line composed of polyester wrapped around a blend of polypropylene and polyethylene and containing approximately 42 visible twists of strands per foot of line.~~

"Nearshore pound net leader or nearshore pound net" means a pound net that has every part of the leader, from the most

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# Regulations

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offshore pole at the pound end of the leader to the most inshore pole of the leader, in less than 14 feet (4.3 m) of water at any tidal condition.

"Officer" means the marine police officer in charge of the district within which the fixed fishing device is located.

"Offshore pound net leader or offshore pound net" means a pound net with any part of the leader, from the most offshore pole at the pound end of the leader to the most inshore pole of the leader, in water greater than or equal to 14 feet (4.3 m) at any tidal condition.

"Pound net" means a stationary fishing device supported by stakes or poles that have been pushed or pumped into the bottom consisting of an enclosure identified as the head or pocket with a netting floor, a heart, and a straight wall, leader, or runner to help guide the fish into the net fixed entrapment gear attached to posts or stakes with three continuous sections from offshore to inshore consisting of (i) a pound made of mesh netting that entraps the fish; (ii) at least one heart made of a mesh netting that is generally in the shape of a heart and aids in funneling fish into the pound; and (iii) a leader, which is a long, straight element consisting of mesh or vertical lines that directs the fish offshore towards the pound.

"Pound Net Regulated Area I" means Virginia waters of the mainstem Chesapeake Bay, south of 37°19.0' north latitude, and west of 76°13.0' west longitude, and all waters south of 37°13.0' north latitude to the Chesapeake Bay Bridge Tunnel (extending from approximately 37°05' north latitude, 75°59' west longitude to 36°55' north latitude, 76°08' west longitude) at the mouth of the Chesapeake Bay, and the portion of the James River downstream of the Hampton Roads Bridge Tunnel (I-64; approximately 36°59.55' north latitude, 76°18.64' west longitude) and the York River downstream of the Coleman Memorial Bridge (Route 17; approximately 37°14.55' north latitude, 76°30.40' west longitude); all waters of the mainstem of the Chesapeake Bay, James River (Hampton Roads), York River, and Mobjack Bay west of the Chesapeake Bay Bridge-Tunnel (U.S. Route 17); seaward of the Hampton Roads Bridge-Tunnel (U.S. Route 60/I-64) on the James River; seaward of the George P. Coleman Memorial Bridge (U.S. Route 17) on the York River; and south of a line beginning at a point 37° 19.0' N. latitude, 76° 26.75' W. longitude, a point on the Severn River fork, near Stump Point; thence easterly to a point at 37° 19.0' N. latitude, 76° 13.0' W. longitude; thence southerly to a point at 37° 13.0' N. latitude, 76° 13.0' W. longitude; thence easterly to a point at 37° 13.0' N. latitude, 76° 00.75' W. longitude near Elliotts Creek.

"Pound Net Regulated Area II" means all waters of the mainstem of the Chesapeake Bay, James River (Hampton Roads), York River, Mobjack Bay, Piankatank River, Rappahannock River, and the Great Wicomico River, outside of Pound Net Regulated Area I, south of 37° 07' N. latitude from Kiptopeake to Smith Island, Northampton County; west of the COLREGS Line at the mouth of the Chesapeake Bay;

seaward of the Hampton Roads Bridge-Tunnel (U.S. Route 60/I-64); seaward of the George P. Coleman Memorial Bridge (U.S. Route 17); seaward of the John Andrew Twigg Bridge (VA Route 3) on the Piankatank River; seaward of the Robert Opie Norris Bridge (VA Route 3) on the Rappahannock River; seaward of the Jessie Dupont Memorial Bridge (VA Route 200) on the Great Wicomico River; and south of the Maryland-Virginia state line.

"Staked gill net" means a fixed fishing device consisting of an upright fence of netting fastened to poles or stakes that have been pushed or pumped into the bottom.

## **4VAC20-20-30. Location, measurements, and modified pound net leader requirements.**

A. A fixed fishing device shall be perpendicular to the shoreline insofar as possible.

B. In determining compliance with the requirements prescribing minimum distances between fixed fishing devices, measurement shall be made from the center line of each device.

C. An applicant shall state the desired length of the fixed fishing device, which shall not exceed the maximum limit prescribed by law. Such length shall be stated on any license issued by the officer. A licensee may apply for a new license to include a greater length provided such additional length does not make the device exceed the maximum legal length or the legal requirement of a minimum distance between successive fishing structures in the same row. In the event a licensee fishes a length less than that stated on the license, the unfished length shall be subject to the provisions of 4VAC20-20-50 B.

~~D. Any fixed fishing device, including but not limited to pound net and fyke net gear, offshore pound net, licensed and fished in Virginia tidal waters located east of the Chesapeake Bay Bridge and Tunnel within the Bottlenose Dolphin Pound Net Regulated Area, shall be equipped with a modified pound net leader as defined in 4VAC20-20-20 year-round. In addition, it shall be the responsibility of the licensee of any fixed fishing device licensed in Virginia tidal waters located east of the Chesapeake Bay Bridge and Tunnel to contact the Virginia Marine Police and the National Marine Fisheries Service at least 72 hours before any modified leader is to be deployed for an inspection of the fixed fishing device's leader design, prior to any initial or subsequent deployment of that fixed fishing device within any year.~~

~~E. Any pound net licensed and fished in Virginia tidal waters located in Pound Net Regulated Area I, except inshore pound nets, shall be equipped with a modified leader from May 6 through July 31. In addition, it shall be the responsibility of the licensee of any pound net, except inshore pound nets, licensed in Virginia tidal waters located in Pound Net Regulated Area I to contact the Virginia Marine Police and the National Marine Fisheries Service at least 72 hours before any modified leader is to be deployed for an inspection~~

of the pound net's leader design, prior to any initial or subsequent deployment of that pound net within any year.

E. It shall be unlawful to set, fish, or fail to remove a modified pound net leader, unless the pound net licensee has completed modified pound net leader compliance training and possesses onboard the vessel a valid modified pound net leader compliance training certificate issued by the National Marine Fisheries Service.

F. It shall be unlawful to set, fish, or fail to remove pound net gear in the Bottlenose Pound Net Regulated Area or Pound Net Regulated Area II unless it has all three continuous sections, as defined in 4VAC20-20-20, except that one or more sections may be missing for a maximum period of 10 days for purposes of setting, removing, or repairing pound nets.

VA.R. Doc. No. R15-4328; Filed March 31, 2015, 5:28 p.m.

**Final Regulation**

**REGISTRAR'S NOTICE:** The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

**Title of Regulation:** 4VAC20-252. **Pertaining to the Taking of Striped Bass (amending 4VAC20-252-20, 4VAC20-252-60 through 4VAC20-252-100, 4VAC20-252-120, 4VAC20-252-160; repealing 4VAC20-252-55).**

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

**Effective Date:** April 1, 2015.

**Agency Contact:** Robert O'Reilly, Chief, Fisheries Management Division, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2247, FAX (757) 247-2002, or email rob.oreilly@mrc.virginia.gov.

**Summary:**

*The amendments (i) raise the Chesapeake area minimum size limit for the striped bass recreational fisheries (Bay spring/summer, Bay fall, and Potomac River tributaries summer/fall) from 18 inches to 20 inches for the summer and fall seasons; (ii) make it unlawful for any person fishing commercially to harvest striped bass by any method other than gill net, pound net, haul seine, fyke net, or commercial hook and line; (iii) modify the dates when transfers of shares of striped bass commercial quota can occur; and (iv) establish the Great Wicomico-Tangier Striped Bass Management Area and provide that only one jurisdictional striped bass tag or tagged striped bass shall be lawful within that area.*

**4VAC20-252-20. Definitions.**

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

"Chesapeake area" means the area that includes the Chesapeake Bay and its tributaries and the Potomac River tributaries.

"Chesapeake Bay and its tributaries" means all tidal waters of the Chesapeake Bay and its tributaries within Virginia, westward of the shoreward boundary of the Territorial Sea, excluding the coastal area and the Potomac River tributaries as defined by this section.

"Coastal area" means the area that includes Virginia's portion of the Territorial Sea, plus all of the creeks, bays, inlets, and tributaries on the seaside of Accomack County, Northampton County (including areas east of the causeway from Fisherman Island to the mainland), and the City of Virginia Beach (including federal areas and state parks, fronting on the Atlantic Ocean and east and south of the point where the shoreward boundary of the Territorial Sea joins the mainland at Cape Henry).

"Commission" means the Marine Resources Commission.

"Commercial fishing" or "fishing commercially" or "commercial fishery" means fishing by any person where the catch is for sale, barter, trade, or any commercial purpose, or is intended for sale, barter, trade, or any commercial purpose.

"Great Wicomico-Tangier Striped Bass Management Area" means the area that includes the Great Wicomico River and those Virginia waters bounded by a line beginning at Dameron Marsh at NAD 83 North Latitude 37-46.9535, West Longitude 76-17.1294; thence extending to the southernmost point of Tangier Island, and thence north to a point on the Virginia-Maryland state boundary at NAD 83 North Latitude 37-57.0407, West Longitude 75-58.5043, thence westerly along the Virginia-Maryland state boundary to Smith Point.

"Potomac River tributaries" means all the tributaries of the Potomac River that are within Virginia's jurisdiction beginning with, and including, Flag Pond thence upstream to the District of Columbia boundary.

"Recreational fishing" or "fishing recreationally" or "recreational fishery" means fishing by any person, whether licensed or exempted from licensing, where the catch is not for sale, barter, trade, or any commercial purpose, or is not intended for sale, barter, trade, or any commercial purpose.

"Share" means a percentage of the striped bass commercial harvest quota.

"Spawning reaches" means sections within the spawning rivers as follows:

1. James River from a line connecting Dancing Point and New Sunken Meadow Creek upstream to a line connecting City Point and Packs Point.
2. Pamunkey River from the Route 33 Bridge at West Point upstream to a line connecting Liberty Hall and the opposite shore.
3. Mattaponi River from the Route 33 Bridge at West Point upstream to the Route 360 bridge at Aylett.

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4. Rappahannock River from the Route 360 Bridge at Tappahannock upstream to the Route 1 Falmouth Bridge.

"Spear" or "spearing" means to fish while the person is fully submerged under the water's surface with a mechanically aided device designed to accelerate a barbed spear.

"Striped bass" means any fish of the species *Morone saxatilis*, including any hybrid of the species *Morone saxatilis*.

#### **4VAC20-252-55. Recreational harvest quota. (Repealed.)**

~~The total allowable level of all recreational harvest of striped bass for all open seasons and for all legal gear shall be 1,402,325 pounds of whole fish. At such time as the total recreational harvest of striped bass is projected to reach 1,402,325 pounds, and announced as such, it shall be unlawful for any person to land or possess striped bass caught for recreational purposes.~~

#### **4VAC20-252-60. Bay and Coastal Spring Trophy-size Striped Bass Recreational Fisheries.**

A. The open season for the Bay Spring Trophy-size Striped Bass Recreational Fishery shall be May 1 through June 15, inclusive; ~~however, the season may be adjusted as set forth in subsection G of this section.~~

B. The area open for the Bay Spring Trophy-size fishery shall be the Chesapeake Bay and its tributaries, except the spawning reaches of the James, Pamunkey, Mattaponi, and Rappahannock Rivers.

C. The open season for the Coastal Spring Trophy-size Striped Bass Recreational Fishery shall be May 1 through May 15, inclusive; ~~however, the season may be adjusted as set forth in subsection G of this section.~~

D. The area open for the Coastal Spring Trophy-size Striped Bass Recreational Fishery is the coastal area as described in 4VAC20-252-20.

E. The minimum size limit for the fisheries described in this section shall be 32 inches total length.

F. The possession limit for the fisheries described in this section shall be one fish per person.

~~G. The Bay and Coastal Spring Trophy size fisheries, combined with the fishery defined by 4VAC20-252-70, shall have a target take of 30,000 total fish coming from both the Virginia and Maryland portions of the Chesapeake Bay and any tributaries of the Chesapeake Bay and the Potomac River, and includes the area under the jurisdiction of the Potomac River Fisheries Commission. The season for this fishery shall be closed when it is determined that this total target has been reached.~~

H. ~~G.~~ It shall be unlawful for any person, 16 years of age or older, participating in the Bay and Coastal Spring Trophy-size striped bass recreational fisheries to fail to obtain a Spring Recreational Striped Bass Trophy Permit from the commission prior to any participation, except when fishing from a legally licensed headboat or charter boat.

~~I. H.~~ It shall be unlawful for any spring recreational striped bass trophy permittee or any charter boat striped bass permittee to fail to report the take, harvest, or possession of any trophy-size striped bass, as described in subsection E of this section, on forms provided by the commission by the 15th day after the close of the Bay and Coastal Spring Trophy-size striped bass recreational fisheries. The report requirements shall be as follows:

1. Any spring recreational striped bass trophy permittees or charter boat striped bass permittees shall provide the permittee name, commission permit identification number, the date of any harvest, the water body where the trophy-size striped bass was caught, number of trophy-size striped bass kept or released, and the length of each trophy-size striped bass kept or released. Any weight information on any kept or released trophy-size striped bass may be provided voluntarily by the permittees.

2. Any spring recreational striped bass trophy permittees or charter boat striped bass permittees who did not participate in the Bay and Coastal Spring Trophy-size striped bass recreational seasons shall notify the commission of their lack of participation by the 15th day after the close of the Bay and Coastal Spring Trophy-size striped bass recreational seasons on forms provided by the commission.

~~J. I.~~ It shall be unlawful for any permittee, as described in 4VAC20-252-50 H and subsection ~~H G~~ of this section, to fail to report either the harvest of trophy-size striped bass or no harvest activity within 15 days of the closing of the Bay and Coastal Spring Trophy-size striped bass recreational seasons.

#### **4VAC20-252-70. Potomac River tributaries spring trophy-size striped bass recreational fishery.**

A. The open season for the Potomac River tributaries spring striped bass recreational fishery shall correspond to the open season as established by the Potomac River Fisheries Commission for the mainstem Potomac River spring fishery.

B. The area open for this fishery shall be those tributaries of the Potomac River that are within Virginia's jurisdiction beginning with, and including, Flag Pond thence upstream to the Route 301 bridge.

C. The minimum size limit for this fishery shall correspond to the minimum size limit as established by the Potomac River Fisheries Commission for the mainstem Potomac River spring trophy-size fishery.

D. The possession limit for this fishery shall be one fish per person.

~~E. This fishery, combined with the fishery defined by 4VAC20-252-60, shall have a target take of 30,000 total fish coming from both the Virginia and Maryland portions of the Chesapeake Bay and any tributaries of the Chesapeake Bay and Potomac River, and includes the area under the jurisdiction of the Potomac River Fisheries Commission. The season for this fishery shall be closed when it is determined that this total target has been reached.~~

~~F. E.~~ It shall be unlawful for any person, 16 years of age or older, participating in the Potomac River tributaries spring trophy-size striped bass recreational fishery to fail to obtain a Spring Recreational Striped Bass Trophy Permit from the commission prior to any participation, except when fishing from a legally licensed headboat or charter boat.

~~G. E.~~ It shall be unlawful for any spring recreational striped bass trophy permittee or any charter boat striped bass permittee to fail to report the take, harvest, or possession of any trophy-size striped bass, as described in ~~subsection E~~ of this section, on forms provided by the commission by the 15th day after the close of the Potomac River tributaries spring trophy-size striped bass recreational fishery. The report requirements shall be as follows:

1. Any spring recreational striped bass trophy permittees or charter boat striped bass permittees shall provide the permittee name, commission permit identification number, the date of any harvest, the water body where the trophy-size striped bass was caught, number of trophy-size striped bass kept or released, and the length of each trophy-size striped bass kept or released. Any weight information on any kept or released trophy-size striped bass may be provided voluntarily by the permittees.

2. Any spring recreational striped bass trophy permittees or charter boat striped bass permittees who did not participate in the Potomac River tributaries spring trophy-size striped bass recreational season shall notify the commission of their lack of participation by the 15th day after the close of the Potomac River tributaries spring trophy-size striped bass recreational season on forms provided by the commission.

~~H. G.~~ It shall be unlawful for any permittee, as described in 4VAC20-252-50 H and 4VAC20-252-60 ~~H G~~, to fail to report either the harvest of trophy-size striped bass or no harvest activity within 15 days of the closing of the Potomac River tributaries spring trophy-size striped bass recreational season.

**4VAC20-252-80. Bay Spring/Summer Striped Bass Recreational Fishery.**

A. The open season for the Bay Spring/Summer Striped Bass Recreational Fishery shall be May 16 through June 15 inclusive.

B. The area open for this fishery shall be the Chesapeake Bay and its tributaries.

C. The minimum size limit for this fishery shall be ~~48~~ 20 inches total length, and the maximum size limit for this fishery shall be 28 inches total length, except as provided in subsection E of this section.

D. The possession limit for this fishery shall be two fish per person.

E. The possession limit described in subsection D of this section may consist of one trophy-size striped bass 32 inches

or greater, which is subject to the provisions of subsections A, B, E, F, ~~G~~ and ~~H G~~ of 4VAC20-252-60.

**4VAC20-252-90. Bay fall striped bass recreational fishery.**

A. The open season for the bay fall striped bass recreational fishery shall be October 4 through December 31, inclusive.

B. The area open for this fishery shall be the Chesapeake Bay and its tributaries.

C. The minimum size limit for this fishery shall be ~~48~~ 20 inches total length.

D. The maximum size limit for this fishery shall be 28 inches total length; however, the maximum size limit shall only apply to one fish of the possession limit.

E. The possession limit for this fishery shall be two fish per person.

**4VAC20-252-100. Potomac River tributaries summer/fall striped bass recreational fishery.**

A. The open season for the Potomac River tributaries summer/fall striped bass fishery shall correspond to the open summer/fall season as established by the Potomac River Fisheries Commission for the mainstem Potomac River.

B. The area open for this fishery shall be the Potomac River tributaries.

C. The minimum size limit for this fishery shall be ~~48~~ 20 inches total length.

D. The maximum size limit for this fishery shall be 28 inches total length; however, the maximum size limit shall only apply to one fish of the possession limit.

