



# VIRGINIA

## REGISTER OF REGULATIONS

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# VIRGINIA REGISTER INFORMATION PAGE

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**THE VIRGINIA REGISTER OF REGULATIONS** is an official state publication issued every other week throughout the year. Indexes are published quarterly, and are cumulative for the year. The *Virginia Register* has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in the *Virginia Register*. In addition, the *Virginia Register* is a source of other information about state government, including petitions for rulemaking, emergency regulations, executive orders issued by the Governor, and notices of public hearings on regulations.

## **ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS**

Unless exempted by law, an agency wishing to adopt, amend, or repeal regulations must follow the procedures in the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Typically, this includes first publishing 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 proposed regulation 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 of Regulations 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 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 the final regulation contains changes made after publication of the proposed regulation that 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*. Pursuant to § 2.2-4007.06 of the Code of Virginia, any person may request that the agency solicit additional public comment on certain changes made after publication of the proposed regulation. The agency shall suspend the regulatory process for 30 days upon such request from 25 or more individuals, 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 alternative to the standard process set forth in the Administrative Process Act for regulations deemed by the Governor to be noncontroversial. To use this process, the Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations become effective on the date noted in the regulatory action if fewer than 10 persons object to using the process in accordance with § 2.2-4012.1.

## **EMERGENCY REGULATIONS**

Pursuant to § 2.2-4011 of the Code of Virginia, an agency may adopt emergency regulations if necessitated by an emergency situation or when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or fewer from its enactment. In either situation, approval of the Governor is required. The emergency regulation is effective upon its filing with the Registrar of Regulations, unless a later date is specified per § 2.2-4012 of the Code of Virginia. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under the circumstances noted in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Virginia Register* and are on the Register of Regulations website at [register.dls.virginia.gov](http://register.dls.virginia.gov).

During the time the emergency regulation is in effect, the agency may proceed with the adoption of permanent regulations in accordance with the Administrative Process Act. 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. **34:8 VA.R. 763-832 December 11, 2017**, refers to Volume 34, Issue 8, pages 763 through 832 of the *Virginia Register* issued on December 11, 2017.

*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.

Members of the Virginia Code Commission: **John S. Edwards**, Chair; **Jennifer L. McClellan**; **Ward L. Armstrong**; **Nicole Cheuk**; **Rita Davis**; **Leslie L. Lilley**; **Christopher R. Nolen**; **Don L. Scott, Jr.**; **Charles S. Sharp**; **Marcus B. Simon**; **Samuel T. Towell**; **Malfourd W. Trumbo**.

Staff of the Virginia Register: **Karen Perrine**, Registrar of Regulations; **Anne Bloomsburg**, Assistant Registrar; **Nikki Clemons**, Regulations Analyst; **Rhonda Dyer**, Publications Assistant; **Terri Edwards**, Senior Operations Staff Assistant.

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# PUBLICATION SCHEDULE AND DEADLINES

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This schedule is available on the Virginia Register of Regulations website (<http://register.dls.virginia.gov>).

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## December 2020 through December 2021

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
37:8	November 16, 2020 ( <b>Monday</b> )	December 7, 2020
37:9	December 2, 2020	December 21, 2020
37:10	December 14, 2020 ( <b>Monday</b> )	January 4, 2021
37:11	December 28, 2020 ( <b>Monday</b> )	January 18, 2021
37:12	January 13, 2021	February 1, 2021
37:13	January 27, 2021	February 15, 2021
37:14	February 10, 2021	March 1, 2021
37:15	February 24, 2021	March 15, 2021
37:16	March 10, 2021	March 29, 2021
37:17	March 24, 2021	April 12, 2021
37:18	April 7, 2021	April 26, 2021
37:19	April 21, 2021	May 10, 2021
37:20	May 5, 2021	May 24, 2021
37:21	May 19, 2021	June 7, 2021
37:22	June 2, 2021	June 21, 2021
37:23	June 16, 2021	July 5, 2021
37:24	June 30, 2021	July 19, 2021
37:25	July 14, 2021	August 2, 2021
37:26	July 28, 2021	August 16, 2021
38:1	August 11, 2021	August 30, 2021
38:2	August 25, 2021	September 13, 2021
38:3	September 8, 2021	September 27, 2021
38:4	September 22, 2021	October 11, 2021
38:5	October 6, 2021	October 25, 2021
38:6	October 20, 2021	November 8, 2021
38:7	November 3, 2021	November 22, 2021
38:8	November 15, 2021 ( <b>Monday</b> )	December 6, 2021
38:9	December 1, 2021	December 20, 2021

\*Filing deadlines are Wednesdays unless otherwise specified.

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# PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

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## TITLE 9. ENVIRONMENT

### STATE AIR POLLUTION CONTROL BOARD

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Air Pollution Control Board conducted a periodic review and a small business impact review of **9VAC5-30, Ambient Air Quality Standards**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated October 5, 2020, to support this decision.

The regulation has been effective in achieving its specific and measurable goals, which are as follows:

1. To protect public health and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.
2. To define levels of air quality that, allowing an adequate margin of safety, are necessary to protect the public health and safety.
3. To define more stringent levels of air quality that are necessary to protect the public welfare from any known or anticipated adverse effects associated with the presence of air pollutants in the ambient air.

The regulation is clearly written and easily understandable by the individuals and entities affected.

This regulation is effective in meeting its goals; therefore, the regulation is being retained without amendment.

This regulation continues to be needed. It provides the necessary requirements to ensure that Virginia standards for air quality are the most cost-effective means of fulfilling ongoing state and federal requirements for air quality.

One comment was received requesting the regulation be revised to include standards that are more stringent than current state and federal standards. The agency believes the standards established by regulation are protective of human health and the environment.

The regulation's level of complexity is appropriate to ensure that the regulated entities are able to meet their legal mandates as efficiently and cost-effectively as possible.

This regulation does not overlap, duplicate, or conflict with any state law or other state regulation.

This regulation was last amended in November 2016.

Over time, it generally becomes less expensive to characterize, measure, and mitigate the regulated pollutants that contribute to poor air quality. This regulation continues to provide the most efficient and cost-effective means to

determine the level and impact of excess emissions and to control those excess emissions.

The department, through examination of the regulation and relevant public comments, has determined that the regulatory requirements currently minimize the economic impact of emission control regulations on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

Contact Information: Gary E. Graham, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 689-4103, FAX (804) 698-4178, or email [gary.graham@deq.virginia.gov](mailto:gary.graham@deq.virginia.gov).

### STATE WATER CONTROL BOARD

#### Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **9VAC25-193, Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Concrete Products Facilities**. The review will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether this regulation should be repealed, 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.

Public comment period begins November 9, 2020, and ends November 30, 2020.

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 both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Melissa Porterfield, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4178, or email [melissa.porterfield@deq.virginia.gov](mailto:melissa.porterfield@deq.virginia.gov).

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# REGULATIONS

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

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## Symbol Key

Roman type indicates existing text of regulations. Underscored language indicates proposed new text. Language that has been stricken indicates proposed text for deletion. Brackets are used in final regulations to indicate changes from the proposed regulation.

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## TITLE 1. ADMINISTRATION

### STATE BOARD OF ELECTIONS

#### Final Regulation

**REGISTRAR'S NOTICE:** The State Board of Elections is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

Title of Regulation: **1VAC20-40. Voter Registration (repealing 1VAC20-40-90).**

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

Effective Date: November 27, 2020.

Agency Contact: Samantha Buckley, Policy Analyst II, Department of Elections, 1100 Bank Street, Richmond, VA 23219, or email [samantha.buckley@elections.virginia.gov](mailto:samantha.buckley@elections.virginia.gov).

