VIRGINIA REGISTER OF REGULATIONS

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THE VIRGINIA REGISTER INFORMATION PAGE

THE VIRGINIA REGISTER OF REGULATIONS is an official state publication issued every other week throughout the year. Indexes are published quarterly, and are cumulative for the year. The *Virginia Register* has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in the *Virginia Register*. In addition, the *Virginia Register* is a source of other information about state government, including petitions for rulemaking, emergency regulations, executive orders issued by the Governor, 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 12 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia be examined carefully.

CITATION TO THE *VIRGINIA REGISTER*

The *Virginia Register* is cited by volume, issue, page number, and date. **28:2 VA.R. 47-141 September 26, 2011,** refers to Volume 28, Issue 2, pages 47 through 141 of the *Virginia Register* issued on September 26, 2011.

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.

PUBLICATION SCHEDULE AND DEADLINES

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

April 2012 through April 2013

Volume: Issue	Material Submitted By Noon*	Will Be Published On
28:17	April 4, 2012	April 23, 2012
28:18	April 18, 2012	May 7, 2012
28:19	May 2, 2012	May 21, 2012
28:20	May 16, 2012	June 4, 2012
28:21	May 30, 2012	June 18, 2012
28:22	June 13, 2012	July 2, 2012
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29:3	September 19, 2012	October 8, 2012
29:4	October 3, 2012	October 22, 2012
29:5	October 17, 2012	November 5, 2012
29:6	October 31, 2012	November 19, 2012
29:7	November 13, 2012 **(Tuesday)**	December 3, 2012
29:8	November 28, 2012	December 17, 2012
29:9	December 11, 2012 **(Tuesday)**	December 31, 2012
29:10	December 26, 2012	January 14, 2013
29:11	January 9, 2013	January 28, 2013
29:12	January 23, 2013	February 11, 2013
29:13	February 6, 2013	February 25, 2013
29:14	February 20, 2013	March 11, 2013
29:150	March 6, 2013	March 25, 2013
29:16	March 20, 2013	April 8, 2013
29:17	April 3, 2013	April 22, 2013

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Initial Agency Notice

Title of Regulation: **18VAC60-20. Regulations Governing Dental Practice.**

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

Name of Petitioner: Denice Burnette.

Nature of Petitioner's Request: Amend 18VAC60-20-190 to permit dental assistants II to operate a high speed rotary instrument in the mouth.

Agency's Plan for Disposition of Request: The petition will be posted and sent for public comment ending May 18, 2012. The Board of Dentistry will consider the petition and any comment at its meeting scheduled for June 8, 2012.

Public Comment Deadline: May 18, 2012.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

VA.R. Doc. No. R12-20; Filed April 3, 2012, 9:20 a.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending **9VAC25-800, Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges Resulting From the Application of Pesticides to Surface Waters.** The purpose of the proposed action is to amend and reissue a VPDES general permit for discharges from pesticides applied directly to surface waters to control pests, or applied to control pests that are present in or over, including near, surface waters. This permit expires on December 31, 2013, and needs to be reissued so pesticide operators can continue to have coverage to apply chemical pesticides that leave a residue in water and all biological pesticide applications that are made in or over, including near, waters of the United States. This regulatory action is also needed to incorporate appropriate changes from the federal National Pollutant Discharge Elimination System Pesticide General Permit.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 62.1-44.15 of the Code of Virginia.

Public Comment Deadline: May 23, 2012.

Agency Contact: William K. Norris, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4022, FAX (804) 698-4347, or email william.norris@deq.virginia.gov.

VA.R. Doc. No. R12-3168; Filed April 2, 2012, 2:05 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Withdrawal of Notice of Intended Regulatory Action

The State Board of Health has WITHDRAWN the Notice of Intended Regulatory Action for **12VAC5-71, Regulations Governing Virginia Newborn Screening Services,** which was published in 27:24 VA.R. 2579 August 1, 2011. This action is being withdrawn because the agency will be initiating a regulatory action using the fast-track rulemaking process (§ 2.2-4012.1 of the Code of Virginia) for this purpose.

Agency Contact: Susan Tlusty, Division of Child and Adolescent Health, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7686, FAX (804) 864-7647, or email susan.tlusty@vdh.virginia.gov.

VA.R. Doc. No. R11-2916; Filed March 26, 2012, 2:12 p.m.

Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Health has WITHDRAWN the Notice of Intended Regulatory Action for **12VAC5-590, Waterworks Regulations,** which was published in 28:8 VA.R. 668 December 19, 2011. The action is being withdrawn as the Virginia Department of Health has no clear indication that bonding for small waterworks can be accomplished through normal financial institutions and there is lack of affirmative support for such a regulation.

Agency Contact: Cathy Hanchey, Department of Health, Office of Drinking Water, 109 Governor Street, Richmond, VA, telephone (804) 864-7506, or email cathy.hanchey@vdh.virginia.gov.

VA.R. Doc. No. R12-3036; Filed March 26, 2012, 2:02 p.m.

TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending **13VAC5-31, Virginia Amusement Device Regulations**. The purpose of the proposed action is to update the regulation to incorporate by reference the newest available nationally recognized codes and standards. The standards for amusement devices are controlled by the American Society for Testing and Materials (ASTM). In conjunction with incorporating the newest available standards into the regulation, the entire regulation will be subject to review and change. The ASTM standards constitute the majority of the regulation and the various parts of the regulation must be coordinated with the use of those standards, which necessitates scrutiny of the entire regulation.

This action is exempt from Article 2 of the Administrative Process Act under § 2.2-4406 A 12 of the Code of Virginia.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 36-98.3 of the Code of Virginia.

Public Comment Deadline: May 23, 2012.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community

Development, Main Street Center, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

VA.R. Doc. No. R12-3160; Filed March 22, 2012, 4:34 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending **13VAC5-51, Virginia Statewide Fire Prevention Code.** The purpose of the proposed action is to update the regulation to incorporate by reference the newest available nationally recognized model building codes and standards produced by International Code Council (ICC). The ICC International Fire Code (IFC) is the major model code. The IFC further references the ICC building, mechanical, plumbing, gas, and electrical codes. The ICC codes are known collectively as the "I-Codes." In conjunction with incorporating the newest available I-Codes into the regulation, the entire regulation will be subject to review and change. The I-Codes constitute the majority of the regulation and the various parts of the regulation must be coordinated with the use of the I-Codes, which necessitates scrutiny of the entire regulation.

This action is exempt from Article 2 of the Administrative Process Act under § 2.2-4406 A 12 of the Code of Virginia.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 27-97 of the Code of Virginia.

Public Comment Deadline: May 23, 2012.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Main Street Center, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

VA.R. Doc. No. R12-3161; Filed March 22, 2012, 4:34 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending **13VAC5-63, Virginia Uniform Statewide Building Code.** The purpose of the proposed action is to update the regulation to incorporate by reference the newest available nationally recognized model building codes and standards produced by the International Code Council (ICC). The ICC International Building Code (IBC), the ICC International Existing Building Code, the International Residential Code and the International Property Maintenance Code are the major model codes. The IBC further references the ICC mechanical, plumbing, and gas codes and the National Electrical Code. The ICC codes are known collectively as the "I-Codes." In conjunction with incorporating the newest available I-Codes into the regulation, the entire regulation will be subject to review and change. The I-Codes constitute the majority of the regulation and the various parts of the regulation must be coordinated with the use of the I-Codes, which necessitates scrutiny of the entire regulation.

This action is exempt from Article 2 of the Administrative Process Act under § 2.2-4406 A 12 of the Code of Virginia.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 36-98 of the Code of Virginia.

Public Comment Deadline: May 23, 2012.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Main Street Center, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

VA.R. Doc. No. R12-3159; Filed March 22, 2012, 4:33 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending **13VAC5-91, Virginia Industrialized Building Safety Regulations.** The purpose of the proposed action is to update the regulation to incorporate by reference the newest available nationally recognized model building codes and standards produced by International Code Council (ICC). The ICC International Building Code (IBC), the ICC International Existing Building Code, the International Residential Code and the International Property Maintenance Code are the major model codes. The IBC further references the ICC mechanical, plumbing, gas, and electrical codes. The ICC codes are known collectively as the "I-Codes." In conjunction with incorporating the newest available I-Codes into the regulation, the entire regulation will be subject to review and change. The I-Codes constitute the majority of the regulation and the various parts of the regulation must be coordinated with the use of the I-Codes, which necessitates scrutiny of the entire regulation.

This action is exempt from Article 2 of the Administrative Process Act under § 2.2-4406 A 12 of the Code of Virginia.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 36-73 of the Code of Virginia.

Public Comment Deadline: May 23, 2012.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community

Development, Main Street Center, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

VA.R. Doc. No. R12-3162; Filed March 22, 2012, 4:35 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

VIRGINIA BOARD FOR ASBESTOS, LEAD, MOLD, AND HOME INSPECTORS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Virginia Board for Asbestos, Lead, Mold, and Home Inspectors intends to consider amending **18VAC15-20, Virginia Asbestos Licensing Regulations.** The purpose of the proposed action is to adjust licensing fees for regulants of the Board for Asbestos, Lead, Mold, and Home Inspectors. The board must establish fees adequate to support the costs of the board's operations and a proportionate share of the Department of Professional and Occupational Regulation's operations. By the close of the next biennium, fees will not provide adequate revenue for those costs. The board has no other source of revenue from which to fund its operations.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 54.1-501 of the Code of Virginia.

Public Comment Deadline: May 23, 2012.

Agency Contact: David Dick, Executive Director, Virginia Board for Asbestos, Lead, Mold, and Home Inspectors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (804) 527-4297, or email alhi@dpor.virginia.gov.

VA.R. Doc. No. R12-3169; Filed April 3, 2012, 8:56 a.m.

BOARD OF NURSING

Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Nursing has WITHDRAWN the Notice of Intended Regulatory Action for **18VAC90-20, Regulations Governing the Practice of Nursing,** which was published in 28:8 VA.R. 668 December 19, 2011. After review of the regulations for clinical nurse specialists by an ad hoc committee of board members and licensees, it was concluded that a change in the Code of Virginia is necessary to achieve the request of the petition for rulemaking that served as the basis for the notice.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

VA.R. Doc. No. R11-28; Filed March 21, 2012, 8:41 a.m.

TITLE 1. ADMINISTRATION

STATE BOARD OF ELECTIONS

Notice of Effective Date

Title of Regulation: **1VAC20-70. Absentee Voting (adding 1VAC20-70-20).**

Statutory Authority: § 24.2-103 of the Code of Virginia.

Effective Date: April 3, 2012.

On January 23, 2012, the State Board of Elections adopted this regulation relating to material omissions from absentee ballots. The final regulation was published in Volume 28, Issue 12 of the February 13, 2012, edition of the Virginia Register (28:12 VA.R. 1012-1013 February 13, 2012) with an effective date upon filing a notice of the United States Attorney General's preclearance with the Registrar of Regulations. The State Board of Elections hereby notices the United States Attorney General's approval of this regulation via a letter dated March 27, 2012, from T. Christian Herren, Jr., Chief, Voting Section, to Joshua N. Lief, Esq., Senior Assistant Attorney General, Office of Attorney General of Virginia. The effective date of this regulation is April 3, 2012. Copies are available online at http://townhall.virginia.gov/L/ViewXML.cfm?textid=6183, by calling toll-free 1-800-552-9745, local (804) 864-8910, by sending a written request to FOIA Coordinator, 1100 Bank St., Richmond, VA 23219, or by email request to foia@sbe.virginia.gov.

Agency Contact: Justin Riemer, Deputy Secretary, State Board of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8904, or email justin.riemer@sbe.virginia.gov.

VA.R. Doc. No. R11-2923; Filed April 3, 2012, 12:36 p.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Fast-Track Regulation

Title of Regulation: **9VAC5-150. Regulation for Transportation Conformity (Rev. G11) (repealing 9VAC5-150-10 through 9VAC5-150-450).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: May 23, 2012.

Effective Date: June 7, 2012.

Agency Contact: Gary E. Graham, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4510, or email gary.graham@deq.virginia.gov.

Basis: Section 10.1-1308 of the Virginia Air Pollution Control Law authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling, and prohibiting air pollution to protect public health and welfare.

Section 176 of the federal Clean Air Act requires that transportation plans, programs, and projects that are funded or approved under Title 23 of the U.S. Code or the Federal Transit Act conform with state or federal air quality implementation plans.

40 CFR Part 51 Subpart T establishes the criteria and procedures governing the determination of conformity for all federally funded transportation plans, programs, and projects in nonattainment and maintenance areas for states with a federally approved SIP that establishes conformity criteria and procedures consistent with the transportation conformity regulation promulgated by EPA.

40 CFR Part 93 Subpart A establishes the criteria and procedures governing the determination of conformity for all federally funded transportation plans, programs, and projects in nonattainment and maintenance areas for states without an federally approved SIP revision that establishes conformity criteria and procedures consistent with the transportation conformity regulation promulgated by EPA.

Purpose: The purpose of a transportation conformity regulation is to establish criteria and procedures for the transportation planning organization to determine whether federally funded transportation plans, programs, and projects are in conformance with state plans for attaining and maintaining the health-based ambient air quality standards in the Northern Virginia, Richmond, and Hampton Roads areas. A transportation conformity regulation ensures that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

9VAC5-150 was adopted on August 31, 1996, to meet the requirements of § 176 of the Clean Air Act and 40 CFR Part 51 Subpart T. However, EPA never approved this chapter, so

all transportation conformity determinations continued to be made in accordance with the federal requirements of 40 CFR Part 93, Subpart A. In the absence of federal approval of Chapter 150, the board adopted a new Regulation for Transportation Conformity, Chapter 151 on March 26, 2007, which incorporated the requirements of 40 CFR Part 93, Subpart A. The new Chapter 151 became effective on May 31, 2007, and was approved by EPA on November 20, 2009 (74 FR 60194).

The requirements of 9VAC5-150 and 9VAC5-151 differ in many respects. Only 9VAC5-151 meets all of the federal statutory and regulatory requirements for transportation conformity and is therefore essential to protect the health and welfare of the public. In order for the state regulations to be administratively correct and for 9VAC5-151 to effectively and efficiently protect public health and welfare, 9VAC5-150 must be repealed.

Rationale for Using Fast-Track Process: 9VAC5-150 cannot be used for transportation conformity determinations because it lacks federal approval. There is an effective regulation for transportation conformity in 9VAC5-151 that has been federally approved. There is a very limited stakeholder group that is affected by transportation conformity regulations and the transportation conformity determination process under 9VAC5-151 has federal and state-specific stakeholder consultation provisions within the regulation. Therefore, no objections to the repeal of 9VAC5-150 are anticipated and the fast-track process is appropriate.

Substance: 9VAC5-150, Regulation for Transportation Conformity, is repealed in its entirety. The provisions of 9VAC5-151, Regulation for Transportation Conformity, are not affected by this action.

Issues: The primary advantage to the public is the removal of unusable and conflicting regulatory requirements, which improves the public's ability to understand and comply with regulatory requirements. There are no disadvantages to the public.

The primary advantage to the department is the removal of regulations that are no longer necessary. There are no disadvantages to the department.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The department proposes to repeal 9VAC5-150, Regulation for Transportation Conformity, in its entirety because a new Regulation for Transportation Conformity (9VAC5-151) has been adopted and supersedes this regulation.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. Since 9VAC5-150 is superseded by 9VAC5-151, repealing the former will have no impact beyond reducing potential confusion amongst the public.

Businesses and Entities Affected. The proposed repealing of this regulation will not affect businesses or other entities.

Localities Particularly Affected. The proposed repealing of this regulation will not disproportionately affect particular localities.

Projected Impact on Employment. The proposed repealing of this regulation will not affect employment.

Effects on the Use and Value of Private Property. The proposed repealing of this regulation will not affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed repealing of this regulation will not affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed repealing of this regulation will not produce an adverse impact on small businesses.

Real Estate Development Costs. The proposed repealing of this regulation will not affect real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to Economic Impact Analysis: The department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

This action repeals in its entirety 9VAC5-150, Regulation for Transportation Conformity, because a new regulation for transportation conformity (9VAC5-151) is in effect and is the only regulation that meets all state and federal statutory and regulatory requirements.

VA.R. Doc. No. R12-2930; Filed April 4, 2012, 10:15 a.m.

Fast-Track Regulation

Title of Regulation: **9VAC5-200. National Low Emission Vehicle Program (Rev. M11) (repealing 9VAC5-200-10 through 9VAC5-200-30).**

Statutory Authority: §§ 10.1-1308 and 46.2-1179.1 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: May 23, 2012.

Effective Date: June 7, 2012.

Agency Contact: Gary E. Graham, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4510, or email gary.graham@deq.virginia.gov.

Basis: Section 10.1-1308 of the Code of Virginia authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling, and prohibiting air pollution in order to protect public health and welfare.

Section 46.2-1179.1 of the Code of Virginia provides that the board may adopt clean alternative fuel fleet standards consistent with the federal Clean Air Act and that adoption by the board of an equivalent approval by EPA (such as the NLEV program) removes the authority for those clean alternative fuel fleet regulations.