E. The possession limit for this fishery shall be two fish per person.

**4VAC20-252-120. Concerning commercial fishing: general.**

A. It shall be unlawful for any person to engage in the commercial fishery for striped bass without first having the necessary commercial fisherman's registration license and appropriate gear license as required by Title 28.2 of the Code of Virginia, and the special permit to fish for striped bass established in 4VAC20-252-130, except as provided in subsection G of 4VAC20-252-160.

B. It shall be unlawful for any person fishing commercially to possess any striped bass taken outside any open commercial season or area, or with gear inapplicable to the season and area, as specified in 4VAC20-252-140. Any striped bass caught contrary to this provision shall be returned to the water immediately.

C. It shall be unlawful for any person while actively fishing pursuant to a commercial fishery to possess any striped bass that is less than the minimum size limit applicable for the area and season then open and being fished. Any striped bass caught that does not meet the applicable minimum size limit shall be returned to the water immediately.



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D. All striped bass in the possession of any person for the purpose of sale must be identified with a tamper-evident sealed tag that has been approved and issued by the appropriate authority in the jurisdiction of capture. Whole striped bass shall have tags attached directly to the fish. Processed or filleted striped bass must be accompanied by the tags removed from the fish when processed. Any person who possesses any amount of striped bass in excess of the maximum number allowed for a licensed recreational fisherman as described in 4VAC20-252-60 through 4VAC20-252-110, inclusive, shall be considered as possessing all striped bass for the purpose of sale. When any person possesses striped bass in excess of the maximum number allowed a licensed recreational fisherman, all striped bass of said person shall be tagged, and the possession of any untagged striped bass shall be prima facie evidence of a violation of this chapter and subject to the provisions of 4VAC20-252-160 H and I and 4VAC20-252-230.

E. When the striped bass are in the possession of any person, other than the original harvester, for the purpose of resale, the striped bass shall be accompanied by a bill of sale which shall include the name of the seller, the permit or license number of the seller if such permit or license is required in the jurisdiction of harvest, the date of sale, the pounds of striped bass in possession, the location of catch and the gear type used to harvest the striped bass. If the striped bass product for sale is fillets, the bill of sale shall also specify the number of fillets.

F. It shall be unlawful for any person fishing commercially to harvest striped bass by any method other than gill net, pound net, haul seine, fyke net, or commercial hook and line.

#### **4VAC20-252-160. Individual transferable shares; tagging.**

A. For each person permitted under the provisions of 4VAC20-252-130 to harvest striped bass commercially, a weight quota shall be issued to permitted fishermen in amounts equal to the percentage share of the Chesapeake area and coastal area striped bass harvest quota they hold. Tags issued for Chesapeake area harvest quota shall only be used for striped bass harvests in the Chesapeake area, and tags issued for the coastal area harvest quota shall only be used for striped bass harvests in the coastal area.

~~B. It shall be unlawful for any person or any person aboard any vessel to possess striped bass tags, as described in this subsection, except as described in subsection C of this section. Unlawful striped bass tags shall be confiscated and impounded by the commission and returned to the issuing agency.~~

- ~~1. Chesapeake area tags in the coastal area.~~
- ~~2. Tags issued for previous years for either the Chesapeake area or coastal area.~~
- ~~3. Potomac River Fisheries Commission striped bass tags in Virginia waters, excluding the Virginia tributaries of the Potomac River.~~

~~4. Maryland striped bass tags in Virginia waters.~~

~~5. Tags from any other jurisdiction in Virginia waters.~~

~~C. It shall be lawful for any person or any person onboard a vessel to possess Maryland or Potomac River Fisheries Commission current year striped bass tags in the Great Wicomico River and those Virginia waters north and west of a line beginning at Flecton Point; thence extending to the southern most point of Tangier Island, and thence to a point due north on the Virginia-Maryland state boundary. Unlawful striped bass tags shall be confiscated and impounded by the commission and returned to the issuing agency.~~

B. It shall be unlawful for any person onboard any vessel to possess any striped bass tags in Virginia waters, according to the following provisions:

1. It shall be unlawful for any person onboard any vessel to set, place, or fish any gear that can harvest striped bass in the Chesapeake area when in possession of coastal area striped bass tags issued by the Virginia Marine Resources Commission or striped bass tagged with coastal area tags.

2. It shall be unlawful for any person to possess Virginia coastal area striped bass tags in the Chesapeake area or striped bass tagged with coastal area tags except when transiting the Chesapeake area.

3. It shall be unlawful for any person to possess striped bass tags issued for previous years for the Chesapeake area, coastal area, or any other jurisdiction.

4. It shall be unlawful for any person to possess Potomac River Fisheries Commission striped bass tags in Virginia waters, except when transiting the Virginia tributaries of the Potomac River to land in Virginia and as provided by subsection C of this section.

5. It shall be unlawful for any person to possess any non-Virginia jurisdictional striped bass tags in Virginia waters or striped bass tagged with any non-Virginia jurisdictional striped bass tags, except as provided by subdivision 4 of this subsection and subsection C of this section.

6. Any violation of this subsection shall result in the confiscation and impoundment of all striped bass tags or striped bass on the vessel.

C. It shall be unlawful for any person onboard any vessel to possess any striped bass tags in the Great Wicomico-Tangier Striped Bass Management Area except current year striped bass tags issued by the jurisdictions of the Virginia Marine Resources Commission, State of Maryland, or Potomac River Fisheries Commission and according to the following provisions:

1. It shall be unlawful for any person onboard any vessel to possess more than one jurisdiction's tags or more than one jurisdiction's tagged striped bass in the Great Wicomico-Tangier Striped Bass Management Area.

2. It shall be unlawful for any person onboard any vessel to place, set, or fish any gear that can harvest striped bass in

the Great Wicomico-Tangier Striped Bass Management Area when in possession of any striped bass tags not issued by the Virginia Marine Resources Commission.

3. Any violation of this subsection shall result in the confiscation and impoundment of all striped bass tags or striped bass on the vessel.

D. Shares of the commercial striped bass quota held by any permitted fisherman may be transferred to any other person who is a licensed registered commercial fisherman; such transfer shall allow the transferee to harvest striped bass in a quantity equal to the share transferred. Any transfer of striped bass commercial shares shall be limited by the following conditions:

1. ~~Commercial Shares of commercial~~ striped bass ~~shares~~ quota shall not be permanently transferred in any quantity less than 500 pounds, or 100% of unused permanent shares, in any year from February 1 through ~~September 30, and transfers October 31. Permanent transfers of shares of commercial striped bass quota shall be prohibited during the period of October 1 through November 30 and December 16 through January 31~~ from November 1 through January 31.

2. ~~Temporary transfer of commercial striped bass shares in any quantity greater than 200 pounds shall be permitted between December 1 and December 16. Shares of commercial striped bass quota shall not be temporarily transferred in any quantity less than 500 pounds from February 1 through October 31 or less than 200 pounds from November 1 through December 15. Temporary transfers of shares of commercial striped bass quota shall be prohibited from December 16 through January 31.~~

3. No licensed registered commercial fisherman shall hold more than 2.0% of the total annual Chesapeake area commercial striped bass harvest quota or more than 11% of the total annual coastal area commercial striped bass harvest quota.

4. No transfer of striped bass commercial harvest quota shall be authorized by the commission unless transferor and transferee provide up-to-date records of all commercial landings of striped bass and striped bass tag use to the commission prior to such transfer.

5. No transfer of striped bass commercial harvest quota shall be authorized unless such transfer is documented on a form provided by the Virginia Marine Resources Commission, notarized by a lawful Notary Public, and approved by the commissioner.

E. Transfers of Chesapeake area or coastal area striped bass commercial quota from one person to another may be permanent or temporary. Transferred quota from the Chesapeake area striped bass commercial quota shall only be used by the transferee for striped bass harvested from the Chesapeake area, and transferred quota from the coastal area striped bass commercial quota shall only be used by the

transferee for striped bass harvested from the coastal area. Permanent transfers of commercial quota shall grant to the transferee that transferred percentage of the quota for future years, and the transferor loses that same transferred percentage of the quota in future years. Temporary transfers of individual striped bass commercial harvest quota shall allow the transferee to harvest only that transferred percentage of the quota during the year in which the transfer is approved. Transferors are solely responsible for any overage of the transferred percentage of the quota by the transferee. Thereafter, any percentage of the transferred striped bass commercial quota, less any overage incurred by the transferee, reverts back to the transferor.

F. The commission will issue striped bass tags to permitted striped bass commercial fishermen as follows: those fishermen permitted only for Chesapeake area or coastal area harvests of striped bass will receive their allotment of tags prior to the start of the fishing season. Any permitted fisherman, eligible for both Chesapeake area and coastal area tags, shall receive only one type of area-specific tag allotment, of his choosing, prior to the start of the fishing season, and his other type of area-specific tags will be distributed when it has been determined from the commission's mandatory harvest reporting program that the fisherman has used all of his first allotment of tags and has not exceeded his individual harvest quota. The commissioner may authorize the distribution of the second allotment of area-specific tags to a fisherman eligible for both Chesapeake area and Coastal area tags prior to that fisherman's complete use of his first allotment of tags, provided that fisherman surrenders any remaining tags of his first allotment of tags.

G. Striped bass tags are valid only for use by the permittee to whom the tags were allotted. The permittee shall be on board the boat or vessel when striped bass are harvested and tags are applied. Nothing in this subsection shall prevent a permitted commercial hook-and-line fisherman from using three crew members who are not registered commercial fishermen to assist in the harvest of his allotment of striped bass.

H. At the place of capture, and before leaving that place of capture, tags shall be passed through the mouth of the fish and one gill opening, and interlocking ends of the tag shall then be connected such that the tag may only be removed by breaking. Failure to comply with these provisions shall be a violation of this chapter.

I. It shall be unlawful to bring to shore any commercially caught striped bass that has not been tagged at the place of capture by the fisherman with a tamper evident, numbered tag provided by the commission. It shall be unlawful to possess striped bass in a quantity greater than the number of tags in possession. If a permittee violates this section, the entire amount of untagged striped bass, as well as the number of tags equal to the amount of striped bass in his possession, shall be confiscated. Any confiscated striped bass shall be

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considered as a removal from that permittee's harvest quota. Any confiscated striped bass tags shall be impounded by the commission. Upon confiscation, the marine police officer shall inventory the confiscated striped bass and may redistribute the catch by one or a combination of the following methods:

1. The marine police officer shall secure a minimum of two bids for purchase of the confiscated striped bass 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 to the Commonwealth pending court resolution of the charge of violating the possession limits established in this chapter. All of the collected funds and confiscated tags will be returned to the accused upon a finding of innocence or forfeited to the Commonwealth upon a finding of guilt.

2. The marine police officer shall provide the confiscated striped bass to commission staff for biological sampling of the catch. Upon receipt of confiscated striped bass, commission staff will secure a minimum of two estimates of value per pound for striped bass from approved and licensed seafood buyers. The confiscated tags and the estimated value of confiscated striped bass provided for biological sampling will be reimbursed to the accused upon a finding of innocence or retained by the commission upon a finding of guilt.

J. Altering or attempting to alter any tag for the purpose of reuse shall constitute a violation of this chapter.

K. Prior to receiving any commercial season's allotment of striped bass tags, a permitted commercial harvester shall be required to have returned all unused tags from the previous commercial season to the commission within 30 days of harvesting their individual harvest quota, or by the second Thursday in January, whichever comes first. Any unused tags that cannot be turned in to the commission shall be accounted for by the harvester submitting an affidavit to the commission that explains the disposition of the unused tags that are not able to be turned into the commission. Each individual shall be required to pay a processing fee of \$25, plus \$0.13 per tag, for any unused tags that are not turned in to the commission.

L. Any individual with remaining unused striped bass commercial quota in the current year requesting additional commercial season striped bass tags shall provide up-to-date records of landings and account for all previously issued tags prior to receiving an additional allotment of tags. The harvester shall submit an affidavit to the commission that explains the disposition of the tags that are not accounted for and shall be required to pay a processing fee of \$25, plus \$0.13 per tag, for such tags to the commission.

M. For the commercial fishing season, one type of tag shall be distributed to Chesapeake area permittees and one type of tag shall be distributed to coastal area permittees. For the Chesapeake area, the tag shall only be used on striped bass 18 inches or greater. For the coastal area, the tag shall only be

used on striped bass 28 inches or greater. The possession of any improperly tagged striped bass by any permitted striped bass fisherman shall be a violation of this chapter.

VA.R. Doc. No. R15-4332; Filed April 1, 2015, 12:00 p.m.

## Emergency Regulation

**Title of Regulation:** 4VAC20-620. **Pertaining to Summer Flounder (amending 4VAC20-620-40).**

**Statutory Authority:** §§ 28.2-201 and 28.2-210 of the Code of Virginia.

**Effective Dates:** April 1, 2015, through May 1, 2015.

**Agency Contact:** Robert O'Reilly, Chief, Fisheries Management Division, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2247, FAX (757) 247-2002, or email rob.oreilly@mrc.virginia.gov.

### Preamble:

*The amendments adjust limitations on the possession and landing of Summer Flounder harvested outside of Virginia waters.*

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

A. It shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to do any of the following, except as described in subsections B, C, and D 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 second Wednesday in March through ~~November 30, or until it has been projected and announced that 85% of the allowable landings have been taken~~ April 19, 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 the combined total of the Virginia landing limit described in subdivision 3 of this subsection and the amount of the legal North Carolina landing limit or trip limit.
2. Land Summer Flounder in Virginia for commercial purposes more than twice during each consecutive 20-day period, with the first 20-day period beginning on the second Wednesday in March.

3. Land in Virginia more than 7,500 pounds of Summer Flounder during each consecutive 20-day period, with the first 20-day period beginning on the second Wednesday in March.

4. Land in Virginia any amount of Summer Flounder more than once in any consecutive five-day period.

C. From December 1 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 the combined total of the Virginia landing limit described in subdivision 3 of this subsection and the amount of the legal North Carolina landing limit or trip limit.

2. Land Summer Flounder in Virginia for commercial purposes more than twice during each consecutive 20-day period, with the first 20-day period beginning on December 1.

3. Land in Virginia more than a total of 10,000 pounds of Summer Flounder during each consecutive 20-day period, with the first 20-day period beginning on December 1.

4. Land in Virginia any amount of Summer Flounder more than once in any consecutive five-day period.

D. From January 1 through December 31 of each year, any boat or vessel issued a valid federal Summer Flounder moratorium permit and owned and operated by a legal Virginia Commercial Hook-and-Line Licensee that possesses a Restricted Summer Flounder Endorsement shall be restricted to a possession and landing limit of 200 pounds of Summer Flounder, except as described in 4VAC20-620-30 F.

E. 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.

F. 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 I 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 I of this section.

G. 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.

H. 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 9 p.m. to 7 a.m.

I. 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.

J. 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.

K. 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.

VA.R. Doc. No. R15-4330; Filed March 31, 2015, 4:31 p.m.

**Final Regulation**

**REGISTRAR'S NOTICE:** The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A

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11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

**Title of Regulation:** 4VAC20-720. Pertaining to Restrictions on Oyster Harvest (amending 4VAC20-720-15).

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

**Effective Date:** April 1, 2015.

**Agency Contact:** Robert O'Reilly, Chief, Fisheries Management Division, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2247, FAX (757) 247-2002, or email rob.oreilly@mrc.virginia.gov.

**Summary:**

*The amendments suspend the sale of oyster hand scrape and oyster dredge licenses to individuals who have not previously held these licenses until the Marine Resources Commission reinstates the sale of those licenses.*

**4VAC20-720-15. Control date.**

**A.** The commission hereby establishes July 1, 2014, as the control date for management of all public oyster fisheries in Virginia. Participation by any individual in any public oyster fishery after the control date will not be considered in the calculation or distribution of oyster fishing rights should entry limitations be established. Any individual entering the public oyster fishery after the control date will forfeit any right to future participation in the public oyster fishery should further entry limitations be established by the commission.

**B.** The sale of oyster hand scrape and oyster dredge licenses to individuals who have not previously held these licenses shall be suspended until the commission reinstates the sale of those licenses.

V.A.R. Doc. No. R15-4331; Filed March 31, 2015, 5:09 p.m.

**Emergency Regulation**

**Title of Regulation:** 4VAC20-1090. Pertaining to Licensing Requirements and License Fees (amending 4VAC20-1090-30).

**Statutory Authority:** §§ 28.2-201 and 28.2-210 of the Code of Virginia.

**Effective Dates:** April 1, 2015, through May 1, 2015.

**Agency Contact:** Robert O'Reilly, Chief, Fisheries Management Division, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2247, FAX (757) 247-2002, or email rob.oreilly@mrc.virginia.gov.

**Preamble:**

*The amendments reduce fees for saltwater recreational fishing licenses, combined sportfishing licenses, combined sportfishing trip licenses, and tidal boat sportfishing licenses.*

**4VAC20-1090-30. License fees.**

The following listing of license fees applies to any person who purchases a license for the purposes of harvesting for commercial purposes, or fishing for recreational purposes, during any calendar year. The fees listed below include a \$1.00 agent fee.