#### Summary:

*Chapter 1064 of the 2020 Acts of Assembly removes the requirement for the Department of Elections to produce and distribute voter photo identification cards. This action repeals the associated regulation.*

#### **1VAC20-40-90. ~~Voter photo identification cards.~~ (Repealed.)**

~~A. Pursuant to the requirements of § 24.2-404 of the Code of Virginia, a voter who does not have an acceptable form of identification listed in § 24.2-643 of the Code of Virginia may obtain a voter photo identification card free of charge through any general registrar's office or the Department of Elections if:~~

- ~~1. The voter signs a completed Voter Photo Identification Card Application;~~
- ~~2. The voter's information is correct in the voter registration system;~~
- ~~3. A photograph of the voter is taken by a general registrar or authorized personnel; and~~
- ~~4. The voter's signature is captured by a general registrar or authorized personnel.~~

~~B. Any voter applying for the voter photo identification card whose record in the voter registration system is materially inaccurate or incomplete will be issued a card after the~~

~~information has been corrected and updated within the system.~~

~~C. A general registrar's office shall provide a temporary identification document to any eligible voter whose application for the voter photo identification card is made after the deadline for registering to vote in the next most proximate election in which the voter is eligible to vote. A temporary identification document may only be issued by the general registrar's office in the locality where the voter is registered for any voter whose Voter Photo Identification Card Application is received after election day and through the conclusion of the period to submit a copy of an identification card provided within § 24.2-653 A of the Code of Virginia. The temporary identification document shall be considered an acceptable form of identification and is valid for 30 days after its issuance.~~

~~D. A person who is unregistered may apply for a voter photo identification card and will be provided with the card upon approval of the submitted application for voter registration. A person who is unregistered shall not be provided with a temporary identification document.~~

~~E. General registrars and the Department of Elections may solicit applicants for voter photo identification cards at locations other than their offices. General registrars shall accept applications and produce temporary identification documents at all permanent satellite offices established within their locality.~~

~~F. A voter's inclusion in the Department of Motor Vehicle's database will not exclude such person from being eligible to receive a voter photo identification card so long as the person affirms he is not in possession of the identification document or the identification document could not otherwise be considered valid. A voter's signature upon the Voter Photo Identification Card Application shall be considered sufficient affirmation.~~

~~G. A voter may request a replacement voter photo identification card if (i) the original card is damaged, lost, or stolen; (ii) the voter's appearance has changed substantially; or (iii) eight years have elapsed since the issuance date upon the card.~~

~~H. Applications for voter photo identification cards shall be (i) considered "registration records," as defined in § 24.2-101 of the Code of Virginia; (ii) only available for public inspection as provided in § 24.2-444 C of the Code of Virginia after redaction of the social security number and day and month of the birth date; and (iii) retained by the registrar~~

~~as provided by subdivision 8 of § 24.2-114 of the Code of Virginia and the applicable Library of Virginia retention schedule for local election records.~~

VA.R. Doc. No. R21-6482; Filed October 20, 2020, 12:50 p.m.

**Final Regulation**

**REGISTRAR'S NOTICE:** The State Board of Elections is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

**Title of Regulation:** 1VAC20-60. Election Administration (amending 1VAC20-60-50).

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

**Effective Date:** October 26, 2020.

**Agency Contact:** Daniel Davenport, Policy Analyst, Department of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 593-2270, or email [daniel.davenport@elections.virginia.gov](mailto:daniel.davenport@elections.virginia.gov).

**Summary:**

*The amendments provide an alternative secure process for dealing with overfull optical scan ballot containers at the general registrar's office and satellite office locations.*

**1VAC20-60-50. Overfull optical scan ballot container.**

A. If an optical scan reader in use in a registrar's office or a polling place or a central absentee precinct malfunctions because the connected ballot container includes too many ballots, election officials may open the ballot container and empty the ballots with the following safeguards:

1. The optical scan ballot container shall be opened in plain sight of any authorized party representatives or other observers and, once the ballots have been deposited into an auxiliary ballot container, both ballot containers shall remain in plain sight in the polling place.
2. Any such auxiliary ballot container used shall meet the requirements of § 24.2-623 of the Code of Virginia.
3. In a general, special, or dual-party primary election, a minimum of two officers of election, not representing the same political party, shall execute such a transfer of ballots. In a single-party primary election, the transfer shall be conducted by a minimum of two officers of election who may represent the same party.

B. In the event that an optical scan reader in a general registrar's office or satellite location malfunctions because the connected ballot container includes too many ballots or there is no storage for ballots, election officials may follow either the process outlined in subsection A of this section or the following alternative procedure:

1. The general registrar, assistant registrars, or officers of election may remove the overflow ballots from the connected ballot container and place them in a secure container.

2. That container will be sealed or locked by the general registrar, assistant registrars, or officers of election with their signatures, the date, and a record of the number of ballots that have been secured in that container.

3. The sealed or locked container shall be immediately transported to the general registrar's office by either the officers of election, the general registrar, or an assistant general registrar.

4. At the general registrar's office, the container shall be stored in a secure, locked location that is away from the access or view of the public and that is accessible only to the general registrar or assistant registrars.

VA.R. Doc. No. R21-6480; Filed October 22, 2020, 10:39 a.m.

**Final Regulation**

**REGISTRAR'S NOTICE:** The State Board of Elections is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

**Title of Regulation:** 1VAC20-60. Election Administration (adding 1VAC20-60-70).

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

**Effective Date:** October 26, 2020.

**Agency Contact:** Daniel Davenport, Policy Analyst, Department of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 593-2270, or email [daniel.davenport@elections.virginia.gov](mailto:daniel.davenport@elections.virginia.gov).

**Summary:**

*The action establishes logic and accuracy testing requirements for electronic pollbooks.*

**1VAC20-60-70. Mandatory logic and accuracy testing for electronic pollbooks.**

All localities must perform logic and accuracy testing on their electronic pollbooks (EPBs) and certify to the Department of Elections that testing was completed by noon on the day prior to any election. This testing must confirm that the EPBs will provide promptly an accurate and secure record of those who have voted pursuant to § 24.2-611 of the Code of Virginia. Specifically, the logic and accuracy testing must do the following:

1. The logic and accuracy testing must confirm that the appropriate election-specific data files were downloaded to the electronic pollbook. In dual primary elections, localities must show that applicable voter registration files

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# Regulations

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were downloaded from both political parties so that the combined data files contain all voters and all absentee ballot information for voters eligible to participate in the election.

2. The logic and accuracy testing must confirm that the electronic pollbooks for each election are set to the correct type of election being held in that jurisdiction. For example, the data on the electronic pollbook must correlate with whether the upcoming election is a primary (single or dual) or general election.

3. The logic and accuracy testing must show that all precincts will provide the correct ballot styles to voters in the precincts. The locality must provide certification to the Department of Elections that all EPBs being used in an election have been tested in compliance with this section.

If a locality repeatedly fails to perform logic and accuracy testing on their electronic pollbooks, then the Department of Elections and State Board of Elections may disallow the locality's use of electronic pollbooks in subsequent elections.

VA.R. Doc. No. R21-6477; Filed October 22, 2020, 11:39 a.m.

## Final Regulation

**REGISTRAR'S NOTICE:** The State Board of Elections is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

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

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

**Effective Date:** October 23, 2020.

**Agency Contact:** Daniel Davenport, Policy Analyst, Department of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 593-2270, or email [daniel.davenport@elections.virginia.gov](mailto:daniel.davenport@elections.virginia.gov).