Purpose: The purpose of the regulation for the National Low Emission Vehicle (NLEV) Program (9VAC5-200) was to require mobile source manufacturers to participate in the federal National Low Emission Vehicle Program (Subpart R, 40 CFR 86), which was a transitional program for the federal Tier 2 standards. 9VAC5-200 was adopted to meet that federal requirement. Subsequently, the requirements of the federal NLEV program were superseded with the February 10, 2000, promulgation of the federal Tier 2 standards which were more restrictive than the NLEV program standards (65 FR 6698). Therefore, a federal requirement to have a Virginia NLEV program in place no longer exists. Additionally, because 9VAC5-200 has no requirements that are applicable to new vehicles after the 2006 model year, there is no longer a need for the NLEV program regulation. This purpose of this amendment is to repeal 9VAC5-200, National Low Emission Vehicle Program, since it is no longer necessary to protect public health and welfare.

Rationale for Using Fast Track Process: 9VAC5-200 is no longer the most restrictive standard for low emission vehicles and is unusable for determining compliance with federal low emission vehicle standards. Additionally, there is a very limited stakeholder group (2 vehicle manufacturers) that could have been affected by this regulation. With the expiration of the program requirements with the 2006 model year, there are no remaining affected stakeholders that would have any objection to the repeal of this regulation. Therefore, no objections to the repeal of the 9VAC5-200 are anticipated.

Substance: 9VAC5-200, the regulation for the National Low Emission Vehicle Program, is repealed in its entirety.

Issues: The primary advantage to the public is the removal of unusable state regulatory requirements, which improves the public's ability to understand and comply with federal regulatory requirements. There are no disadvantages to the public.

The primary advantage to the department is the removal of regulations that are no longer necessary. There are no disadvantages to the department.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. This regulation (9VAC5-200) for the National Low Emission Vehicle (NLEV) Program was adopted by the State Air Pollution Control Board (Board) on January 7, 1999 with an effective date of April 14, 1999, to implement an EPA-approved alternative clean fuel fleet standard for mobile sources. The regulation required mobile source manufacturers to participate in the federal National Low Emission Vehicle Program (40 CFR 86 Subpart R).

On February 10, 2000 the federal NLEV program was superseded by federal Tier 2 standards which were more restrictive than the NLEV program standards (65 FR 6698). Additionally, 9VAC5-200 has no requirements that are applicable to new vehicles after the 2006 model year. Thus the Board proposes to repeal this regulation in its entirety.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. The current regulations do not effectively produce any requirements for manufacturers or any other entities since there are no requirements that are applicable to new vehicles after the 2006 model year and since in 2010 the federal NLEV program was superseded by federal Tier 2 standards which were more restrictive than the NLEV program standards. Thus repealing these regulations will have no impact beyond reducing potential confusion amongst the public.

Businesses and Entities Affected. Only new vehicle manufacturers were affected by this regulation. Such entities would not be affected by the repeal of this regulation since

there are no requirements that are applicable to new vehicles after the 2006 model year and since in 2010 the federal NLEV program was superseded by federal Tier 2 standards which were more restrictive than the NLEV program standards.

Localities Particularly Affected. The proposed repeal of this regulation does not have a disproportionate effect on any particular localities.

Projected Impact on Employment. The proposed repeal of this regulation will not affect employment.

Effects on the Use and Value of Private Property. The proposed repeal of this regulation will not affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed repeal of this regulation will not affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed repeal of this regulation will not affect small businesses.

Real Estate Development Costs. The proposed repeal of this regulation will not affect real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to Economic Impact Analysis: The department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

This action repeals in its entirety 9VAC5-200, which was adopted to implement the federal National Low Emission Vehicle Program (NLEV). 9VAC5-200 is obsolete because the NLEV program has been superseded by federal Tier 2 standards that are more restrictive than the NLEV and because it has no requirements applicable to new vehicles after the 2006 model year.

VA.R. Doc. No. R12-3004; Filed April 4, 2012, 10:11 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Air Pollution Control Board is claiming exemptions from §§ 2.2-4007 through 2.2-4007.06, 2.2-4013, 2.2-4014, and 2.2-4015 of the Administrative Process Act. Sections 2.2-4007.07, 2.2-4013 E, 2.2-4014 D, and 2.2-4015 C of the Administrative Process Act provide that these sections shall not apply to the issuance by the State Air Pollution Control Board of variances to its regulations.

Title of Regulation: **9VAC5-221. Variance for Rocket Motor Test Operations at Atlantic Research Corporation Gainesville Facility (Rev. L11) (repealing 9VAC5-221-10 through 9VAC5-221-60).**

Statutory Authority: §§ 10.1-1307 and 10.1-1308 of the Code of Virginia.

Effective Date: May 23, 2012.

Agency Contact: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email mary.major@deq.virginia.gov.

Background: On September 30, 2002, the board issued a variance (9VAC5-221) to the Atlantic Research Corporation (ARC) rocket test facility. Due to the nature of the testing operations, ARC had no appropriate method by which it could demonstrate compliance with the board's opacity standards. The board, therefore, granted a variance for the testing facility that enabled ARC to demonstrate compliance through meeting a particulate matter standard as an alternative to the opacity standard. Because the facility was shut down in March 2007, the variance is no longer required. In order for the state regulations to be administratively correct, 9VAC5-221 must now be repealed.

Summary:

The action repeals the variance issued to the Atlantic Research Corporation rocket test facility. The variance is no longer required because the facility was shut down in March 2007.

VA.R. Doc. No. R12-3020; Filed March 27, 2012, 10:27 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Air Pollution Control Board is claiming exemptions from §§ 2.2-4007 through 2.2-

4007.06, 2.2-4013, 2.2-4014, and 2.2-4015 of the Administrative Process Act. Sections 2.2-4007.07, 2.2-4013 E, 2.2-4014 D, and 2.2-4015 C of the Administrative Process Act provide that these sections shall not apply to the issuance by the State Air Pollution Control Board of variances to its regulations.

Title of Regulation: **9VAC5-240. Variance for Open Burning (Rev. I11) (repealing 9VAC5-240-10 through 9VAC5-240-50).**

Statutory Authority: § 10.1-1307 of the Code of Virginia.

Effective Date: May 23, 2012.

Agency Contact: Gary E. Graham, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4510, or email gary.graham@deq.virginia.gov.

Summary:

This chapter originally created a variance to relieve Gloucester County residents from seasonal restrictions on open burning. The variance expired on December 31, 2008; therefore, this chapter is being repealed.

VA.R. Doc. No. R12-2933; Filed March 26, 2012, 4:04 p.m.

Fast-Track Regulation

Title of Regulation: **9VAC5-500. Exclusionary General Permit for Federal Operating Permit Program (Rev. H11) (repealing 9VAC5-500-10 through 9VAC5-500-240).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: May 23, 2012.

Effective Date: June 7, 2012.

Agency Contact: Gary E. Graham, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4510, or email gary.graham@deq.virginia.gov.

Basis: Section 10.1-1308 of the Code of Virginia authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling, and prohibiting air pollution to protect public health and welfare.

Purpose: Federal operating permit requirements mandated by Title V of the Clean Air Act and implemented in 9VAC5-80 largely apply only to sources with emissions that exceed specified levels and are thus major. To determine whether a source is major, not only are a source's actual emissions considered, but also its potential emissions. Thus, a source that has maintained actual emissions at levels below the major source threshold could still be subject to major source requirements if it has the potential to emit major amounts of air pollutants. However, such sources could legally avoid program requirements by taking federally-enforceable permit conditions that limit emissions to levels below the applicable major source threshold.

As the deadlines for complying with the Title V operating permit requirements approached, industry and state and local air pollution agencies became increasingly focused on the need to adopt and implement federally-enforceable mechanisms to limit emissions from sources that desire to limit potential emissions to below major source levels. In the case of Virginia, the board adopted a state operating permit program (9VAC5-80, Article 5) that was approved by the Environmental Protection Agency (EPA) for this purpose, but implementation of that program became problematic due to the volume of sources affected.

The EPA remained concerned that even with expedited approvals and other strategies, sources might face gaps in the ability to acquire federally-enforceable potential to emit limits due to delays in state adoption or EPA approval of programs or in their implementation. In order to ensure that such gaps did not create adverse consequences for states or for sources, on January 25, 1995, EPA issued a memo announcing a transition policy for a period extending until January 25, 1997. Under this policy, exclusionary rules and general permits could be used to create simple, streamlined means to ensure that these sources with actual emissions below 50% of major source thresholds would not be considered major sources for the transition period. EPA extended the transition period in subsequent memos, but made clear that the transition period would not be extended past the December 31, 2000, expiration date of the EPA transition policy that was given in the final transition policy memo.

On April 24, 1997, the board adopted an exclusionary general permit program (9VAC5-500, Exclusionary General Permit for Federal Operating Permit Program) to implement that EPA transition policy. By the December 31, 2000, expiration date of the EPA transition policy, all sources in Virginia that had obtained exclusionary general permits under that program had been issued state operating permits with federally enforceable emission limits and were no longer subject to applicability as major sources under the federal operating permit program. And, as of that date, 9VAC5-500 conflicted with federal and state regulatory requirements that all major sources (with respect to their potential to emit) apply for and obtain federal operating permits. The purpose of this amendment to repeal 9VAC5-500 is to resolve that conflict and remove the provisions of an unusable permit program that is no longer needed to protect the health, welfare, and safety of the public.

Rationale for Using Fast-Track Process: As of December 31, 2000, no more sources with exclusionary general permits existed and the department had the capability to issue sufficient permits with federally enforceable emission limits

under the new source review permit programs or the state operating permit program to meet any affected source's need to be excluded from the federal operating permit program. Because no sources exist with exclusionary general permits under 9VAC5-500 and applicability under an exclusionary general permit will no longer protect a source from applicability under the federal operating permit programs, there is no stakeholder group that is likely to object to repeal of the regulation.

Substance: 9VAC5-500, Exclusionary General Permit for Federal Operating Permit Program, is repealed in its entirety. The repeal of this chapter does not affect the provisions of the federal operating permit program (9VAC5-80, Articles 1, 2, 3, and 4).

Issues: The primary advantage to the public is the removal of unusable and conflicting regulatory requirements, which improves the public's ability to understand and comply with regulatory requirements. There are no disadvantages to the public.

The primary advantage to the department is the removal of regulations that are no longer necessary. There are no disadvantages to the department

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. This regulation establishes procedures for facility owners to obtain authority to operate under a general permit in order to avoid the necessity of obtaining a permit required under Title V of the Clean Air Act. The Air Pollution Control Board proposes to repeal this regulation because the U.S. Environmental Protection Agency (EPA) policy under which this regulation operated has expired and the regulation is no longer applicable.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. Since the regulation is no longer applicable, repealing it will have no impact beyond reducing potential confusion amongst the public.

Businesses and Entities Affected. Since the regulation is no longer applicable, repealing it will not affect businesses or other entities.

Localities Particularly Affected. The proposed repealing of this regulation will not disproportionately affect particular localities.

Projected Impact on Employment. The proposed repealing of this regulation will not affect employment.

Effects on the Use and Value of Private Property. The proposed repealing of this regulation will not affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed repealing of this regulation will not affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed repealing of this regulation will not produce an adverse impact on small businesses.

Real Estate Development Costs. The proposed repealing of this regulation will not affect real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to Economic Impact Analysis: The department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

This action repeals in its entirety 9VAC5-500 because the U.S. Environmental Protection Agency policy under which the regulation operated has expired, rendering the regulation obsolete.

VA.R. Doc. No. R12-2934; Filed April 4, 2012, 10:06 a.m.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

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

Proposed Regulation

Title of Regulation: **14VAC5-41. Rules Governing Advertisement of Life Insurance and Annuities (amending 14VAC5-41-40).**

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

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

Public Comment Deadline: May 4, 2012.

Agency Contact: James Young, Manager Special Projects, Bureau of Insurance, Life and Health Division, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9612, FAX (804) 371-9944, or email james.young@scc.virginia.gov.

Summary:

The amendments clarify the disclosure language required for advertisements of certain life insurance policies and annuities.

AT RICHMOND, MARCH 30, 2012

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2012-00044

Ex Parte: In the matter of
Amending the Rules Governing
Advertisement of Life Insurance
and Annuities

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia 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, and § 38.2-223 of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code of Virginia.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code of Virginia are set forth in Title 14 of the Virginia Administrative Code.

The Bureau of Insurance ("Bureau") has submitted to the Commission a proposal to amend the Rules Governing Advertisment of Life Insurance and Annuities at Chapter 41 of Title 14 of the Virginia Administrative Code, specifically set forth at 14 VAC 5-41-40, General disclosure requirements.

A request for clarification of the amendments to subsection H of 14 VAC 5-41-40 was made by a group of life insurance companies that do business primarily in the final expenses market. After the Bureau promulgated new rules at 14 VAC 5-41, which became effective July 1, 2011, this group of companies questioned the applicability of the disclosure language in subsection H to certain policies, as well as the length of required disclosure, and asked the Bureau for clarification. The Bureau has revised the language to meet the Bureau's goals as well as to address the concerns of these companies.

NOW THE COMMISSION is of the opinion that amendments to Section 40 of Chapter 41 of Title 14 of the Virginia Administrative Code should be considered for adoption.

Accordingly, IT IS ORDERED THAT:

(1) The proposal to amend Chapter 41 of Title 14 of the Virginia Administrative Code, specifically 14 VAC 5-41-40, General disclosure requirements, is attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose amending Section 40 in Chapter 41 of Title 14 of the Virginia Administrative Code, shall file such comments or hearing request on or before May 4, 2012, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: http://www.scc.virginia.gov/caseinfo.htm. All comments shall refer to Case No. INS-2012-00044.

(3) If no written request for a hearing on the proposal to amend 14 VAC 5-41-40 is received on or before May 4, 2012, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may amend 14 VAC 5-41-40.

(4) AN ATTESTED COPY hereof, together with a copy of the proposal to amend rules, shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Althelia P. Battle, who forthwith shall give further notice of the proposal to amend rules by

mailing a copy of this Order, together with the proposal, to all companies licensed by the Commission to write life insurance or annuities in the Commonwealth of Virginia, as well as all interested parties.

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

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposed amendments to the rules on the Commission's website: http://www.scc.virginia.gov/case.

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

14VAC5-41-40. General disclosure requirements.

A. The information required to be disclosed by this chapter shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of an advertisement so as to confuse or mislead.

B. If an advertisement uses the terms "nonmedical," "no medical examination required," or similar terms where issue is not guaranteed, these terms shall be accompanied by a further disclosure of equal prominence and juxtaposition to the effect that issuance of the policy may depend upon the answers to the health questions contained in the application.

C. An advertisement shall not contain figures, dollar amounts, or statistical information unless it accurately reflects recent and relevant facts. The source of any figures, dollar amounts, or statistics used in advertisements shall be identified therein.

D. An advertisement for a life insurance policy containing graded or modified benefits shall prominently display any limitation of benefits. If the premium is level and coverage decreases or increases with age or duration, that fact shall be commonly disclosed. An advertisement of or for a life insurance policy under which the death benefit varies with the length of time the policy has been in force shall accurately describe and clearly call attention to the amount of minimum death benefit under the policy.

E. Any advertisement that mentions or refers to universal life insurance premiums shall indicate that it is possible that coverage will expire when either no premiums are paid following the initial premium, or subsequent premiums are insufficient to continue coverage , if true.

F. An insurer or agent shall advise a prospective applicant who is considering replacing a policy that under the existing policy the period of time during which the existing insurer could contest the policy or deny coverage for death caused by suicide may have expired or may expire earlier than it will under the proposed policy.

G. An advertisement for life insurance or an annuity that is to be used to fund a preneed funeral contract shall disclose that fact.

H. An advertisement ~~for~~ of a life insurance policy or ~~an~~ annuity ~~in which the face amount or any part of the face amount is based on the~~ that will not fund a preneed funeral contract and that includes a listing, summary, description, or comparison of actual or estimated ~~cost~~ costs of funeral goods or services shall contain the following disclosure:

"~~This is (life insurance or an annuity).~~ This (life insurance or annuity) does not specifically cover funeral goods or services, and may not cover the entire cost of your funeral at the time of your death. The beneficiary of this (life insurance or annuity) may use the proceeds ~~of this (life insurance or annuity)~~ for any purpose, unless otherwise directed. ~~The face amount of this (life insurance or annuity) is not guaranteed to increase at the same rate as the costs of a funeral increase.~~"

VA.R. Doc. No. R12-3144; Filed April 2, 2012, 2:24 p.m.

Proposed Regulation

Title of Regulation: **14VAC5-300. Rules Governing Credit for Reinsurance (amending 14VAC5-300-10, 14VAC5-300-30, 14VAC5-300-40, 14VAC5-300-60, 14VAC5-300-70, 14VAC5-300-80, 14VAC5-300-90, 14VAC5-300-100, 14VAC5-300-110, 14VAC5-300-120, 14VAC5-300-130, 14VAC5-300-140, 14VAC5-300-150, 14VAC5-300-160; adding 14VAC5-300-95, 14VAC5-300-170; repealing 14VAC5-300-20, 14VAC5-300-50).**

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

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

Public Comment Deadline: June 22, 2012.