1. COMMERCIAL LICENSES	
Commercial Fisherman Registration License	\$190.00
Commercial Fisherman Registration License for a person 70 years or older	\$90.00
Delayed Entry Registration.	\$190.00
Delayed Entry Registration License for a person 70 years or older	\$90.00
Seafood Landing License for each boat or vessel	\$175.00
For each Commercial Fishing Pier over or upon subaqueous beds (mandatory)	\$83.00
Seafood Buyer's License -- For each boat or motor vehicle	\$63.00
Seafood Buyer's License -- For each place of business	\$126.00
Clam Aquaculture Product Owner's Permit	\$10.00
Oyster Aquaculture Product Owner's Permit	\$10.00
Clam Aquaculture Harvester's Permit	\$5.00
Oyster Aquaculture Harvester's Permit	\$5.00
Nonresident Harvester's License	\$444.00
2. OYSTER RESOURCE USER FEES	
Any licensed commercial fisherman harvesting oysters by hand	\$50.00
For any harvester using one or more gear types to harvest oysters or for any registered commercial fisherman who solely harvests or possesses any bushel limit described in 4VAC20-720-80, only one oyster resource user fee, per year, shall be paid	\$300.00
On any business shucking or packing no more than 1,000 gallons of oysters	\$500.00
On any business shucking or packing more than 1,000 but no more than 10,000 gallons of oysters	\$1,000.00

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On any business shucking or packing more than 10,000 but no more than 25,000 gallons of oysters	\$2,000.00	To shuck and pack oysters, for 200,000 gallons or over	\$456.00
On any business shucking or packing more than 25,000 gallons of oysters	\$4,000.00	<b>4. BLUE CRAB HARVESTING AND SHEDDING LICENSES, EXCLUSIVE OF CRAB POT LICENSES</b>	
On any oyster buyer using a single truck or location	\$100.00	For each person taking or catching crabs by dip nets	\$13.00
On any oyster buyer using multiple trucks or locations	\$300.00	For ordinary trotlines	\$13.00
Commercial aquaculture operation, on riparian assignment or general oyster planting grounds	\$50.00	For patent trotlines	\$51.00
<b>3. OYSTER HARVESTING, SHUCKING, AND BUYERS LICENSES</b>		For each single-rigged crab-scrape boat	\$26.00
Any person purchasing oysters caught from the public grounds of the Commonwealth or the Potomac River, for a single place of business with one boat or motor vehicle used for buying oysters	\$50.00	For each double-rigged crab-scrape boat	\$53.00
Any person purchasing oysters caught from the public grounds of the Commonwealth or the Potomac River, for a single place of business with multiple boats or motor vehicles used for buying oysters	\$100.00	For up to 210 peeler pots	\$36.00
For each person taking oysters by hand, or with ordinary tongs	\$10.00	For up to 20 tanks and floats for shedding crabs	\$9.00
For each single-rigged patent tong boat taking oysters	\$35.00	For more than 20 tanks or floats for shedding crabs	\$19.00
For each double-rigged patent tong boat taking oysters	\$70.00	For each crab trap or crab pound	\$8.00
Oyster Dredge Public Ground	\$50.00	<b>5. CRAB POT LICENSES</b>	
Oyster Hand Scrape	\$50.00	For up to 85 crab pots	\$48.00
To shuck and pack oysters, for any number of gallons under 1,000	\$12.00	For over 85 but not more than 127 crab pots	\$79.00
To shuck and pack oysters, for 1,000 gallons, up to 10,000	\$33.00	For over 127 but not more than 170 crab pots	\$79.00
To shuck and pack oysters, for 10,000 gallons, up to 25,000	\$74.00	For over 170 but not more than 255 crab pots	\$79.00
To shuck and pack oysters, for 25,000 gallons, up to 50,000	\$124.00	For over 255 but not more than 425 crab pots	\$127.00
To shuck and pack oysters, for 50,000 gallons, up to 100,000	\$207.00	<b>6. HORSESHOE CRAB AND LOBSTER LICENSES</b>	
To shuck and pack oysters, for 100,000 gallons, up to 200,000	\$290.00	For each person harvesting horseshoe crabs by hand	\$16.00
		For each boat engaged in fishing for, or landing of, lobster using less than 200 pots	\$41.00
		For each boat engaged in fishing for, or landing of, lobster using 200 pots or more	\$166.00
		<b>7. CLAM HARVESTING LICENSES</b>	
		For each person taking or harvesting clams by hand, rake or with ordinary tongs	\$24.00
		For each single-rigged patent tong boat taking clams	\$58.00

# Regulations

For each double-rigged patent tong boat taking clams	\$84.00	<b>10. MENHADEN HARVESTING LICENSES</b> Any person purchasing more than one of the following licenses, as described in this subsection, for the same vessel, shall pay a fee equal to that for a single license for the same vessel.	
For each boat using clam dredge (hand)	\$19.00		
For each boat using clam dredge (power)	\$44.00		
For each boat using hydraulic dredge to catch soft shell clams	\$83.00		
For each person taking surf clams	\$124.00		
<b>8. CONCH (WHELK) HARVESTING LICENSES</b>		On each boat or vessel under 70 gross tons fishing for the purse seine menhaden reduction sector	\$249.00
For each boat using a conch dredge	\$58.00	On each vessel 70 gross tons or over fishing for the purse seine menhaden reduction sector	\$996.00
For each person taking channeled whelk by conch pot	\$51.00	On each boat or vessel under 70 gross tons fishing for the purse seine menhaden bait sector	\$249.00
<b>9. FINFISH HARVESTING LICENSES</b>		On each vessel 70 gross tons or over fishing for the purse seine menhaden bait sector	\$996.00
Each pound net	\$41.00	<b>11. COMMERCIAL GEAR FOR RECREATIONAL USE</b>	
Each stake gill net of 1,200 feet in length or under, with a fixed location	\$24.00	Up to five crab pots	\$36.00
All other gill nets up to 600 feet	\$16.00	Crab trotline (300 feet maximum)	\$10.00
All other gill nets over 600 feet and up to 1,200 feet	\$24.00	One crab trap or crab pound	\$6.00
Each person using a cast net or throw net or similar device	\$13.00	One gill net up to 300 feet in length	\$9.00
Each fyke net head, weir, or similar device	\$13.00	Fish dip net	\$7.00
For fish trotlines	\$19.00	Fish cast net	\$10.00
Each person using or operating a fish dip net	\$9.00	Up to two eel pots	\$10.00
On each haul seine used for catching fish, under 500 yards in length	\$48.00	<b>12. SALTWATER RECREATIONAL FISHING LICENSE</b>	
On each haul seine used for catching fish, from 500 yards in length to 1,000 yards in length	\$146.00	Individual, resident	<del>\$22.50</del> <u>\$17.50</u>
For each person using commercial hook and line	\$31.00	Individual, nonresident	<del>\$30.00</del> <u>\$25.00</u>
For each person using commercial hook and line for catching striped bass only	\$31.00	Temporary 10-Day, resident	<del>\$15.00</del> <u>\$10.00</u>
For up to 100 fish pots or eel pots	\$19.00	Temporary 10-Day, nonresident	<del>\$15.00</del> <u>\$10.00</u>
For over 100 but not more than 300 fish pots or eel pots	\$24.00	Recreational boat, resident	<del>\$53.00</del> <u>\$48.00</u>
For over 300 fish pots or eel pots	\$62.00	Recreational boat, nonresident, provided a nonresident may not purchase a recreational boat license unless his boat is registered in Virginia	<del>\$84.00</del> <u>\$76.00</u>
		Head Boat/Charter Boat, resident, six or less passengers	<del>\$224.00</del> <u>\$190.00</u>
		Head Boat/Charter Boat, nonresident, six or less passengers	<del>\$421.00</del> <u>\$380.00</u>
		Head Boat/Charter Boat, resident, more than six passengers, plus \$5.00 per person, over six persons	<del>\$224.00</del> <u>\$190.00</u>

Head Boat/Charter Boat, nonresident, more than six passengers, plus \$5.00 per person, over six persons	<del>\$421.00</del> <u>\$380.00</u>
Rental Boat, resident, per boat, with maximum fee of \$703	<del>\$19.00</del> <u>\$14.00</u>
Rental Boat, nonresident, per boat, with maximum fee of \$1270	<del>\$23.00</del> <u>\$18.00</u>
Commercial Fishing Pier (Optional)	<del>\$669.00</del> <u>\$632.00</u>
Disabled Resident Lifetime Saltwater License	\$10.00
Disabled Nonresident Lifetime Saltwater License	\$10.00
Reissuance of Saltwater Recreational Boat License	\$5.00
<b>13. COMBINED SPORTFISHING LICENSE</b>	
This license is to fish in all inland waters and tidal waters of the Commonwealth during open season.	
Residents	<del>\$44.50</del> <u>\$39.50</u>
Nonresidents	<del>\$76.00</del> <u>\$71.00</u>
<b>14. COMBINED SPORTFISHING TRIP LICENSE</b>	
This license is to fish in all inland waters and tidal waters of the Commonwealth during open season for five consecutive days.	
Residents	<del>\$28.00</del> <u>\$24.00</u>
Nonresidents	<del>\$35.00</del> <u>\$31.00</u>
<b>15. TIDAL BOAT SPORTFISHING LICENSE</b>	
Residents	<del>\$131.00</del> <u>\$126.00</u>
Nonresidents	<del>\$206.00</del> <u>\$201.00</u>
<b>16. LIFETIME SALTWATER RECREATIONAL FISHING LICENSES</b>	
Individual Resident Lifetime License	\$276.00
Individual Nonresident Lifetime License	\$500.00
Individual Resident Lifetime License age 45 - 50	\$132.00
Individual Nonresident Lifetime License age 45 - 50	\$240.00
Individual Resident Lifetime License age 51 - 55	\$99.00
Individual Nonresident Lifetime License 51 - 55	\$180.00

Individual Resident Lifetime License age 56 - 60	\$66.00
Individual Nonresident Lifetime License age 56 - 60	\$120.00
Individual Resident Lifetime License age 61 - 64	\$35.00
Individual Nonresident Lifetime License age 61 - 64	\$60.00
Individual Resident Lifetime License age 65 and older	\$5.00

V.A.R. Doc. No. R15-4333; Filed March 31, 2015, 4:18 p.m.

### Emergency Regulation

**Title of Regulation: 4VAC20-1280. Pertaining to Fishing License and Privilege Revocation (adding 4VAC20-1280-10 through 4VAC20-1280-40).**

**Statutory Authority:** §§ 28.2-201 and 28.2-210 of the Code of Virginia.

**Effective Dates:** April 1, 2015, through May 1, 2015.

**Agency Contact:** Robert O'Reilly, Chief, Fisheries Management Division, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2247, FAX (757) 247-2002, or email rob.oreilly@mrc.virginia.gov.

**Preamble:**

*This chapter establishes the penalties for violation of a commission-ordered revocation of any fishing license or of fishing privileges within the Commonwealth's tidal waters.*

#### CHAPTER 1280

#### PERTAINING TO FISHING LICENSE AND PRIVILEGE REVOCATION

**4VAC20-1280-10. Purpose.**

The purpose of this chapter is to establish penalties for any individual found fishing illegally, after the Marine Resources Commission has ordered the revocation of his fishing license or his fishing privileges, or both.

**4VAC20-1280-20. Definition.**

The following word and term when used in this chapter shall have the following meaning unless the context indicates otherwise:

"Fishing" means all operations involved in (i) taking or catching marine fish, shellfish, and marine organisms; (ii) using, setting, operating or piloting any apparatus or vessel employed in killing, taking or catching marine fish, shellfish, and marine organisms; or (iii) transporting or preparing for market marine fish, shellfish, and marine organisms.

**4VAC20-1280-30. Unlawful fishing after fishing license has been revoked.**

It shall be unlawful for any person to participate in any fishing, at any time, during the period his fishing licenses or



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# Regulations

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fishing privileges are revoked by the Marine Resources Commission.

## **4VAC20-1280-40. Penalty.**

As set forth in § 28.2-903 of the Code of Virginia, any person violating a provision of this chapter shall be guilty of a Class 3 misdemeanor. A second violation and each subsequent violation of any provision of this chapter committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

V.A.R. Doc. No. R15-4334; Filed March 31, 2015, 3:54 p.m.

### **Final Regulation**

**REGISTRAR'S NOTICE:** The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-1290. Pertaining to Restrictions on the Harvest of Shellfish and in Condemned Shellfish Areas (adding 4VAC20-1290-10, 4VAC20-1290-20, 4VAC20-1290-30).**

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

Effective Date: April 1, 2015.

Agency Contact: Robert O'Reilly, Chief, Fisheries Management Division, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2247, FAX (757) 247-2002, or email rob.oreilly@mrc.virginia.gov.

#### **Summary:**

*This chapter establishes that any area designated as a condemned shellfish area shall not be leased as general oyster planting grounds.*

#### **CHAPTER 1290**

#### **PERTAINING TO RESTRICTIONS ON THE HARVEST OF SHELLFISH AND IN CONDEMNED SHELLFISH AREAS**

#### **4VAC20-1290-10. Purpose.**

The purpose of this chapter is to protect and promote the oyster broodstock within the condemned shellfish areas and within the tidal waters of the Commonwealth and to protect the public health.

#### **4VAC20-1290-20. Definitions.**

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

"Restricted shellfish area" means any area designated by the Virginia Department of Health, Division of Shellfish Sanitation, in which it is unlawful for any person, firm, or corporation to take shellfish for any purpose except by permit granted by the Marine Resources Commission as provided in § 28.2-810 of the Code of Virginia.

"Prohibited shellfish area" means any area designated by the Virginia Department of Health, Division of Shellfish Sanitation, in which it is unlawful for any person, firm, or corporation to take shellfish for any purpose.

#### **4VAC20-1290-30. Restrict leasing of condemned shellfish areas.**

All unassigned or vacant state-owned bottomland designated as a condemned shellfish area by the Virginia Department of Health, and classified as either restricted shellfish area or prohibited shellfish area for the direct harvest of shellfish, shall not be leased as general oyster planting grounds.

V.A.R. Doc. No. R15-4335; Filed March 31, 2015, 4:06 p.m.

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## **TITLE 8. EDUCATION**

### **STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA**

#### **Final Regulation**

**REGISTRAR'S NOTICE:** The State Council of Higher Education for Virginia is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 B 4 of the Code of Virginia, which excludes regulations relating to grants of state or federal funds or property.

Title of Regulation: **8VAC40-150. Virginia Two-Year College Transfer Grant Program Regulations (amending 8VAC40-150-10, 8VAC40-150-30).**

Statutory Authority: § 23-38.10:9 of the Code of Virginia.

Effective Date: July 1, 2015.

Agency Contact: Lee Ann Rung, Manager, Executive and Council Affairs, State Council of Higher Education for Virginia, James Monroe Building, 101 North 14th Street, 9th Floor, Richmond, VA 23219, telephone (804) 225-2602, FAX (804) 371-7911, or email leeanrung@schev.edu.

Small Business Impact Review Report of Findings: This regulatory action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

#### **Summary:**

*This action conforms the requirements for the two-year college transfer grant program to Item 144 H 2 of the 2013 Appropriation Act and Chapter 806 of the 2014 Acts of Assembly. The amendments (i) set the maximum expected family contribution at \$12,000 for students entering a senior institution as a two-year transfer student for the first time in the fall 2013 academic year and (ii) expand the eligibility criteria to enrollment by the spring following the award of the associate degree.*

## 8VAC40-150-10. Definitions.

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

"Academic year" means the enrollment period that normally extends from late August to May or early June and that is normally comprised of two semesters (fall and spring) or three quarters (fall, winter, and spring).

"Accredited institution" means any institution approved to confer degrees pursuant to Chapter 21.1 (§ 23-276.1 et seq.) of Title 23 of the Code of Virginia."

"Approved course of study" means a curriculum of courses at the undergraduate level leading to a first bachelor's degree. Programs in the 39.xxxx series, as classified in the National Center for Education Statistics' Classification of Instructional Programs (CIP), provide religious training or theological education and are not approved courses of study.

"Award" means a grant from state funds appropriated for the Virginia Two-Year College Transfer Grant Program (CTG).

"Award year" means the 12-month enrollment period during which a college or university holds classes, normally comprised of (i) one fall semester, one spring semester, and a summer session or (ii) one fall quarter, one winter quarter, one spring quarter, and a summer session. For purposes of awarding funds for this program, the summer will be treated as a trailing term.

"Cost of attendance" means the sum of tuition, required fees, room, board, books and supplies, and other education-related expenses as determined by an institution for purposes of awarding federal Title IV student financial assistance.

"Council" means the State Council of Higher Education for Virginia or its designated staff.

"Domiciliary resident of Virginia" means a student who is determined by a participating institution to meet the eligibility requirements specified by § 23-7.4 of the Code of Virginia.

"Expected family contribution" or "EFC" means the amount a student and the student's family is expected to contribute toward the cost of college attendance. The EFC is calculated using information provided on the Free Application for Federal Student Aid. The institution may exercise professional judgment to adjust the student's EFC, as permitted under federal law, based on factors that affect the family's ability to pay.

"Financial need" means a maximum expected family contribution of \$8,000 based on a standard nine-month academic year. Beginning with students who are entering a participating institution as a two-year transfer student for the first time in the fall 2012 academic year, and who otherwise meet the eligibility criteria of § 23-38.10:10 of the Code of Virginia, the maximum EFC is raised to \$9,000. Beginning with students who are entering a participating institution as a two-year transfer student for the first time in the fall 2013 academic year, and who otherwise meet the eligibility criteria

of § 23-38.10:10 of the Code of Virginia, the maximum EFC is raised to \$12,000.

"First-time entering freshman" means a student attending any institution for the first time at the undergraduate level. Includes students enrolled in the fall term who attended college for the first time in the immediate prior summer term. Also includes students who entered with advanced standing (college credits earned before high school graduation).

"Free Application for Federal Student Aid" or "FAFSA" means the needs analysis form provided by the United States Department of Education, which is completed annually by students applying for federal Title IV student financial assistance and need-based financial aid programs sponsored by the Commonwealth of Virginia and that results in the calculation of the expected family contribution.

"Full-time study" means enrollment for at least 12 credit hours per semester or its equivalent in quarter hours at the undergraduate level. The total hours counted will not include courses taken for audit, but may include required developmental or remedial courses and other elective courses that normally are not counted toward a degree at the participating institution.

"Participating institution of higher education" or "participating institution" means a four-year public or private nonprofit accredited institution within the Commonwealth of Virginia whose primary purpose is to provide undergraduate collegiate education and not to provide religious training or theological education.

"Program" means the Virginia Two-Year College Transfer Grant.

"Quarter" means a division of an academic year approximately 10 to 11 weeks in length from the first day of classes through the last day of exams for the fall, winter, and spring enrollment periods.

"Satisfactory academic progress" means acceptable progress towards completion of an approved course of study as defined by the institution for the purposes of eligibility under § 668 of the Federal Compilation of Student Financial Aid Regulations.

"Semester" means a division of an academic year approximately 15 to 16 weeks in length from the first day of classes through the last day of exams for the fall and spring enrollment periods.