### Summary:

*The amendments clarify when a general registrar is required to count a returned mail absentee ballot with a missing or illegible postmark. Changes since the proposed regulation (i) add the use of an Intelligent Mail barcode and, if necessary, the sworn oath on the ballot's B envelope to determine the ballot's submission date and (ii) remove the definition of "postmark."*

### 1VAC20-70-20. Material omissions from absentee ballots.

A. Pursuant to the requirements of § 24.2-706 of the Code of Virginia, a timely received absentee ballot contained in an Envelope B shall not be rendered invalid if it contains an error or omission not material to its proper processing.

B. The following omissions are always material and any Envelope B containing such omissions shall be rendered invalid if any of the following exists:

1. Except as provided in subdivisions C 2 and 3 of this section, the voter did not include his full first name;
2. The voter did not provide his last name;
3. The voter omitted his generational suffix when one or more individuals with the same name are registered at the same address, and it is impossible to determine the identity of the voter;
4. The voter did not provide his house number and street name or his rural route address;
5. The voter did not provide either his city or zip code;
6. The voter did not sign Envelope B; or
7. The voter's witness did not sign Envelope B.

C. The ballot shall not be rendered invalid if on the Envelope B:

1. The voter included his full name in an order other than "last, first, middle";
2. The voter used his first initial instead of his first full name, so long as the voter provided his full middle name;
3. The voter provided a derivative of his legal name as his first or middle name (e.g., "Bob" instead of "Robert");
4. If the voter provided his first name and last name, the voter did not provide a middle name or a middle initial;
5. The voter did not provide his residential street identifier (Street, Drive, etc.);
6. The voter did not provide a zip code, so long as the voter provided his city;
7. The voter did not provide his city, so long as the voter provided his zip code;
8. The voter omitted the date, or provided an incorrect or incomplete date on which he signed Envelope B; or
9. The ballot is imperfectly sealed within Envelope B, provided that the outer envelope with Envelope B and the ballot arrived sealed.
10. The illegibility of a voter's or witness' signature on an Envelope B shall not be considered an omission or error.

D. For the purposes of this regulation, "city" may include the voter's locality, town, or any acceptable mailing name for the five-digit zip code of the voter's residence.

E. Whether an error or omission on an Envelope B not specifically addressed by this regulation is material and shall render the absentee ballot invalid shall be determined by a majority of the officers of the election present.

F. ~~[ The ballot shall not be rendered invalid based on a missing or illegible postmark if the~~ If a ] ballot is received by the general registrar's office by noon on the third day after the election pursuant to § 24.2-709 of the Code of Virginia ~~[ and but ] the return envelope [ does not have has ] a [ missing or illegible ] postmark, [ or the postmark is missing or illegible~~ the General Registrar shall refer to the Intelligent Mail barcode on the return envelope to determine whether the ballot was mailed on or before the date of the relevant election.

1. If there is evidence from the Intelligent Mail barcode that the ballot was mailed after the close of polls for the relevant election, the ballot shall be rendered invalid.

2. If there is no evidence from the Intelligent Mail barcode that the ballot was mailed after the close of polls for the relevant election, including if the Intelligent Mail barcode was not scanned, the General Registrar shall refer to the date on which the oath on Envelope B was signed.

a. If the oath on Envelope B was signed on or before the date of the relevant election, the ballot shall not be rendered invalid due to receipt after the close of polls by the General Registrar.

b. If the oath on Envelope B was signed after the date of the relevant election, the ballot shall be rendered invalid. ]

[ G. For the purposes of this chapter, "postmark" means an official postmark of the United States Postal Service (USPS) or any other official indicia of confirmation of mailing by the USPS or other postal or delivery service. ]

VA.R. Doc. No. R21-6478; Filed October 21, 2020, 11:52 a.m.

**Final Regulation**

**REGISTRAR'S NOTICE:** The State Board of Elections is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

**Title of Regulation: 1VAC20-70. Absentee Voting (adding 1VAC20-70-60).**

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

**Effective Date:** October 23, 2020.

**Agency Contact:** David Nichols, Director of Election Services, Department of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8952, or email [david.nichols@elections.virginia.gov](mailto:david.nichols@elections.virginia.gov).

**Summary:**

*The regulation establishes requirements for satellite offices to be "adequate facilities" as provided in § 24.2-701.2 of the Code of Virginia, including which physical protections*

*and cyber security protections are necessary to make voting systems safe and secure at satellite offices. The regulation also requires that each locality (i) submit a list of all expected satellite office locations and a readiness checklist for each location and (ii) conduct an internet connectivity validation test for each location and submit confirmation of connectivity.*

**1VAC20-70-60. Security requirements for absentee satellite offices.**

A. To guarantee that their facilities are adequate for the protection of all election materials and voting systems, each locality that operates a satellite office pursuant to § 24.2-701.2 of the Code of Virginia must comply with the following:

1. Each satellite office must maintain an adequate number of ballots of each ballot style from all precincts within its locality.

2. Each satellite office must balance its voter credit records nightly by reconciling the public count with the electronic pollbook count at the end of each day.

3. Each satellite office must have reliable internet connectivity for the entire in-person absentee voting period. Here, "reliable" means that the connection meets the National Institute of Standards and Technology standards and that the likelihood of connectivity interruptions is low.

4. Computer systems at the satellite office locations will be directly connected to the Virginia Electronic Registration Information System (VERIS). Electronic pollbooks connected to the cloud or to a virtual private network (VPN) will be linked to each other across various satellite office locations as well as the General Registrar's office. Voter credit will be uploaded into VERIS at the end of each day, and updated files will be uploaded at the beginning of each day to the electronic pollbooks.

5. Each satellite office must be equipped such that it can (i) confirm that any attempted voter is eligible to vote in that election; (ii) confirm that any attempted voter has not previously voted in the election; and (iii) record each voter's participation in the election in real time.

B. To comply with these requirements, localities must submit a list of all expected satellite office locations no more than 90 days before and no less than 60 days before election day. Additionally, each locality must complete a readiness checklist for each satellite office location and submit the completed readiness checklist to the Department of Elections. The readiness checklist will be promulgated by the Department of Elections. The Department of Elections may deny a satellite office's ability to connect to VERIS or an electronic pollbook if a locality fails to timely complete the readiness checklist.

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C. No later than 60 days before election day, each locality will provide the final address of each of its satellite offices to the Department of Elections. Eight days before absentee voting begins at a satellite location, the locality will conduct a test to validate internet connectivity for that location and submit confirmation of connectivity to the Department of Elections. Continued failure means that the Department of Elections will not grant the satellite office access to VERIS or authorize the use of a connected electronic pollbook. A satellite office that cannot meet these internet connectivity standards before absentee voting begins at that office may apply for an emergency location change under subsection F of § 24.2-701.2 of the Code of Virginia.

VA.R. Doc. No. R20-6377; Filed October 21, 2020, 9:57 a.m.

## Final Regulation

**REGISTRAR'S NOTICE:** The State Board of Elections is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

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

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

**Effective Date:** October 21, 2020.

**Agency Contact:** David Nichols, Director of Election Services, Department of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8952, or email [david.nichols@elections.virginia.gov](mailto:david.nichols@elections.virginia.gov).

### Summary:

*The amendments establish requirements for absentee ballot envelopes.*

### **1VAC20-70-70. Mandatory mailing elements on absentee ballot envelopes.**

A. For the purposes of this regulation, the following words and terms have the following meanings:

"Outer absentee envelope" means the envelope containing the materials referred to in § 24.2-706 B 3 of the Code of Virginia.

