

**RULES GOVERNING GROUP SELF-INSURERS OF LIABILITY UNDER THE
VIRGINIA WORKERS' COMPENSATION ACT**

14VAC5-370-10. Purpose.

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

14VAC5-370-20. Definitions.

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

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

"Commission" means State Corporation Commission.

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

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

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

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

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

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

**RULES GOVERNING GROUP SELF-INSURERS OF LIABILITY UNDER THE
VIRGINIA WORKERS' COMPENSATION ACT**

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

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

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

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

If, after review of the association's application as well as the additional information required by 14VAC5-370-40 of this chapter, the Commission is satisfied that it has satisfactory proof of (i) the solvency of each member of the association, (ii) the financial ability of each employer to meet its obligations as a member and (iii) the ability of the association to pay or cause to be paid the compensation in the amount and manner and when due as provided for in the Act, the Commission may issue a license to the association.

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

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

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

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

1. A copy of the members' indemnity agreement and power of attorney required by 14VAC5-370-120 of this chapter binding the association and each member of the association, jointly and severally, to comply with the provisions of the Act and copies of any other governing instruments of the proposed group self-insurance association;

**RULES GOVERNING GROUP SELF-INSURERS OF LIABILITY UNDER THE
VIRGINIA WORKERS' COMPENSATION ACT**

2. An executed copy of the application of each employer for membership in the association on the effective date of the license of the association;
 3. Financial statements of all applicants for membership showing that the membership of the proposed association has a combined net worth of at least one million dollars. Political subdivisions of this Commonwealth may combine to form associations without complying with this requirement;
 4. Proof of payment by each member of at least 25% of its estimated first year's contribution into a designated depository;
 5. A confirmation of excess insurance, if excess insurance is required, by a licensed insurer in an amount acceptable to the Commission which complies with the requirements set forth in 14VAC5-370-90 of this chapter. However, the Commission at its discretion may allow this insurance to be placed with an approved surplus lines insurer;
 6. Designation of the board and of the administrator of the association, together with properly executed biographical affidavits for each member of the board and for the administrator or the principal officers of a corporation serving as an administrator. Affidavits are to be submitted on a form prescribed by the Commission;
 7. Information showing that the association has, within its own organization or by contract with an approved service agent, adequate facilities and competent personnel to service its program with respect to underwriting matters, claims adjusting, and industrial safety engineering. Copies of all executed servicing agreements shall be filed with the Commission;
 8. A confirmation of a fidelity bond in a form and amount acceptable to the Commission;
 9. Deposit of securities or a surety bond with the State Treasurer in an amount acceptable to the Commission in accordance with the requirements of 14VAC5-370-60 of this chapter;
 10. A projection of administrative expenses for the first year of operation in an amount and as a percentage of the estimated annual contributions;
 11. A statement regarding the type of business and guidelines to be used to determine common interest; and
 12. A copy of the association's contracts with the service agent and the administrator which sets forth the terms and obligations of the agreement.
- B. An application submitted by a group self-insurance association shall be accompanied by all of the following:
1. A composite listing of the estimated annual gross contribution to be developed by each member of the association individually and in the aggregate for the association, which, in the

**RULES GOVERNING GROUP SELF-INSURERS OF LIABILITY UNDER THE
VIRGINIA WORKERS' COMPENSATION ACT**

aggregate, shall be not less than \$350,000 for each of the association's first two years and thereafter for subsequent years shall be not less than \$500,000, provided that this latter requirement shall not apply to groups licensed prior to May 1, 1988; and

2. The application shall be accompanied by any other information the Commission requires.

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

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

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

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

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

A. Except as provided in subsection B of this section, each group self-insurance association licensed by the Commission shall maintain with the State Treasurer a security deposit of acceptable securities or surety bond in an amount of \$250,000 for the first plan year, or such other amount as the Commission prescribes, and for succeeding plan years such amount as the Commission deems reasonable taking into account the financial condition of the association and any excess insurance carried by the association. The Commission may, from time to time, increase, release or reduce the security deposit or surety bond requirement. The security

**RULES GOVERNING GROUP SELF-INSURERS OF LIABILITY UNDER THE
VIRGINIA WORKERS' COMPENSATION ACT**

deposit or surety bond shall be held by the State Treasurer pursuant to §65.2-801C of the Code of Virginia, and so far as not inconsistent with the provisions of the Act or these regulations shall be subject to the provisions of Article 7 (§38.2-1045 et seq.) of Chapter 10 of Title 38.2 of the Code of Virginia.

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

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

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

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

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

14VAC5-370-70. Investment.

The board of an association may, in its discretion, invest funds in any type of investments authorized by §§38.2-1415, 38.2-1418, 38.2-1419, 38.2-1421, 38.2-1432 of the Code of Virginia and 14VAC5-370-60 of this chapter. Other investments may be made subject to the approval of the Commission. All such investments shall be authorized or approved by the board in the manner contemplated by the provisions of §38.2-1408 of the Code of Virginia.

**RULES GOVERNING GROUP SELF-INSURERS OF LIABILITY UNDER THE
VIRGINIA WORKERS' COMPENSATION ACT**

14VAC5-370-80. Filing of reports.

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

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

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

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

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

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

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

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

(1) The association; and

(2) The Commission.

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

(1) The association; and

(2) The Commission.