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

Summary:

The proposed amendments incorporate revisions made by the National Association of Insurance Commissioners (NAIC) to its Credit for Reinsurance Model Regulation. The revisions provide the State Corporation Commission with the authority to: (i) certify reinsurers or to recognize the certification issued by another NAIC-accredited state; (ii) evaluate a reinsurer that applies for certification and to assign a rating based on that evaluation; (iii) require that certified reinsurers post collateral in an amount that corresponds with its assigned rating, in order for a United

States ceding insurer to be allowed full credit for the reinsurance ceded; (iv) evaluate a non-United States jurisdiction in order to determine if it is a "qualified jurisdiction" or choose to defer to an NAIC list of recommended qualified jurisdictions; and (v) require ceding insurers to take steps to manage their concentration risk and to diversify their reinsurance program.

AT RICHMOND, APRIL 3, 2012

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2012-00058

Ex Parte: In the matter of
Adopting Revisions to the Rules
Governing Credit for Reinsurance

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia 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, and § 38.2-223 of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code of Virginia.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code of Virginia are set forth in Title 14 of the Virginia Administrative Code. A copy may also be found at the Commission's website: http://www.scc.virginia.gov/case.

The Bureau of Insurance ("Bureau") has submitted to the Commission proposed revisions to rules set forth in Chapter 300 of Title 14 of the Virginia Administrative Code entitled Rules Governing Credit For Reinsurance, which amend the Rules at 14 VAC 5-300-10, 14 VAC 5-300-30, 14 VAC 5-300-40, 14 VAC 5-300-60 through 14 VAC 5-300-90, and 14 VAC 5-300-100 through 14 VAC 5-300-160; adopt new Rules at 14 VAC 5-300-95 and 14 VAC 5-300-170; and repeal the Rules at 14 VAC 5-300-20 and 14 VAC 5-300-50 ("Rules").

The proposed revisions to the regulations are necessary due to the passage of House Bill 1139 during the 2012 General Assembly Session, which amends and reenacts §§ 38.2-1316.1, 38.2-1316.2, 38.2-1316.4, and 38.2-1316.8; and repeals §§ 38.2-1316.3, 38.2-1316.5, and 38.2-1316.6 of the Code Virginia, effective July 1, 2012. The proposed revisions incorporate the revisions made by the National Association of Insurance Commissioners ("NAIC") to its Credit for Reinsurance Model Regulation, and provides the Commission with the authority to (i) certify reinsurers or to recognize the certification issued by another NAIC-accredited state, (ii) evaluate a reinsurer that applies for certification and assign a rating based on that evaluation, (iii) require that certified reinsurers post collateral in an amount that corresponds with its assigned rating in order for a United States ceding insurer to be allowed full credit for the reinsurance ceded, and (iv) require ceding insurers to take steps to manage their concentration risk and to diversify their reinsurance programs.

NOW THE COMMISSION is of the opinion that the proposed revisions submitted by the Bureau amending the Rules at 14 VAC 5-300-10, 14 VAC 5-300-30, 14 VAC 5-300-40, 14 VAC 5-300-60 through 14 VAC 5-300-90, and 14 VAC 5-300-100 through 14 VAC 5-300-160, adopting new Rules at 14 VAC 5-300-95 and 14 VAC-300-170, and repealing the Rules at 14 VAC 5-300-20 and 14 VAC 5-300-50, should be considered for adoption with an effective date of January 1, 2013.

Accordingly, IT IS ORDERED THAT:

(1) The proposed revisions to Rules Governing Credit For Reinsurance, which amend the Rules at 14 VAC 5-300-10, 14 VAC 5-300-30, 14 VAC 5-300-40, 14 VAC 5-300-60 through 14 VAC 5-300-90, and 14 VAC 5-300-100 through 14 VAC 5-300-160, adopt new Rules at 14 VAC 5-300-95 and 14 VAC-300-170, and repeal the Rules at 14 VAC 5-300-20 and 14 VAC 5-300-50 be attached and be made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or to request a hearing to oppose the adoption of the proposed new rules shall file such comments or hearing request on or before June 22, 2012, in writing, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and shall refer to Case No. INS-2012-00058. 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/case.

(3) If no written request for a hearing on the proposed new rules is filed on or before June 22, 2012, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed revisions to the Rules, may adopt the revised Rules.

(4) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposed revisions to the Rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations and shall make available this Order and the attached proposed revisions to the Rules on the Commission's website: http://www.scc.virginia.gov/case.

(5) AN ATTESTED COPY hereof, together with a copy of the proposed revised Rules, shall be sent by the Clerk of the Commission to the Bureau in care of Deputy Commissioner Douglas C. Stolte, who forthwith shall give further notice of

the proposed adoption of the revised Rules by mailing a copy of this Order, together with the proposed revised Rules, to all licensed insurers, burial societies, fraternal benefit societies, health services plans, risk retention groups, home protection companies, joint underwriting associations, group self-insurance pools, and group self-insurance associations licensed by the Commission, qualified reinsurers and certain interested parties designated by the Bureau.

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

14VAC5-300-10. Purpose.

The purpose of this chapter ~~(14VAC5-300-10 et seq.)~~ is to set forth rules and procedural requirements which the ~~Commission~~ commission has determined are necessary to carry out the provisions of Article 3.1 (§ 38.2-1316.1 et seq.) of Chapter 13 of Title 38.2 of the Code of Virginia.

14VAC5-300-20. ~~Severability.~~ (Repealed.)

~~If any provision of this chapter or its application to any person or circumstance, is held invalid, such determination shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are severable.~~

14VAC5-300-30. Applicability and scope.

This chapter ~~(14VAC5-300-10 et seq.)~~ shall apply to all insurers taking credit for reinsurance under the provisions of Article 3.1 (§ 38.2-1316.1 et seq.) of Chapter 13 of Title 38.2 of the Code of Virginia.

14VAC5-300-40. Definitions.

~~For purposes of~~ The following words and terms when used in this chapter ~~(14VAC5-300-10 et seq.)~~ shall have the following meanings unless the context clearly indicates otherwise:

"The Act" means the provisions concerning reinsurance set forth in Article 3.1 (§ 38.2-1316.1 et seq.) of Chapter 13 of Title 38.2 of the Code of Virginia.

~~"Accredited reinsurer" has the meaning set forth in § 38.2-1316.1 of the Code of Virginia.~~

~~"Accredited state" means a state in which the supervising insurance official, state insurance department or regulatory agency is accredited by the National Association of Insurance Commissioners (NAIC) with respect to compliance with the NAIC Policy Statement on Financial Regulation Standards.~~

~~"Audited financial report" means and includes those items specified in 14VAC5-270-60 of this title, "Rules Governing Annual Audited Financial Reports."~~

"Beneficiary" means the entity for whose sole benefit the trust described in 14VAC5-300-120 ~~of this chapter~~, or the letter of credit described in 14VAC5-300-130 ~~of this chapter~~, has been established and any successor of the beneficiary by operation of law, including, without limitation, any receiver, conservator, rehabilitator or liquidator.

"Certified reinsurer" has the meaning set forth in § 38.2-1316.1 of the Code of Virginia.

~~"Credit" has the meaning defined in § 38.2-1316.1 of the Code of Virginia.~~

"Grantor" means the entity that has established a trust for the sole benefit of the beneficiary. However, when such a trust is established in conjunction with a reinsurance agreement that qualifies for credit under 14VAC5-300-120 ~~of this chapter~~, the grantor shall not be an assuming insurer for which credit can be taken under § 38.2-1316.2 ~~or § 38.2-1316.3~~ of the Code of Virginia.

"Mortgage-related security" means an obligation that is rated AA or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC and that either:

1. Represents ownership of one or more promissory notes or certificates of interest or participation in the notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates or participation), that:

a. Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 USCA § 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and

b. Were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 USCA §§ 1709 and 1715-b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 USCA § 1703; or

2. Is secured by one or more promissory notes or certificates of deposit or participations in the notes (with or without recourse to the insurer of the notes) and, by its terms, provides for payments of principal in relation to

payments, or reasonable projections of payments, or notes meeting the requirements of items 1 a and b of this definition.

"NAIC" means the National Association of Insurance Commissioners.

"Obligations", as used in ~~14VAC5-300-120 B 6 of this chapter~~ 14VAC5-300-120 A 11, means:

1. Reinsured losses and allocated loss ~~expense~~ expenses paid by the ceding company, but not recovered from the assuming insurer;

2. Reserves for reinsured losses reported and outstanding;

3. Reserves for reinsured losses incurred but not reported; and

4. Reserves for allocated reinsured loss expenses and unearned premiums.

"Promissory note" means, when used in connection with a manufactured home, a loan, advance or credit sale as evidenced by a retail installment sales contract or other instrument.

"Qualified United States financial institutions" has the meanings set forth in § 38.2-1316.1 of the Code of Virginia.

~~"Statutory financial statement" means financial statements filed on either a quarterly or annual basis with the supervising insurance official, insurance department or insurance regulatory agency of the assuming insurer's state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance. Any statutory financial statement required under this chapter shall be filed in accordance with the filing dates prescribed for the financial statements filed by licensed insurers pursuant to §§ 38.2-1300 and 38.2-1301 of the Code of Virginia.~~

~~"Substantially similar" standards means credit for reinsurance standards which the Commission determines equal or exceed the standards of the Act and this chapter (14VAC5-300-10 et seq.). An insurer licensed and domiciled, or entered through and licensed, in an accredited state is deemed to be subject to substantially similar standards for purposes of the Act and this chapter.~~

~~"Surplus to policyholders" (i) when applied to a domestic or foreign assuming insurer, has the meaning set forth in § 38.2-100 of the Code of Virginia, and (ii), when applied to an alien assuming insurer, means "trusteed surplus" as defined in § 38.2-1031 of the Code of Virginia. In both instances as used in this chapter, the calculation and verification of such surplus shall be subject to the provisions of Title 38.2 of the Code of Virginia pertaining to admitted assets, investments, reserve requirements and other liabilities.~~

14VAC5-300-50. ~~Credit for reinsurance generally.~~ (Repealed.)

~~A. Except for those credits or reductions in liability allowed pursuant to § 38.2-1316.4 of the Act, a ceding insurer shall not receive reserve credits for reinsurance unless the assuming insurer meets certain financial and licensing requirements established by §§ 38.2-1316.2 and 38.2-1316.3 of the Act. The following subdivisions of this section and 14VAC5-300-60 through 14VAC5-300-90 of this chapter set forth requirements for such assuming insurers.~~

~~B. The Act also contains examination and jurisdiction submission requirements by which most assuming insurers are required to submit to the examination authority of the Commission and the limited jurisdiction of this Commonwealth. The assuming insurer may also be required to appoint the Clerk of the Commission as statutory agent for service of process in any action, suit or proceeding arising out of a reinsurance agreement for which credit is taken under the Act, and instituted by or on behalf of the ceding insurer. The following provisions shall apply whenever such submissions or appointments are required by the Act or this chapter:~~

~~1. The submissions shall be executed and filed in duplicate on forms approved by the Commission.~~

~~2. When the assuming insurer is an incorporated company, each appointment or submission shall be executed by a duly authorized officer of the corporation. When the assuming insurer is an unincorporated group of persons, such forms may be executed by a trustee or other duly appointed and authorized representative of the group. In no case shall the executing officer, trustee, or representative be affiliated with or employed by a corresponding ceding insurer.~~

~~3. A submission to limited jurisdiction and any appointment of the Clerk of the Commission as agent for service of process shall be accompanied by a current listing of ceding insurers for whom jurisdiction through courts in Virginia is acknowledged. The listing shall identify all ceding insurers domiciled in Virginia with whom reinsurance agreements are in effect. For each ceding insurer identified, the listing shall report the complete name, address, domicile, and, for those companies registered with the NAIC, the identifying NAIC number of the ceding insurer. Such listing shall be updated at least annually unless more frequent filings are requested by the Commission.~~

~~C. It is possible for a ceding insurer to take credit for a reinsurance transaction in one of two ways even if the assuming company cannot satisfy the threshold financial and licensing requirements or is unwilling to make the examination and jurisdiction submissions provided for in the Act. In such instances, the controlling statute is § 38.2-1316.4 of the Act.~~

1. Under subdivision 1 of § 38.2-1316.4, credit may be taken if the transaction is required by law, however, the amount of credit may be restricted as provided in 14VAC5-300-100 of this chapter.

2. Under subdivision 2 of § 38.2-1316.4, credit may be taken in the form of a reduction from liability for collateralized transactions. 14VAC5-300-110 through 14VAC5-300-140 of this chapter relate to collateralized transactions, including those secured by letters of credit.

D. Regardless of whether a ceding insurer seeks credit pursuant to § 38.2-1316.2, § 38.2-1316.3 or § 38.2-1316.4 of the Act, no balance sheet adjustments can be made unless the reinsurance agreement satisfies the conditions of § 38.2-1316.5 of the Act and 14VAC5-300-150 of this chapter. Additional conditions set forth throughout this chapter can affect transactions involving trusteed funds or groups of assuming insurers.

E. The ceding insurer is responsible for determining, in advance of taking any credit for reinsurance, whether the assuming insurer is willing and able to satisfy the licensing and financial conditions, and make the examination and jurisdictional submissions provided for in § 38.2-1316.2 or § 38.2-1316.3 of the Act. If such conditions are not satisfied, or such submissions are not made in a proper and timely manner as required by this chapter, credit for reinsurance may be disallowed in the ceding insurer even though the required materials or filings may originate, by necessity or definition, with the assuming insurer.

For purposes of the Act, and except as otherwise approved by the Commission, an insurer shall not be considered "licensed" unless it is fully authorized to actively solicit and conduct its business in the appropriate jurisdiction.

F. Except as provided elsewhere in this chapter, all filings required by the Act or this chapter shall be filed (i) prior to the date of the statutory financial statement under which the ceding insurer in a given reinsurance agreement initially seeks credit according to the provisions of the Act, and (ii) on or before March 1 of each successive year in which the ceding insurer seeks credit or the assuming insurer seeks standing in this Commonwealth as an accredited reinsurer.

G. Unless an extension for the time of filing is first granted in writing, the failure to submit timely filings or to respond within 10 days to any request by the Commission for additional documents shall be considered grounds for disallowing credit and/or revoking the standing of an accredited reinsurer. Extensions may be granted for any period determined by the Commission, provided, the request for extension is in writing and is supported by a showing of good and valid cause.

14VAC5-300-60. Credit for reinsurance; reinsurer licensed in this Commonwealth.

Pursuant to §§ § 38.2-1316.2 A 1 and 38.2-1316.3 A1 B of the Act, the Commission commission shall allow credit when reinsurance is ceded to an assuming insurer which is licensed to transact insurance in this Commonwealth. For purposes of this section, an insurer shall not be considered so "licensed" unless it is fully authorized to actively solicit and conduct its business in this Commonwealth and in its domiciliary state.

14VAC5-300-70. Credit for reinsurance; accredited reinsurers.

A. Pursuant to § 38.2-1316.2 A 2 and § 38.2-1316.3 A1 of the Act, the Commission commission shall allow credit when reinsurance is ceded to an assuming insurer which is an accredited reinsurer as of the date of the ceding insurer's statutory financial statement.

B. An assuming insurer which satisfies the filing requirements of this section, and which maintains a surplus to policyholders in an amount not less than $20 million shall be recognized in this Commonwealth as an accredited reinsurer.

1. Such insurer's initial request for standing as an accredited reinsurer shall be deemed granted 90 days following the Commission's receipt of documents required by subdivisions D 1 and D 2, unless the Commission specifically requests, in writing, information pursuant to subdivision D 3 of this section.

2. Any request by the Commission for additional information pursuant to subdivision D 3 of this section, shall toll the statutory provisions for automatic recognition as an accredited reinsurer.

C. An assuming insurer which fails to maintain surplus to policyholders of at least $20 million may request recognition as an accredited reinsurer by filing, in addition to the other requirements set forth in this section, a letter of explanation as to why its surplus is less than $20 million and justification as to why the Commission should recognize the accreditation of such assuming insurer.

1. Such insurers shall be recognized as accredited reinsurers only upon a showing of good and valid cause.

2. Such insurers' standing as accredited reinsurers may be limited to certain types of reinsurance transactions, or otherwise applicable only with regard to specified types of reinsurance contracts, such as pooling arrangements among affiliates within the same holding company system.

D. Filing requirements.

1. As a condition of accreditation, an accredited reinsurer shall file with the Commission:

a. Evidence of its submission to the Commission's authority to examine its books and records; and

~~b. Evidence of its submission to this Commonwealth's jurisdiction and appointment of the Clerk of the Commission as agent for service of process in any action, suit or proceeding instituted by or on behalf of the ceding company.~~

~~2. The following documents shall be filed prior to accreditation and annually thereafter for as long as the assuming insurer seeks standing in this Commonwealth as an accredited reinsurer.~~

~~a. A certified copy of a certificate of authority or of compliance or other evidence that it is licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state.~~

~~b. A copy of its statutory financial statement, and~~

~~c. A copy of its most recent audited financial report.~~

~~3. In addition to the foregoing, the insurer shall file, upon the request of the Commission, any additional information, certifications or reports of the assuming insurer as the Commission determines are necessary to verify the licensing status or financial condition of the assuming insurer.~~

for reinsurance ceded by a domestic insurer to an assuming insurer that is accredited as a reinsurer in this Commonwealth as of the date on which statutory financial statement credit for reinsurance is claimed. An accredited reinsurer shall:

1. File a properly executed Certificate of Assuming Insurer as evidence of its submission to this Commonwealth's jurisdiction and to this Commonwealth's authority to examine its books and records;

2. File with the commission a certified copy of a certificate of authority or other acceptable evidence that it is licensed to transact insurance or reinsurance in at least one state, or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;

3. File annually with the commission a copy of its annual statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and

4. Maintain a surplus as regards policyholders in an amount not less than $20 million, or obtain the affirmative approval of the commission upon a finding that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.