"Special insignia" and "insignia" mean the Official Election Mail logo registered by the United States Postal Service with the United States Patent and Trademark Office.

B. All general registrars must place Intelligent Mail barcodes on both the outer absentee envelope and on the return envelope.

C. Both the outer absentee envelope and return envelope must include a special insignia to identify Official Election Mail. The Department of Elections will ensure the proper

insignia is available to the general registrars of each county and city.

VA.R. Doc. No. R21-6479; Filed October 21, 2020, 9:27 a.m.

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## TITLE 9. ENVIRONMENT

### VIRGINIA WASTE MANAGEMENT BOARD

#### Forms

**REGISTRAR'S NOTICE:** Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

**Titles of Regulations:** 9VAC20-81. Solid Waste Management Regulations.

9VAC20-120. Regulated Medical Waste Management Regulations.

**Contact Information:** Debra Harris, Policy and Planning Specialist, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 698-4209, email [debra.harris@deq.virginia.gov](mailto:debra.harris@deq.virginia.gov).

FORMS (9VAC20-81)

[Annual Report QA/QC Submission Checklist, DEQ Form ARSC-01 \(rev. 7/2011\)](#)

~~Solid Waste Management Facility Permit Applicant's Disclosure Statement, DEQ Form DISC-01 (rev. 8/2018)~~

~~Solid Waste Management Facility Permit Applicant - Key Personnel Disclosure Statement, DEQ Form DISC-02 (rev. 8/2018)~~

~~Solid Waste Management Facility Disclosure Statement - Quarterly Update, DEQ Form DISC-03 (rev. 8/2018)~~

[Solid Waste Management Facility Permit Applicant's Disclosure Statement, DEQ Form DISC-01 \(rev. 9/2020\)](#)

[Solid Waste Management Facility Permit Applicant - Key Personnel Disclosure Statement, DEQ Form DISC-02 \(rev. 9/2020\)](#)

[Solid Waste Management Facility Disclosure Statement - Quarterly Update, DEQ Form DISC-03 \(rev. 9/2020\)](#)

[Request for Certification \(Local Government\), DEQ Form SW-11-1 \(rev. 6/2016\)](#)

[Special Waste Disposal Request, DEQ Form SWDR \(rev. 8/2018\)](#)

Solid Waste Part A Application, DEQ Form SW PTA (rev. 3/2011)

Solid Waste Disposal Facility Part B Application, DEQ Form SW PTB (rev. 3/2011)

Solid Waste Information and Assessment Program Reporting Table, Form DEQ 50-25 with Statement of Economic Benefits Form and Instructions (rev. 12/2018)

Exempt Yard Waste Composting Annual Report, DEQ Form YW-2 (rev. 7/2011)

Exempt Yard Waste Compost Facility - Notice of Intent and Certification, DEQ Form YW-3 (rev. 7/2011)

Exempt Yard Waste & Herbivorous Manures Compost Facility - Notice of Intent and Certification, DEQ Form YW-4 (rev. 7/2011)

FORMS (9VAC20-120)

~~Solid Waste Management Facility Permit Applicant's Disclosure Statement (Cover Sheet), DEQ Form DISC-01 (rev. 8/2018)~~

~~Solid Waste Management Facility Permit Applicant's Disclosure Statement - Key Personnel Statement, DEQ Form DISC-02 (rev. 8/2018)~~

[Solid Waste Management Facility Permit Applicant's Disclosure Statement, DEQ Form DISC-01 \(rev. 9/2020\)](#)

[Solid Waste Management Facility Permit Applicant's Disclosure Statement - Key Personnel Statement, DEQ Form DISC-02 \(rev. 9/2020\)](#)

Local Government Certification Request, DEQ Form CERT-01 (rev. 8/2018)

Petition for Evaluation and Approval of Regulated Medical Waste Treatment Technology, DEQ Form RMWTP-01 (rev. 8/2018)

VA.R. Doc. No. R21-6541; Filed October 13, 2020, 4:10 p.m.

**VIRGINIA WASTE MANAGEMENT BOARD**

**Final Regulation**

**REGISTRAR'S NOTICE:** The Virginia Waste Management Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Virginia Waste Management Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** **9VAC20-110. Regulations Governing the Transportation of Hazardous Materials (amending 9VAC20-110-110).**

**Statutory Authority:** §§ 10.1-1450 and 44-146.30 of the Code of Virginia; 49 USC §§ 1809 through 1810; 49 CFR Parts 107, 170 through 180, 383, and 390 through 397.

**Effective Date:** December 9, 2020.

**Agency Contact:** Leslie A. Romanchik, Environmental Manager II, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4129, or email [leslie.romanchik@deq.virginia.gov](mailto:leslie.romanchik@deq.virginia.gov).

**Summary:**

*The amendment updates the federal regulations from Title 49 of the Code of Federal Regulations that are incorporated by reference into Virginia's Regulations Governing the Transportation of Hazardous Materials (9VAC20-110) to the latest version as published on October 1, 2019.*

Part III

Compliance with Federal Regulations

**9VAC20-110-110. Compliance.**

A. Every person who transports or offers for transportation hazardous materials within or through the Commonwealth of Virginia shall comply with the federal regulations governing the transportation of hazardous materials promulgated by the U.S. Secretary of Transportation with amendments promulgated as of October 1, ~~2018~~ 2019, pursuant to the Hazardous Materials Transportation Act, and located at Title 49 of the Code of Federal Regulations as set forth below and which are incorporated in these regulations by reference:

1. Special Permits. 49 CFR Part 107, Subpart B.
2. Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers, Assemblers, Repairers, Inspectors, Testers, and Design Certifying Engineers in 49 CFR Part 107, Subpart F.
3. Registration of Persons Who Offer or Transport Hazardous Materials in 49 CFR Part 107, Subpart G.
4. Hazardous Materials Regulations in 49 CFR Parts 171 through 177.
5. Specifications for Packagings in 49 CFR Part 178.
6. Specifications for Tank Cars in 49 CFR Part 179.
7. Continuing Qualification and Maintenance of Packagings in 49 CFR Part 180.
8. Motor Carrier Safety Regulations in 49 CFR Parts 390 through 397.

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~~B. The references to and incorporation by reference of 49 CFR Part 390 into this chapter includes the compliance date extension as promulgated by the U.S. Department of Transportation's Federal Motor Carrier Safety Administration (83 FR 62505, December 4, 2018).~~

VA.R. Doc. No. R21-6547; Filed October 16, 2020, 10:31 a.m.

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## TITLE 11. GAMING

### CHARITABLE GAMING BOARD

#### Proposed Regulation

**REGISTRAR'S NOTICE:** The Charitable Gaming Board is claiming an exemption from the Administrative Process Act in accordance with the second enactment of Chapter 982 of the 2020 Acts of Assembly, which exempts the actions of the board relating to the adoption of regulations necessary to implement the provisions of the act; however, the board is required to provide an opportunity for public comment on any such regulations prior to their adoption.

**Title of Regulation:** 11VAC15-50. Texas Hold'em Poker Tournament Regulations (adding 11VAC15-50-10 through 11VAC15-50-170).

**Statutory Authority:** §§ 18.2-340.19 and 18.2-340.28:2 of the Code of Virginia.

**Public Hearing Information:** No public hearings are scheduled.

**Public Comment Deadline:** December 9, 2020.

**Agency Contact:** Michael Menefee, Program Manager, Charitable and Regulatory Programs, Department of Agriculture and Consumer Services, 102 Governor Street, Richmond, VA 23219, telephone (804) 786-3983, FAX (804) 371-7479, or email [michael.menefee@vdacs.virginia.gov](mailto:michael.menefee@vdacs.virginia.gov).