"Student" means an undergraduate student who is entitled to in-state tuition charges pursuant to § 23-7.4 of the Code of Virginia.

"Summer session" means a division of an award year consisting of one or more summer sessions normally extending from late May to August, exclusive of the participating institution's fall, winter, and spring terms.

"Term" means the fall semester or quarter, winter quarter, spring semester or quarter, or summer session.

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# Regulations

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## 8VAC40-150-30. Eligibility criteria for an initial award.

In order to receive an award, the student must:

1. Be a domiciliary resident of Virginia;
2. Be a first-time entering freshman no earlier than fall 2007;
3. Have received an associate's degree at a Virginia two-year public institution of higher education;
4. Have a cumulative grade point average of at least 3.0 on a 4.0 scale upon completion of the associate's degree program;
5. Have enrolled into a participating institution by the fall or spring term following completion of the associate's degree;
6. Be enrolled for full-time study in an approved course of study;
7. Have applied for financial aid by completing the FAFSA by the institution's published deadline;
8. Demonstrate financial need; and
9. Have complied with federal selective service registration requirements, unless the following apply:
  - a. The requirement to register has terminated or become inapplicable; and
  - b. The student shows by preponderance of the evidence that failure to register was not a knowing and willful failure to register and that the student complies with federal selective service registration requirements prior to disbursement of funds.

VA.R. Doc. No. R15-4268; Filed March 25, 2015, 1:29 p.m.

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## TITLE 12. HEALTH

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

#### Notice of Extension of Emergency Regulation

Titles of Regulations: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-226).**

**12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (amending 12VAC30-60-143).**

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

Expiration Date Extended Through: October 9, 2015.

The Governor has approved the Department of Medical Assistance Services' request to extend the expiration date of the above-referenced emergency regulation for six months as provided for in § 2.2-4011 D of the Code of Virginia. Therefore, the emergency regulation pertaining to mental health skill building services will continue in effect through October 9, 2015. The emergency regulation was published in

30:5 VA.R. 507-517 November 4, 2013. The extension is required in order for the department to continue enforcing the legislative mandate as set out in Items 307 LL and 307 RR (f) of Chapter 3 of the 2012 Acts of the Assembly.

Agency Contact: Emily McClellan, Regulatory Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, or email emily.mcclellan@dmas.virginia.gov.

VA.R. Doc. No. R14-3451; Filed March 31, 2015, 4:46 p.m.

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## TITLE 21. SECURITIES AND RETAIL FRANCHISING

### STATE CORPORATION COMMISSION

#### Proposed Regulation

<p><u>REGISTRAR'S NOTICE:</u> The State Corporation Commission is claiming an exemption 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.</p>
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Titles of Regulations: **21VAC5-20. Broker-Dealers, Broker-Dealer Agents and Agents of the Issuer (amending 21VAC5-20-85, 21VAC5-20-155, 21VAC5-20-280).**

**21VAC5-40. Exempt Securities and Transactions (adding 21VAC5-40-190).**

**21VAC5-45. Federal Covered Securities (amending 21VAC5-45-20).**

**21VAC5-80. Investment Advisors (amending 21VAC5-80-130, 21VAC5-80-200, 21VAC5-80-220).**

Statutory Authority: §§ 12.1-13 and 13.1-523.1 of the Code of Virginia (21VAC5-20-85, 21VAC5-20-155).

§§ 12.1-13 and 13.1-523 of the Code of Virginia (21VAC5-20-280, 21VAC5-45-20, 21VAC5-80-130, 21VAC5-80-200, 21VAC5-80-220)

§§ 12.1-13 and 13.1-514 of the Code of Virginia (21VAC5-40-90).

Public Hearing Information: A public hearing will be held upon request.

Public Comment Deadline: May 22, 2015.

Agency Contact: Timothy O'Brien, Chief Examiner, Division of Securities and Retail Franchising, State Corporation Commission, Tyler Building, 9th Floor, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9415, FAX (804) 371-9911, or email timothy.o'brien@scc.virginia.gov.

Summary:

Chapters 354 and 400 of the 2015 Acts of the Assembly establish a new exemption from the registration provisions of the Securities Act (Chapter 5 of Title 13.1 of the Code of Virginia) for certain intrastate securities offerings known as "crowdfunding." To implement this intrastate crowdfunding exemption (ICE), new section 21VAC5-40-190 is proposed, which includes (i) limiting the aggregate price of the offering to \$2 million; (ii) requiring certain financial statements that vary depending on the amount of the offering; (iii) requiring an exemption filing, which includes a Form ICE, filing fee, and disclosures, at least 20 days prior to an offer of securities or use of any publicly available website in connection with the offering; (iv) imposing conditions on offers and sales over the Internet; (v) requiring reports to investors and to the State Corporation Commission; (vi) prohibiting the use of the exemption with other exemptions; and (vii) establishing disqualifications for use of the exemption.

The proposed amendments to 21VAC5-20-85 and 21VAC5-20-155 grant certain Canadian broker-dealers and their agents relief from the prohibited business conduct provisions found in 21VAC5-20-280, but not the anti-fraud provisions of the Securities Act. The proposed amendments to 21VAC5-20-280 (i) address concerns regarding customer privacy by adding privacy to the list of the standards promulgated by the Financial Industry Regulatory Authority Rules or the federal Securities and Exchange Commission (SEC) and (ii) permit broker-dealers to deliver prospectuses either by hard copy or by electronic means.

The proposed amendments to 21VAC5-45-20 allow filers to use the new SEC Form D to file for federal Regulation D, Rule 506 (b) and 506 (c) offerings.

The proposed amendments to 21VAC5-80 (i) clarify that investment advisor representatives who meet the examination requirements and are registered in any state jurisdiction will not have to retake the examination in Virginia as long as they have been registered within the two-year period immediately preceding the date of filing an application; (ii) waive certain examinations if representatives currently hold a designation from and are in good standing with certain professional organizations; (iii) add privacy standards to the investment advisor rules, similar to those proposed for the broker-dealers; and (iv) increase to \$1 million the amount that must be under management and increase the net worth of the client from to at least \$2 million for investment advisors compensated on the basis of a share of the capital gains of the funds, capital appreciation of the funds, or any portion of the funds under management.

The proposed amendments also include minor, grammatical, and technical changes to 21VAC5-20, 21VAC5-45, and 21VAC5-80.

AT RICHMOND, MARCH 30, 2015

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. SEC-2015-00014

Ex Parte: In the matter of  
Adopting a Revision to the Rules  
Governing the Virginia Securities Act

## ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction. Section 13.1-523 of the Virginia Securities Act ("Act"), § 13.1-501 et seq. of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of the Act.

The rules and regulations issued by the Commission pursuant to the Act are set forth in Title 21 of the Virginia Administrative Code. A copy also may be found at the Commission's website: [www.scc.virginia.gov](http://www.scc.virginia.gov).

Chapter 354, 2015 Acts of the Assembly, provides for a new exemption for certain securities offerings known as the "Intrastate Crowdfunding Exemption" ("ICE"). As a result of this new legislation, the Division of Securities and Retail Franchising ("Division") submitted to the Commission a set of rules to effectuate the new legislation to be placed in section 190 of Chapter 40 of Title 21 of the Virginia Administrative Code entitled "Securities Act Rules" ("Rules"). In addition, the Division has offered some additional minor, grammatical, and technical changes to its Rules in Chapter 20, Chapter 45, and Chapter 80.

Proposed Revisions to Chapter 40. Intrastate Crowdfunding Exemption.

Chapter 354, as passed by the Virginia General Assembly, provides for an exemption from the registration provisions of the Act for certain intrastate offerings known as "crowdfunding." Crowdfunding began as a way for the public to donate small amounts of money, often through social networking websites, to help artists, musicians, film makers, charities and other people to finance their projects. This initial concept has been promoted as a way of assisting small businesses and start-ups looking for investment capital to help their business ventures off the ground.

The Jumpstart Our Business Startups ("JOBS") Act was passed on April 5, 2012. The JOBS Act provided, in part, that the Federal Securities and Exchange Commission ("SEC") promulgate rules that would provide the basis for a federal exemption for these small business offerings. The SEC proposed rules on October 23, 2013,<sup>1</sup> but have yet to adopt the regulations. The states, in an effort to provide support to local small businesses determined to move forward to provide crowdfunding options for their citizens.

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# Regulations

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The Virginia General Assembly proposed several bills in the 2014 session, but the legislation was delayed due to the pending federal rules. Since the federal rules have not been adopted, the General Assembly moved forward with a proposal for Virginia. Several bills were introduced, and SB 763 was signed by the governor on March 19, 2015, as the Virginia Intrastate Crowdfunding Exemption.

The new legislation, Chapter 354, permits the Commission to adopt rules to effectuate ICE in several areas: (1) aggregate price of securities in an offering under this exemption; (2) total consideration paid by any purchaser; (3) compensation to be paid to employees, agents or other persons for the solicitation of, or based on the sale of, securities in connection with an offering under this exemption; (4) disqualification of the issuer or any person related to the issuer; (5) conditions on the offering including: (i) restrictions on the nature of the issuer, (ii) limitations on the number and manner of offerings, (iii) disclosures required to be provided to the investors, including risk disclosures, (iv) escrow requirements, (v) notice filings and other materials related to the offering; (6) filing fee; and (7) reporting requirements.

The Division proposes to adopt a new Rule at 21 VAC 5-40-190 that addresses the provisions of Chapter 354. The Division reviewed the provisions of other state crowdfunding exemptions in order to be as consistent as possible with crowdfunding in other states. Major highlights of the proposed rules are:

- Limiting the aggregate price of the offering to \$2 million;

- Requiring certain financial statements that vary depending on the amount of the offering;

- Requiring an exemption filing, which includes a Form ICE, filing fee and disclosures, at least 20 days prior to an offer of securities or use of any publicly available website in connection with the offering;

- Imposing conditions on offers and sales over the Internet;

- Requiring reports to investors and the Commission; and

- Prohibiting the use of the exemption with other exemptions, as well as disqualifications for use of the exemption.

## Proposed Revisions to Chapter 20. Broker-dealers and agents.

Certain Canadian broker-dealers requested that the Commission consider granting them relief from the prohibited business conduct regulations found in Section 280 of Chapter 20. These firms argued that they already are under a strenuous regulatory structure in Canada and that it would be burdensome for them to also try to comply with the various state regulatory requirements. While the proposed amendments to section 86 and 155 grant these firms and their agents relief from this section of the Commission's rules, each still will be subject to the anti-fraud provisions of the Act.

In addition, the Division proposes changes to subdivision 280 D 12 to address concerns regarding customer privacy.

Therefore, the Division proposes to add privacy to the list of the standards promulgated by the Financial Industry Regulatory Authority Rules or the SEC.

In today's environment and with the continued advancement in online services, certain broker-dealers requested that the Division remove the requirement that customers opt-in to electronic delivery. Therefore, the Division proposes to amend subsection 280 A 10 to allow broker-dealers to deliver prospectuses either by hard copy or by electronic means. Broker-dealers will no longer be required to only allow electronic delivery if an investor "opts in" to such service.

## Proposed Revisions to Chapter 45. Offerings conducted pursuant to Rule 506 of Federal Regulation D (17 CFR 2230.506): Filing requirements and issuer-agent exemption.

On September 23, 2013, the SEC approved rule proposals regarding Regulation D of Rule 506 of the Securities Act of 1933.<sup>2</sup> In addition to allowing general solicitation under a new provision 506 (c), the SEC adopted a new Form D. In order to allow issuers to make the appropriate notice filing under Regulation D, the Division proposes to update section 20 to reflect the adoption of new Form D. This new provision will allow filers to use the new form to file for Regulation D, Rule 506 (b) and 506 (c) offerings.

## Proposed Revisions to Chapter 80. Investment Advisors.

Many of the proposed revisions are minor, including some technical and grammatical changes. There are proposed minor revisions in sections 130, 200 and 220.

The Division proposes to amend Subsection 130 B to clarify the examination qualifications for investment advisor representatives. Such representatives who meet the examination requirements under subsection A and are registered in any state jurisdiction will not have to retake the examination in Virginia as long as they have been registered within the two-year period immediately preceding the date of filing an application. In addition, certain examinations are waived under subsection 130 C if representatives currently hold and are in good standing with certain professional organizations.

The Division proposes to amend subdivision 200 A 14 to add privacy standards to the investment advisor rules, similar to that proposed for the broker-dealers.

The Division proposes to amend subparagraph 220 B 1 a to increase the dollar amount from \$750,000 to \$1 million under management for investment advisors who wish to contract with clients to be compensated on the basis of a share of the capital gains, or capital appreciation of the funds, or any portion of the funds under management. This increase will make this provision consistent with investment advisor rules imposed by the SEC.

The Division proposes to amend subparagraph 220 B 1 b to increase the net worth of the client from at least \$1.5 million to \$2 million. Again, this increase will make this provision consistent with investment advisor rules imposed by the SEC.

The Division recommended to the Commission that the proposed revisions should be considered for adoption. The Division also has recommended to the Commission that a hearing should be held only if requested by those interested parties who specifically indicate that a hearing is necessary and the reasons therefore.

A copy of the proposed revisions may be requested by interested parties from the Division by telephone, by mail or e-mail request and also can be found at the Division's website: [www.scc.virginia.gov/srf](http://www.scc.virginia.gov/srf). Any comments to the proposed rules must be received by May 22, 2015.

Accordingly, IT IS ORDERED THAT:

(1) The proposed revisions are appended hereto and made a part of the record herein.

(2) Comments or requests for hearing on the proposed revisions must be submitted in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before May 22, 2015. Requests for hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall reference Case No. SEC-2015-00014. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov>.

(3) The proposed revisions shall be posted on the Commission's website at: <http://www.scc.virginia.gov> and on the Division's website at: <http://www.scc.virginia.gov/srf>. Interested persons also may request a copy of the proposed revisions from the Division by telephone, mail or e-mail.

AN ATTESTED COPY HEREOF, together with a copy of the proposed revisions, shall be sent to the Registrar of Regulations for publication in the Virginia Register.

AN ATTESTED COPY HEREOF shall be sent by the Clerk of the Commission to the Director of the Division of Securities and Retail Franchising, who shall forthwith provide notice of this Order via U.S. mail or e-mail a copy of this Order to any interested persons as he may designate.

<sup>1</sup>SEC Release Nos. 33-9470; 34-70741; File No. S7-09-13, RIN 3235-AL37.

<sup>2</sup>SEC Release Nos. 33-9415; No. 34-69959; No. IA-3624; File No. 57-07-12, RIN 3235-AL34.

### **21VAC5-20-85. Limited Canadian broker-dealer registration.**

A. A broker-dealer that is resident in Canada and has no office or other physical presence in the Commonwealth of Virginia may, provided the broker-dealer is registered under this section, effect transactions in securities:

1. With or for a person from Canada who is temporarily residing in or visiting the Commonwealth with whom the Canadian broker-dealer had a bona fide business-client

relationship before the person entered this Commonwealth; or

2. With or for a person present in this Commonwealth whose transactions are in a Canadian self-directed tax advantaged retirement account of which the person is the holder or contributor.

B. Application for registration as a broker-dealer under this section shall be filed with the commission at its Division of Securities and Retail Franchising or such other entity designated by the commission on and in full compliance with forms prescribed by the commission and shall include all information required by such forms.

C. An application for registration as a broker-dealer under this section shall be deemed incomplete for purposes of applying for registration unless the following executed forms, fee, and information are submitted to the commission:

1. An application in the form required by the jurisdiction in which the broker-dealer maintains its principal place of business.
2. Statutory fee payable to the Treasurer of Virginia in the amount of \$200 United States currency pursuant to § 13.1-505 F of the Act.
3. Evidence that the applicant is registered as a broker-dealer in the jurisdiction from which it is effecting the transactions.
4. Evidence that the applicant is a member of a self-regulatory organization or stock exchange in Canada.
5. Any other information the commission may require.

D. A broker-dealer registered under this section shall:

1. Maintain its provincial or territorial registration and its membership in a self-regulatory organization or stock exchange in good standing;
2. Provide the commission upon request with its books and records relating to its business in the Commonwealth of Virginia as a broker-dealer;
3. Immediately notify the commission of any criminal action taken against it; or of any finding or sanction imposed on the broker-dealer as a result of any self-regulatory or regulatory action involving fraud, theft, deceit, misrepresentation, or similar conduct;
4. Disclose to its clients in the Commonwealth of Virginia that the broker-dealer and its agents are not subject to the full regulatory requirements of the Act.

E. A broker-dealer's registration under this section, and any renewal thereof, shall expire annually at midnight on the 31st day of December unless renewed in accordance with subsection F of this section.

F. To renew its registration, a broker-dealer registered under this section shall file with the commission at its ~~Division of Securities and Retail Franchising~~ division the most recent renewal application, if any, filed in the jurisdiction in which the broker-dealer maintains its principle place of business, or

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if no such renewal application is required, the most recent application filed pursuant to subdivision C 1 of this section along with the statutory fee in the amount of \$200 United States currency pursuant to § 13.1-505 F of the Act.

G. A Canadian broker-dealer registered under this section and acting in accordance with the limitations set out in this section is exempt from all other rules applicable to broker-dealers except ~~21VAC5-20-280~~ the anti-fraud provisions of the Act and the requirements set out in this section.

## **21VAC5-20-155. Limited Canadian broker-dealer agent registration.**

A. An agent of a Canadian broker-dealer who has no office or other physical presence in the Commonwealth of Virginia may, provided the broker-dealer agent is registered under this section, effect transactions in securities as permitted for a broker-dealer registered under 21VAC5-20-85.

B. Application for registration as a broker-dealer agent under this section shall be filed with the commission at its Division of Securities and Retail Franchising or such other entity designated by the commission on and in full compliance with forms prescribed by the commission and shall include all information required by such forms.

C. An application for registration as a broker-dealer agent under this section shall be deemed incomplete for purposes of applying for registration unless the following executed forms, fee, and information are submitted to the commission:

1. An application in the form required by the jurisdiction in which the broker-dealer maintains its principal place of business.
2. Statutory fee payable to the Treasurer of Virginia in the amount of \$30 United States currency pursuant to § 13.1-505 G of the Act.
3. Evidence that the applicant is registered as a broker-dealer agent in the jurisdiction from which it is effecting the transactions.
4. Any other information the commission may require.