B. If the commission determines that the assuming insurer has failed to meet or maintain any of these qualifications, the commission may upon written notice and opportunity for hearing, suspend or revoke the accreditation. Credit shall not be allowed a domestic ceding insurer under this section if the assuming insurer's accreditation has been revoked by the commission, or if the reinsurance was ceded while the assuming insurer's accreditation was under suspension by the commission.

14VAC5-300-80. Credit for reinsurance; reinsurer domiciled and licensed in another state, and neither licensed nor accredited in Virginia.

A. Pursuant to the provisions of § 38.2-1316.2 A 3 of the Act, the ~~Commission~~ commission shall allow credit ~~when a domestic insurer cedes reinsurance to an assuming insurer which as of the date of the ceding insurer's statutory financial statement:~~

~~1. Maintains a surplus to policyholders in an amount not less than $20 million;~~

~~2. Is domiciled and licensed, or entered through and licensed, in a state which employs standards regarding credit for reinsurance substantially similar to those applicable under the Act and this chapter;~~

~~3. Submits to the Commission's authority to examine its books and records;~~

~~4. Submits to this Commonwealth's jurisdiction and designates the Clerk of the Commission as agent for service of process in any action, suit or proceeding instituted by or on behalf of the ceding company; and~~

~~5. Satisfies the applicable filing requirements set forth in subsection C of this section.~~

~~B. A foreign or alien ceding insurer taking credit pursuant to § 38.2-1316.3 A2 of the Act must cede reinsurance to an assuming insurer which:~~

~~1. Maintains a surplus to policyholders in an amount not less than $20 million;~~

~~2. Is licensed and authorized to actively solicit and conduct its business in at least one state; and~~

~~3. Satisfies the applicable filing requirements set forth in subsection C of this section.~~

~~C.~~ Filing requirements.

~~1. When credit is requested for a domestic ceding insurer, the Commission may require that the ceding insurer file or cause to be filed;~~

~~a. Evidence to support a finding by the Commission that the assuming insurer's state of domicile, or entry, employs standards regarding credit for reinsurance substantially similar to those set forth in the Act. Such~~

~~evidence must be in a form acceptable to the Commission, and at the request of the Commission shall consist of statutes, regulations, and interpretations of the standards utilized by the state of domicile, or entry.~~

~~b. Such additional information, certifications, or reports of the assuming insurer as the Commission determines are necessary to verify the licensing status or financial condition of the assuming insurer.~~

~~2. When credit is requested for a foreign or alien ceding insurer, the Commission may require the ceding insurer to file or cause to be filed such information, certifications or reports of the assuming insurer as the Commission determines are necessary to verify the licensing status or financial condition of the assuming insurer.~~

~~3. When reinsurance is ceded by a domestic insurer and assumed pursuant to pooling arrangements among insurers in the same holding company, unless specifically required by the Commission, the $20 million surplus to policyholder requirement shall be deemed waived. Notwithstanding this provision, the Commission may require the ceding insurer to file or cause to be filed:~~

~~a. A copy of the underlying pooling agreement.~~

~~b. Such additional information, certifications or reports of the members of the pooling arrangement as the Commission determines are necessary to verify the financial condition of the collective or individual members of the pooling arrangement.~~

for reinsurance ceded by a domestic insurer to an assuming insurer that as of any date on which statutory financial statement credit for reinsurance is claimed:

1. Is domiciled in (or, in the case of a United States branch of an alien assuming insurer, is entered through) a state that employs standards regarding credit for reinsurance substantially similar to those applicable under the Act and this chapter;

2. Maintains a surplus as regards policyholders in an amount not less than $20 million; and

3. Files a properly executed Certificate of Assuming Insurer with the commission as evidence of its submission to this Commonwealth's authority to examine its books and records.

B. The provisions of this section relating to surplus as regards policyholders shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system. As used in this section, "substantially similar" standards means credit for reinsurance standards that the commission determines equal or exceed the standards of the Act and this chapter.

14VAC5-300-90. Credit for reinsurance; reinsurers maintaining trust funds.

A. Pursuant to § 38.2-1316.2 A 4 ~~or § 38.2-1316.3 A 3~~ of the Act, the commission shall allow credit for reinsurance ceded to a trusteed assuming insurer which, as of the date of the ceding insurer's statutory financial statement:

1. Maintains a trust fund and trusteed surplus that complies with the provisions of § 38.2-1316.2 A 4 ~~of the Act~~;

2. Complies with the requirements set forth in subsections B, C and D of this section; and

3. Reports annually to the commission on or before June 1 of each year in which a ceding insurer seeks reserve credit under the Act substantially the same information as that required to be reported on the NAIC annual statement form by licensed insurers, to enable the commission to determine the sufficiency of the trust fund. The accounting shall, among other things, set forth the balance to the trust and list the trust's investments as of the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.

~~B. When credit is taken for reinsurance ceded to any trusteed assuming insurer, the commission may require that the ceding insurer file or cause to be filed:~~

~~1. A copy of the trust agreement pertaining to the requisite trust funds along with a statement identifying and locating the specific provisions in the agreement which satisfy the form of trust requirements set forth in subsection E of this section;~~

~~2. Satisfactory evidence that the requisite trust funds are held in a qualified United States financial institution;~~

~~3. A certified statement and accounting of trusteed surplus executed by a duly authorized officer or representative of the trusteed assuming insurer;~~

~~4. A certified statement from the trustee of the trust listing the assets of the trust; and~~

~~5. A certified English translation for any foreign language documents filed pursuant to the Act or this chapter.~~

~~C. When credit is requested for reinsurance ceded to trusteed assuming insurer which is a group including incorporated and individual unincorporated underwriters, the group shall make available to the commission annual certifications of solvency of each underwriter member of the group, prepared by the group's domiciliary regulator and its independent accountant, or if a certification is unavailable a financial statement, prepared by independent public accountants, of each underwriter member of the group.~~

~~D. When credit is requested for reinsurance ceded to a trusteed assuming insurer which is a group of incorporated insurers under common administration, the group shall:~~

~~1. File evidence of its submission to the commission's authority to examine the books and records of any member of the group.~~

~~2. Certify that any member examined will bear the expense of any such examination.~~

~~3. Make available to the commission an annual certification of each underwriter member's solvency by the member's domiciliary regulator and financial statements prepared by independent public accountants of each underwriter member of the group.~~

~~4. If requested by the commission, file copies of annual statements for the three year period preceding the initial request for credit, or other documents satisfactory to the commission, which show that the group has continuously transacted an insurance business outside the United States for at least three years.~~

~~E. Form of Trust. The trust required under § 38.2-1316.2 A 4 of the Act and subdivisions A 2, A 3, B 1, and B 2 of this section shall provide that:~~ B. The following requirements apply to the following categories of assuming insurer:

1. The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States domiciled insurers, and in addition, the assuming insurer shall maintain a trusteed surplus of not less than $20 million, except as provided in subdivision 2 of this subsection.

2. At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trusteed surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trusteed surplus may not be reduced to an amount less than 30% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.

3. a. The trust fund for a group including incorporated and individual unincorporated underwriters shall consist of:

(1) For reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after January 1, 1993, funds in trust in an amount not less than the respective underwriters' several liabilities attributable to business ceded by United States domiciled ceding insurers to any underwriter of the group;

(2) For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this chapter, funds in trust in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and

(3) In addition to these trusts, the group shall maintain a trusteed surplus of which $100 million shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all the years of account.

b. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members. The group shall, within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the commission:

(1) An annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or

(2) If a certification is unavailable, a financial statement, prepared by independent public accountants, of each underwriter member of the group.

4. a. The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of $10 billion (calculated and reported in substantially the same manner as prescribed by the NAIC Annual Statement Instructions and the NAIC Accounting Practices and Procedures Manual) and which has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation, shall:

(1) Consist of funds in trust in an amount not less than the assuming insurers' several liabilities attributable to business ceded by United States domiciled ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of such group;

(2) Maintain a joint trusteed surplus of which $100 million shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group; and

(3) File a properly executed Certificate of Assuming Insurer as evidence of the submission to this Commonwealth's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any such examination.

b. Within 90 days after the statements are due to be filed with the group's domiciliary regulator, the group shall file with the commission an annual certification of each underwriter member's solvency by the member's domiciliary regulators, and financial statements, prepared by independent public accountants, of each underwriter member of the group.

C. 1. Credit for reinsurance shall not be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that:

~~1.~~ a. Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied 30 days after entry of the final order of any court of competent jurisdiction in the United States~~.~~;

~~2.~~ b. Legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's United States policyholders and ceding insurers, their assigns and successors in interest~~.~~;

~~3.~~ c. The trust and the assuming insurer shall be subject to examination as determined by the commission~~.~~;

~~4.~~ d. The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust~~.~~; and

~~5.~~ e. No later than February 28 of each year the trustees of the trust (i) shall report to the commission in writing setting forth the balance in the trust and listing the trust's investments at the preceding year end and (ii) shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next December 31.

~~F. Any amendment to the trust, required under § 38.2-1316.2 A 4 of the Act and subdivisions A 1, A 3, B 1, and B 2 of this section, shall be filed with the commission within 30 days after the effective date of the amendment.~~

2. a. Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by this subsection or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.

b. The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.

c. If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States beneficiaries of the trust, the commissioner with regulatory oversight over the trust shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement.

d. The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

D. For purposes of this section, the term "liabilities" shall mean the assuming insurer's gross liabilities attributable to reinsurance ceded by United States domiciled insurers excluding liabilities that are otherwise secured by acceptable means, and, shall include:

1. For business ceded by domestic insurers authorized to write accident and health, and property and casualty insurance:

a. Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;

b. Reserves for losses reported and outstanding;

c. Reserves for losses incurred but not reported;

d. Reserves for allocated loss expenses; and

e. Unearned premiums.

2. For business ceded by domestic insurers authorized to write life, health, and annuity insurance:

a. Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;

b. Aggregate reserves for accident and health policies;

c. Deposit funds and other liabilities without life or disability contingencies; and

d. Liabilities for policy and contract claims.

E. Assets deposited in trusts established pursuant to § 38.2-1316.2 A of the Act and this section shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States financial institution as defined in § 38.2-1316.1 of the Act, clean, irrevocable, unconditional, and "evergreen" letters of credit issued or confirmed by a qualified United States financial institution, as defined in § 38.2-1316.1, and investments of the type specified in this subsection, but investments in or issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust shall not exceed 5.0% of total investments. No more than 20% of the total of the investments in the trust may be foreign investments authorized under subdivisions 1 e, 3, 5 b, or 6 of this subsection, and no more than 10% of the total of the investments in the trust may be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in United States dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust established to satisfy the requirements of § 38.2-1316.2 A 4 shall be invested only as follows:

1. Government obligations that are not in default as to principal or interest, that are valid and legally authorized and that are issued, assumed, or guaranteed by:

a. The United States or by any agency or instrumentality of the United States;

b. A state of the United States;

c. A territory, possession, or other governmental unit of the United States;

d. An agency or instrumentality of a governmental unit referred to in subdivisions 1 b and c of this subsection if the obligations shall be by law (statutory of otherwise) payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but shall not be obligations eligible for investment under this subsection if payable solely out of special assessments on properties benefited by local improvements; or

e. The government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

2. Obligations that are issued in the United States, or that are dollar denominated and issued in a non-United States market, by a solvent United States institution (other than an insurance company) or that are assumed or guaranteed by a solvent United States institution (other than an insurance company) and that are not in default as to principal or interest if the obligations:

a. Are rated A or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;

b. Are insured by at least one authorized insurer (other than the investing insurer or a parent, subsidiary or affiliate of the investing insurer) licensed to insure obligations in this Commonwealth and, after considering the insurance, are rated AAA (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or

c. Have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC;

3. Obligations issued, assumed or guaranteed by a solvent non-United States institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of United States corporations issued in a non-United States currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

4. An investment made pursuant to the provisions of subdivision 1, 2, or 3 of this subsection shall be subject to the following additional limitations:

a. An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities shall not exceed 5.0% of the assets of the trust;

b. An investment in any one mortgage-related security shall not exceed 5.0% of the assets of the trust;

c. The aggregate total investment in mortgage-related securities shall not exceed 25% of the assets of the trust; and

d. Preferred or guaranteed shares issued or guaranteed by a solvent United States institution are permissible investments if all of the institution's obligations are eligible as investments under subdivisions 2 a and c of this subsection, but shall not exceed 2.0% of the assets of the trust.

5. Equity interests.

a. Investments in common shares or partnership interests of a solvent United States institution are permissible if:

(1) Its obligations and preferred shares, if any, are eligible as investments under this subsection; and

(2) The equity interests of the institution (except an insurance company) are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 USC §§ 78 a to 78 kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the Financial Industry Regulatory Authority, or successor organization. A trust shall not invest in equity interests under this subdivision an amount exceeding 1.0% of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company;

b. Investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if:

(1) All its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC; and

(2) The equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development;

c. An investment in or loan upon any one institution's outstanding equity interests shall not exceed 1.0% of the assets of the trust. The cost of an investment in equity interests made pursuant to this subdivision, when added to the aggregate cost of other investments in equity interests then held pursuant to this subdivision, shall not exceed 10% of the assets in the trust;

6. Obligations issued, assumed, or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

7. Investment companies.

a. Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 USC § 80 a, are permissible investments if the investment company:

(1) Invests at least 90% of its assets in the types of securities that qualify as an investment under subdivision 1, 2, or 3 of this subsection or invests in securities that are determined by the commission to be substantively similar to the types of securities set forth in subdivision 1, 2, or 3 of this subsection; or

(2) Invests at least 90% of its assets in the types of equity interests that qualify as an investment under subdivision 5 a of this subsection;

b. Investments made by a trust in investment companies under this subdivision shall not exceed the following limitations:

(1) An investment in an investment company qualifying under subdivision 7 a (1) of this subsection shall not exceed 10% of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed 25% of the assets in the trust; and

(2) Investments in an investment company qualifying under subdivision 7 a (2) of this subsection shall not exceed 5.0% of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to subdivision 5 a of this subsection.

8. Letters of credit.

a. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the commission), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

b. The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct.

F. A specific security provided to a ceding insurer by an assuming insurer pursuant to 14VAC5-300-100 shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this section.

14VAC5-300-95. Credit for reinsurance; certified reinsurers.

A. Pursuant to § 38.2-1316.2 B of the Act, the commission shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this Commonwealth at all times for which statutory financial statement credit for reinsurance is claimed under this section. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the commission. The security shall be in a form consistent with the provisions of § 38.2-1316.2 B and 14VAC5-300-110, 14VAC5-300-120,

14VAC5-300-130 or 14VAC5-300-140. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

1. Ratings	Security Required
Secure – 1	0.0%
Secure – 2	10%
Secure – 3	20%
Secure – 4	50%
Secure – 5	75%
Vulnerable – 6	100%

2. Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.

3. The commission shall require the certified reinsurer to post 100%, for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation, or conservation against the ceding insurer.

4. In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the commission. The one year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:

a. Line 1: Fire

b. Line 2: Allied Lines

c. Line 3: Farmowners multiple peril

d. Line 4: Homeowners multiple peril

e. Line 5: Commercial multiple peril

f. Line 9: Inland marine

g. Line 12: Earthquake

h. Line 21: Auto physical damage

5. Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.

6. Nothing in this section shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this section.

B. Certification procedure.

1. The commission shall post notice on the Bureau of Insurance's website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The commission may not take final action on the application until at least 30 days after posting the notice required by this subdivision.

2. The commission shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in such notice shall be the rating assigned the certified reinsurer in accordance with subsection A of this section. The commission shall publish a list of all certified reinsurers and their ratings.

3. In order to be eligible for certification, the assuming insurer shall meet the following requirements:

a. The assuming insurer shall be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commission pursuant to subsection C of this section.

b. The assuming insurer shall maintain capital and surplus, or its equivalent, of no less than $250 million calculated in accordance with subdivision 4 h of this subsection. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least $250 million and a central fund containing a balance of at least $250 million.

c. The assuming insurer shall maintain financial strength ratings from two or more rating agencies deemed acceptable by the commission. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the commission in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:

(1) Standard & Poor's;

(2) Moody's Investors Service;

(3) Fitch Ratings;

(4) A.M. Best Company; or

(5) Any other nationally recognized statistical rating organization.

d. The certified reinsurer shall comply with any other requirements reasonably imposed by the commission.

4. Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, the following:

a. The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The commission shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification:

Ratings	Best	S&P	Moody's	Fitch
Secure – 1	A++	AAA	Aaa	AAA
Secure – 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure – 3	A	A+, A	A1, A2	A+, A
Secure – 4	A-	A-	A3	A-
Secure – 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable – 6	B, B-C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

b. The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;

c. For certified reinsurers domiciled in the United States, a review of the most recent applicable NAIC annual statement blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers);

d. For certified reinsurers not domiciled in the United States, a review annually of the Assumed Reinsurance Form CR-F (for property/casualty reinsurers) or the Reinsurance Assumed Life Insurance, Annuities, Deposit Funds and Other Liabilities Form CR-S (for life and health reinsurers) of this chapter;

e. The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than 90 days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;

f. Regulatory actions against the certified reinsurer;

g. The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subdivision 4 h of this subsection;

h. For certified reinsurers not domiciled in the United States, audited financial statements (audited United States GAAP basis if available, audited IFRS basis statements are allowed but shall include an audited footnote reconciling equity and net income to a United States GAAP basis), regulatory filings, and actuarial opinion (as filed with the non-United States jurisdiction supervisor). Upon the initial application for certification, the commission will consider audited financial statements for the last three years filed with its non-United States jurisdiction supervisor;

i. The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;

j. A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves United States ceding insurers. The commission shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and

k. Any other information deemed relevant by the commission.