#### Summary:

*Pursuant to Chapter 982 of the 2020 Acts of Assembly, the proposed action establishes regulations for Texas Hold'em poker tournaments, including requirements for (i) a qualified organization to obtain a permit to conduct a Texas Hold'em poker tournament; (ii) an operator to obtain a registration to administer a Texas Hold'em poker tournament on behalf of a qualified organization; (iii) recordkeeping, use of proceeds, and fees to be paid by a qualified organization to an operator; and (iv) participation in Texas Hold'em poker tournaments, such as conduct of poker games, use of mechanical equipment, and penalties.*

## CHAPTER 50 TEXAS HOLD'EM POKER TOURNAMENT REGULATIONS

### 11VAC15-50-10. Definitions.

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

"Administer" means the activities by an operator that are associated with production of a poker tournament.

"Agent" means any person authorized by an operator, supplier, or landlord to act for or in place of such operator, supplier, or landlord.

"Charitable Gaming Statute" means Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 of the Code of Virginia.

"Charitable host representative" means a person who (i) is a bona fide member, as defined in § 18.2-340.16 of the Code of Virginia, of the qualified organization; (ii) meets all other requirements for bona fide members set forth in the Charitable Gaming Statute and this chapter; and (iii) is responsible for the oversight and execution of the written contract between the qualified organization and operator during the poker tournament.

"Conduct" means the actions by a qualified organization associated with the provision of a poker tournament during and immediately before or after the permitted activity, which may include (i) dealing playing cards, (ii) distributing poker chips, (iii) distributing prizes, and (iv) any other services provided by a volunteer game worker or volunteer dealer.

"Fiscal year" means the 12-month period beginning January 1 and ending December 31 of any given year.

"Game manager" means a person who (i) is a bona fide member, as defined in § 18.2-340.16 of the Code of Virginia, of the qualified organization that is managing, operating, and conducting the poker tournament; (ii) meets all other requirements for bona fide members set forth in the Charitable Gaming Statute and this chapter; and (iii) is responsible for the operation of the qualified organization's poker tournament.

"Immediate family" means a person's spouse, parent, child, sibling, grandchild, grandparent, mother or father-in-law, or stepchild.

"Interested person" means (i) the president or chief executive officer, treasurer or chief financial officer, an officer, a game manager, or charitable host representative of any qualified organization that is exempt or is a permit applicant or holds a permit to conduct Texas Hold'em poker tournaments; (ii) the owner, partner, president or chief executive officer, treasurer or chief financial officer, or tournament manager of any operator; or (iii) the owner,

director, officer, or partner of an entity engaged in supplying charitable gaming supplies to a qualified organization.

"IRS" means the U.S. Internal Revenue Service or its successor.

"Landlord" means any person or such person's agent, firm, association, organization, partnership, corporation, employee, or immediate family member thereof, who owns or leases any premises devoted in whole or in part for use to hold a poker tournament and any person residing in the same household as a landlord.

"Manufacturer" means a person that assembles from raw materials or subparts a completed piece of charitable gaming equipment or supplies. "Manufacturer" also means a person who or an entity that modifies, converts, adds, or removes parts to or from charitable gaming equipment or supplies.

"Operator" means a person not affiliated with a qualified organization that has registered with the department in accordance with 11VAC15-50-40 to administer poker tournaments.

"Poker game" means a Texas Hold'em poker game as defined in § 18.2-340.16 of the Code of Virginia.

"Poker tournament" means a Texas Hold'em poker tournament as defined in § 18.2-340.16 of the Code of Virginia.

"Remuneration" means payment in cash or the provision of anything of value for goods provided or services rendered.

"Tournament manager" means a person who is employed or contracted by an operator to administer poker tournaments for a qualified organization.

"Use of proceeds" means the use of funds derived by a qualified organization from its charitable gaming activities that are disbursed for those lawful religious, charitable, community, or educational purposes. "Use of proceeds" includes expenses relating to the acquisition, construction, maintenance, or repair of any interest in the real property involved in the operation of the qualified organization and used for lawful religious, charitable, community, or educational purposes.

## **11VAC15-50-20. Organization eligibility; permit requirements.**

A. The conduct of charitable gaming is a privilege that may be granted or denied by the department. Except as provided in § 18.2-340.23 of the Code of Virginia, every eligible organization with anticipated gross gaming receipts that exceed the amount set forth in § 18.2-340.23 of the Code of Virginia in any 12-month period shall obtain a permit from the department prior to the commencement of a poker tournament. To be eligible for a permit an organization must meet all of the requirements of § 18.2-340.24 of the Code of Virginia.

B. In accordance with § 18.2-340.19 A 1 of the Code of Virginia, as a condition of receiving a poker tournament permit, a qualified organization shall use a minimum of 2.5% of gross receipts from its poker tournaments for (i) those lawful religious, charitable, community, or educational purposes for which the organization is specifically chartered or organized; (ii) those expenses relating 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; or (iii) the cost of compensating an operator who is contracted by the qualified organization to administer its poker tournament. However, the amount from this compensation that may be counted toward the minimum use of proceeds shall not exceed 0.25% of the gross receipts generated from the poker tournament, and it may be adjusted by the board at its discretion on an annual basis.

C. If an organization fails to meet the minimum use of proceeds requirement, its permit may be suspended or revoked. However, the department shall not suspend or revoke the permit of any organization solely because of its failure to meet the required percentage without having first provided the organization with an opportunity to implement a remedial business plan.

D. An organization may request a temporary reduction in the predetermined percentage specified in subsection B of this section from the department. In reviewing such a request, the department shall consider such factors appropriate to and consistent with the purpose of charitable gaming, which may include (i) the organization's overall financial condition, (ii) the length of time the organization has conducted charitable gaming, (iii) the extent of the deficiency, and (iv) the progress that the organization has made in attaining the minimum percentage in accordance with a remedial business plan.

E. An organization must meet all requirements related to the conduct of charitable gaming established in the Charitable Gaming Regulations (11VAC15-40).

F. An organization whose permit is revoked for failure to comply with provisions of subsection B of this section shall be eligible to reapply for a permit at the end of one year from the date of revocation. The department, at its discretion, may issue the permit if it is satisfied that the organization has made substantial efforts toward meeting its remedial business plan.

## **11VAC15-50-30. Permit application process for an organization.**

A. Any organization anticipating gross gaming receipts that exceed the amount set forth in § 18.2-340.23 of the Code of Virginia shall complete a form prescribed by the department to request issuance or renewal of an annual permit to conduct charitable gaming. Organizations shall submit a nonrefundable fee payable to the Treasurer of Virginia in the

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amount of \$200 with the application unless the organization is exempt from such fee pursuant to § 18.2-340.23 of the Code of Virginia or holds a charitable gaming permit issued pursuant to 11VAC15-40-30.

B. The department may initiate action against any organization exempt from permit requirements when the department reasonably believes the organization is not in compliance with the provisions of the Charitable Gaming Statute or this chapter.

C. A permit shall be valid for a period of one year from the date of issuance or for a period specified on the permit. The department may issue permits for periods of less than one year.