**RULES GOVERNING GROUP SELF-INSURERS OF LIABILITY UNDER THE
VIRGINIA WORKERS' COMPENSATION ACT**

2. If the contract or policy contains any type of commutation clause, it shall provide in substance:
 - a. That any commutation effected under the policy shall not relieve the underwriter or underwriters of further liability in respect to claims and expenses unknown at the time of such commutation or in regard to claims apparently closed but which may be subsequently revived by or through a competent authority; and
 - b. That in the event the underwriter proposes to settle liability to the association for any future payments payable as compensation for injuries occurring during the term of the policy by the payment of a lump sum to be fixed as provided in the commutation clause of the policy, not less than 30 days' prior notice of this commutation shall be given to the Commission by registered or certified mail by the underwriter or its agent.
3. In the event any commutation is effected, the Commission shall have the right to direct that this sum either:
 - a. Be placed in trust for the benefit of the injured employee or dependent entitled to the future payment of benefits, or
 - b. Be invested by the association in the manner permitted by 14VAC5-370-70 of this chapter and held along with any income or gains from the investments in a special reserve subject to further order of the Commission to assure the future payment of compensation to the employee or dependent entitled to the compensation.
4. No more than one association, which shall be defined as the named insured, shall be covered by any contract or policy of excess liability insurance. Any reinsurance contract issued on any contract or policy of excess liability shall contain a clause providing that, (i) the reinsurance is written expressly for, and for the protection of, the named insured, and (ii) in the event of the aggregate and/or specific excess underwriter's going into liquidation or being otherwise unable to pay to the named insured, the reinsurer of the aggregate and/or specific excess underwriter will pay benefits as may be due under the terms of the reinsurance contract directly to the named insured;
5. Copies of the complete contracts or policies of excess liability insurance, complete with all endorsements thereto, shall be filed with the Commission.

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

**RULES GOVERNING GROUP SELF-INSURERS OF LIABILITY UNDER THE
VIRGINIA WORKERS' COMPENSATION ACT**

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

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

1. Monitoring the financial condition of each member of the association (unless proof of financial condition is not required under 14VAC5-370-40 A 3), and doing all other acts necessary to assure that each member continues to be able to fulfill the obligations of membership; and also reporting promptly to the Commission any grounds for believing that a change in any member's financial condition, withdrawal of a member, or any other circumstances affecting the association's ability to meet its obligations;
2. Designating an administrator to administer the affairs of the association, who shall furnish a fidelity bond with the association as obligee, in an amount sufficient to protect the association against the misappropriation or misuse of any monies or securities. The amount of the bond shall be determined by the Commission and evidence of the bond shall be filed with the Commission, said bond being one of the conditions required for licensing of the association. The administrator shall not be an owner, officer or employee of any service agent, its parent or any of its affiliated companies, any of which are under contract with the association;
3. Retaining control of all monies collected for the association and the disbursement of such monies by the association. All assets of the association shall remain in the custody of the board or the authorized administrator. However, a claims fund for payment of benefits due and other related expenses may be established for the use of any authorized service agent;
4. Active efforts to collect delinquent accounts resulting from any past due contributions by members. The board shall terminate in the manner provided by §65.2-804 B of the Code of Virginia any member delinquent for more than 30 days in the payment of any subscription charge or assessment billed to such member;
5. The members' supervisory board or the administrator shall not use any of the monies collected for any purpose unrelated to securing the members' liability under the Act. Further, they shall be prohibited from borrowing any monies from the association or in the name of the association without advising the Commission of the nature and purpose of the loan and obtaining Commission approval;

**RULES GOVERNING GROUP SELF-INSURERS OF LIABILITY UNDER THE
VIRGINIA WORKERS' COMPENSATION ACT**

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

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

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

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

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

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

2. At the effective date of the license of an association, at least 25% of the first year's estimated annual contribution payable by each member of the association shall have been paid into a designated depository. The balance of the first year's annual contributions shall be paid no later than the end of the ninth month of the association year. For each subsequent year of operation of the association, the payment schedule shall provide an advance payment of at least 15% of the estimated annual contribution with the balance payable not later than the end of the tenth month. At no time shall the member's combined payments be less than the total earned estimated annual contribution due at that time.

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

However, the Commission shall require that 3.0% or more of an association's earned contributions for each fiscal accounting period be allocated to a contingency reserve. The

**RULES GOVERNING GROUP SELF-INSURERS OF LIABILITY UNDER THE
VIRGINIA WORKERS' COMPENSATION ACT**

contingency reserve is to be used at the direction of the association's board subject to the approval of the Commission. When the Commission is satisfied that the contingency reserve is adequate for the needs of the association, adjustments may be made by the Commission as necessary to the contingency reserve or to contributions to the contingency reserve to maintain it at an established amount.

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

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

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

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

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

14VAC5-370-130. Servicing of association.

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

**RULES GOVERNING GROUP SELF-INSURERS OF LIABILITY UNDER THE
VIRGINIA WORKERS' COMPENSATION ACT**

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

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

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

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

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

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

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

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

**RULES GOVERNING GROUP SELF-INSURERS OF LIABILITY UNDER THE
VIRGINIA WORKERS' COMPENSATION ACT**

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

The Commission may revoke an association's license if:

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

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

14VAC5-370-160. Penalties.

Penalty for failure to comply with this chapter shall be as provided by §12.1-13 of the Code of Virginia.

14VAC5-370-170. Examination of association.

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

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

14VAC5-370-180. Severability.

If any provisions of this chapter, or the application of it to any person or circumstances, is held invalid, such invalidity 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.