



townhall.virginia.gov

Exempt Action: Final Regulation Agency Background Document

Agency name	Department of Agriculture and Consumer Services
Virginia Administrative Code (VAC) Chapter citation(s)	11 VAC 20-20
VAC Chapter title(s)	Charitable Gaming Regulations
Action title	Promulgation of Charitable Gaming Regulations by Department of Agriculture and Consumer Services, including electronic gaming provisions
Final agency action date	December 27, 2022
Date this document prepared	December 27, 2022

This information is required for executive branch review pursuant to 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. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to 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.

This regulatory action will promulgate regulations for the conduct of charitable gaming in the Commonwealth. Chapters 554 and 609 of the 2022 Acts of Assembly authorize the Commissioner of the Department of Agriculture and Consumer Services (VDACS) to prescribe regulations and conditions under which charitable gaming shall be conducted in the Commonwealth. Previously, the authority to adopt regulations regarding the conduct of charitable gaming rested with the Charitable Gaming Board (Board).

The regulation consists of the regulatory provisions established in 11 VAC 15-40 by the Board and the provisions regarding electronic gaming that are outlined below.

The regulation establishes that a minimum of 20 percent of an organization's electronic gaming adjusted gross receipts must be used for the organization's charitable purpose. The regulation maintains the requirement currently established in 11 VAC 15-40 that a minimum of 10 percent of an organization's gross receipts from all other charitable gaming must be used for the organization's charitable purpose.

The regulation establishes provisions with which social organizations must comply to obtain and maintain an authorization from VDACS to conduct electronic gaming, including (i) required documents that must be provided to VDACS, (ii) prohibited acts, and (iii) recordkeeping and bank account requirements. The regulation also establishes the process by which VDACS may suspend, revoke, or reinstate authorizations to conduct electronic gaming. The regulation establishes a fee of \$200 to obtain an authorization to conduct electronic gaming in addition to the required charitable gaming permit fee. A qualified organization that leases from a social organization to conduct electronic gaming must obtain a charitable gaming permit prior to conducting electronic gaming.

The regulation prescribes the conditions under which a social organization may lease its premises to a qualified organization to conduct electronic gaming, including required documentation and requirements for the lease agreement between the social organization and qualified organization that intends to lease the social organization's premises to conduct charitable gaming. The lease agreement must be provided to VDACS for review.

In accordance with Va. Code § 18.2-340.31, the regulation establishes the audit and administration fee at one-half of one percent of an organization's electronic gaming adjusted gross receipts. This fee is in addition to the fee of one-quarter of one percent required by Va. Code § 18.2-340.31(D).

The regulation establishes a late fee to be assessed on an electronic gaming manufacturer that fails to submit required reports.

VDACS held a 30-day public comment period on the proposed regulation in accordance with Chapters 722 and 767 of the 2022 Acts of Assembly from October 24, 2022, to November 23, 2022. Although not required, VDACS held a virtual public hearing on the proposed regulation on November 15, 2022, from 10:00 a.m. until 12:00 p.m. During the 30-day public comment period, VDACS received over 470 comments on the proposed regulation. The comments and VDACS's responses are summarized below.

- Most commenters believed the requirement that organizations use 40 percent of their electronic gaming adjusted gross receipts towards their stated charitable purpose was too high; the suggested percentage of charitable gaming proceeds that commenters proposed should be used towards the organization's charitable cause ranged from zero to 30 percent. VDACS lowered this percentage to 20 percent in the final regulation. VDACS notes that this requirement is not a tax, as many commenters labeled it. This percentage is the amount of charitable gaming revenue that a charitable organization must use or donate in furtherance of its charitable cause.
- Most commenters wanted VDACS to allow salaries and wages of employees whose primary responsibility is to provide services for the principal benefit of the organization's members to qualify as a reasonable and proper business expense for which charitable gaming revenue may be used. VDACS has amended the regulation to allow these salaries and wages to qualify as a reasonable and proper business expense.
- Many comments requested that expenses related to the acquisition, construction, maintenance, or repair of any interest in real property involved in the operation of the organization and used for lawful religious, charitable, community, or educational purposes be counted toward the organization's use of proceeds requirement. Chapter 553 of the 2022 Acts of Assembly removed this allowance from Va. Code § 18.2-340.33; therefore, VDACS has no authority or discretion to allow these expenses to qualify as an organization's use of its proceeds for its charitable purpose.

- The proposed regulation required a game manager to be present anytime electronic gaming was being conducted at a location. VDACS amended the proposed regulation to require that a game manager be able to respond within 30 minutes of a request by the department for electronic gaming conducted in the private area of a social organization. However, a charitable organization that leases the public space of a social organization must ensure that the charitable organization’s representative is present when conducting electronic gaming.
- Many organizations requested that they be allowed to use electronic funds transfer methods to purchase charitable gaming supplies and to make charitable contributions. VDACS has modified the proposed regulation to allow electronic funds transfer for these purposes.
- Many comments requested that VDACS expand the requirement that all electronic gaming receipts be deposited no more than 48 hours following an electronic gaming session. VDACS has modified the regulation to allow the organization to make deposits of electronic gaming receipts every seven days.
- The proposed regulations required that an organization maintain separate bank accounts, one for electronic gaming and one for all other forms of charitable gaming. VDACS has determined separate accounts are necessary to ensure that the receipts from electronic gaming are separate from receipts from other charitable gaming. A separate bank account for electronic gaming will ensure adequate control of electronic gaming revenue and ensure proper allocation of use of proceeds since electronic gaming revenue is subject to a different use of proceeds requirement than revenue from other charitable gaming activities. VDACS does not believe the separate bank account requirement places an undue burden on the organization that conducts electronic gaming and has, therefore, not modified this requirement.
- VDACS removed the automatic suspension or revocation of an authorization to conduct electronic gaming when an organization fails to meet the required use of proceeds percentage, and instead provided the agency discretionary authority to suspend or revoke an authorization in these circumstances.
- One comment asserted that VDACS unintentionally failed to comply with the economic impact analysis requirements of the Virginia Administrative Process Act (APA). This regulatory action is exempt from the APA pursuant to Va. Code § 2.2-4006(A)(4)(a) and the second enactment of Chapters 722 and 767 of the 2022 Acts of Assembly; however, this action is subject to the requirements established in the Procedures for the Office of Regulatory Management for the Review of State Agency Regulations in furtherance of Executive Order 19 (2022). As such, the agency prepared and submitted the required Office of Regulatory Management Economic Review Form, which is distinct from the analysis required by Section 2.2-4007.04 of the APA.

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, internal staff review, 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.”

Chapters 554 and 609 of the 2022 Acts of Assembly authorize the Commissioner of Agriculture and Consumer Services to prescribe regulations and conditions under which charitable gaming shall be conducted in the Commonwealth. Previously, the authority to adopt regulations regarding the conduct of charitable gaming rested with the Board.

Chapters 722 and 767 of the 2022 Acts of Assembly required VDACS to promulgate regulations regarding (i) the authorization of electronic gaming by social organizations, (ii) the conditions under which a social organization may lease their premises to a qualified organization for the purpose of conducting electronic gaming, (iii) the predetermined percentage of adjusted gross receipts from electronic gaming that each organization must use in support of its charitable purpose, (iv) a schedule of late fees for electronic gaming manufacturers that fail to submit required reports timely. Chapters 722 and 767 also include an enactment clause that exempt the initial adoption of these regulations from APA, except that there shall be an opportunity for public comment.

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 December 27, 2022, the Commissioner of Agriculture and Consumer Services adopted as final 11 VAC 20-20, *Charitable Gaming Regulations*.