D. The department shall complete a background investigation of an organization or interested persons to ensure public safety and welfare as required by § 18.2-340.25 of the Code of Virginia. Investigations shall consider the nature, the age and severity, and the potential harm to public safety and welfare of any criminal offense. The investigation may include the following:

1. A search of criminal history records for the president or chief executive officer, treasurer or chief financial officer, game manager, or charitable host representative of the organization. Information and authorization to conduct these records checks shall be provided in the permit application. In addition, the department shall require that the organization provide assurances that all other individuals, excluding an operator, involved in the management, operation, or conduct of charitable gaming meet the requirements of subdivision 12 of § 18.2-340.33 of the Code of Virginia. The department may deny an application if:

a. Any person participating in the management of any charitable gaming has ever been:

(1) Convicted of a felony; or

(2) Convicted of any misdemeanor involving fraud, theft, or financial crimes within the preceding five years.

b. Any person participating in the conduct of charitable gaming has been:

(1) Convicted of any felony in the preceding 10 years; or

(2) Convicted of any misdemeanor involving fraud, theft, or financial crimes within the preceding five years;

2. An inquiry as to whether the organization has been granted tax-exempt status pursuant to § 501(c) of the Internal Revenue Code by the IRS and is in compliance with IRS annual filing requirements;

3. An inquiry as to whether the organization has entered into any contract with, or has otherwise employed for compensation, any person for the purpose of organizing or

managing, operating, or conducting any charitable gaming activity outside of a written contract with an operator to administer the organization's poker tournament;

4. Inquiries into the finances and activities of the organization and the sources and uses of funds;

5. Inquiries into the level of community or financial support to the organization and the level of community involvement in the membership and management of the organization; and

6. Inquiries into the percentage of members who are residents of the Commonwealth for a membership-based organization to determine compliance with the membership requirement of § 18.24-340.24 A of the Code of Virginia.

E. The permit application for an organization that has not previously held a permit shall include:

1. A copy of the articles of incorporation, bylaws, charter, constitution, or other appropriate organizing document;

2. A copy of the determination letter issued by the IRS under § 501(c) of the Internal Revenue Code, if appropriate, or a letter from the national office of an organization indicating the applicant organization is in good standing and is currently covered by a group exemption ruling. A letter of good standing is not required if the applicable national or state office has furnished the department with a listing of member organizations in good standing in the Commonwealth as of January 1 of each year and has agreed to promptly provide the department any changes to the listing as those changes occur;

3. A copy of the written lease or proposed written lease agreement and all other written agreements between an organization and the landlord if the organization rents or intends to rent a facility where a poker tournament is or will be conducted. Information on the lease shall include name, address, and phone number of the landlord; maximum occupancy of the building; and rental amount;

4. An authorization by an officer or other appropriate official of the organization to permit the department to determine whether the organization has been investigated or examined by the IRS in connection with charitable gaming activities during the previous three years;

5. A statement whether the organization will manage, operate, and conduct its own poker tournament or will contract with an operator to administer its poker tournament. If the organization contracts with an operator, then the identity of the operator shall be disclosed, a copy of the written contract with the operator shall accompany the application, and the written contract shall comply with the provisions of 11VAC15-50-140;

6. If the organization uses or intends to use an operator to administer its poker tournament, the identity of the

organization's charitable host representative and a copy of a current identification of the charitable host representative, such as a driver's license or other government issued identification;

7. If the organization intends to manage, operate, and conduct or manages, operates, and conducts its own poker tournament, the designation and identity of the organization's game manager, who shall be a person and shall be responsible for the operation and conduct of the poker tournament for the qualified organization, and a copy of a current identification of the game manager, such as a driver's license or other government issued identification;

8. If the organization intends to manage, operate, and conduct a poker tournament, then a copy of written internal control policies and procedures that includes segregation of duties, cash security, and cash controls based on generally accepted standards;

9. Written statement as to whether (i) the president or chief executive officer, treasurer or chief financial officer, an officer, a game manager, or charitable host representative; (ii) an immediate family member of an individual listed in clause (i) of this subdivision; or (iii) persons residing in the same household as an individual listed in clause (i) of this subdivision has directly or indirectly any interest or ownership in an operator; and

10. A sample of the badge to be worn by the game manager and other game workers during the operation and conduct of the qualified organization's poker tournament, which shall include the following:

- a. A recent photo of the person;
- b. The first name and last name of the person;
- c. The name of the qualified organization; and
- d. The date the badge was issued to the person.

F. An organization applying to renew a permit previously issued by the department shall submit articles of incorporation, bylaws, charter, constitution, or other organizing document; IRS determination letter; or any other document or information specified in subsection E of this section only if there are any amendments or changes to these documents or information that are directly related to the management, operation, or conduct of charitable gaming.

G. The department may request copies of minutes of meetings of the organization and any contracts with landlords, suppliers, or operators to which the organization is or may be a party.

H. If any information on the permit application changes or is found to be inaccurate, then the qualified organization shall notify the department and provide the updated or corrected

information within three business days of the change or the discovery of the inaccuracy.

I. A qualified organization wishing to change the date, time, location, or operator of its poker tournament shall request an amendment to its permit. Amendment requests shall be made in writing on a form prescribed by the department in advance of the proposed effective date.

J. A qualified organization may cancel its poker tournament due to inclement weather, a disaster, or other circumstances outside the organization's control without an amendment to its permit.

K. Any qualified organization that ceases to conduct poker tournaments shall immediately notify the department in writing and provide the department a report as to the disposition of all unused charitable gaming supplies on a form prescribed by the department.

L. No qualified organization or its members or any persons affiliated or associated with the qualified organization, their immediate family members, or persons residing in their household shall directly or indirectly receive any payment from the qualified organization's landlord, agents, employees, their immediate family members, or persons residing in their household unless such payment from the landlord is directly related to a written contract for the facility leased for use to hold a poker tournament as required by 11VAC15-50-90 A and such a payment is made by check from the landlord directly to the qualified organization's charitable gaming account.

M. No qualified organization or its members or any persons affiliated or associated with the qualified organization, their immediate family members, or persons residing in their household shall directly or indirectly receive any loan from a landlord, operator, or supplier of charitable gaming supplies or the agents, employees, immediate family members, or persons residing in the household of the landlord, operator, or supplier of charitable gaming supplies.

## **11VAC15-50-40. Operator registration.**

A. No person shall administer a poker tournament on behalf of a qualified organization without an operator registration. A person seeking to administer a poker tournament on behalf of a qualified organization shall apply to the department for an operator registration on a form prescribed by the department. The application fee for an operator registration is \$1,000.

B. The department shall conduct a background investigation prior to the issuance of a registration to any operator. The investigation may include the following:

- 1. Verification that the operator is authorized to conduct business in the Commonwealth, which may include registration with the State Corporation Commission, the Department of Taxation, or the Virginia Employment Commission.

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2. Verification of current compliance with Commonwealth's tax laws.

3. A search of criminal history records on the owner, partner, president or chief executive officer, treasurer or chief financial officer, and the operator's tournament manager. If the owner, partner, president or chief executive officer, treasurer or chief financial officer, or the operator's tournament manager is domiciled outside of the Commonwealth or has resided in the Commonwealth for fewer than five years, a criminal history search conducted by the appropriate authority in any state in which that individual has resided during the previous five years shall be provided by the applicant. Appropriate information and authorizations shall be provided to the department to verify this information.

C. An operator registration shall be valid for a period of one year from the date of issuance or for a period specified on the registration. The department may issue a registration for a period of less than one year.

