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Fast-Track Regulation Agency Background Document

Agency name	Commissioner of Agriculture and Consumer Services
Virginia Administrative Code (VAC) Chapter citation(s)	11 VAC 20-10
VAC Chapter title(s)	Public Participation Guidelines
Action title	Promulgation of 11 VAC 20-10
Date this document prepared	October 1, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations. Under §2.2-4007.02 of the Code of Virginia, every rulemaking body in Virginia is required to adopt public participation guidelines and to use these guidelines in the development of its regulations. This action will promulgate public participation guidelines for the Commissioner of Agriculture and Consumer Services, based on the model public participation guidelines developed by the Department of Planning and Budget.

Chapters 554 and 609 of the 2022 Acts of Assembly (i) eliminated the provisions of the Code of Virginia that authorized the Charitable Gaming Board (Board) to promulgate regulations, (ii) reclassified the Board as an advisory board within the meaning of Va. Code § 2.2-2100, and (iii) authorized the Commissioner of Agriculture and Consumer Services (Commissioner) to promulgate regulations to carry out the provisions of the Charitable Gaming Law (Article 1.1:1 of Chapter 8 of Title 18.2 of the Code). Chapters 554 and 609

of the 2022 Acts of Assembly provide, in part, that the regulations of the Charitable Gaming Board shall be administered by the Department of Agriculture and Consumer Services and shall remain in full force and effect until the Commissioner promulgates regulations. As such, it is necessary that the Commissioner to repeal the existing public participation guidelines (11 VAC 15-13) through a separate regulatory action and that the Commissioner, through this regulatory action, promulgates new public participation guidelines. The repeal of 11VAC15-13 and the promulgation of 11VAC20-10 will have the same effective date.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

“Board” means the Charitable Gaming Board.

“Commissioner” means the Commissioner of the Virginia Department of Agriculture and Consumer Services.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On October 11, 2024, the Commissioner authorized staff to take any and all steps necessary to repeal 11 VAC 15-13, Public Participation Guidelines, and promulgate 11 VAC 20-10, Public Participation Guidelines.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

Section 2.2-4007.02 of the Administrative Process Act requires every rulemaking body to adopt public participation guidelines and to use these guidelines in the development of its regulations. Chapters 554 and 609 of the 2022 Acts of Assembly resulted in the reclassification of the Board as an advisory board and the assumption by the Commissioner of the Board’s regulatory authority over charitable gaming. Because the Commissioner is required to repeal the Board’s existing Public Participation guidelines, he must promulgate his own.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Section 3.2-102 of the Code of Virginia (Code) grants the Commissioner the authority to adopt regulations in accordance with the provisions of the Charitable Gaming Law. Section 2.2-4007.02 of the Code requires every rulemaking body in Virginia to adopt public participation guidelines.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

The change in regulatory authority for charitable gaming from the Board to the Commissioner requires that 11 VAC 15-13 be repealed. The Administrative Process Act requires that public participation guidelines be promulgated for every rulemaking body, therefore the Commissioner is promulgating the required guidelines in place of 11 VAC 15-13. The welfare of citizens is protected when rulemaking bodies comply with the Administrative Process Act.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

Through this regulatory action, the Commissioner will adopt the model public participation guidelines developed by the Department of Planning and Budget.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

This action is required by the Administrative Process Act. The primary advantage to the public and the agency is that the public will have a simple and uniform method for participating in the agency's rulemaking process. There are no disadvantages to the public or the Commonwealth.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

The proposed action does not include any requirements that exceed applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

No agency, locality, or entity is particularly affected by the proposed regulation.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>There is no economic impact on the agency.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There is no economic impact on other state agencies.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The public will have a simple and uniform method for participating in the agency's rulemaking process.</p>

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees or revenues resulting from the regulatory change.	There is no economic impact on localities.
Benefits the regulatory change is designed to produce.	There is no economic impact on localities.

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	There is no economic impact on other entities.
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There is no economic impact on other entities.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	There is no economic impact on other entities.
Benefits the regulatory change is designed to produce.	The public will have a simple and uniform method for participating in the agency's rulemaking process.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

This action is required by the Administrative Process Act, and therefore no alternatives exist.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

This action is required by the Administrative Process Act, and therefore no alternatives exist.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of and reason for your objection to using this process.

The Commissioner is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email, or fax to:

Michael Menefee
Program Manager, Office of Charitable and Regulatory Programs
Virginia Department of Agriculture and Consumer Services
P.O. Box 1163, Richmond, VA 23218
Phone: (804) 786-3983
Fax: (804) 225-2666
Email: michael.menefee@vdacs.virginia.gov

In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
	11VAC20-10-10	N/A	Purpose of the public participation guidelines
	11VAC20-10-20	N/A	Definitions
	11VAC20-10-30	N/A	Notification list requirements
	11VAC20-10-40	N/A	Requirements for information to be sent to persons on the notification list
	11VAC20-10-50	N/A	Requirements related to accepting public comments
	11VAC20-10-60		Requirements for petitions for rulemaking
	11VAC20-10-70		Requirements for appointment of a regulatory advisory panel
	11VAC20-10-80		Requirements for appointment of a negotiated rulemaking panel
	11VAC20-10-90		Requirements for posting notice of open meetings
	11VAC20-10-100		Requirements for public hearings

	11VAC20-10-110		Requirements regarding periodic review of regulations
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