D. A broker-dealer agent registered under this section shall:

1. Maintain his provincial or territorial registration in good standing;
2. Immediately notify the commission of any criminal action taken against him, or of any finding or sanction imposed on him as a result of any self-regulatory or regulatory action involving fraud, theft, deceit, misrepresentation or similar conduct.

E. A broker-dealer agent's registration under this section, and any renewal thereof, shall expire annually at midnight on the 31st day of December unless renewed in accordance with subsection F of this section.

F. To renew the registrations of its agents, a broker-dealer registered under this section shall file with the commission at its ~~Division of Securities and Retail Franchising~~ division the most recent renewal application, if any, filed in the

jurisdiction in which the broker-dealer maintains its principal place of business, or if no such renewal application is required, the most recent application filed pursuant to subdivision C 1 of this section along with the statutory fee in the amount of \$30 United States currency pursuant to § 13.1-505 G of the Act.

G. A Canadian broker-dealer agent registered under this section and acting in accordance with the limitations set out in this section is exempt from all other rules applicable to a broker-dealer agent except ~~21VAC5-20-280~~ the anti-fraud provisions of the Act and the requirements set out in this section.

## **21VAC5-20-280. Prohibited business conduct.**

A. Every broker-dealer is required to observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business. The acts and practices described below are considered contrary to such standards and may constitute grounds for denial, suspension, or revocation of registration or such other action authorized by the Act. No broker-dealer who is registered or required to be registered shall:

1. Engage in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers or in the payment upon request of free credit balances reflecting completed transactions of any of its customers, or take any action that directly or indirectly interferes with a customer's ability to transfer his account; provided that the account is not subject to any lien for moneys owed by the customer or other bona fide claim, including, but not limited to, seeking a judicial order or decree that would bar or restrict the submission, delivery or acceptance of a written request from a customer to transfer his account;
2. Induce trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;
3. Recommend to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer. The reasonable basis to recommend any such transaction to a customer shall be based upon the risks associated with a particular security, and the information obtained through the diligence and inquiry of the broker-dealer to ascertain the customer's investment profile. A customer's investment profile includes, but is not limited to, the customer's investment objectives, financial situation, risk tolerance and needs, tax status, age, other investments, investment experience, investment time horizon, liquidity needs, and any other relevant information known by the broker-dealer or of which the broker-dealer is otherwise made aware in connection with such recommendation;
4. Execute a transaction on behalf of a customer without authority to do so or, when securities are held in a

customer's account, fail to execute a sell transaction involving those securities as instructed by a customer, without reasonable cause;

5. Exercise any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders;

6. Execute any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account, or fail, prior to or at the opening of a margin account, to disclose to a noninstitutional customer the operation of a margin account and the risks associated with trading on margin at least as comprehensively as required by FINRA Rule 2264;

7. Fail to segregate customers' free securities or securities held in safekeeping;

8. Hypothecate a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by Rules of the SEC;

9. Enter into a transaction with or for a customer at a price not reasonably related to the current market price of a security or receiving an unreasonable commission or profit;

10. Fail to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus, ~~either by the following means:~~ (i) hard copy prospectus delivery or (ii) electronic prospectus delivery-

~~When a broker dealer delivers a prospectus electronically, it must first allow its clients to affirmatively opt in to the program. The acknowledgment of the opt in may be by any written or electronic means, but the broker dealer is required to acknowledge the opt in. For any client that chooses not to opt in to electronic delivery, the broker dealer shall continue to deliver to the client a hard copy of the prospectus;~~

11. Introduce customer transactions on a "fully disclosed" basis to another broker-dealer that is not exempt under § 13.1-514 B 6 of the Act;

12. a. Charge unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of moneys due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;

b. Charge a fee based on the activity, value or contents (or lack thereof) of a customer account unless written

disclosure pertaining to the fee, which shall include information about the amount of the fee, how imposition of the fee can be avoided and any consequence of late payment or nonpayment of the fee, was provided no later than the date the account was established or, with respect to an existing account, at least 60 days prior to the effective date of the fee;

13. Offer to buy from or sell to any person any security at a stated price unless the broker-dealer is prepared to purchase or sell at the price and under such conditions as are stated at the time of the offer to buy or sell;

14. Represent that a security is being offered to a customer "at a market" or a price relevant to the market price unless the broker-dealer knows or has reasonable grounds to believe that a market for the security exists other than that made, created or controlled by the broker-dealer, or by any person for whom he is acting or with whom he is associated in the distribution, or any person controlled by, controlling or under common control with the broker-dealer;

15. Effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:

a. Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

b. Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; however, nothing in this subdivision shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers; or

c. Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in the security or raising or depressing the price of the security, for the purpose of inducing the purchase or sale of the security by others;

16. Guarantee a customer against loss in any securities account of the customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for the customer;

17. Publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless the broker-dealer believes that the transaction was a bona fide purchase or sale of the security; or which purports to quote the bid price or asked



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price for any security, unless the broker-dealer believes that the quotation represents a bona fide bid for, or offer of, the security;

18. Use any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;

19. Fail to make reasonably available upon request to any person expressing an interest in a solicited transaction in a security, not listed on a registered securities exchange or quoted on an automated quotation system operated by a national securities association approved by regulation of the commission, a balance sheet of the issuer as of a date within 18 months of the offer or sale of the issuer's securities and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, the names of the issuer's proprietor, partners or officers, the nature of the enterprises of the issuer and any available information reasonably necessary for evaluating the desirability or lack of desirability of investing in the securities of an issuer. All transactions in securities described in this subdivision shall comply with the provisions of § 13.1-507 of the Act;

20. Fail to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of the security, the existence of control to the customer, and if disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

21. Fail to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member;

22. Fail or refuse to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written request or complaint;

23. Fail to clearly and separately disclose to its customer, prior to any security transaction, providing investment advice for compensation or any materially related transaction that the customer's funds or securities will be in the custody of an investment advisor or contracted custodian, in a manner that does not provide Securities Investor Protection Corporation protection, or equivalent third-party coverage over the customer's assets;

24. Market broker-dealer services that are associated with financial institutions in a manner that is misleading or

confusing to customers as to the nature of securities products or risks;

25. In transactions subject to breakpoints, fail to:

a. Utilize advantageous breakpoints without reasonable basis for their exclusion;

b. Determine information that should be recorded on the books and records of a member or its clearing firm, which is necessary to determine the availability and appropriateness of breakpoint opportunities; or

c. Inquire whether the customer has positions or transactions away from the member that should be considered in connection with the pending transaction; and apprise the customer of the breakpoint opportunities;

26. Use a certification or professional designation in connection with the offer, sale, or purchase of securities that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees in such a way as to mislead any person.

a. The use of such certification or professional designation includes, but is not limited to, the following:

(1) Use of a certification or designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(2) Use of a nonexistent or self-conferred certification or professional designation;

(3) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; or

(4) Use of a certification or professional designation that was obtained from a designating or certifying organization that:

(a) Is primarily engaged in the business of instruction in sales or marketing;

(b) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(c) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(d) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

b. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subdivision 26 a (4) of this subsection, when the organization has been accredited by:

(1) The American National Standards Institute;

(2) The Institute for Credentialing Excellence (formerly the National Commission for Certifying Agencies); or

(3) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales or marketing.

c. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

- (1) Use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and
- (2) The manner in which those words are combined.

d. For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency when that job title:

- (1) Indicates seniority within the organization; or
- (2) Specifies an individual's area of specialization within the organization.

For purposes of this subdivision d, "financial services regulatory agency" includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under § 3 (a)(1) of the Investment Company Act of 1940 (15 USC § 80a-3(a)(1)).

e. Nothing in this regulation shall limit the commission's authority to enforce existing provisions of law;

27. Represent that securities will be listed or that application for listing will be made on a securities exchange or the National Association of Securities Dealers Automated Quotations (NASDAQ) system or other quotation system without reasonable basis in fact for the representation;

28. Falsify or alter so as to make false or misleading any record or document or any information provided to the commission;

29. Negotiate, facilitate, or otherwise execute a transaction on behalf of an investor involving securities issued by a third party pursuant to a claim for exemption under subsection B of § 13.1-514 of the Act unless the broker-dealer intends to report the securities owned and the value of such securities on at least a quarterly basis to the investor;

30. Offer or sell securities pursuant to a claim for exemption under subsection B of § 13.1-514 of the Act without having first verified the information relating to the

securities offered or sold, which shall include, but not be limited to, ascertaining the risks associated with investing in the respective security;

31. Allow any person to represent or utilize its name as a trading platform without conspicuously disclosing the name of the registered broker-dealer in effecting or attempting to effect purchases and sales of securities; or

32. Engage in any conduct that constitutes a dishonest or unethical practice including, but not limited to, forgery, embezzlement, nondisclosure, incomplete disclosure or material omissions or untrue statements of material facts, manipulative or deceptive practices, or fraudulent course of business.

B. Every agent is required to observe high standards of commercial honor and just and equitable principles of trade in the conduct of his business. The acts and practices described below are considered contrary to such standards and may constitute grounds for denial, suspension, or revocation of registration or such other action authorized by the Act. No agent who is registered or required to be registered shall:

1. Engage in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer;

2. Effect any securities transaction not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transaction is authorized in writing by the broker-dealer prior to execution of the transaction;

3. Establish or maintain an account containing fictitious information in order to execute a transaction which would otherwise be unlawful or prohibited;

4. Share directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents;

5. Divide or otherwise split the agent's commissions, profits or other compensation from the purchase or sale of securities in this state with any person not also registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control;

6. Engage in conduct specified in subdivision A 2, 3, 4, 5, 6, 10, 15, 16, 17, 18, 23, 24, 25, 26, 28, 30, 31, or 32 of this section;

7. Fail to comply with the continuing education requirements under 21VAC5-20-150 C; or

8. Hold oneself out as representing any person other than the broker-dealer with whom the agent is registered and, in the case of an agent whose normal place of business is not on the premises of the broker-dealer, failing to conspicuously disclose the name of the broker-dealer for whom the agent is registered when representing the dealer

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in effecting or attempting to effect the purchases or sales of securities.

C. No person shall publish, give publicity to, or circulate any notice, circular, advertisement, newspaper article, letter, investment service or communication which, though not purporting to offer a security for sale, describes the security, for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

D. The purpose of this subsection is to identify practices in the securities business that are generally associated with schemes to manipulate and to identify prohibited business conduct of broker-dealers or sales agents who are registered or required to be registered.

1. Entering into a transaction with a customer in any security at an unreasonable price or at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.

2. Contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead or using any advertising or sales presentation in a deceptive or misleading manner.

3. In connection with the offer, sale, or purchase of a security, falsely leading a customer to believe that the broker-dealer or agent is in possession of material, nonpublic information that would affect the value of the security.

4. In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors of similar investment objective for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstances of each investor.

5. Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution by, among other things, (i) transferring securities to a customer, another broker-dealer, or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees or (ii) parking or withholding securities.

6. Although nothing in this subsection precludes application of the general ~~antifraud~~ anti-fraud provisions against anyone for practices similar in nature to the practices discussed below, the following subdivisions a through f specifically apply only in connection with the solicitation of a purchase or sale of over the counter (OTC) unlisted non-NASDAQ equity securities:

a. Failing to advise the customer, both at the time of solicitation and on the confirmation, of any and all compensation related to a specific securities transaction

to be paid to the agent including commissions, sales charges, or concessions.

b. In connection with a principal transaction, failing to disclose, both at the time of solicitation and on the confirmation, a short inventory position in the firm's account of more than 3.0% of the issued and outstanding shares of that class of securities of the issuer; however, subdivision 6 of this subsection shall apply only if the firm is a market maker at the time of the solicitation.

c. Conducting sales contests in a particular security.

d. After a solicited purchase by a customer, failing or refusing, in connection with a principal transaction, to promptly execute sell orders.

e. Soliciting a secondary market transaction when there has not been a bona fide distribution in the primary market.

f. Engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same security.

7. Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive, or other fraudulent device or contrivance including but not limited to the use of boiler room tactics or use of fictitious or nominee accounts.

8. Failing to comply with any prospectus delivery requirements promulgated under federal law or the Act.

9. In connection with the solicitation of a sale or purchase of an OTC unlisted non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under § 13 of the Securities Exchange Act when requested to do so by a customer.

10. Marking any order tickets or confirmations as unsolicited when in fact the transaction was solicited.

11. For any month in which activity has occurred in a customer's account, but in no event less than every three months, failing to provide each customer with a statement of account with respect to all OTC non-NASDAQ equity securities in the account, containing a value for each such security based on the closing market bid on a date certain; however, this subdivision shall apply only if the firm has been a market maker in the security at any time during the month in which the monthly or quarterly statement is issued.

12. Failing to comply with any applicable provision of the FINRA Rules or any applicable fair practice, privacy, or ethical standard promulgated by the SEC or by a self-regulatory organization approved by the SEC.

13. In connection with the solicitation of a purchase or sale of a designated security:

a. Failing to disclose to the customer the bid and ask price, at which the broker-dealer effects transactions with

individual, retail customers, of the designated security as well as its spread in both percentage and dollar amounts at the time of solicitation and on the trade confirmation documents; or

b. Failing to include with the confirmation, the notice disclosure contained under 21VAC5-20-285, except the following shall be exempt from this requirement:

(1) Transactions in which the price of the designated security is \$5.00 or more, exclusive of costs or charges; however, if the designated security is a unit composed of one or more securities, the unit price divided by the number of components of the unit other than warrants, options, rights, or similar securities must be \$5.00 or more, and any component of the unit that is a warrant, option, right, or similar securities, or a convertible security must have an exercise price or conversion price of \$5.00 or more.

(2) Transactions that are not recommended by the broker-dealer or agent.

(3) Transactions by a broker-dealer: (i) whose commissions, commission equivalents, and mark-ups from transactions in designated securities during each of the preceding three months, and during 11 or more of the preceding 12 months, did not exceed 5.0% of its total commissions, commission-equivalents, and mark-ups from transactions in securities during those months; and (ii) who has not executed principal transactions in connection with the solicitation to purchase the designated security that is the subject of the transaction in the preceding 12 months.

(4) Any transaction or transactions that, upon prior written request or upon its own motion, the commission conditionally or unconditionally exempts as not encompassed within the purposes of this section.

c. For purposes of this section, the term "designated security" means any equity security other than a security:

(1) Registered, or approved for registration upon notice of issuance, on a national securities exchange and makes transaction reports available pursuant to 17 CFR 11Aa3-1 under the Securities Exchange Act of 1934;

(2) Authorized, or approved for authorization upon notice of issuance, for quotation in the NASDAQ system;

(3) Issued by an investment company registered under the Investment Company Act of 1940;

(4) That is a put option or call option issued by The Options Clearing Corporation; or

(5) Whose issuer has net tangible assets in excess of \$4 million as demonstrated by financial statements dated within no less than 15 months that the broker-dealer has reviewed and has a reasonable basis to believe are true and complete in relation to the date of the transaction with the person, and

(a) In the event the issuer is other than a foreign private issuer, are the most recent financial statements for the issuer that have been audited and reported on by an independent public accountant in accordance with the provisions of 17 CFR 210.2-02 under the Securities Exchange Act of 1934; or

(b) In the event the issuer is a foreign private issuer, are the most recent financial statements for the issuer that have been filed with the SEC; furnished to the SEC pursuant to 17 CFR 240.12g3-2(b) under the Securities Exchange Act of 1934; or prepared in accordance with generally accepted accounting principles in the country of incorporation, audited in compliance with the requirements of that jurisdiction, and reported on by an accountant duly registered and in good standing in accordance with the regulations of that jurisdiction.

### **21VAC5-40-190. Intrastate crowdfunding exemption.**

A. In accordance with § 13.1-514 B 21 of the Act, an offer or sale of a security by an issuer is exempt from the securities, broker-dealer and agent registration requirements of the Act if the offer or sale meets all of the following requirements:

1. The issuer of the security is a business entity:

a. Formed under the laws of the Commonwealth;

b. Authorized to do business in the Commonwealth; and

c. That has its principal place of business in the Commonwealth.

2. The offering is sold only to residents of the Commonwealth in compliance with the requirements for the federal exemption for intrastate offerings under § 3(a)(11) of the Securities Act of 1933, 15 USC 77c(a)(11), and SEC Rule 147, 17 CFR 230.147.

3. The securities offered and sold pursuant to this exemption are equity securities of the issuer. This exemption is not available to debt offerings.

4. The sum of all cash and other consideration to be received for all sales of the securities in reliance on this exemption does not exceed \$2 million, less the aggregate amount received for all sales of securities by the issuer within 12 months before the first offer or sale made in reliance upon this exemption, and if the offering is:

a. \$100,000 or less, if the issuer has financial statements prepared the previous year that have been certified by the principal executive officer of the issuer to be true and complete in all material respects;

b. More than \$100,000 but less than \$500,000, if the issuer has undergone a financial review of the financial statements of its most recently completed fiscal year, conducted by an independent certified public accountant in accordance with generally accepted accounting principles; or

c. \$500,000 or more, if the issuer has undergone an audit of the financial statements of its most recently completed

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fiscal year, conducted by an independent certified public accountant in accordance with generally accepted accounting principles.

5. The issuer has not accepted more than \$10,000 from any single purchaser unless the purchaser is an accredited investor as defined by Rule 501 of SEC Regulation D, 17 CFR 230.501.