D. The department may refuse to issue a registration or may suspend or revoke a registration if an operator, officer, director, employee, agent, or owner:

1. Is operating without a valid license, permit, certificate, registration, or other similar authority related to gambling in any state, territory, or possession of the United States; the District of Columbia; or any political subdivision thereof;

2. Uses or continues to use a product that has been recalled by the manufacturer;

3. Administers poker tournaments for unauthorized persons or entities, such as qualified organizations not permitted by the department pursuant to 11VAC15-50-30 or otherwise exempted from obtaining or possessing a permit pursuant to § 18.2-340.23 of the Code of Virginia; engages or participates in illegal gambling; or is not authorized to conduct business in the Commonwealth;

4. Fails to notify the department within 20 days of the occurrence, knowledge, or receipt of the filing of any administrative or legal action relating to gambling or the administration of poker tournaments involving or concerning the operator, any officer, director, employee, agent, or owner during the term of the operator's registration;

5. Is involved directly or indirectly with another operator whose registration was denied, suspended, or revoked by the department;

6. Fails to provide the report required by subsection I of this section;

7. Has been found by the department to have violated any provision of the Charitable Gaming Statute or this chapter; or

8. Has been engaged in activities that would compromise the department's objective of maintaining the highest level of integrity in charitable gaming.

E. The registration application for an operator that has not previously held a registration shall include:

1. A copy of the articles of incorporation, bylaws, charter, constitution, or other appropriate organizing document;

2. A copy of written internal control policies and procedures that includes segregation of duties, cash security, and cash controls based on generally accepted standards;

3. A list of all qualified organizations on whose behalf the applicant intends to administer a poker tournament, the locations at which the applicant intends to administer a poker tournament, and any other information deemed necessary by the department;

4. A copy of each written contract with a qualified organization;

5. The identity of the operator's tournament managers, dealers, and other game workers. A copy of a current identification, such as a driver's license or other government issued identification, of the operator's tournament managers, dealers, and other game workers; and

6. A sample of the badge to be worn by the operator's poker tournament manager, charitable host representative, dealer, and other game workers during the administering of the qualified organization's poker tournament. A badge shall include the following:

a. A recent photo of the person;

b. The first name and last name of the person;

c. The name of the operator; and

d. The date the badge was issued to the person.

F. If any information on the registration application changes or is found to be inaccurate, then the operator shall notify the department and provide the updated or corrected information within three business days of the change or the discovery of the inaccuracy.

G. Operators applying to renew a registration previously issued by the department shall submit articles of incorporation, bylaws, charter, constitution, or other organizing document or any other document or information specified in subsection E of this section only if there are any amendments or changes to these documents or information

that are directly related to the administering of a poker tournament.

H. Operators shall ensure that a copy of a detailed invoice is provided to the qualified organization for each poker tournament it administers on behalf of the qualified organization. The invoice shall reflect the following:

1. Name, address, and the organization number of the qualified organization;
2. Date and location of the poker tournament; and
3. All information needed to calculate the fee owed to the operator, including gross receipts, net receipts, and prize disbursement.

I. Each operator shall provide a report to the department by March 1 of each year for the fiscal year ending December 31 of the previous year for each qualified organization it contracted with to administer a poker tournament in the Commonwealth of Virginia. This report shall be provided to the department via a department-approved electronic medium. The report shall include the name, address, and organization number of each qualified organization and the following information for each poker tournament:

1. The total amount of gross receipts generated from each poker tournament;
2. The total amount of prizes disbursed to players for each poker tournament;
3. The total number of players at each poker tournament;
4. The total amount charged by the operator to the qualified organization for administering the poker tournament; and
5. Any other information deemed necessary by the department.

J. An operator that administers a poker tournament for a qualified organization exempt from obtaining or possessing a permit pursuant to § 18.2-340.23 of the Code of Virginia shall ensure the qualified organization is and remains exempted from obtaining or possessing such a permit prior to any poker tournament. The operator shall also obtain a written and signed statement from the president or chief executive officer and treasurer or chief financial officer, or another officer or director if the president or chief executive officer and treasurer or chief financial officer are filled by the same person, confirming that gross receipts are expected to be less than or equal to the amount set forth in § 18.2-340.23 of the Code of Virginia. Such statements shall be dated and kept on file for a minimum of three years from the close of a fiscal year.

K. The operator shall maintain training records related to poker tournaments and 11VAC15-50-50 C for all of its tournament managers, dealers, and other game workers. Such

records shall be available for inspection by the department, its employees, or its agents at their request.

L. The operator shall disclose to the department whether (i) any of its directors, officers, owners, partners, employees, independent contractors, or agents; (ii) an immediate family member of an individual listed in clause (i) or this subdivision; or (iii) persons residing in the same household as an individual listed in clause (i) or this subdivision is affiliated or associated with any qualified organization that is authorized pursuant to §§ 18.2-340.23 and 18.2-340.24 of the Code of Virginia to manage, operate, and conduct a poker tournament or to contract with an operator to administer its poker tournament.

M. An operator shall not prepare or submit a permit application or a financial report on behalf of a qualified organization.

### **11VAC15-50-50. Suspension, revocation, or denial of permit for organization.**

A. Pursuant to § 18.2-340.20 of the Code of Virginia, the department may suspend, revoke, or deny the permit of any qualified organization to manage, operate, or conduct poker tournaments or to contract with an operator to administer the qualified organization's poker tournaments for cause, including any of the following reasons:

1. The qualified organization is found to be in violation of or has failed to meet any of the requirements of the statutes or regulations governing the operation, management, and conduct of charitable gaming in the Commonwealth.
2. The qualified organization is found to be not in good standing with its state or national organization.
3. The IRS revokes or suspends the qualified organization's tax-exempt status.
4. The qualified organization willfully and knowingly provides false information in its application for a permit to conduct charitable gaming.
5. The qualified organization is found to have a member involved in the management, operation, or conduct of its charitable gaming who has been convicted of any felony or any misdemeanor as follows:
  - a. For any person participating in the management or operation of any charitable gaming:
    - (1) Convicted of a felony; or
    - (2) Convicted of any misdemeanor involving fraud, theft, or financial crimes within the preceding five years.
  - b. For any person participating in the conduct of charitable gaming:
    - (1) Convicted of any felony within the preceding 10 years; or

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(2) Convicted of any misdemeanor involving fraud, theft, or financial crimes within the preceding five years.

6. The qualified organization fails to report a violation as required by 11VAC15-50-170.

7. The qualified organization is found to have managed, operated, or conducted a poker tournament or contracted, whether written or verbal, with an operator or others that administered a poker tournament on its behalf without a permit issued to the qualified organization to do so unless the qualified organization did so in compliance with § 18.2-340.23 A of the Code of Virginia.

8. The qualified organization fails to comply with the disclosure requirement pursuant to 11VAC15-50-30 E 9.

9. If the qualified organization uses or intends to use an operator to administer its poker tournament, the qualified organization fails to submit or provide to the department a written contract that complies with 11VAC15-50-140; fails to submit or provide to the department a new or amended written contract with its operator within 20 days after the contract is signed by all parties to the contract; or fails to submit or provide to the department a new or amended written contract with its operator that complies with 11VAC15-50-140.

10. The qualified organization or its members or any persons affiliated or associated with the qualified organization, their immediate family members, or persons residing in their household directly or indirectly received a loan from a landlord, operator, or supplier of charitable gaming supplies, its agents, its employees, their immediate family members, or persons residing in their household.

11. The operator fails to fulfill any of the conditions of the written contract with the qualified organization as identified under 11VAC15-50-140.

B. The failure to meet any of the requirements of § 18.2-340.24 of the Code of Virginia shall be cause for the denial of the permit, and no qualified organization shall manage, operate, and conduct any poker tournaments or contract with an operator to administer the qualified organization's poker tournaments until the requirements are met and a permit is obtained.