5. Based on the analysis conducted under subdivision 4 e of this subsection of a certified reinsurer's reputation for

prompt payment of claims, the commission may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to United States ceding insurers, provided that the commission shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under subdivision 4 a of this subsection if the commission finds that:

a. More than 15% of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of 90 days or more that are not in dispute and that exceed $100,000 for each cedent; or

b. The aggregate amount of reinsurance recoverables on paid losses that are not in dispute that are overdue by 90 days or more exceeds $50 million.

6. The assuming insurer shall submit a properly executed Certificate of Certified Reinsurer as evidence of its submission to the jurisdiction of this Commonwealth, appointment of the commission as an agent for service of process in this Commonwealth, and agreement to provide security for 100% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment. The commission shall not certify any assuming insurer that is domiciled in a jurisdiction that the commission has determined does not adequately and promptly enforce final United States judgments or arbitration awards.

7. The certified reinsurer shall agree to meet applicable information filing requirements as determined by the commission, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers that are not otherwise public information subject to disclosure shall be exempted from disclosure under §§ 38.2-221.3 and 38.2-1306.1 of the Act and shall be withheld from public disclosure. The applicable information filing requirements are, as follows:

a. Notification within 10 days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing such changes and the reasons therefore;

b. Annually, Form CR-F or CR-S, as applicable;

c. Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subdivision 7 d of this subsection;

d. Annually, audited financial statements (audited United States GAAP basis if available, audited IFRS basis statements are allowed but shall include an audited footnote reconciling equity and net income to a United States GAAP basis), regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor). Upon the initial certification, audited financial statements for the last three years filed with the certified reinsurer's supervisor;

e. At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from United States domestic ceding insurers;

f. A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and

g. Any other information that the commission may reasonably require.

8. Change in rating or revocation of certification.

a. In the case of a downgrade by a rating agency or other disqualifying circumstance, the commission shall upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of subdivision 4 a of this subsection.

b. The commission shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the commission to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

c. If the rating of a certified reinsurer is upgraded by the commission, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the commission shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the commission, the commission shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.

d. Upon revocation of the certification of a certified reinsurer by the commission, the assuming insurer shall be required to post security in accordance with 14VAC5-300-110 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with 14VAC5-300-90, the commission may allow additional credit equal to the ceding insurer's pro rata share of such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration.

Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the commission to be at high risk of uncollectibility.

C. Qualified jurisdictions.

1. If, upon conducting an evaluation under this section with respect to the reinsurance supervisory system of any non-United States assuming insurer, the commission determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the commission shall publish notice and evidence of such recognition in an appropriate manner. The commission may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.

2. In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the commission shall evaluate the reinsurance supervisory system of the non-United States jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. The commission shall determine the appropriate approach for evaluating the qualifications of such jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the commission as eligible for certification. A qualified jurisdiction shall agree to share information and cooperate with the commission with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the commission, include but are not limited to the following:

a. The framework under which the assuming insurer is regulated.

b. The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.

c. The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.

d. The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.

e. The domiciliary regulator's willingness to cooperate with United States regulators in general and the commission in particular.

f. The history of performance by assuming insurers in the domiciliary jurisdiction.

g. Any documented evidence of substantial problems with the enforcement of final United States judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the commission has determined that it does not adequately and promptly enforce final United States judgments or arbitration awards.

h. Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization.

i. Any other matters deemed relevant by the commission.

3. A list of qualified jurisdictions shall be published through the NAIC committee process. The commission shall consider this list in determining qualified jurisdictions. If the commission approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commission shall provide thoroughly documented justification with respect to the criteria provided under subdivisions 2 a through i of this subsection.

4. United States jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

D. Recognition of certification issued by an NAIC accredited jurisdiction.

1. If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the commission has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed Certificate of Certified Reinsurer and such additional information as the commission requires. The assuming insurer shall be considered to be a certified reinsurer in this Commonwealth.

2. Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this Commonwealth as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the commission of any change in its status or rating within 10 days after receiving notice of the change.

3. The commission may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with subdivision B 7 a of this section.

4. The commission may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the commission suspends

or revokes the certified reinsurer's certification in accordance with subdivision B 7 b of this section, the certified reinsurer's certification shall remain in good standing in this Commonwealth for a period of three months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this Commonwealth.

E. Mandatory funding clause. In addition to the clauses required under 14VAC5-300-150, reinsurance contracts entered into or renewed under this section shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.

F. The commission shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.

14VAC5-300-100. Credit for reinsurance required by law.

When an assuming insurer fails to meet the requirements of § 38.2-1316.2 ~~or § 38.2-1316.3~~ of the Act, the ceding insurer may take credit pursuant to subdivision 1 of § 38.2-1316.4 of the Act but only with respect to the insurance of risks located in jurisdictions where such reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this section, "jurisdiction" means any state, district or territory of the United States and any lawful national government.

14VAC5-300-110. ~~Reduction~~ Asset or reduction from liability for reinsurance ceded to an assuming insurer not meeting the requirements of ~~§ 38.2-1316.2 or 38.2-1316.3~~ 14VAC5-300-60 through 14VAC5-300-100.

~~A. A ceding insurer taking credit pursuant to subdivision 2 of § 38.2-1316.4 of the Act for reinsurance ceded shall be allowed such reduction from liability only when the requirements of subdivision 2 of § 38.2-1316.4 of the Act and 14VAC5-300-120, 14VAC5-300-130 or 14VAC5-300-140 of this chapter are met.~~

~~B. In determining the appropriateness of the proposed security arrangement or accounting treatment, the Commission may consider the guidelines and other criteria as set forth in the NAIC Examiners' Handbook, NAIC practice and procedure manuals, or annual statement instructions in effect when the Commission exercises discretion under the Act or this chapter (14VAC5-300-10 et seq.).~~ A. Pursuant to § 38.2-1316.4 of the Act, the commission shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of § 38.2-1316.2 of the Act in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the reinsurance contract. The security shall be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in § 38.2-1316.1 of the Act. This security may be in the form of any of the following:

(1) Cash;

(2) Securities listed by the Securities Valuation Office of the NAIC, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the NAIC Securities Valuation Office, and qualifying as admitted assets;

(3) Clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in § 38.2-1316.1 of the Act, effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust for, the ceding insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs; or

(4) Any other form of security acceptable to the commission.

B. An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this section shall be allowed only when the requirements of 14VAC5-300-150 and the applicable portions of 14VAC5-300-120, 14VAC5-300-130, or 14VAC5-300-140 of this chapter have been satisfied.

14VAC5-300-120. Trust agreements qualified under 14VAC5-300-110 and subdivision 2 of § 38.2-1316.4 of the Act.

A. When a ceding insurer takes credit pursuant to subdivision 2 of § 38.2-1316.4 of the Act for reinsurance transactions secured by funds held in trust, the underlying trust agreement shall meet the following conditions:

1. The trust agreement shall be entered into between the beneficiary, the grantor and a trustee which shall be a qualified United States financial institution, as those terms are defined in this chapter ~~(14VAC5-300-10 et seq.)~~.

2. The trust agreement shall create a trust account into which assets shall be deposited.

3. All assets in the trust account shall be held by the trustee at the trustee's office in the United States~~, except that a bank may apply for the Commission's permission to use a foreign branch office of such bank as trustee for trust agreements established pursuant to this section. If the Commission approves the use of such foreign branch office as trustee, then its use must be approved by the beneficiary in writing and the trust agreement must provide that the written notice described in subdivision A 4 of this section must also be presentable, as a matter of legal right, at the trustee's principal office in the United States~~.

4. The trust agreement shall provide that:

a. The beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

b. No other statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets~~.~~;

c. It is not subject to any conditions or qualifications outside of the trust agreement; and

d. It shall not contain references to any other agreements or documents except as provided for under ~~subdivision 9~~ subdivisions 11 and 12 of this subsection~~;~~.

~~e. At least 30 days, but not more than 45 days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary; and~~

~~f. The trustee shall be liable for its own negligence, willful misconduct or lack of good faith.~~

5. The trust agreement shall be established for the sole benefit of the beneficiary.

6. The trust agreement shall require the trustee to:

a. Receive assets and hold all assets in a safe place;

b. Determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any such assets, without consent or signature from the grantor or any other person or entity;

c. Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

d. Notify the grantor and the beneficiary, within 10 days, of any deposits to or withdrawals from the trust account;

e. Upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the beneficiary and deliver physical custody of such assets to such beneficiary; and

f. Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.

7. The trust agreement shall provide that at least 30 days, but not more than 45 days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

8. The trust agreement shall be made subject to and governed by the laws of the state in which the trust is established.

~~8.~~ 9. The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the commission), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

~~9. The reinsurance agreement entered into in conjunction with such a trust agreement may, but need not, contain provisions required by subdivision C 1 b of this section, so long as these required conditions are included in the trust agreement.~~

10. The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct, or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence or willful misconduct, or both.

11. Notwithstanding other provisions of this chapter, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

a. To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss

expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

b. To make payment to the assuming insurer of any amounts held in the trust account that exceed 102% of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

c. Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in § 38.2-1316.1 of the Act apart from its general assets, in trust for such uses and purposes specified in subdivisions 11 a and b of this subsection as may remain executory after such withdrawal and for any period after the termination date.

12. Notwithstanding other provisions of this chapter, when a trust agreement is established to meet the requirements of 14VAC5-300-110 in conjunction with a reinsurance agreement covering life, annuities or accident and health risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

a. To pay or reimburse the ceding insurer for:

(1) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and

(2) The assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement;

b. To pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or

c. Where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution apart from its general assets, in trust for the uses and purposes specified in subdivisions 12 a and b of this subsection as may remain executory after withdrawal and for any period after the termination date.

13. Either the reinsurance agreement or the trust agreement shall stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the Code of Virginia or any combination of the above, provided investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust shall not exceed 5.0% of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities or accident and health risks, then the provisions required by this subdivision shall be included in the reinsurance agreement.

B. When a ceding insurer seeks credit pursuant to subdivision 2 of § 38.2-1316.4 ~~of the Act~~ for reinsurance transactions secured by funds held in trust, the underlying trust agreement may contain the following provisions subject to all conditions set forth:

1. The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than 90 days after receipt by the beneficiary and grantor of the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than 90 days after receipt by the trustee and the beneficiary of the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

2. The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any such interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

3. The trustee may be given authority to invest, and accept substitutes of, any funds in the account, provided that no investment or substitution shall be made without prior

approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest such funds and to accept such substitutions which the trustee determines are at least equal in current fair market value to the assets withdrawn and that are consistent with the restrictions in subdivision C 1 b of this section.

4. The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Such transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

5. The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered over to the grantor.

~~6. Notwithstanding other provisions of this chapter, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, such a trust agreement may, notwithstanding any other conditions in this chapter, provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, for the following purposes:~~

~~a. To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;~~

~~b. To make payment to the assuming insurer of any amounts held in the trust account that exceed 102% of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or~~

~~c. Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days prior to such termination date, to withdraw amounts equal to such obligations and deposit such amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in this chapter apart from its general assets, in trust for such uses and purposes specified in subdivisions a and b above as may remain executory after such withdrawal and for any period after such termination date.~~

C. Conditions applicable to reinsurance agreements entered into by a ceding insurer which takes credit pursuant to subdivision 2 of § 38.2-1316.4 ~~of the Act~~ for reinsurance transactions secured by funds held in trust.

1. The reinsurance agreement may contain provisions that:

a. Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifying what such agreement is to cover~~.~~;

~~b. Stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash (United States legal tender), certificates of deposit (issued by a United States bank and payable in United States legal tender), and investments of the types permitted by § 38.2-1316.4 of the Code of Virginia or any combination of the above, provided that such investments are issued by an institution that is not the parent, subsidiary, or affiliate of either the grantor or the beneficiary and, provided, further, that the amount of credit taken or reduction from liability allowed shall not, as a result of this subdivision, exceed the amount of credit or reduction from liability allowed a domestic insurer pursuant to Title 38.2. The reinsurance agreement may further specify the types of investments to be deposited. Where a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, then such trust agreement may contain the provisions required by this subdivision in lieu of including such provisions in the reinsurance agreement.~~

~~c.~~ b. Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments~~,~~ or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate any such assets without consent or signature from the assuming insurer or any other entity~~.~~;

~~d.~~ c. Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent~~.~~; and

~~e.~~ d. Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitations any liquidator, rehabilitator, receiver or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(1) To pay or reimburse the ceding insurer for ~~the~~:

(a) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies;

~~(2) To reimburse the ceding insurer for the~~ (b) The assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement; and

~~(3) To fund an account with the ceding insurer in an amount at least equal to the deduction for reinsurance ceded, from the ceding insurer liabilities for policies ceded under the agreement, which account shall include, but not be limited to, amounts for policy reserves, claims and losses incurred (including losses incurred but not reported), loss adjustment expenses, and unearned premium reserves; and~~

~~(4) To any~~ (c) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer ~~claims are due under the reinsurance agreement.~~; or

(2) To make payment to the assuming insurer of amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

2. The reinsurance agreement also may contain provisions that:

~~f.~~ a. Give the assuming insurer the right to seek approval (which shall not be unreasonably or arbitrarily withheld) from the ceding insurer to withdraw from the trust account all or any part of the trust assets and transfer such assets to the assuming insurer, provided:

(1) The assuming insurer shall, at the time of such withdrawal, replace the withdrawn assets with other qualified assets having a current fair market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount, or

(2) After such withdrawal and transfer, the current fair market value of the trust account is no less than 102% of the required amount.

~~g.~~ b. Provide for~~: (1) The~~ the return of any amount withdrawn in excess of the actual amounts required for ~~subdivisions C 1 e (1), (2), and (3), or in the case of subdivision C 1 e (4), any amounts that are subsequently determined not to be due and; (2) Interest~~ subdivision C 1 d of this section, and for interest payments, at a rate not in excess of the prime rate of interest~~,~~ on ~~the~~ such amounts ~~held pursuant to subdivision C 1 e (3);~~.

~~h.~~ c. Permit the award by any arbitration panel or court of competent jurisdiction of:

(1) Interest at a rate different from that provided in subdivision ~~g (2) above,~~ 2 b of this subsection;

(2) Court or arbitration costs~~,~~;

(3) Attorney's fees~~,~~; and

(4) Any other reasonable expenses.

~~2.~~ D. With regard to financial reporting, a trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the ~~Commission~~ commission in compliance with the provisions of this chapter when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction shall be no greater than the specific obligations, as defined in this chapter ~~(14VAC5-300-10 et seq.)~~, under the reinsurance agreement that the trust account was established to secure~~;~~.

~~3.~~ E. With regard to existing agreements and notwithstanding the effective date of this chapter ~~[effective March 1, 1992]~~, any trust agreement or underlying reinsurance agreement in existence prior to ~~January 1, 1992~~ July 1, 2012, will continue to be acceptable until ~~the first occurring anniversary or renewal date after December 31, 1991~~ January 1, 2013, at which time the agreements will have to be in full compliance with this chapter for the trust agreement to be acceptable~~; and~~.

~~4.~~ F. The failure of any trust agreement to specifically identify the beneficiary as defined in 14VAC5-300-40 ~~of this chapter~~ shall not be construed to affect any actions or rights which the ~~Commission~~ commission may take or possess pursuant to the provisions of the laws of this Commonwealth.

14VAC5-300-130. Letters of credit qualifying for § 38.2-1316.4 credit under 14VAC5-300-110.

A. The letter of credit ~~must~~ shall be clean, irrevocable, unconditional and issued or confirmed by a qualified United States financial institution as defined in § 38.2-1316.1 of the Act. The letter of credit shall contain an issue date and expiration date and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit also shall indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents or entities,

except as provided in subdivision H 1 of this section. As used in this section, "beneficiary" means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator or liquidator). ~~It cannot be conditioned on the delivery of any other documents or materials. It shall contain an issue date and date of expiration and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented.~~

~~B. The letter of credit must be irrevocable. It must provide that it cannot be modified, except for an increase in face amount, or revoked without the consent of the beneficiary, once the beneficiary is established.~~

~~C. The letter of credit must be unconditional. It shall indicate specifically that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain preference to any other agreements, documents or entities, except as provided in subdivision K 1 of this section.~~

~~D.~~ B. The heading of the letter of credit may include a boxed section which contains the name of the applicant and other appropriate notations to provide a reference for such letter of credit. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only.

~~E.~~ C. The letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.

~~F.~~ D. The term of the letter of credit shall be for at least one year and shall contain an "evergreen clause" ~~which automatically renews the letter of credit for a time certain should the issuer of the same fail to affirmatively signify its intention to non-renew upon expiry and which~~ that prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" shall provide for a period of no less than 30 days notice prior to ~~expiry~~ expiration date for nonrenewal.