6. At least 20 days before an offer of securities is made in reliance on this exemption or the use of any publicly available Internet website in connection with an offering of securities in reliance on this exemption, the issuer files with the commission in writing or in electronic form, all of the following:

a. A notice of claim of exemption from registration on Form ICE specifying that the issuer intends to conduct an offering in reliance on this exemption, accompanied by a nonrefundable filing fee of \$250 payable to the Treasurer of Virginia.

b. A copy of the disclosure statement or Form ICE to be provided to prospective investors in connection with the offering. The disclosure statement or Form ICE shall contain all of the following:

(1) A description of the issuer, including type of entity, the address and telephone number of its principal office, its formation history, and its business plan;

(2) A description of the intended use of the offering proceeds, including any amounts to be paid, as compensation or otherwise, to any owner, executive officer, director, managing member, or other person occupying a similar status or performing similar functions on behalf of the issuer;

(3) The identity of each person that owns more than 10% of the ownership interests of any class of securities of the issuer and the amount of said securities held by such person;

(4) The identity of the executive officers, directors, or managing members of the issuer and any other individuals who occupy similar status or perform similar functions in the name of and on behalf of the issuer, including their titles and their prior business experience;

(5) The terms and conditions of the securities being offered including:

(a) The type and amounts of any outstanding securities of the issuer;

(b) The minimum and maximum amount of securities being offered, if any;

(c) Either the percentage ownership of the issuer represented by the offered securities or the valuation of the issuer implied by the price of the offered securities;

(d) The price per share, unit, or interest of the securities being offered;

(e) Any restrictions on transfer of the securities being offered; and

(f) A disclosure of any anticipated future issuance of securities that might dilute the value of the securities being offered;

(6) The identity of any person that the issuer has or intends to retain to assist the issuer in conducting the offer and sale of the securities, including the owner of any websites, if known, but excluding any person acting solely as an accountant or attorney and any employees whose primary job responsibilities involve the operating business of the issuer rather than assisting the issuer in raising capital;

(7) For each person identified as required in subdivision 6 b (6) of this subsection, a description of the consideration being paid to the person for such assistance;

(8) A description of any litigation or legal proceedings involving the issuer or any executive officer, director, or managing member or other person occupying a similar status or performing similar functions on behalf of the issuer;

(9) The issuer's financial statements for the three most recent fiscal years or for as much time as the issuer has been in existence, if less than three years;

(10) The name and address, including the uniform resource locator, of each Internet website that will be used by the issuer to offer or sell securities under an exemption under this section; and

(11) Any additional information material to the offering, including, if appropriate, a discussion of significant risk factors that make the offering speculative or risky. This discussion shall be concise and organized logically and may not be limited to risks that could apply to any issuer or any offering.

c. An escrow agreement with a bank or other depository institution located in this Commonwealth, in which the purchaser funds will be deposited. At a minimum the escrow agreement shall provide that all offering proceeds will be released to the issuer only when the aggregate capital raised from all purchasers is equal to or greater than the minimum target offering amount specified in the disclosure statement as necessary to implement the business plan and all purchasers will receive a return of their subscription funds if that target offering amount is not raised by the time stated in the disclosure statement. The depository institution may contract with the issuer to collect reasonable fees for its escrow services regardless of whether the target offering amount is reached; however such fees shall not be deducted from purchaser funds if the target offering amount is not raised by the time stated in the disclosure statement. The issuer shall disclose in its disclosure statement or Form ICE whether

any interest earned on escrowed purchaser funds will be paid to purchasers on a pro rata basis if the minimum target amount, as described above, is not raised.

7. The issuer is not, either before or as a result of the offering:

a. A company that is engaged or proposes to engage in the business of investing, reinvesting, owning, holding or trading in securities, including an investment company as defined by 15 USC § 80a-3, or a hedge fund, commodity pool, or similar investment vehicle;

b. Subject to the reporting requirements of § 13 or 15(d) of the Securities Exchange Act of 1934, 15 USC 78m and 78o(d);

c. A company that has not yet defined its business operations, has no business plan, has no stated investment goal for the funds being raised, or that plans to engage in a merger with or acquisition of an unspecified business entity or entities, or without an allocation of proceeds to sufficiently identifiable properties or objectives; or

d. A company that is engaged in or proposes to engage in petroleum exploration or production, mining, or other extractive industries.

8. The issuer informs each prospective purchaser that the securities are not registered under federal or state securities laws and that the securities are subject to limitations on transfer or resale and displays the following legend conspicuously on the cover page of the disclosure statement:

THESE SECURITIES ARE BEING SOLD IN RELIANCE ON AN EXEMPTION TO THE FEDERAL SECURITIES REGISTRATION REQUIREMENTS UNDER SECTION 3(a)(11) OF THE SECURITIES ACT OF 1933 AND UNDER SECTION 13.1-514 OF THE VIRGINIA SECURITIES ACT. THESE SECURITIES CAN ONLY BE SOLD TO RESIDENTS OF VIRGINIA AND ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AS CONTAINED IN SUBSECTIONS (e) AND (f) OF SEC RULE 147, 17 CFR 230.147. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME AND THAT THEY MAY LOSE ALL OF THE INVESTMENT AND CAN AFFORD THE LOSS OF THE INVESTMENT.

IN MAKING AN INVESTMENT DECISION, INVESTORS SHOULD RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS REVEALED IN THESE OFFERING DOCUMENTS, INCLUDING THE MERITS AND RISKS INVOLVED.

THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE

AUTHORITY OR REGULATORY COMMISSION NOR HAVE THESE ENTITIES CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

9. If the offer and sale of securities under this section is made through the Internet, all of the following requirements are met:

a. Any person acting as the Internet website operator shall be an issuer, a registered broker-dealer, or a funding portal that is in compliance with all commission, SEC, and FINRA requirements, including, if it is a funding portal, making any required notice filings with the commission;

b. Internet website operators shall comply with all commission, SEC, and FINRA requirements applicable to intrastate offerings through the Internet;

c. Internet website operators shall maintain records of all offers and sales of securities effected through its Internet website for five years from the close of the offering; and

d. The issuer and the Internet website operator shall keep and maintain records of the offers and sales of securities made through the Internet website for five years from the close of the offering. The issuer and the Internet website operator shall promptly provide ready access to the records to the commission on request. The commission may access, inspect, and review any Internet website described in this subdivision 9 and its records.

10. All payments for the purchase of securities are directed to and held by the depository institution subject to the provisions of subdivision 6 c of this subsection.

11. The issuer does not pay, directly or indirectly, any commission or remuneration to an executive officer, director, managing member, or other individual who has a similar status or performs similar functions in the name of and on behalf of the issuer for offering or selling the securities unless he is registered as a broker-dealer agent under the Act. An executive officer, director, managing member, or other individual who has a similar status or performs similar functions in the name of and on behalf of the issuer is exempt from the agent registration requirements of the Act if he does not receive, directly or indirectly, any commission or remuneration for offering or selling securities of the issuer that are exempt from registration under this section.

12. The issuer provides a copy of Form ICE or the disclosure statement provided to the commission under subdivision 6 b of this subsection to each prospective purchaser at the time the offer of securities is made to the prospective purchaser.

13. The term of the offering does not exceed 12 months after the date of the first offer.

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B. The issuer shall provide a quarterly report to the issuer's purchasers until none of the securities issued under this section are outstanding. All of the following apply to the quarterly report described in this subsection:

1. The issuer shall provide the report free of charge to the purchasers;
2. An issuer may satisfy the report requirement under this subsection by making the information available on an internet website if the information is made available within 45 days after the end of each fiscal quarter and remains available until the next quarterly report is issued;
3. The issuer shall file each report with the commission and shall provide a written copy of the report to any purchaser on request; and
4. The report shall include all of the following:
  - a. The compensation received by each director and executive officer of the issuer, including cash compensation earned since the previous report and on an annual basis and any bonuses, stock options, other rights to receive securities of the issuer or any affiliate of the issuer, or other compensation received; and
  - b. An analysis by management of the issuer's business operations and financial condition.

C. The exemption provided in this section shall not be used in conjunction with any other exemption under the Act, except offers and sales to control persons shall not count toward the limitation in subdivision A 4 of this section.

D. The exemption described in this section shall not be available to the issuer if the issuer, any of the issuer's predecessors, any affiliate of the issuer, or any control person of the issuer:

1. Within the past 10 years, has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the SEC;
2. Within the past 10 years, has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;
3. Is currently subject to any state or federal administrative enforcement order or judgment, entered within the past 10 years, finding fraud or deceit in connection with the purchase or sale of any security; or
4. Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the past 10 years, that temporarily, preliminarily, or permanently restrains or enjoins the party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

E. Subsection D of this section shall not apply if:

1. The party subject to the disqualification is licensed or registered to conduct securities-related business in the state

in which the order, judgment, or decree creating the disqualification was entered against such party;

2. Before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or

3. The issuer establishes it did not know and exercising reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this subsection.

F. An Internet website through which an offer or sale of securities under this section is made is not subject to the broker-dealer or agent registration requirements of the Act if the Internet website meets all of the following conditions:

1. It does not offer investment advice or recommendations;
2. It does not solicit purchases, sales, or offers to buy the securities offered or displayed on the Internet website;
3. It does not compensate employees, agents, or other persons for the solicitation or based on the sale of securities displayed or referenced on the Internet website; and
4. It does not hold, manage, possess, or otherwise handle purchaser funds or securities.

G. As used in this section, "financial review" means a limited inquiry and analytical procedure of much narrower scope than an audit, undertaken by a certified public accountant for the purpose of expressing limited assurance that financial statements are presented in accordance with generally accepted accounting principles.

H. As used in this section, "control person" means (i) an officer, director, partner, managing member, trustee, or other person having the power, directly or indirectly, to direct the management or policies of the issuer, whether by contract or otherwise; or (ii) a person that owns 10% or more of any class of the outstanding securities of the issuer.

I. As used in this section, "funding portal" means any person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others, solely pursuant to § 4(6) of the Securities Act of 1933 that does not:

1. Offer investment advice or recommendations;
2. Solicit purchases, sales, or offers to buy the securities offered or displayed on its Internet website or portal;
3. Compensate employees, agents, or other persons for such solicitation or based on the sales of securities displayed or referenced on its Internet website or portal;
4. Hold, manage, possess, or otherwise handle investor funds or securities; or
5. Engage in such other activities as the SEC, by rule, determines appropriate.

J. The issuer or other designated person shall be notified by letter or electronic communication when the exemption filing is effective. If, however, on or before the initial

commencement date of the offering, and after timely filing the materials required by subdivision A 6 of this section with the commission, the issuer has not been notified that any one or more of the filed materials fails to conform to the requirements of this section, the proposed offering shall be deemed effective.

K. Upon completion of an offering made in reliance on this exemption, the issuer shall file a final sales report with the commission, by letter or electronic communication, no later than 30 days after the last sale in the offering that includes the following information:

1. The time period in which the offering was open;
2. The number of investors that purchased shares or units in the offering;
3. The dollar amount sold in the offering; and
4. The dollar amount, if any, returned to investors, purchasers, or subscribers.

**NOTICE:** The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (21VAC5-40)

- [Form D, Notice of Exempt Offering of Securities, U.S. Securities and Exchange Commission, SEC1972 \(rev. 2/12\)](#)
- [Intrastate Crowdfunding Exemption, Form ICE \(eff. 7/15\)](#)

**21VAC5-45-20. Offerings conducted pursuant to Rule 506 of federal Regulation D (17 CFR 230.506): Filing requirements and issuer-agent exemption.**

A. An issuer offering a security that is a covered security under § 18 (b)(4)(D) of the Securities Act of 1933 (15 USC § 77r(b)(4)(D)) shall file with the commission no later than 15 days after the first sale of such federal covered security in this Commonwealth:

1. A notice on SEC Form D (17 CFR 239.500), as filed with the SEC.
2. A filing fee of \$250 payable to the Treasurer of Virginia.

B. An amendment filing shall contain a copy of the amended SEC Form D. No fee is required for an amendment.

C. For the purpose of this chapter, SEC "Form D" is the document, as adopted by the SEC, and in effect on ~~February 27, 2012~~ September 23, 2013, entitled "Form D, Notice of Exempt Offering of Securities."

D. Pursuant to § 13.1-514 B 13 of the Act, an agent of an issuer who effects transactions in a security exempt from registration under the Securities Act of 1933 pursuant to rules and regulations promulgated under § 4(2) thereof (15 USC

§ 77d(2)) is exempt from the agent registration requirements of the Act.

**21VAC5-80-130. Examination/qualification.**

A. An individual applying for registration as an investment advisor representative shall be required to provide evidence of passing within the two-year period immediately preceding the date of the application: (i) the Uniform Investment Adviser Law Examination, Series 65; (ii) the Uniform Combined State Law Examination, Series 66 and the General Securities Representative Examination, Series 7; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.

B. Any individual who ~~has been~~ meets the qualifications set forth in subsection A of this section and is registered as an investment advisor or investment advisor representative in any state jurisdiction requiring ~~the registration and qualification of investment advisors or investment advisor representatives~~ within the two-year period immediately preceding the date of the filing of an application shall not be required to satisfy the examination requirements set forth in subsection A of this section, except that the commission may require additional examinations for any individual found to have violated any federal or state securities laws.

C. The examination requirements shall not apply to an individual who currently holds and is in good standing under one of the following professional designations:

1. Certified Financial Planner (CFP) issued by the Certified Financial Planner Board of Standards, Inc.;
2. Chartered Financial Consultant (ChFC) awarded by The American College, Bryn Mawr, Pennsylvania;
3. Personal Financial Specialist (PFS) administered by the American Institute of Certified Public Accountants;
4. Chartered Financial Analyst (CFA) granted by the Association for Investment Management and Research;
5. Chartered Investment Counselor (CIC) granted by the Investment Counsel Association of America; or
6. Such other professional designation, after reasonable notice and subject to review by the commission, as the ~~Director~~ director of the ~~Division of Securities and Retail Franchising~~ division designates.

D. In lieu of meeting the examination requirement described in subsection A of this section, an applicant who meets all the qualifications set forth below may file with the commission at its ~~Division of Securities and Retail Franchising~~ division an executed Affidavit for Waiver of Examination (Form S.A.3).

1. No more than one other individual connected with the applicant's investment advisor is utilizing the waiver at the time the applicant files Form S.A.3.
2. The applicant is, and has been for at least the five years immediately preceding the date on which the application



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for registration is filed, actively engaged in the investment advisory business.

3. The applicant has been for at least the two years immediately preceding the date on which the application is filed the president, chief executive officer or chairman of the board of directors of an investment advisor organized in corporate form or the managing partner, member, trustee or similar functionary of an investment advisor organized in noncorporate form.

4. The investment advisor or advisors referred to in subdivision 3 of this subsection has been actively engaged in the investment advisory business and during the applicant's tenure as president, chief executive officer, chairman of the board of directors, or managing partner, member, trustee or similar functionary had at least \$40 million under management.

5. The applicant verifies that he has read and is familiar with the investment advisor and investment advisor representative provisions of the Act and the provisions of Parts I through V of this chapter.

6. The applicant verifies that none of the questions in Item 14 (disciplinary history) on his Form U4 have been, or need be, answered in the affirmative.

## **21VAC5-80-200. Dishonest or unethical practices.**

A. An investment advisor or federal covered advisor is a fiduciary and has a duty to act primarily for the benefit of his clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment advisor or federal covered advisor and his clients and the circumstances of each case, an investment advisor or federal covered advisor who is registered or required to be registered shall not engage in unethical practices, including the following:

1. Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation, risk tolerance and needs, and any other information known or acquired by the investment advisor or federal covered advisor after reasonable examination of the client's financial records.

2. Placing an order to purchase or sell a security for the account of a client without written authority to do so.

3. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party authorization from the client.

4. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client

within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

5. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.

6. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment advisor or federal covered advisor, or a financial institution engaged in the business of loaning funds or securities.

7. Loaning money to a client unless the investment advisor or federal covered advisor is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment advisor or federal covered advisor.

8. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment advisor or federal covered advisor, or misrepresenting the nature of the advisory services being offered or fees to be charged for the services, or omission to state a material fact necessary to make the statements made regarding qualifications services or fees, in light of the circumstances under which they are made, not misleading.

9. Providing a report or recommendation to any advisory client prepared by someone other than the investment advisor or federal covered advisor without disclosing that fact. This prohibition does not apply to a situation where the advisor uses published research reports or statistical analyses to render advice or where an advisor orders such a report in the normal course of providing service.

10. Charging a client an unreasonable advisory fee in light of the fees charged by other investment advisors or federal covered advisors providing essentially the same services.

11. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment advisor or federal covered advisor or any of his employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

a. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; or

b. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the advisor or his employees.

12. Guaranteeing a client that a specific result will be achieved as a result of the advice which will be rendered.

13. Directly or indirectly using any advertisement that does any one of the following:

a. Refers to any testimonial of any kind concerning the investment advisor or investment advisor representative or concerning any advice, analysis, report, or other service rendered by the investment advisor or investment advisor representative;

b. Refers to past specific recommendations of the investment advisor or investment advisor representative that were or would have been profitable to any person; except that an investment advisor or investment advisor representative may furnish or offer to furnish a list of all recommendations made by the investment advisor or investment advisor representative within the immediately preceding period of not less than one year if the advertisement or list also includes both of the following:

(1) The name of each security recommended, the date and nature of each recommendation, the market price at that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each security; and

(2) A legend on the first page in prominent print or type that states that the reader should not assume that recommendations made in the future will be profitable or will equal the performance of the securities in the list;

c. Represents that any graph, chart, formula, or other device being offered can be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making that person's own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in the advertisement the limitations thereof and the risks associated to its use;

d. Represents that any report, analysis, or other service will be furnished for free or without charge, unless the report, analysis, or other service actually is or will be furnished entirely free and without any direct or indirect condition or obligation;

e. Represents that the commission has approved any advertisement; or

f. Contains any untrue statement of a material fact, or that is otherwise false or misleading.

For the purposes of this section, the term "advertisement" includes any notice, circular, letter, or other written communication addressed to more than one person, or any notice or other announcement in any electronic or paper publication, by radio or television, or by any medium, that offers any one of the following:

(i) Any analysis, report, or publication concerning securities;

(ii) Any analysis, report, or publication that is to be used in making any determination as to when to buy or sell any security or which security to buy or sell;

(iii) Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or

(iv) Any other investment advisory service with regard to securities.

14. Disclosing the identity, affairs, or investments of any client to any third party unless required by law or an order of a court or a regulatory agency to do so, or unless consented to by the client, or failing to comply with any applicable privacy provision or standard promulgated by the SEC or by a self-regulatory organization approved by the SEC.

15. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment advisor has custody or possession of such securities or funds, when the investment advisor's action is subject to and does not comply with the safekeeping requirements of 21VAC5-80-146.

16. Entering into, extending or renewing any investment advisory contract unless the contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment advisor or federal covered advisor and that no assignment of such contract shall be made by the investment advisor or federal covered advisor without the consent of the other party to the contract.

17. Failing to clearly and separately disclose to its customer, prior to any security transaction, providing investment advice for compensation or any materially related transaction that the customer's funds or securities will be in the custody of an investment advisor or contracted custodian in a manner that does not provide Securities Investor Protection Corporation protection, or equivalent third-party coverage over the customer's assets.

18. Using a certification or professional designation in connection with the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees in such a way as to mislead any person.

a. The use of such certification or professional designation includes, but is not limited to, the following:

(1) Use of a certification or designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

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(2) Use of a nonexistent or self-conferred certification or professional designation;

(3) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; or

(4) Use of a certification or professional designation that was obtained from a designating or certifying organization that:

(a) Is primarily engaged in the business of instruction in sales ~~and/or~~ or marketing;

(b) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(c) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(d) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

b. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subdivision 18 a (4) of this subsection, when the organization has been accredited by:

(1) The American National Standards Institute;

(2) The Institute for Credentialing Excellence (formerly the National Commission for Certifying Agencies); or

(3) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales ~~and/or~~ or marketing.

c. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

(1) Use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(2) The manner in which those words are combined.

d. For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

(1) Indicates seniority within the organization; or

(2) Specifies an individual's area of specialization within the organization.

For purposes of this subdivision d, "financial services regulatory agency" includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under § 3 (a)(1) of the Investment Company Act of 1940 (15 USC § 80a-3(a)(1)).

e. Nothing in this regulation shall limit the commission's authority to enforce existing provisions of the law.

B. An investment advisor representative is a fiduciary and has a duty to act primarily for the benefit of his clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment advisor representative and his clients and the circumstances of each case, an investment advisor representative who is registered or required to be registered shall not engage in unethical practices, including the following:

1. Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the investment advisor representative after reasonable examination of the client's financial records.

2. Placing an order to purchase or sell a security for the account of a client without written authority to do so.

3. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party authorization from the client.

4. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

5. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.

6. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment advisor representative, or a financial institution engaged in the business of loaning funds or securities.

7. Loaning money to a client unless the investment advisor representative is engaged in the business of loaning funds or the client is an affiliate of the investment advisor representative.

8. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment advisor representative, or misrepresenting the nature of the advisory services being offered or fees to be charged for the services, or omission to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

9. Providing a report or recommendation to any advisory client prepared by someone other than the investment advisor or federal covered advisor who the investment advisor representative is employed by or associated with without disclosing that fact. This prohibition does not apply to a situation where the investment advisor or federal covered advisor uses published research reports or statistical analyses to render advice or where an investment advisor or federal covered advisor orders such a report in the normal course of providing service.

10. Charging a client an unreasonable advisory fee in light of the fees charged by other investment advisor representatives providing essentially the same services.

11. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment advisor representative which could reasonably be expected to impair the rendering of unbiased and objective advice including:

- a. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; or
- b. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the investment advisor representative.

12. Guaranteeing a client that a specific result will be achieved as a result of the advice which will be rendered.

13. Directly or indirectly using any advertisement that does any one of the following:

- a. Refers to any testimonial of any kind concerning the investment advisor or investment advisor representative or concerning any advice, analysis, report, or other service rendered by the investment advisor or investment advisor representative;
- b. Refers to past specific recommendations of the investment advisor or investment advisor representative that were or would have been profitable to any person; except that an investment advisor or investment advisor representative may furnish or offer to furnish a list of all recommendations made by the investment advisor or investment advisor representative within the immediately preceding period of not less than one year if the advertisement or list also includes both of the following:

(1) The name of each security recommended, the date and nature of each recommendation, the market price at

that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each security; and

(2) A legend on the first page in prominent print or type that states that the reader should not assume that recommendations made in the future will be profitable or will equal the performance of the securities in the list;

c. Represents that any graph, chart, formula, or other device being offered can be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making that person's own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in the advertisement the limitations thereof and the risks associated with its use;

d. Represents that any report, analysis, or other service will be furnished for free or without charge, unless the report, analysis, or other service actually is or will be furnished entirely free and without any direct or indirect condition or obligation;

e. Represents that the commission has approved any advertisement; or

f. Contains any untrue statement of a material fact, or that is otherwise false or misleading.

For the purposes of this section, the term "advertisement" includes any notice, circular, letter, or other written communication addressed to more than one person, or any notice or other announcement in any electronic or paper publication, by radio or television, or by any medium, that offers any one of the following:

- (i) Any analysis, report, or publication concerning securities;
- (ii) Any analysis, report, or publication that is to be used in making any determination as to when to buy or sell any security or which security to buy or sell;
- (iii) Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or
- (iv) Any other investment advisory service with regard to securities.

14. Disclosing the identity, affairs, or investments of any client to any third party unless required by law or an order of a court or a regulatory agency to do so, or unless consented to by the client.

15. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment advisor representative other than a person associated with a federal covered advisor has custody or possession of such securities or funds, when the investment advisor

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# Regulations

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representative's action is subject to and does not comply with the safekeeping requirements of 21VAC5-80-146.

16. Entering into, extending or renewing any investment advisory or federal covered advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment advisor representative and that no assignment of such contract shall be made by the investment advisor representative without the consent of the other party to the contract.

17. Failing to clearly and separately disclose to its customer, prior to any security transaction, providing investment advice for compensation or any materially related transaction that the customer's funds or securities will be in the custody of an investment advisor or contracted custodian in a manner that does not provide Securities Investor Protection Corporation protection, or equivalent third-party coverage over the customer's assets.

18. Using a certification or professional designation in connection with the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees in such a way as to mislead any person.

a. The use of such certification or professional designation includes, but is not limited to, the following:

(1) Use of a certification or designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(2) Use of a nonexistent or self-conferred certification or professional designation;

(3) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; or

(4) Use of a certification or professional designation that was obtained from a designating or certifying organization that:

(a) Is primarily engaged in the business of instruction in sales ~~and~~ or marketing;

(b) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(c) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(d) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

b. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subdivision 18 a (4) of this subsection, when the organization has been accredited by:

(1) The American National Standards Institute;

(2) The Institute for Credentialing Excellence (formerly the National Commission for Certifying Agencies); or

(3) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales ~~and/or~~ or marketing.

c. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

(1) Use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(2) The manner in which those words are combined.

d. For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

(1) Indicates seniority within the organization; or

(2) Specifies an individual's area of specialization within the organization.

For purposes of this subdivision d, "financial services regulatory agency" includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under § 3(a)(1) of the Investment Company Act of 1940 (15 USC § 80a-3(a)(1)).

e. Nothing in this regulation shall limit the commission's authority to enforce existing provisions of law.

C. The conduct set forth in subsections A and B of this section is not all inclusive. Engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices may be deemed an unethical business practice except to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290 (96)).

D. The provisions of this section shall apply to federal covered advisors to the extent that fraud or deceit is involved,

or as otherwise permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290 (96)).

**21VAC5-80-220. Performance based fees.**

A. In accordance with § 13.1-503 C of the Act, an investment advisor may enter into, extend, or renew any investment advisory contract to provide for compensation to the investment advisor on the basis of a share of the capital gains upon, or the capital appreciation of, the funds or any portion of the funds of a client, provided that the following conditions of this section are satisfied.

B. Nature of the client:

1. a. The client entering into the contract subject to this section must be a natural person or a company, as defined in subdivision 2 of this subsection and in the definition of "company" in subsection E of this section, who immediately after entering into the contract has at least ~~\$750,000~~ \$1 million under the management of the investment advisor; or

b. A person who the registered investment advisor (and any person acting on his behalf) entering into the contract reasonably believes, immediately prior to entering into the contract, is a natural person or a company, as defined in subdivision 2 of this subsection and in the definition of "company" in subsection E of this section, whose net worth at the time the contract is entered into exceeds ~~\$1,500,000~~ \$2 million. (The net worth of a natural person may include assets held jointly with such person's spouse.)

2. The term "company" as used in subdivision 1 of this subsection does not include:

- a. A private investment company, as defined in subsection E of this section;
- b. An investment company registered under the Investment Company Act of 1940; or
- c. A business development company, as defined in § 202(a)(22) of the Investment Advisers Act of 1940 (15 USC § 80b-2(a)(22))

unless each of the equity owners (other than the investment advisor entering into a contract under this section) of any such company identified in ~~this~~ subdivision 2 of this subsection, is a natural person or company described in this subsection ~~B~~.

C. Disclosure. In addition to the disclosure requirements of Form ADV, the advisor shall disclose to the client, or the client's independent agent, prior to entering into an advisory contract permitted by this section, all material information concerning the proposed advisory arrangement including the following:

1. That the fee arrangement may create an incentive for the advisor to make investments that are riskier or more speculative than would be the case in the absence of a performance fee;

2. Where relevant, that the advisor may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's account;

3. The time period which will be used to measure investment performance throughout the term of the contract and its significance in the computation of the fee;

4. The nature of any index which will be used as a comparative measure of investment performance, the significance of the index, and the reason the advisor believes the index is appropriate; and

5. Where an advisor's compensation is based on the unrealized appreciation of securities for which market quotations are not readily available, how such securities will be valued and the extent to which the valuation will be independently determined.

D. Arm's-length contract. The investment advisor (and any person acting on its behalf) who enters into the contract must reasonably believe, immediately prior to entering into the contract, that the contract represents an arm's-length arrangement between the parties and that the client (or in the case of a client which is a company as defined in subsection E of this section, the person, representing the company), alone or together with the client's independent agent, understands the proposed method of compensation and its risks. The representative of a company may be a partner, director, officer, or an employee of the company or the trustee, where the company is a trust, or any other person designated by the company or trustee, but must satisfy the definition of client's independent agent set forth in subsection E of this section.

E. Definitions. For the purpose of this section:

The term "affiliated person" has the same meaning as in § 2 (a)(3) of the Investment Company Act of 1940 (15 USC § 80a-2(a)(3)).

The term "client's independent agent" means any person agreeing to act as the client's agent in connection with the contract other than:

1. The investment advisor acting in reliance upon this section, an affiliated person of the investment advisor, an affiliated person of an affiliated person of the investment advisor, or an interested person of the investment advisor as defined in this subsection;

2. A person who receives, directly or indirectly, any compensation in connection with the contract from the investment advisor, an affiliated person of the investment advisor, an affiliated person of an affiliated person of the investment advisor or an interested person of the investment advisor as defined in this subsection; or

3. A person with any material relationship between himself (or an affiliated person of such person) and the investment advisor (or an affiliated person of the investment advisor) that exists, or has existed at any time during the previous two years.

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# Regulations

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The term "company" has the same meaning as in § 202 (a)(5) of the Investment Advisers Act of 1940 (15 USC § 80b-2(a)(5)).

The term "interested person" as used in the definition of "client's independent agent" of this section means:

1. Any member of the immediate family of any natural person who is an affiliated person of the investment advisor;
2. Any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued by the investment advisor or by a controlling person of the investment advisor if the beneficial or legal interest of the person in any security issued by the investment advisor or by a controlling person of the investment advisor:
  - a. Exceeds one tenth of one percent of any class of outstanding securities of the investment advisor or a controlling person of the investment advisor; or
  - b. Exceeds 5.0% of the total assets of the person (seeking to act as the client's independent agent); or
3. Any person or partner or employee of any person who at any time since the beginning of the last two years has acted as legal counsel for the investment advisor.

The term "private investment company" means a company which would be defined as an investment company under § 3 (a) of the Investment Company Act of 1940 (15 USC § 80a-3(a)) but for the exception provided from that definition by § 3 (c)(1) of such Act.

The term "securities for which market quotations are readily available" in subsection C of this section has the same meaning as in Rule 2a-4 (a)(1) under the Investment Company Act of 1940 (17 CFR 270.2a-4 (a)(1)).

The term "securities for which market quotations are not readily available" in subsection C of this section means securities not described in the above paragraph.

V.A.R. Doc. No. R15-4298; Filed March 30, 2015, 2:12 p.m.

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# GOVERNOR

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## EXECUTIVE ORDER NUMBER 41 (2015)

### **Implementation of "Ban the Box" Hiring Policies in the Commonwealth**

#### Importance of the Initiative

Virginia takes great pride in having a diverse and thriving business environment. Every year many new businesses choose to relocate or open in the Commonwealth because of its welcoming business environment and quality workforce. Unfortunately, many people with criminal histories find it difficult to gain employment in Virginia. The National Employment Law Project estimates 70 million American adults have arrests or convictions in their past that can make it difficult for them to obtain employment.

It is vitally important to Virginia's new economy that every Virginian has a meaningful opportunity to compete for jobs in the Commonwealth. Expanding employment opportunities not only improves the Commonwealth's fiscal health, but also enhances the quality of life for all of her citizens by providing improved access to better housing, education, and other societal benefits.

Accordingly, by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, I hereby issue this Executive Order (Order) directing the Department of Human Resource Management (DHRM) to amend the state employment application and to provide guidance to all agencies, boards and commissions within the executive branch of government consistent with this Order on the appropriate use of criminal background checks.

#### Scope and Guidance

This Order shall apply to all agencies, boards and commissions within the executive branch of government subject to the authority of the Governor and covered by the Virginia Personnel Act as set forth in § 2.2-2900, et al., of the Code of Virginia. This Order also encourages similar hiring practices among private employers operating within the Commonwealth and state government contractors.

In implementing this Order, DHRM shall take the following actions:

- (1) Amend the state employment application to "ban the box," removing those questions relating to convictions and criminal history;
- (2) Inform all hiring authorities within the executive branch that state employment decisions will not be based on the criminal history of an individual unless demonstrably job-related and consistent with business necessity, or state or federal law prohibits hiring an individual with certain convictions for a particular position;

(3) Provide guidance to ensure that any criminal history background check is only conducted after a candidate has (a) signed the appropriate waiver authorizing release, (b) been found otherwise eligible for the position, and (c) is being considered for a specific position; and

(4) Identify agency positions to be classified as sensitive in accordance with § 2.2-1201.1 of the Code of Virginia and this Order, where initial disclosure of criminal history information shall still be required.

Any person refusing to complete and sign the appropriate authorization for release of criminal history information prepared in accordance with this Order may have his application for that position removed from further consideration.

Nothing in this Order shall be construed to create or imply any new cause of action against the Commonwealth of Virginia or any component part thereof, or against any person acting in his official capacity.

#### Effective Date of the Executive Order

This Executive Order shall be effective upon its signing and shall remain in full force and effect until amended or rescinded by further executive order.

Within 90 days of the date of this Order, DHRM shall submit a report to the Governor outlining its compliance with this Order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 3rd day of April, 2015.

/s/ Terence R. McAuliffe  
Governor



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# GENERAL NOTICES/ERRATA

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## AIR POLLUTION CONTROL BOARD

### State Implementation Plan - PM<sub>2.5</sub> Nonattainment and Maintenance Areas (Rev. G14)

**Notice of action:** The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed revision to the Commonwealth of Virginia State Implementation Plan (SIP). The SIP is a plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act (the Act) to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act. The Commonwealth intends to submit the regulation to EPA as a revision to the SIP in accordance with the requirements of § 110(a) of the Act.

**Regulations affected:** The regulation provisions of the board affected by this action concern PM<sub>2.5</sub> nonattainment and maintenance areas (Rev. G14) in 9VAC5-20 (General Provisions).

**Purpose of notice:** DEQ is seeking comment on the issue of whether the regulation amendments should be submitted as a revision to the SIP.

**Public comment period:** April 20, 2015, through May 20, 2015.

**Public hearing:** A public hearing may be conducted if a request is made in writing to the contact listed below. In order to be considered, the request must include the full name, address, and telephone number of the person requesting the hearing and be received by DEQ by the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

**Public comment stage:** The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 c of the Administrative Process Act because they are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent EPA regulations. Since the amendments are exempt from administrative procedures for the adoption of regulations, DEQ is accepting comment only on the issue cited above under "purpose of notice" and not on the content of the regulation amendments.

**Description of proposal:** The proposed revision will consist of amendments to existing regulation provisions concerning PM<sub>2.5</sub> nonattainment and maintenance areas. On October 6, 2014 (79 FR 60081), EPA approved a request that localities (Counties of Arlington, Fairfax, Loudoun, and Prince William; Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park) in the Northern Virginia area that were designated as nonattainment for very fine

particulate matter (PM<sub>2.5</sub>) be redesignated to attainment/maintenance. The amendments revise the list of maintenance areas to include Northern Virginia for PM<sub>2.5</sub> (9VAC5-20-203), and revise the list of nonattainment areas to remove Northern Virginia for PM<sub>2.5</sub> (9VAC5-20-204).

**Federal information:** This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102) and not any provision of state law. The proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104. It is planned to submit all provisions of the proposal as a revision to the Commonwealth of Virginia SIP.

**How to comment:** DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by the contact person listed below by the last day of the comment period. All materials received are part of the public record.

**To review regulation documents:** The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website at <http://www.deq.state.va.us/Programs/Air/PublicNotices/airplansandprograms.aspx>. The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

- 1) Main Street Office, 629 East Main Street, 8th Floor, Richmond, VA, telephone (804) 698-4070,
- 2) Southwest Regional Office, 355 Deadmore Street, Abingdon, VA, telephone (276) 676-4800,
- 3) Blue Ridge Regional Office, Roanoke Location, 3019 Peters Creek Road, Roanoke, VA, telephone (540) 562-6700,
- 4) Blue Ridge Regional Office, Lynchburg Location, 7705 Timberlake Road, Lynchburg, VA, (434) 582-5120,
- 5) Valley Regional Office, 4411 Early Road, Harrisonburg, VA, telephone (540) 574-7800,
- 6) Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA, telephone (804) 527-5020,
- 7) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800, and
- 8) Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA, telephone (757) 518-2000.