~~G.~~ E. The letter of credit shall state whether it is subject to and governed by the laws of this Commonwealth, the ceding insurer's state of domicile or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce ~~(Publication 500)~~ Publication 600 (UCP 600) or International Standby Practices ISP98 of the International Chamber of Commerce, Publication 590, or any successor publication, and all drafts drawn thereunder shall be presentable at an office in the United States of a qualified United States financial institution.

~~H.~~ F. If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 500), or any successor publication, then the letter of credit shall specifically address and ~~make provision~~ provide for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 17 of Publication 500, or any successor publication, occur.

~~I. The letter of credit shall be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit, pursuant to the applicable definitions contained within § 38.2-1316.1 of the Act.~~

~~J. When a~~ G. If the letter of credit~~,~~ is issued by a financial institution ~~not recognized by the Act and this chapter as a qualified United States financial institution~~ authorized to issue letters of credit, ~~is subsequently confirmed by~~ other than a qualified United States financial institution~~,~~ as described in subsection ~~I~~ A of this section, then the following additional requirements shall be met:

1. The issuing financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and

2. The "evergreen clause" shall provide for ~~a period of no less than~~ 30 ~~days'~~ days notice prior to ~~expiry~~ the expiration date for nonrenewal.

~~K.~~ H. Reinsurance agreement provisions.

1. The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions which:

a. Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover~~.~~;

b. Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other ~~provision~~ provisions in ~~such~~ the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:

(1) To pay or reimburse the ceding insurer for ~~the~~:

(a) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;

~~(2) To reimburse the ceding insurer for the~~ (b) The assuming insurer's share under the specific reinsurance agreement, of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the

assuming insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement; and

~~(3) To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer's liabilities for policies ceded under the agreement (such amount shall include, but not be limited to, amounts for policy reserves, claims and losses incurred and unearned premium reserves); and~~

~~(4) To pay any~~ (c) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer ~~claims are due under the reinsurance agreement.~~;

(2) Where the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and where the assuming insurer's entire obligations under the reinsurance agreement remain unliquidated and undischarged 10 days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and deposit those amounts in a separate account in the name of the ceding insurer in a qualified United States financial institution apart from its general assets, in trust for such uses and purposes specified in subdivision 1 b (1) of this subsection as may remain after withdrawal and for any period after the termination date.

c. All of the foregoing provisions of subdivision 1 of this subsection should be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

2. Nothing contained in subdivision 1 of this subsection shall preclude the ceding insurer and assuming insurer from providing for:

a. An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to subdivision 1 b ~~(3)~~ of this subsection; ~~and/or~~ or

b. The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or~~, in the case of subdivision 1 b (4) of this subsection,~~ any amounts that are subsequently determined not to be due.

~~3. When a letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life, annuities and health, where it is customary practice to provide a letter of credit for a specific purpose, then such reinsurance agreement may in lieu of subdivision 1 b of this subsection, require that the parties enter into a "Trust Agreement" which may be incorporated into the reinsurance agreement or be a separate document.~~

~~L. A letter of credit may not be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the Commission unless an acceptable letter of credit with the filing ceding insurer as beneficiary has been issued on or before the date of filing of the financial statement.~~

14VAC5-300-140. Other security.

The ~~Commission~~ commission may allow credit pursuant to subdivision 2 d of § 38.2-1316.4 of the Act for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

14VAC5-300-150. Reinsurance contract.

Credit will not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of 14VAC5-300-60, 14VAC5-300-70, 14VAC5-300-80, 14VAC5-300-90, ~~and 14VAC5-300-110 of this chapter~~ 14VAC5-300-95, or 14VAC5-300-100 or otherwise in compliance with § 38.2-1316.2 of the Act ~~after the adoption of this chapter (14VAC5-300-10 et seq.)~~ unless the reinsurance agreement:

1. Includes a proper insolvency ~~clauses pursuant to subdivisions A 1 through A 3 of § 38.2-1316.5 of the Act; and~~ clause that stipulates that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding company;

2. Includes a provision pursuant to ~~subdivision A 4 of § 38.2-1316.5 of the Act~~ § 38.2-1316.2 whereby the assuming insurer, if an unauthorized assuming insurer ~~entering into a transaction with a domestic insurer~~, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give such court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decisions of such court or panel~~.~~; and

3. Includes a proper reinsurance intermediary clause, if applicable, that stipulates that the credit risk for the intermediary is carried by the assuming insurer.

14VAC5-300-160. Contracts affected.

All new and renewal reinsurance transactions entered into after December 31, ~~1991~~ 2012, shall conform to the requirements of the Act and this chapter if credit is to be given to the ceding insurer for such reinsurance. Unless otherwise provided in this chapter, credits for cessions under reinsurance agreements in force on July 1, 2012, or commenced within six months thereafter, shall be governed by the requirements for such credits in effect on June 30, 2012.

14VAC5-300-170. Severability.

If any provision in this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the chapter and the application of the provision to other persons or circumstances shall not be affected thereby.

FORMS (14VAC5-300)

Certificate of Assuming Insurer - Year Ended December 31, 2012, R05(3/12) (eff. 01/13).

Certificate of Certified Reinsurer - Year Ended December 31, 2012, R15(03/12) (eff. 01/13).

Schedule S, Part 1 - Part 6, 1994-2011 National Association of Insurance Commissioners (eff. 01/13).

Schedule F, Part 1 - Part 8, 1994-2011 National Association of Insurance Commissioners (eff. 01/13).

Form CR-F - Part 1 - Part 2, 2011 National Association of Insurance Commissioners (eff. 01/13).

Form CR-S - Part 1 - Part 3, 2011 National Association of Insurance Commissioners (eff. 01/13).

DOCUMENTS INCORPORATED BY REFERENCE (14VAC5-300-9999)

NAIC Policy Statement on Financial Regulation Standards, 2012, National Association of Insurance Commissioners.

NAIC Annual Statement Instructions, 2011 Life Annual Statement Instructions, September 15, 2011, National Association of Insurance Commissioners and the Center for Insurance Policy and Research.

NAIC Annual Statement Instructions, 2011 Property/Casualty Annual Statement Instructions, September 15, 2011, National Association of Insurance Commissioners and the Center for Insurance Policy and Research.

NAIC Accounting Practices & Procedures Manual, Volumes I, II, III, March 2011, National Association of Insurance Commissioners.

ICC Uniform Customs and Practice for Documentary Credits (UCP 500), 1993, International Chamber of Commerce.

ICC Uniform Customs and Practice for Documentary Credits (UCP 600), 2007, International Chamber of Commerce.

International Standby Practices ISP98, 1999, The Institute of International Banking Law and Practice, Inc.

Purposes and Procedures Manual of the NAIC Securities Valuation Office - Effective for Statements Ending December 31, 2011, Volume/Issue 11/01, 2011, National Association of Insurance Commissioners.

VA.R. Doc. No. R12-3115; Filed April 3, 2012, 2:41 p.m.

STATE CORPORATION COMMISSION

AT RICHMOND, MARCH 5, 2012

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE-2012-00021

Ex Parte: In re: In the matter of adopting
rules and regulations for consideration of the
Performance Incentive authorized by
§ 56-585.1 A 2 c of the Code of Virginia

ORDER INITIATING RULEMAKING PROCEEDING

Section 56-585.1 A 2 c of the Code of Virginia ("Code") establishes a Performance Incentive for investor-owned incumbent electric utilities which authorizes the State Corporation Commission ("Commission") to increase or decrease a utility's authorized return on equity for superior or inferior performance when providing regulated electric service in the Commonwealth. Specifically, under the statute:

> The Commission may increase or decrease [an investor-owned incumbent electric utility's] combined rate of return by up to 100 basis points based on the generating plant performance, customer service, and operating efficiency of a utility, as compared to nationally recognized standards determined by the Commission to be appropriate for such purposes, such action being referred to in this section as a Performance Incentive. If the Commission adopts such Performance Incentive, it shall remain in effect without change until the next biennial review for such utility is concluded and shall not be modified pursuant to any provision of the remainder of this subsection.

Accordingly, the Commission has the discretion under § 56-585.1 A 2 c of the Code:

(1) to apply or not apply a Performance Incentive; and (2) to increase or decrease an investor-owned incumbent electric utility's authorized return on common equity based on generating plant performance, customer service, and operating efficiency.

Since the enactment of this statute by the Virginia General Assembly in 2007,[1] Virginia Electric and Power Company ("DVP") and Appalachian Power Company ("APCo") have filed applications with the Commission requesting an increase in their authorized return on common equity in recognition of their generating plant performance, customer service, and operating efficiency pursuant to the Performance Incentive authorized by § 56-585.1 A 2 c of the Code.[2] However, since the statute is silent on what specific performance metrics or nationally recognized standards should apply when determining whether a positive or negative Performance Incentive should be awarded, the parties participating in DVP's and APCo's recent rate proceedings have expressed widely divergent views on what specific performance metrics or nationally recognized standards should apply when determining whether an investor-owned incumbent electric utility's authorized return on equity should be increased or decreased under the statute. For example, in the Final Order in DVP's recent biennial review proceeding, Case No. PUE-2011-00027, we noted there was a lack of consensus among the parties on what specific performance metrics or nationally recognized standards should apply when determining whether to issue a positive or negative Performance Incentive for generating plant performance, customer service, and operating efficiency. Therein we stated that:

> the Company did not propose any specific metrics for evaluating operating efficiency, and that the participants in this case expressed divergent views on some of the nationally recognized standards that should be applied to generating plant performance, customer service, and operating efficiency under [§ 56-585.1 A 2 c of the Code]. In this regard, we will forthwith initiate a rulemaking proceeding for further development of workable criteria for the implementation of this statute in future biennial review proceedings.[3]

NOW THE COMMISSION, having considered the Performance Incentive authorized by § 56-585.1 A 2 c of the Code and our Final Order in Case No. PUE-2011-00027, is of the opinion and finds that a rulemaking proceeding should be initiated to develop the specific performance metrics and nationally recognized standards the Commission should consider when determining whether a positive or negative Performance Incentive should be applied, as authorized by § 56-585.1 A 2 c of the Code. In this regard, we will direct our Staff to solicit comments from stakeholders and schedule a meeting or meetings with stakeholders, if necessary, having an interest in the Performance Incentive authorized by § 56-585.1 A 2 c of the Code. Initially, we will deem those parties participating in DVP's and APCo's recent base rate proceedings to be stakeholders in this rulemaking proceeding. However, this proceeding also shall be open to any other interested persons who desire to file comments or otherwise participate in this case. We expect our Staff to develop, with appropriate input from stakeholders and other interested persons, the specific performance metrics and nationally recognized standards that should be filed when an investor-owned incumbent electric utility requests, or when a party supports, an increase or decrease in such utility's authorized return on equity under § 56-585.1 A 2 c of the Code. We further direct our Staff to draft proposed rules and regulations relative to Performance Incentive filing requirements and submit the same to the Commission for further consideration after consultation with stakeholders and other interested persons.

When developing the proposed rules and regulations, we find that a mechanical, formulaic approach which limits the Commission's discretion when considering a positive or negative Performance Incentive should not be included in the proposed rules. In other words, when the specific performance metrics and nationally recognized standards are proposed, a utility's ability to meet or fail to meet a specific performance metric or nationally recognized standard should not automatically result in a specific basis point increase or decrease in an investor-owned incumbent electric utility's authorized return on equity. Rather, we expect the proposed rules and regulations to preserve the Commission's discretion to award a positive or negative Performance Incentive depending on the evidence presented in each case. Finally, we will set a date of September 5, 2012, for the filing of the Staff's proposed rules and regulations relating to the Performance Incentive.

Accordingly, IT IS ORDERED THAT:

(1) This matter is docketed and assigned Case No. PUE-2012-00021.

(2) The Commission's Divisions of Energy Regulation and Utility Accounting and Finance shall prepare and file proposed rules and regulations for consideration of the Performance Incentive authorized by § 56-585.1 A 2 c of the Code, with appropriate input from stakeholders and other interested persons as described herein.

(3) This matter is continued generally pending further order of the Commission.

AN ATTESTED COPY hereof shall be sent to the Clerk of the Commission to all persons on the official service lists in Case Nos. PUE-2009-00019, PUE-2009-00030, PUE-2011-00027, and PUE-2011-00037. The Service Lists are available from the Clerk of the Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219. A copy shall also be sent to the Commission's Office of General Counsel and Divisions of Energy Regulation and Utility Accounting and Finance.

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[1] Virginia Acts of Assembly, 2007 Reconvened Session, identical Chapters 888 and 933 (approved April 4, 2007; effective July 1, 2007).

[2] See Application of Virginia Electric and Power Company, For a 2009 statutory review of the rates, terms and conditions for the provision of generation, distribution and transmission services pursuant to § 56-585.1 A of the Code of Virginia, Case No. PUE-2009-00019, Application (Mar. 31, 2009) (requesting a 100 basis point Performance Incentive increase under § 56-585.1 A 2 c of the Code); Application of Appalachian Power Company, For a 2009 statutory review of the rates, terms and conditions for the provision of generation, distribution and transmission services pursuant to § 56-585.1 A of the Code of Virginia, Case No. PUE-2009-00030, Application (July 15, 2009) (requesting an 85 basis point Performance Incentive increase under § 56-585.1 A 2 c of the Code); Application of Virginia Electric and Power Company, For a 2011 biennial review of the rates, terms and conditions for the provision of generation, distribution and transmission services pursuant to § 56-585.1 A of the Code, Case No. PUE-2011-00027, Application (Mar. 31, 2011) (requesting a 100 basis point Performance Incentive increase under § 56-585.1 A 2 c of the Code).

[3] Application of Virginia Electric and Power Company, For a 2011 biennial review of the rates, terms and conditions for the provision of generation, distribution, and transmission services pursuant to § 56-585.1 A of the Code of Virginia, Case No. PUE-2011-00027, Doc. Cont. Cen. No. 111160062, Final Order at 23 (Nov. 30, 2011).

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March 28, 2012

Administrative Letter 2012-03

To: All Insurers Licensed in Virginia and Other Interested Parties

Re: Implementation of Search Options for Rate and Form Submissions and Establishment of Additional Filing Requirements

In accordance with our ongoing efforts to educate and inform Virginia's insurance consumers, we will soon launch a new website function for viewing information about rate and form submissions on file with the Bureau of Insurance (the Bureau). The purpose of this administrative letter is to apprise all carriers and interested parties of the availability of this new function, and to notify carriers of additional filing requirements that will be necessary in order to display clear and succinct information through this new website application. We anticipate this new functionality, which will consist of two separate search options described below, to be available on or around May 1, 2012. **Additional filing requirements described further in this letter are effective immediately.**

The following two search options, which will be accessed through the link also shown below, will be provided to users of this new website function: www.scc.virginia.gov/boi/SERFFInquiry/

Search Option 1 - Public Access to General Information about Rate and Form Submissions:

General information about submissions filed with the Bureau will be available through this search option, but direct access to the rates or forms will not be included. It will still be necessary to contact the Bureau for copies of publicly available rates and forms.

Search Option 2 - Public Access to PPACA Forms and Rates and Associated Supporting Documentation:

Rates and forms associated with accident and sickness insurance products that are subject to the requirements of the federal Patient Protection Affordable Care Act (PPACA), along with related supporting documentation, will be available for viewing through this option.

Additional Filing Requirements

In order to ensure that there is meaningful information available to the public, additional filing requirements have been established for the Filing Description section in SERFF. Any SERFF submission that does not include a properly completed Filing Description will be ***rejected***. Filings submitted via mail must also contain this information or the submission will be ***rejected***. The required information is listed below:

• All submissions filed with the Life and Health Division or the Property and Casualty Division must provide a brief summary of the filing, including a statement describing whether the materials in the filing are new, revisions of existing materials or are additional materials that will be used with previously filed or approved rates or forms in Virginia.

• All rate submissions filed with the Life and Health Division involving a rate change must include (i) a statement regarding whether the change is an increase, decrease, or revision of former rates, (ii) the percentage amount(s) of the change(s), (iii) the number of affected policyholders, and (iv) the reason for the proposed change(s).

• All form submissions filed with the Life and Health Division must include (i) a description of each form (i.e., form name, title, and edition date) and the intended use of the form, (ii) identification of any change in benefits and premiums which occurs while the form is in force with a reference to the contract provisions which describe the benefit change, (iii) to the extent practicable, the SERFF or State Tracking number of the approved form that the new form revises or replaces, or the SERFF or State Tracking number of the approved form(s) with which the new forms will be used, and (iv) a statement as to whether any other regulatory body has withdrawn approval of the form because the form contains one or more provisions that were deemed to be misleading, deceptive or contrary to public policy.

Questions regarding this letter and the filing requirements for submissions to the Life and Health Division may be directed to: Bob Grissom, Chief Insurance Market Examiner, Life and Health Division, (804) 371-9152, bob.grissom@scc.virginia.gov.

Questions regarding this letter and the filing requirements for submissions to the Property and Casualty Division may be directed to: Rebecca Nichols, CPCU, CIC, CIE, AIC, CCP, ALMI, Principal Insurance Market Examiner, Property and Casualty Division, (804) 371-9331, rebecca.nichols@scc.virginia.gov.