**Contact Information:** Karen Sabastanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, or email [karen.sabastanski@deq.virginia.gov](mailto:karen.sabastanski@deq.virginia.gov).

## STATE CORPORATION COMMISSION

### Bureau of Insurance

March 30, 2015

Administrative Letter 2015-07

To: All Insurers Licensed to Write Insurance Primarily for Personal, Family, or Household Purposes, Life Insurance, Annuities, and Accident and Sickness Insurance in Virginia, and All Interested Parties

Re: Requirements for Adverse Underwriting Decisions and Notices; Withdrawal of Administrative Letters 1978-04; 1978-09; 1978-11; 1981-04; 1981-15, 1981-16, and 2003-06

NOTE: EACH INSURER RECEIVING THIS ADMINISTRATIVE LETTER IS INSTRUCTED TO MAKE EACH OF ITS CURRENTLY APPOINTED AGENTS AND EACH NEWLY APPOINTED AGENT AWARE OF THIS ADMINISTRATIVE LETTER.

Since 1978, Chapter 6 of Title 38.2 of the Code of Virginia (Chapter) has been amended and several Administrative Letters have been issued by the Bureau of Insurance (Bureau) that addressed specific issues or changes made to those statutes regarding adverse underwriting decisions and providing the required notice. This administrative letter compiles all of the information on adverse underwriting decisions (AUD) included in previous letters and provides guidance on insurers' responsibility to provide the required notice to insureds.<sup>1</sup> Consequently, the following Administrative Letters are hereby withdrawn: 1978-04; 1978-09; 1978-11; 1981-04; 1981-15, 1981-16, 1992-25, and 2003-06.

The Bureau provides the following guidance which is to be used in conjunction with the provisions of Chapter 6 of Title 38.2 of the Code of Virginia.

#### Definitions and Scope

Sections [38.2-601](#) and [38.2-602](#) of the Code of Virginia set forth respectively the scope and definitions applicable to the Chapter, which are crucial to a proper understanding of the Chapter and must be read very carefully. Chapter 6 establishes standards for the collection, use, and disclosure of personal information gathered in connections with insurance transactions by insurance agents, insurance institutions, or insurance-support organizations. This chapter limits the disclosure of such information and provides a means for applicants and policyholders to obtain the reasons for any adverse underwriting decision (AUD).

Chapter 6 only applies to the underwriting and servicing of insurance purchased primarily for personal, family, or household needs rather than business or professional needs.

In addition to the definition of adverse underwriting decision (below), the following definitions in [§ 38.2-602](#) of the Code

of Virginia are very important when considering AUDs: individual, insurance transaction, personal information, and privileged information.

#### Adverse Underwriting Decisions

Adverse underwriting decision means:

Any of the following actions with respect to insurance transactions involving insurance coverage that is individually underwritten:

- a. A declination of insurance coverage;
- b. A termination of insurance coverage;
- c. Failure of an agent to apply for insurance coverage with a specific insurance institution that an agent represents and that is requested by an applicant;
- d. In the case of a property or casualty insurance coverage:
  - (1) Placement by an insurance institution or agent of a risk with a residual market mechanism or an unlicensed insurer; or
  - (2) The charging of a higher rate on the basis of information that differs from that which the applicant or policyholder furnished; or
- e. In the case of a life or accident and sickness insurance coverage, an offer to insure at higher than standard rates, or with limitations, exceptions, or benefits other than those applied for.

With respect to AUDs, Chapter 6 provides the following rights:

- Grants individuals and certain other persons the general right to access recorded personal information ([§ 38.2-608](#) of the Code of Virginia);
- Grants individuals and certain other persons the right to correct, amend, or delete any recorded information in a file and, if the information is not changed, the right to put in the file information the individual believes is correct, relevant, or fair as well as a concise statement why the individual disagrees with the information in the file ([§ 38.2-609](#) of the Code of Virginia);
- Requires that individuals and certain other persons are provided the reason(s) for any AUD, the information on which the decision was based, and the opportunity to see and copy the information subject to certain limitations ([§ 38.2-610](#) of the Code of Virginia);
- Prohibits an individual from being asked whether he or she was the subject of a previous AUD or previously obtained insurance through a residual market mechanism without also being asked the reason ([§ 38.2-611](#) of the Code of Virginia);

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## General Notices/Errata

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- Prohibits an AUD from being based, in whole or in part, on the fact of a previous AUD, on the fact that an individual previously obtained insurance through a residual market mechanism, on information from certain types of insurance-support organizations, or on the fact that the individual previously obtained insurance through a particular insurance institution or agent. (§ 38.2-612 A of the Code of Virginia)
- Prohibits insurance institutions and agents from basing an AUD solely on the loss history of the previous owner of the property to be insured (§ 38.2-612 B of the Code of Virginia); and
- Provides an individual with the power to seek legal action against an insurance institution, agent, or insurance support organization for violations of certain sections of the Chapter. (§ 38.2-617 of the Code of Virginia).

### AUD Notice

In the event of an AUD, the insurer or agent must give certain information to the applicant, policyholder, or individual proposed for coverage. The insurer or agent must provide such person with (1) the specific reason or reasons for the AUD, or advise the person that, upon request, he may receive the reason or reasons in writing, and (2) a summary of the person's rights under §§ 38.2-608 and 38.2-609, as well as § 38.2-610 B of the Code of Virginia.

The applicant, policyholder, or individual has 90 business days from the date of receipt of the AUD notice to request the reason or reasons for such decision. Within 21 business days from the receipt of such request, the insurer or agent must furnish the specific reason or reasons for the AUD and the specific items of personal and certain privileged information that support the AUD. The insurer or agent must also provide the names and addresses of the institutional sources that supplied the specific items of personal or privileged information. No charge may be made for the copying of the material provided in response to the request from the applicant, policyholder, or individual.

Attached to this letter is a prototype AUD notice setting forth the kinds of information that should be contained in an AUD notice. AUD notices containing wording that is substantially similar to that in the prototype are deemed acceptable for use in Virginia. This does not prevent insurers and agents from including more information in AUD notices about rights provided under Virginia law or the procedures used by the insurer, agent, or insurance-support organization to comply with the law.

### Examples of Actions Triggering AUD Notices

- When increasing insureds' premiums or charging points under Safe Driver Insurance Plans, insurers writing private passenger automobile insurance must also be aware that AUD notices are required.

- When an application is closed/denied because the applicant, his physician, or some other person fails to furnish required information, such closure or denial is a declination of coverage and triggers an AUD notice.
- When coverage is
  - A. Terminated (cancelled or nonrenewed);
  - B. Not placed with the specific insurance institution requested by the applicant;
  - C. In the case of accident and sickness or life insurance,
    - (i) offered at a rate higher than that requested,
    - (ii) offered at a lower benefit level than that requested, or
    - (iii) offered with exclusions or exceptions other than those requested,
  - D. In the case of property and casualty insurance,
    - (i) offered through a residual market mechanism or unlicensed insurer, or
    - (ii) offered at a higher premium based on information that differs from that provided by the applicant.

### Notice Required but Not an AUD Notice

While an AUD notice is not required in the following circumstances the insurance institution or agent responsible for their occurrence must give notice to the applicant or policyholder of the specific reason or reasons for their actions (see § 38.2-602, definition of Adverse Underwriting Decision, subsection 2):

- The termination of an individual policy form on a statewide basis;
- A declination of insurance coverage solely because such coverage is not available on a class or statewide basis; or
- The rescission of a policy.

An example of a declination due to coverage not available on a class basis is a declination of coverage based on eligibility requirements clearly addressed in an accident and sickness insurance policy that has been filed and approved by the Bureau. Another example of a declination of coverage triggering a notice arises when an applicant requests an optional coverage from an automobile insurer that no longer offers such coverage.

Questions about this administrative letter should be directed to:

For the Property and Casualty Division, George A. Lyle, CPCU, CIC, AIE, Principal Insurance Market Examiner,

P&C Consumer Services, telephone (804) 371-9185, or email [george.lyle@scc.virginia.gov](mailto:george.lyle@scc.virginia.gov).

For the Life & Health Division, Ann Colley, Principal Insurance Analyst, L&H Research, telephone (804) 371-9813, or email [ann.colley@scc.virginia.gov](mailto:ann.colley@scc.virginia.gov).

/s/ Jacqueline K. Cunningham  
Commissioner of Insurance

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<sup>1</sup> Additional information may be found in the *Common Problems Found During Examinations Identified by the Property and Casualty Market Conduct and Consumer Services Sections and the Common Problems Identified During Life And Health Market Conduct Examinations*, which are located at <http://scc.virginia.gov/boi/laws.aspx>.

Administrative Letter 2015-07

Attachment

## Prototype AUD Notice

In connection with your application for or policy of \_\_\_ insurance, we have found it necessary to take the following action:

The reasons for this action are as follows:

(The reason for the action may be given here or in lieu of this sentence the following sentence may be substituted: "You have a right to obtain the specific reason(s) for this decision by submitting a written request to the company.")

You have the right to know the specific items of information that support the reasons given for this decision and the identity of the source of that information. You also have the right to see and obtain copies of documents relating to this decision.

If you ask us to correct, amend, or delete any information about you in our files and if we refuse to do so, you have the right to give us a concise statement of what you believe is the correct information. We will put your statement in our file so that anyone reviewing your file will see it.

If you would like additional information concerning this action, state law requires that you submit a written request within ninety (90) business days from the date this notice was mailed to you. Please send your request to:

(Show the name and address of the person or department to contact for additional information.)

## VIRGINIA LOTTERY

### Director's Orders

The following Director's Orders of the Virginia Lottery were filed with the Virginia Registrar of Regulations on April 1, 2015. The orders may be viewed at the Virginia Lottery, 900 East Main Street, Richmond, Virginia, or at the office of the

Registrar of Regulations, 201 North 9th Street, 2nd Floor, Richmond, Virginia.

### Director's Order Number Eighteen (15)

Virginia's Computer-Generated Game Lottery "Pick 4" Final Rules For Game Operation (This Director's Order becomes effective February 27, 2015, fully replaces any and all prior Virginia Lottery "Pick 4" game rules, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

### Director's Order Number Thirty-One (15)

Virginia's Computer-Generated Game Lottery "Pick 3" Final Rules For Game Operation (This Director's Order becomes effective February 18, 2015, fully replaces any and all prior Virginia Lottery "Pick 3" game rules, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

### Director's Order Number Thirty-Four (15)

Virginia's Instant Game Lottery 1545 "20X The Money" Final Rules For Game Operation (effective March 19, 2015)

### Director's Order Number Thirty-Five (15)

Virginia's Instant Game Lottery 1538 "Winner Take All" Final Rules For Game Operation (effective March 19, 2015)

### Director's Order Number Thirty-Six (15)

Virginia's Instant Game Lottery 1558 "Money, Money, Money" Final Rules For Game Operation (effective March 19, 2015)

### Director's Order Number Thirty-Seven (15)

Virginia's Instant Game Lottery 1551 "Find The 9's" Final Rules For Game Operation (effective March 19, 2015)

### Director's Order Number Thirty-Eight (15)

Virginia Lottery's "2015 RIR Torque Club Ticket Giveaway" Final Rules For Operation (This Director's Order becomes effective on Friday, April 24, 2015, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

### Director's Order Number Thirty-Nine (15)

Virginia's Computer-Generated Game Lottery "Cash4Life®" Final Rules For Game Operation (This Director's Order becomes effective on May 3, 2015, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

### Director's Order Number Forty-Seven (15)

Virginia's Ninth Computer-Generated Game Lottery Mega Millions Final Rules For Game Operation (This Director's Order becomes effective March 24, 2015, fully replaces any and all prior Virginia Lottery "Mega Millions" game rules,

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## General Notices/Errata

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and shall remain in full force and effect unless amended or rescinded by further Director's Order)

### DEPARTMENT OF TRANSPORTATION

#### Public Comment Period for Mobile Food Vending on State Highway Right-of-way

The Virginia Department of Transportation (VDOT) plans to prepare and propose to the Commonwealth Transportation Board (CTB) amendments to the land use permit regulations (24VAC30-151-670) in accordance with the provisions set out in Chapter 466 of the 2015 Acts of Assembly, which would allow mobile food vending on state highway right-of-way. The CTB will then consider the amendments for adoption, or may direct that additional input be solicited before making a decision.

Currently, the Land Use Permit Regulations (24VAC30-151) prohibit vendors from selling on state highway right-of-way. Chapter 466 requires the CTB to amend its regulations to allow mobile food vending on non-limited access highways. Chapter 466 further provides that the regulations shall allow localities to regulate operation of the mobile food vending businesses located on state highway right-of-way in a manner consistent with local ordinances and Commonwealth Transportation Board regulations and policies.

Chapter 466 also requires VDOT to seek input from localities and other stakeholders during the process of amending the regulations. This general notice is not intended to substitute for any subsequent solicitations of public input that may be made during a formal regulatory amendment process.

The public comment period closes at 5:00 p.m. on May 4, 2015. Anyone wishing to submit comments may do so by mail or fax to Robert W. Hofrichter, Assistant Administrator, Transportation and Mobility Planning Division, Virginia Department of Transportation, 1401 East Broad Street, Richmond, Virginia 23219, FAX 804-225-4785, or email [robert.hofrichter@vdot.virginia.gov](mailto:robert.hofrichter@vdot.virginia.gov).

### STATE WATER CONTROL BOARD

#### Public Comment Period for Leesville Auto-Cycle vs. Continuous Release Study

**Purpose:** The purpose of this comment period is to provide the public with an opportunity to submit to the Department of Environmental Quality (DEQ) written comments on the Leesville Auto-Cycle vs. Continuous Release Study (Study) dated February 2015, submitted by Appalachian Power Company, in accordance with Virginia Water Protection (VWP) Permit No. 08-0572 for the Smith Mountain Project located in Franklin, Bedford, Pittsylvania, and Campbell Counties, Virginia.

**Background:** The Study investigated the potential effects from different operational procedures to provide downstream

flows to the Staunton River through auto-cycling versus continuous releases at Leesville Dam. The effects of these operations were reviewed with respect to bank erosion, recreation, public safety, water quality, and aquatic habitat in the Staunton River between Leesville Dam and the confluence with Goose Creek. A copy of the Study can be obtained at <http://www.deq.virginia.gov/programs/water/wetlandsstreams/publicnotices.aspx>.

**Public comment period:** Written comments will be accepted from April 1, 2015, through April 30, 2015, at 11:59 p.m. Any comments received by DEQ during the comment period will be taken under consideration during DEQ's review of the report that will be concurrent with DEQ's five-year review of the permit. All comments must be in writing and submitted by mail, email, or fax to the contact person listed below.

**Contact Information:** Brian McGurk, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4180, FAX (804) 698-4131, or email [brian.mcgurk@deq.virginia.gov](mailto:brian.mcgurk@deq.virginia.gov).

#### Proposed Consent Order for Sandy's MHC, LLC

An enforcement action has been proposed for Sandy's MHC, LLC (Sandy's) for violations in Frederick County, Virginia. The State Water Control Board proposes to issue a consent order to Sandy's to address noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Tiffany Severs will accept comments by email at [tiffany.severs@deq.virginia.gov](mailto:tiffany.severs@deq.virginia.gov), FAX at (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, from April 20, 2015, through May 20, 2015.

### STATE WATER CONTROL BOARD VIRGINIA WASTE MANAGEMENT BOARD

#### Proposed Enforcement Action for Duke Energy Carolinas, LLC

An enforcement action has been proposed for Duke Energy Carolinas, LLC for a coal ash release into the Dan River from its Eden facility in February 2014. The enforcement action assesses a penalty and provides for the performance of supplemental environmental projects. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Kathleen O'Connell will accept comments by email at [kathleen.oconnell@deq.virginia.gov](mailto:kathleen.oconnell@deq.virginia.gov), FAX at (804) 698-4277, or by postal mail at the Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219, through May 20, 2015.

## VIRGINIA CODE COMMISSION

### Requesting Comments on Future Code of Virginia Title Recodifications

The Virginia Code Commission, which is responsible for publishing and maintaining the Code of Virginia, is considering which title of the Code of Virginia to select next for recodification and accepting comments relating to this selection.

Generally, the commission selects a title for recodification on the basis of the need to logically reorganize content, modernize language, and reflect current Code style and numbering schemes. To the extent practical, the commission avoids making substantive changes to the statutory text. In the event that a substantive change is made, the change is highlighted and explained in a final report. More information on title recodification can be found at [http://codecommission.dls.virginia.gov/title\\_23.shtml](http://codecommission.dls.virginia.gov/title_23.shtml).

The commission is currently working on the recodification of Title 23, Educational Institutions, assisted by an advisory panel of practitioners experienced in this subject area. The completion of work on proposed Title 23.1, Educational Institutions, is expected by the end of 2015, with the introduction of resulting legislation expected in the 2016 Session of the General Assembly.

Titles considered as recodification candidates include: Titles 8.01 (Civil Remedies and Procedure), 22.1 (Education), 36 (Housing), 40.1 (Labor and Employment), 45.1 (Mines and Mining), and 55 (Property and Conveyances).

The commission is scheduled to meet on May 4, 2015, at 10 a.m. in the General Assembly Building, 6th Floor, Speaker's Conference Room, Richmond, VA 23219 to discuss title recodification candidates and review comments.

Comments received by May 3, 2015, will be considered at the May 4 meeting. Comments may be emailed to [vacode@dls.virginia.gov](mailto:vacode@dls.virginia.gov) or mailed to Virginia Code Commission, General Assembly Building, 2nd Floor, 201 North Ninth Street, Richmond, VA 23219.

### Notice to State Agencies

**Contact Information:** *Mailing Address:* Virginia Code Commission, General Assembly Building, 201 North 9th Street, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; FAX (804) 692-0625; *Email:* [varegs@dls.virginia.gov](mailto:varegs@dls.virginia.gov).

**Meeting Notices:** Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <http://www.virginia.gov/connect/commonwealth-calendar>.

**Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed:** A table listing regulation sections that have been amended, added, or

repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/documents/cumultab.pdf>.

**Filing Material for Publication in the *Virginia Register of Regulations*:** Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works 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.