Questions regarding the functionality of the search options may be directed to: Trish Todd, CPCU, AIE, AIC, Senior Insurance Market Examiner, Automated Systems, (804) 371-9195, trish.todd@scc.virginia.gov.

/s/ Jacqueline K. Cunningham
Commissioner of Insurance

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April 2, 2012

Administrative Letter 2012-04

To: All Insurance Institutions Licensed in Virginia and All Interested Parties

Re: Revised Gramm-Leach Bliley Act Privacy Notices; Withdrawal of Administrative Letter 2011-06

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

The purpose of this administrative letter is to advise Virginia agents and insurance institutions, as defined in § 38.2-602 of the Code of Virginia, that changes have been made in the Federal Model Privacy Forms (Model Privacy Forms) that were attached to Administrative Letter 2011-06. **The attached revised Model Privacy Forms remove the requirement to insert Virginia specific information in the Other Important Information box.** Removing this requirement allows insurance institutions and agents who do business in multiple states to use a uniform notice and still meet the requirements described in §§ 38.2-604.1, 38.2-612.1, 38.2-613, and 38.2-613.2 of the Code of Virginia (Virginia Privacy Notice). Although the Model Privacy Forms are not required to be used, insurance institutions and agents who elect to use the attached forms in accordance with this administrative letter will meet the requirements for compliance with the Gramm-Leach-Bliley Act (GLBA) set forth in the Virginia Privacy Notice. **Due to the changes in the attached Model Privacy Forms, Administrative Letter 2011-06 is hereby withdrawn.**

As required by the Financial Services Regulatory Relief Act of 2006, eight federal agencies[1] adopted the simplified Model Privacy Forms. Insurance institutions and agents that do business in the Commonwealth may use the new Model Privacy Forms or continue to use other types of privacy notices that differ from the Model Privacy Forms to meet the notice content requirements of the Virginia Privacy Notice. The full and accurate completion of the Model Privacy Forms in accordance with the Virginia Instructions and this administrative letter constitutes compliance with the notice content requirements of the Virginia Privacy Notice. This safe harbor is limited to the content and format of the Model Privacy Forms. The requirements of § 38.2-604.1 as to when

the Virginia Privacy Notice must be given to an applicant or insured are not changed by this administrative letter.

Use of Model Privacy Form

Insurance institutions and agents may use the attached Model Privacy Forms, consistent with the Virginia instructions and the instructions set forth in this administrative letter, as a safe harbor of compliance with the requirements of the Virginia Privacy Notice. The Model Privacy Forms may be used at the option of an insurance institution, including a group of insurance institutions, agents, or financial companies that use a common privacy notice to meet the content requirements of the Virginia Privacy Notice. **GLBA and the Virginia Privacy Notice requirements apply to life insurance, accident and sickness insurance, and property and casualty insurance primarily for personal, family, or household purposes.**

The Model Privacy Forms are standardized forms, including page layout, content, format, style, pagination, and shading. Insurance institutions and agents seeking to obtain the safe harbor through use of the Model Privacy Forms may modify them only as described in the Virginia Instructions, as well as those in this administrative letter. Furthermore, the safe harbor only applies to the use of the Model Privacy Forms if the insurance institution or agent accurately completes the form and otherwise meets the requirements of the Virginia instructions and those set forth in this administrative letter.

Under § 38.2-604.1 of the Code of Virginia, if an insurance institution or agent only discloses nonpublic personal information to affiliated and non-affiliated third parties as authorized under § 38.2-613 of the Code of Virginia, the insurance institution or agent is not required to list those exceptions in the initial or annual Virginia Privacy Notice. When describing the categories of parties to whom these disclosures are made in the Model Privacy Forms, it is sufficient for the insurance institution or agent to state that it makes disclosures to other affiliated and non-affiliated third parties for their everyday business purposes.

Use of Other Types of Privacy Notices

Use of the attached Model Privacy Forms is not required. Insurance institutions and agents may continue to use their existing privacy notices that meet the requirements of the Virginia Privacy Notice.

Safe Harbor Not Applicable to the Notice Required by § 38.2-604

Insurance institutions and agents should be aware that while the accurate use of the Model Privacy Forms will provide the insurance institution or agent with a safe harbor of compliance with the Virginia Privacy Notice, the Model Privacy Forms will not provide a safe harbor for the notice required by § 38.2-604 of the Code of Virginia, the Notice of Information Collection and Disclosure Practices. Consequently, insurance institutions and agents are reminded that they are still required to provide the notice set forth in § 38.2-604 of the Code of Virginia.

Questions regarding this letter may be directed to: Property & Casualty Division, Katie Johnson, CIC, AIE, Principal Insurance Market Examiner, (804) 371-9688, katie.johnson@scc.virginia.gov, Life & Health Division, Ann Colley, Principal Insurance Analyst, (804) 371-9813, ann.colley@scc.virginia.gov.

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[1] Office of the Comptroller of the Currency; Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS); National Credit Union Administration (NCUA); Federal Trade Commission (FTC); Commodity Futures Trading Commission (CFTC); and Securities and Exchange Commission (SEC).

/s/ Jacqueline K. Cunningham
Commissioner of Insurance

Attachment - Model Privacy Form

There are four versions of the Model Privacy Form on the following pages:

- Version 1: Model Form with No Opt-out.
- Version 2: Model Form with Opt-out by Telephone and/or Online.
- Version 3: Model with Mail-in Opt-out Form.
- Version 4: Optional Mail-in Form.

Version 1: Model Form with No Opt-out

Page 2

Who we are.	
Who is providing this notice?	*[insert name of the insurance institution/agent/financial institution]*
What we do.	
How does *[name of insurance institution/agent/financial institution]* protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with state and federal law. These measures include computer safeguards and secured files and buildings. *[insert]*
How does *[name of insurance institution/agent/financial institution]* collect my personal information?	We collect your personal information, for example, when you • *[example 1]* and *[example 2]* • *[example 3]* and *[example 4]* • *[example 5]* and *[example 6]* *[We also collect your personal information from other companies.]* **OR** *[We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]*
Why can't I limit all sharing?	Federal law gives you the right to limit only • Sharing for affiliates' everyday business purposes – information about your creditworthiness • Affiliates from using your information to market to you • Sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. *[See below for more on your rights under state law.]*

Definitions	
Affiliates	• Companies related by common ownership or control. They can be financial and nonfinancial companies. • *[affiliate information]*
Nonaffiliates	• Companies not related by common ownership or control. They can be financial and nonfinancial companies. • *[nonaffiliate information]*
Joint marketing	• A formal agreement between nonaffiliated financial companies that together market financial products or services to you. • *[joint marketing information]*

Other important information
[Insert other important information]

Version 2: Model Form with Opt-out by Telephone and/or Online

Rev. *[Insert Date]*

FACTS	**WHAT DOES** *[NAME OF INSURANCE INSTITUTION/AGENT/FINANCIAL INSTITUTION]* **DO WITH YOUR PERSONAL INFORMATION?**

WHY?	Financial companies choose how they share your personal information. Federal and state law give consumers the right to limit some but not all sharing. Federal and state law also require us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.

WHAT?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: • Social security number and *[example 2]* • *[example 3]* and *[example 4]* • *[example 5]* and *[example 6]*

HOW?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons *[name of insurance institution/agent/financial institution]* chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information.	Does *[name of insurance institution/agent/financial institution]* share?	Can you limit this sharing?
For our everyday business purposes – Such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes – To offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes – Information about your transactions and experiences		
For our affiliates' everyday business purposes – Information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

To limit our sharing.	• Call *[phone number]* – our menu will prompt you through your choice(s) • Visit us online: *[website]* **Please note:** If you are a new customer, we can begin sharing your information **30** days from the date we sent this notice. When you are no longer our customer, we continue to share your information as described in this notice. However, you can contact us at any time to limit our sharing.

Questions?	**Call** *[phone number]* **or go to** *[website]*.

Version 2: Model Form with Opt-out by Telephone and/or Online

Page 2

Who we are.	
Who is providing this notice?	*[insert name of the insurance institution/agent/financial institution]*
What we do.	
How does *[name of insurance institution/agent/financial institution]* protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with state and federal law. These measures include computer safeguards and secured files and buildings. *[insert]*
How does *[name of insurance institution/agent/financial institution]* collect my personal information?	We collect your personal information, for example, when you • *[example 1]* and *[example 2]* • *[example 3]* and *[example 4]* • *[example 5]* and *[example 6]* *[We also collect your personal information from other companies.]* OR *[We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]*
Why can't I limit all sharing?	Federal law gives you the right to limit only • Sharing for affiliates' everyday business purposes – information about your creditworthiness • Affiliates from using your information to market to you • Sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. *[See below for more on your rights under state law.]*
What happens when I limit sharing for an account I hold jointly with someone else?	[Your choices will apply to everyone on your account.] **OR** [Your choices will apply to everyone on your account -- unless you tell us otherwise.]

Definitions	
Affiliates	• Companies related by common ownership or control. They can be financial and nonfinancial companies. • *[affiliate information]*
Nonaffiliates	• Companies not related by common ownership or control. They can be financial and nonfinancial companies. • *[nonaffiliate information]*
Joint marketing	• A formal agreement between nonaffiliated financial companies that together market financial products or services to you. • *[joint marketing information]*

Other important information
[Insert other important information]

Version 3: Model Form with Mail-in Opt-out Form

Rev. *[Insert Date]*

FACTS	**WHAT DOES** *[NAME OF INSURANCE INSTITUTION/AGENT/FINANCIAL INSTITUTION]* **DO WITH YOUR PERSONAL INFORMATION?**
WHY?	Financial companies choose how they share your personal information. Federal and state law give consumers the right to limit some but not all sharing. Federal and state law also require us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
WHAT?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: • Social security number and *[example 2]* • *[example 3]* and *[example 4]* • *[example 5]* and *[example 6]*
HOW?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons *[name of insurance institution/agent/financial institution]* chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information.	Does *[name of insurance institution/agent/financial institution]* share?	Can you limit this sharing?
For our everyday business purposes – Such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes – To offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes – Information about your transactions and experiences		
For our affiliates' everyday business purposes – Information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

To limit our sharing.	• Call *[phone number]* – our menu will prompt you through your choice(s) • Visit us online: *[website]* • Mail the **form** below **Please note:** If you are a new customer, we can begin sharing your information **30** days from the date we sent this notice. When you are no longer our customer, we continue to share your information as described in this notice. However, you can contact us at any time to limit our sharing.
Questions?	**Call** *[phone number]* **or go to** *[website]*.

Cut here

Mail-in Form

Leave Blank
OR
[If you have a joint account, your choice(s) will apply to everyone on your account unless you mark the space below.
❒ *Apply my choices only to me]*

Mark any/all you want to limit:
- ❒ Do not share information about my creditworthiness with your affiliates for their everyday business purposes.
- ❒ Do not allow your affiliates to use my personal information to market to me.
- ❒ Do not share my personal information with nonaffiliates to market their products and services to me.

Name		**Mail to:** *[Name of insurance institution/agent/financial institution]*
Address		*[Address1]*
City, State, Zip		*[Address2]*
[Account #]		*[City], [State] [Zip]*

Version 3: Model Form with Mail-in Opt-out Form

Page 2

Who we are.	
Who is providing this notice?	*[insert name of the insurance institution/agent/financial institution]*
What we do.	
How does *[name of insurance institution/agent/financial institution]* protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with state and federal law. These measures include computer safeguards and secured files and buildings. *[insert]*
How does *[name of insurance institution/agent/financial institution]* collect my personal information?	We collect your personal information, for example, when you • *[example 1]* and *[example 2]* • *[example 3]* and *[example 4]* • *[example 5]* and *[example 6]* *[We also collect your personal information from other companies.]* OR *[We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]*
Why can't I limit all sharing?	Federal law gives you the right to limit only • Sharing for affiliates' everyday business purposes – information about your creditworthiness • Affiliates from using your information to market to you • Sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. *[See below for more on your rights under state law.]*
What happens when I limit sharing for an account I hold jointly with someone else?	[Your choices will apply to everyone on your account.] **OR** [Your choices will apply to everyone on your account -- unless you tell us otherwise.]

Definitions	
Affiliates	• Companies related by common ownership or control. They can be financial and nonfinancial companies. • *[affiliate information]*
Nonaffiliates	• Companies not related by common ownership or control. They can be financial and nonfinancial companies. • *[nonaffiliate information]*
Joint marketing	• A formal agreement between nonaffiliated financial companies that together market financial products or services to you. • *[joint marketing information]*

Other important information
[Insert other important information]

Version 4: Optional Mail-in Form

Cut here

Mail-in Form

Leave Blank
OR
[If you have a joint account, your choice(s) will apply to everyone on your account unless you mark the space below.

❒ *Apply my choices only to me]*

Mark any/all you want to limit:

❒ Do not share information about my creditworthiness with your affiliates for their everyday business purposes.
❒ Do not allow your affiliates to use my personal information to market to me.
❒ Do not share my personal information with nonaffiliates to market their products and services to me.

Name	
Address	
City, State, Zip	
[Account #]	

Mail to:
[Name of insurance institution/agent/financial institution]
[Address1]
[Address2]
[City], [State] [Zip]

Virginia Instructions – Model Privacy Forms

1. ***How the model privacy form is used.***

(a) The model form may be used, at the option of an insurance institution or agent, including a group of insurance institutions or financial institutions that use a common privacy notice, to meet the content requirements of the privacy notice and opt-out notice set forth in §§ 38.2-604.1 and 38.2-612.1 of the Code of Virginia.

(b) The model form is a standardized form, including page layout, content, format, style, pagination, and shading. Insurance institutions or agents seeking to obtain the safe harbor through use of the model form may modify it only as described in these instructions.

(c) Note that disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act [15 U.S.C. 1681 – 1681x] (FCRA), such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.

(d) In the body of the Model Privacy Forms, certain terms are used in place of the terms used in the Code of Virginia. In the interest of uniformity, insurance institutions and agents that wish to use the Model Privacy Forms shall use such terms, as set forth in this instruction, in place of the terms used in Chapter 6 of Title 38.2 of the Code of Virginia. For example, in the Model Privacy Forms, reference is made to "financial companies." This term includes insurance institutions, agents, and other financial institutions who issue privacy notices in Virginia. Additionally, the use of the word "customer" is used instead of "policyholder" and "applicant," where appropriate. The term "nonaffiliates" is used instead of "non-affiliated third parties."

2. ***The contents of the model privacy form.*** The model form consists of two pages, which may be printed on both sides of a single sheet of paper, or may appear on two separate pages. Where an insurance institution or agent provides a long list of insurance institutions, agents, or financial institutions at the end of the model form in accordance with Instruction 6(a)(1), or provides additional information in accordance with Instruction 6(c), and such list or additional information exceeds the space available on Page Two of the model form, such list or additional information may extend to a third page.

(a) Page One. The first page consists of the following components:

(1) Date last revised (upper right-hand corner).
(2) Title.
(3) Key frame (Why?, What?, How?).
(4) Disclosure table ("Reasons we can share your personal information").
(5) "To limit our sharing" box, as needed, for the insurance institutions' or agents' opt-out information.
(6) "Questions" box, for customer service contact information.
(7) Mail-in opt-out form, as needed.

1

Virginia Instructions – Model Privacy Forms

(b) Page Two. The second page consists of the following components:

(1) Heading (Page Two).
(2) Frequently Asked Questions ("Who we are" and "What we do").
(3) Definitions.
(4) "Other important information" box, as needed.

3. *The format of the model privacy form*. The format of the model form may be modified only as described below:

(a) *Easily readable type font*. Insurance institutions and agents that utilize the model form must use it in an easily readable type font. While a number of factors together produce an easily readable type font, insurance institutions and agents are required to use a minimum 10-point font (unless otherwise expressly permitted in these instructions) and sufficient spacing between the lines of type.

(b) *Logo*. An insurance institution or an agent may include a corporate logo on any page of the notice, so long as it does not interfere with the readability of the model form or the space constraints of each page.

(c) *Page size and orientation*. Each page of the model form must be printed on paper in portrait orientation, the size of which must be sufficient to meet the layout and minimum font size requirements, with sufficient white space on the top, bottom, and sides of the content.

(d) *Color*. The model form must be printed on white or light color paper (such as cream) with black or other contrasting ink color. Spot color may be used to achieve visual interest, so long as the color contrast is distinctive and the color does not detract from the readability of the model form. Logos may also be printed in color.

(e) *Languages*. The model form may be translated into languages other than English.

The information in the model form may be modified only as described below:

4. *Name of the insurance institution, a group of affiliated insurance institutions or financial institutions, or agent providing the notice*. Insert the name of the insurance institution or agent providing the notice or a common identity of affiliated insurance/financial institutions jointly providing the notice on the form wherever [**name of insurance institution/agent or financial institution**] appears.

Virginia Instructions – Model Privacy Forms

5. *Page One*.

(a) *Last revised date*. The insurance institution or agent must insert in the upper right-hand corner the date on which the notice was last revised. The information shall appear in minimum 8-point font as "rev. [month/year]" using either the name or number of the month, such as "rev. July 2009" or "rev. 7/09."

(b) *General instructions for the "What?" box*.

(1) The bulleted list identifies the types of personal information that the insurance institution or agent collects and shares. All insurance institutions and agents must use the term "Social Security number" in the first bullet.

(2) An insurance institution or agent must use no more than five (5) of the following terms to complete the bulleted list: income; account balances; payment history; transaction history; transaction or loss history; credit history; credit scores; assets; investment experience; credit-based insurance scores; insurance claim history; medical information; overdraft history; purchase history; account transactions; risk tolerance; medical-related debts; credit card or other debt; mortgage rates and payments; retirement assets; checking account information; employment information; wire transfer instructions. In addition to the terms above, insurance institutions and agents may use other terms to more accurately reflect the information they collect and share.

(c) *General instructions for the disclosure table*. The left column lists reasons for sharing or using personal information. Each reason correlates to a specific legal provision described in paragraph 5(d) of these instructions. In the middle column, each insurance institution or agent must provide a "Yes" or "No" response that accurately reflects its information sharing policies and practices with respect to the reason listed on the left. In the right column, each insurance institution or agent must provide in each box one of the following three (3) responses, as applicable, that reflects whether a consumer can limit such sharing: "Yes" if it is required to or voluntarily provides an opt-out; "No" if it does not provide an opt-out; or "We don't share" if it answers "No" in the middle column. **Only the sixth row ("For our affiliates to market to you") may be omitted at the option of the insurance institution or agent.** *See* paragraph 5(d)(6) of this instruction.

(d) *Specific disclosures and corresponding legal provisions*.

(1) *For our everyday business purposes*. This reason incorporates sharing information, including sharing with service providers, under § 38.2-613 of the Code of Virginia, other than the purposes specified in paragraphs 5(d)(2) and 5(d)(3) below.

(2) *For our marketing purposes*. This reason incorporates sharing information with service providers by an insurance institution or agent for its own marketing pursuant to §§ 38.2-604.1 and 38.2-613 of the Code of Virginia. An insurance institution or agent that shares for this reason may choose to provide an opt-out.

Virginia Instructions – Model Privacy Forms

(3) *For joint marketing with other financial companies*. This reason incorporates sharing information under joint marketing agreements between two or more insurance institutions, financial institutions, or agents and with any service provider used in connection with such agreements pursuant to §§ 38.2-604.1 and 38.2-613 of the Code of Virginia. An insurance institution or agent that shares for this reason may choose to provide an opt-out.

(4) *For our affiliates' everyday business purposes – information about transactions and experiences*. This reason incorporates sharing information specified in Sections 603(d)(2)(A)(i) and (ii) of the FCRA and § 38.2-604.1 of the Code of Virginia. An insurance institution or agent that shares for this reason may choose to provide an opt-out.

(5) *For our affiliates' everyday business purposes – information about creditworthiness*. This reason incorporates sharing information pursuant to Section 603(d)(2)(A)(iii) of the FCRA. An insurance institution or agent that shares for this reason must provide an opt-out.

(6) *For our affiliates to market to you*. This reason incorporates sharing information specified in Section 624 of the FCRA. **This reason may be omitted from the disclosure table when**: the insurance institution or agent does not have affiliates (or does not disclose personal information to its affiliates); the insurance institution's or agent's affiliates do not use personal information in a manner that requires an opt-out; or the insurance institution or agent provides the affiliate marketing notice separately. Insurance institutions and agents that include this reason must provide an opt-out of indefinite duration. An insurance institution or agent that is required to provide an affiliate marketing opt-out, but does not include that opt-out in the model form under this part, must comply with Section 624 of the FCRA with respect to the initial notice and opt-out and any subsequent renewal notice and opt-out. An insurance institution or agent not required to provide an opt-out under this subparagraph may elect to include this reason in the model form.

(7) *For nonaffiliates to market to you*. This reason incorporates sharing described in §§ 38.2-612.1 and 38.2-613 of the Code of Virginia. An insurance institution or agent that shares personal information for this reason must provide an opt-out.

(e) *To limit our sharing*: An insurance institution or agent must include this section of the model form *only* if it provides an opt-out as set forth in §§ 38.2-604.1 and 38.2-612.1 of the Code of Virginia. The word "choice" may be written in either the singular or plural, as appropriate. Insurance institutions and agents must select one or more of the applicable opt-out methods described: telephone, such as by a toll-free number; a Website; or use of a mail-in opt-out form. Insurance institutions and agents may include the words "toll-free" before telephone, as appropriate. An insurance institution or agent that allows consumers to opt out online must provide either a specific Web address that takes consumers directly to the opt-out page or a general Web address that provides a clear and conspicuous direct link to the opt-out page. The opt-out choices made available to the consumer who contacts the insurance institution or agent through these methods must correspond accurately to the "Yes" responses in the third column of the disclosure table. In the part titled "Please note," insurance institutions and agents may insert

a number that is 30 or greater in the space marked "[30]." Instructions on voluntary or state privacy law opt-out information are in paragraph 5(g)(5) of these instructions.

(f) *Questions box*. Customer service contact information must be inserted as appropriate, where **[phone number]** or **[website]** appear. Insurance institutions and agents may elect to provide either a phone number, such as a toll-free number, or a Web address, or both. Insurance institutions and agents may include the words "toll-free" before the telephone number, as appropriate.

(g) *Mail-in opt-out form*. Insurance institutions and agents must include this mail-in form *only* if they state in the "To limit our sharing" box that consumers can opt out by mail. The mail-in form must provide opt-out options that correspond accurately to the "Yes" responses in the third column in the disclosure table. Insurance institutions and agents that require applicants and policyholders to provide only name and address may omit the section identified as "[account #]." Insurance institutions and agents that require additional or different information, such as a random opt-out number or a truncated account number to implement an opt-out election, should modify the "[account #]" reference accordingly. This includes insurance institutions and agents that require applicants and policyholders with multiple accounts to identify each account to which the opt-out should apply. An insurance institution or agent must enter its opt-out mailing address in the far right of this form (*see v*ersion 3 of the Model Privacy Forms) or below the form (*see* version 4). The reverse side of the mail-in opt-out form must not include any content of the model form.

(1) *Joint accountholder*. Virginia law provides that any joint applicant or policyholder may separately direct that his financial information not be disclosed to nonaffiliates. In accordance with paragraph 6(a)(5) of these instructions, Virginia insurance institutions and agents that permit applicants and policyholders to opt out using a mail-in form (in versions 3 and 4 of the Model Privacy Forms) must provide (in the far left column of the mail-in form) the following statements: "If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below." "Apply my choice(s) only to me." Virginia insurance institutions and agents may not leave this area of the mail-in form blank. The word "choice" may be written in either the singular or the plural, as appropriate, and the word "policy" may be substituted for "account" in this statement.

(2) *FCRA Section 603(d)(2)(A)(iii) opt-out*. If the insurance institution or agent shares personal information pursuant to Section 603(d)(2)(A)(iii) of the FCRA, it must include in the mail-in opt-out form the following statement: "Do not share information about my creditworthiness with your affiliates for their everyday business purposes."

(3) *FCRA Section 624 opt-out*. If the insurance institution or agent incorporates Section 624 of the FCRA in accord with paragraph 5(d)(6) of these Instructions, it must include in the mail-in opt-out form the following statement: "Do not allow your affiliates to use my personal information to market to me."

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(4) *Nonaffiliates opt-out.* If the insurance institution or agent shares personal information pursuant to §§ 38.2-604.1, 38.2-612.1, and 38.2-613 of the Code of Virginia, it must include in the mail-in opt-out form the following statement: "Do not share my personal information with nonaffiliates to market their products and services to me."

(5) *Additional opt-outs.* Insurance institutions and agents that use the disclosure table to provide opt-out options beyond those required by Federal law must provide those opt-outs in this section of the model form. An insurance institution or agent that chooses to offer an opt-out for its own marketing in the mail-in opt-out form must include one of the two following statements: "Do not share my personal information to market to me." or "Do not use my personal information to market to me." An insurance institution or agent that chooses to offer an opt-out for joint marketing must include the following statement: "Do not share my personal information with other financial institutions to jointly market to me."

(h) *Barcodes.* An insurance institution or agent may elect to include a barcode and/or "tagline" (an internal identifier) in 6-point font at the bottom of Page One, as needed for information internal to the institution, so long as these do not interfere with the clarity or text of the form.

6. Page Two.

(a) *General instructions for the questions.* Certain questions may be customized as follows:

(1) *"Who is providing this notice?"* This question may be omitted when only one insurance institution or agent provides the model form and that insurance institution or agent is clearly identified in the title on Page One. Two or more insurance institutions, financial institutions, or agents that jointly provide the model form must use this question to identify themselves as required by § 38.2-604.1 of the Code of Virginia. When the list of insurance institutions, financial institutions, or agents exceeds four (4) lines, the insurance institution, financial institution, or agent must describe in the response to this question the general types of insurance institutions, financial institutions, or agents jointly providing the notice and must separately identify those insurance institutions, financial institutions, or agents in minimum 8-point font, directly following the "Other important information" box, or, if that box is not included in the institution's form, directly following the "Definitions." The list may appear in a multi-column format.

(2) *"How does **[name of insurance institution/agent/financial institution]** protect my personal information?"* The insurance institution or agent may only provide additional information pertaining to its safeguard practices following the designated response to this question. Such information may include information about the insurance institution's or agent's use of cookies or other measures it uses to safeguard personal information. See § 38.2-613.2 of the Code of Virginia. Insurance institutions and agents are limited to a maximum of 30 additional words.

(3) *"How does **[name of insurance institution/agent/financial institution]** collect my personal information*?" Insurance institutions and agents must use no more than five (5) of the following terms to complete the bulleted list for this question: open an account; deposit money; pay your bills; apply for a loan; use your credit or debit card; seek financial or tax advice; apply for

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insurance; pay insurance premiums; file an insurance claim; seek advice about your investments; buy securities from us; sell securities to us; direct us to buy securities; direct us to sell your securities; make deposits or withdrawals from your account; enter into an investment advisory contract; give us your income information; provide employment information; give us your employment history; tell us about your investment or retirement portfolio; tell us about your investment or retirement earnings; apply for financing; apply for a lease; provide account information; give us your contact information; pay us by check; give us your wage statements; provide your mortgage information; make a wire transfer; tell us who receives the money; tell us where to send the money; show your government-issued ID; show your driver's license; or order a commodity futures or option trade. In addition to the terms above, insurance institutions and agents may use other terms that more accurately reflect the sources of the information they collect.

Insurance institutions and agents that collect personal information from their affiliates and/or credit bureaus must include after the bulleted list the following statement: "We also collect your personal information from others, such as credit bureaus, affiliates, or other companies." Insurance institutions and agents that do not collect personal information from their affiliates or credit bureaus but do collect information from other companies must include the following statement instead: "We also collect your personal information from other companies." Only insurance institutions and agents that do not collect any personal information from affiliates, credit bureaus, or other companies may omit both statements.

(4) *"Why can't I limit all sharing?"* Insurance institutions and agents that describe state privacy law provisions in the "*Other important information*" box must use the bracketed sentence: "See below for more on your rights under state law." Other insurance institutions and agents must omit this sentence.

(5) *"What happens when I limit sharing for an account I hold jointly with someone else?"*

(a) Insurance institutions and agents must use the following statement to respond to this question: "Your choices will apply to everyone on your account – unless you tell us otherwise." Virginia law provides that any joint applicant or policyholder may separately direct that his financial information not be disclosed to nonaffiliates. (See § 38.2-612.1 D of the Code of Virginia.) Insurance institutions and agents that provide insurance products or services and elect to use the model form may substitute the word "policy" for "account" in these statements.

(b) *General instructions for the definitions*. The insurance institution or agent must customize the space below the responses to the three definitions in this section. This specific information must be in italicized lettering to set off the information from the standardized definitions.

(1) *Affiliates*. As required by § 38.2-604.1 of the Code of Virginia, where [***affiliate information***] appears, the insurance institution or agent must:

(i) If it has no affiliates, state: "***[name of insurance institution or agent]*** *has no affiliates*";

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(ii) If it has affiliates but does not share personal information, state: "***[name of insurance institution or agent]*** *does not share with our affiliates*"; or
(iii) If it shares with its affiliates, state, as applicable: *"Our affiliates include companies with a* ***[common corporate identity of insurance institution or agent]*** *name; financial companies such as* ***[insert illustrative list of companies]****; nonfinancial companies, such as* ***[insert illustrative list of companies;]*** *and others, such as* ***[insert illustrative list]****."*

(2) *Nonaffiliates*. As required by § 38.2-604.1 of the Code of Virginia, where ***[nonaffiliate information]*** appears, the insurance institution or agent must:

(i) If it does not share with nonaffiliates, state: "***[name of insurance institution or agent]*** *does not share with nonaffiliates so they can market to you*"; or
(ii) If it shares with nonaffiliates, state, as applicable: *"Nonaffiliates we share with can include* ***[list categories of companies such as mortgage companies, insurance companies, direct marketing companies, and nonprofit organizations]****."*

(3) *Joint marketing*. As required by § 38.2-604.1 of the Code of Virginia, where ***[joint marketing]*** appears, the [insurance institution or agent] must:

(i) If it does not engage in joint marketing, state: "***[name of insurance institution or agent]*** *doesn't jointly market*"; or
(ii) If it shares personal information for joint marketing, state, as applicable: *"Our joint marketing partners include* ***[list categories of companies such as credit card companies]****."*

(c) *General instructions for the "Other important information" box.* This box is optional. The space provided for information in this box is not limited. Only the following types of information can appear in this box:

(1) State and/or international privacy law information; and/or

(2) Acknowledgment of receipt form.

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CRIMINAL JUSTICE SERVICES BOARD

Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Criminal Justice Services is conducting a periodic review of 6VAC20-80, Rules Relating to Certification of Criminal Justice Instructors.

The review of this regulation will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia.

The purpose of this review is to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins April 23, 2012, and ends on May 14, 2012.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Stephanie L. Morton, Law Enforcement Program Coordinator, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 786-8003, FAX (804) 786-0410, or email stephanie.morton@dcjs.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

DEPARTMENT OF FORESTRY

Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Forestry is conducting a periodic review of 4VAC10-20, Standards for Classification of Real Estate as Devoted to Forest Use under the Virginia Land Use Assessment Law.

The review of this regulation will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia.

The purpose of this review is to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins April 23, 2012, and ends on May 25, 2012.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Ron Jenkins, Assistant State Forester, Department of Forestry, 900 Natural Resources Drive, Suite 800, Charlottesville, VA 22903, telephone (434) 220-9022, FAX (434) 977-7749, or email ron.jenkins@dof.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

STATE LOTTERY DEPARTMENT

Director's Order

The following Director's Order of the State Lottery Department was filed with the Virginia Registrar of Regulations on April 5, 2012. The order may be viewed at the State Lottery Department, 900 East Main Street, Richmond, VA, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, VA.

Director's Order Number Forty-Four (12)

Virginia's Instant Game Lottery 1298; "Ace In The Hole" Final Rules for Game Operation (effective April 5, 2012)

STATE WATER CONTROL BOARD

Supplemental Notice of Intent to Provide § 401 Water Quality Certification of U.S. Army Corps of Engineers Nationwide Permit 37

Pursuant to Virginia Water Protection Permit Program Regulation (9VAC25-210-130), the State Water Control Board (board) is giving notice of its intent to provide unconditional § 401 Water Quality Certification for activities authorized by the U.S. Army Corps of Engineers (USACE) Nationwide Permit 37 (NWP-37) for Emergency Watershed Protection and Rehabilitation, after considering public comment for a 30-day period starting March 15, 2012. This NWP was published in Part II of the Federal Register on February 21, 2012, with an effective date of March 19, 2012.

NWP-37 replaces the Norfolk District's Regional Permit 37 (RP-37), now suspended. The initial notice of intent posted March 14, 2012, listed this permit as a regional permit.

The State Water Control Board will issue its final § 401 Water Quality Certification for activities authorized by the U.S. Army Corps of Engineers (USACE) Nationwide Permit 37 (NWP-37) at the end of the comment period and after any comments received are considered. Written comments, including those by email, must be received no later than 4 p.m. on April 13, 2012, and should be submitted to David L. Davis at the address given below. Only those comments received within this period will be considered by the board. Written comments shall include the name, address, and telephone number of the writer, and shall contain a complete, concise statement of the factual basis for comments.

Contact Information: David L. Davis, P.O. Box 1105, 629 East Main Street, Richmond, VA 23218, telephone (804) 698-4105, FAX (804) 698-4032, or email dave.davis@deq.virginia.gov.

Proposed Consent Special Order for Kan Pai Restaurant

An enforcement action has been proposed for Yimmer, LLC for alleged violations at Kan Pai Restaurant, Henrico County, Virginia. The State Water Control Board proposes to issue a consent special order to Yimmer, LLC to address noncompliance with State Water Control Board 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. Gina Pisoni will accept comments by email at gina.pisoni@deq.virginia.gov, FAX at (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from April 18, 2012, to May 23, 2012.

Proposed Consent Special Order for McGill Environmental Systems of N.C., Inc.

An enforcement action has been proposed for McGill Environmental Systems of N.C., Inc. for alleged violations that occurred on I-295 in Henrico County, Virginia. The State Water Control Board proposes to issue a consent special order to McGill Environmental Systems of N.C., Inc. to address noncompliance with State Water Control Board 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. Gina Pisoni will accept comments by email at gina.pisoni@deq.virginia.gov, FAX at (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from April 18, 2012, to May 23, 2012.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; FAX (804) 692-0625; *Email:* 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/cmsportal3/cgi-bin/calendar.cgi.

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/cumultab.htm.

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.