C. Except when an qualified organization fails to meet any of the requirements of §18.2-340.24 of the Code of Virginia, in lieu of suspending, revoking, or denying a permit to manage, operate, and conduct poker tournaments or to contract with an operator to administer the qualified organization's poker tournaments, the department may afford a qualified organization an opportunity to enter into a compliance agreement specifying additional conditions or requirements as it may deem necessary to ensure a qualified organization's compliance with the statute and regulations governing the conduct of charitable gaming activities and

may require that a qualified organization participates in such training as is directed or offered by the department.

D. If a permit is suspended, the department shall set the terms of the suspension, which shall include the length of the suspension and a requirement that, prior to reinstatement of the permit, the organization shall submit a remedial business plan to address the conditions that resulted in the suspension.

## **11VAC15-50-60. Operation and conduct of Texas Hold'em poker tournaments.**

A. A Texas Hold'em poker tournament is a competition at which:

1. Players shall pay a fixed fee for entry into the competition and for a certain amount of poker chips for use in the competition;

2. Players may be allowed to pay an additional fee during set preannounced times of the competition to receive additional poker chips for use in the competition;

3. Players may be seated at one or more tables simultaneously playing Texas Hold'em poker games;

4. Players shall, upon running out of poker chips, be eliminated from the competition; and

5. A set preannounced number of players shall be awarded prizes of value according to how long such players remain in the competition.

B. Any competition that does not meet the requirements established in subsection A of this section is not permissible. A qualified organization or operator shall ensure its Texas Hold'em poker tournament meets the requirements established in subsection A of this section.

C. Operations of poker tournaments.

1. Participation in poker tournaments.

a. Qualified organizations shall (i) only manage, operate, and conduct a poker tournament after a permit has been issued by the department unless the qualified organization is exempted from obtaining or possessing a permit pursuant to § 18.2-340.23 of the Code of Virginia; or (ii) obtain a permit pursuant to 11VAC15-50-30 and contract with an operator that is registered pursuant to 11VAC15-50-40 to administer its poker tournament.

b. An operator shall only administer a poker tournament for a qualified organization (i) permitted by the department pursuant to 11VAC15-50-30, or (ii) exempted from obtaining or possessing a permit pursuant to § 18.2-340.23 of the Code of Virginia, and an operator shall only administer a poker tournament after it is registered pursuant to 11VAC15-50-40.

c. All persons participating as a player in a poker tournament shall be 18 years of age or older.

d. The qualified organization's game managers, volunteer game workers, volunteer dealers, charitable host representatives, their immediate family members, or persons residing in their household shall not participate in or otherwise play in any of the qualified organization's poker tournaments.

e. The operator's directors, officers, owners, partners, tournament managers, employees, independent contractors, agents, their immediate family members, or persons residing in their household shall not participate in or otherwise play in any poker tournaments administered by the operator.

f. The qualified organization is responsible for all actions performed by its game managers, volunteer game workers, volunteer dealers, and charitable host representatives, and if the qualified organization contracted with an operator to administer its poker tournament, then the qualified organization is responsible for the operator's actions during its poker tournament.

## 2. Operations of tournaments.

a. During a poker tournament, if the qualified organization is managing, operating, and conducting its own poker tournament, then a game manager must be physically present during the entire duration of the poker tournament. If an operator is administering the poker tournament, then the operator's tournament manager and charitable host representative must be physically present during the entire duration of the poker tournament.

b. During a poker tournament, the qualified organization or operator shall provide badges for each of its game manager, operator's tournament manager, charitable host representative, dealers, and other game workers that shall be worn in a manner in which the badges are visible to players and to the department, its employees, or its agents during the duration of the poker tournament. A game manager, operator's tournament manager, charitable host representative, dealers, and other game workers shall also possess a current photo identification, such as a driver's license or other government issued identification. The game manager, tournament manager, charitable host representative, dealers, and other game workers shall provide the badge, current photo identification, or both upon request by the department, its employees, or its agents to do so. These badges shall meet the criteria set forth in 11VAC15-50-30 and 11VAC15-50-40.

c. If the qualified organization is managing, operating, and conducting its own poker tournament, then a game manager shall complete and sign a poker tournament reconciliation form within 48 hours of the end of the poker tournament as required by 11VAC15-50-110. If an operator is administering the poker tournament, then the

operator's tournament manager and charitable host representative shall complete and sign a poker tournament reconciliation form within 48 hours of the end of the poker tournament as required by 11VAC15-50-110.

d. All persons involved in managing, operating, conducting, or administering a poker tournament shall be 18 years or age or older.

e. During the poker tournament, a qualified organization or operator may award players participating in the poker tournament prizes of value, the value of which may be determined by the game manager or the operator's tournament manager, under the following conditions, including:

(1) A player, within a specific period of time as determined by the game manager or the operator's tournament manager, wins the highest ranked hand;

(2) A player sitting on the seat randomly determined by the game manager or operator's tournament manager, at a specific period of time as determined by the game manager or the operator's tournament manager;

(3) Every player sitting at a single table that is randomly determined by the game manager or operator's tournament manager, at a specific period of time as determined by the game manager or the operator's tournament manager;

(4) A player that loses a hand that is the highest losing ranking hand, within a specific period of time as determined by the game manager or the operator's tournament manager;

(5) The last player who remains in the poker tournament who participated in the last man standing bet;

(6) An amount of poker chips, as determined by the game manager or operator's tournament manager, that are placed into the pot at a randomly selected table by the game manager or the operator's tournament manager before the hand begins, before any players place forced bets, commonly referred to as "blinds"; or

(7) Those players who pay an additional fee to receive additional poker chips at the set preannounced times for use in the poker tournament may be awarded prizes based on how long such player remains in the tournament, as determined by the game manager or the operator's tournament manager.

f. The game manager or the operator's tournament manager shall:

(1) Adhere to the definition of Texas Hold'em poker game as stated in § 18.2-340.16 of the Code of Virginia;

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(2) Apply the ranking of hands and the rules of the poker tournament as governed by the official rules of the Poker Tournament Directors Association; and

(3) Apply the code of conduct and etiquette as governed by Robert's Rules of Poker.

g. For the purposes of maintaining integrity of the poker tournament, the dealer shall only be responsible for dealing playing cards and handling poker chips at the poker table during the poker tournament and not assigned any other duties or responsibilities not directly related to such activities.

h. If the charitable host representative is involved in any portion of the cash handling during a poker tournament administered by an operator, then the charitable host representative shall adhere to the operator's internal control policies and procedures that were submitted to the department by the operator pursuant to 11VAC15-50-40 E.

i. The poker tournament shall include a live dealer, physical playing cards, and physical poker chips.

3. A qualified organization shall display prominently its charitable gaming permit during the poker tournament, and if the qualified organization uses an operator to administer its poker tournament, then the operator shall display its operator registration.

4. A game manager or, if a qualified organization uses an operator to administer its poker tournament, the qualified organization's charitable host representative and the operator's tournament manager shall display prominently a poster advising the public of a phone number where complaints relating to the poker tournament may be made. Such posters shall be in a format prescribed by the department, as required by 11VAC15-50-170.

5. A game manager or, if a qualified organization uses an operator to administer its poker tournament, the qualified organization's charitable host representative and the operator's tournament manager shall display prominently a poster that bears a toll-free telephone number for "Gamblers Anonymous" or other organization that provides assistance to compulsive gamblers.

6. A game manager or, if a qualified organization uses an operator to administer its poker tournament, the qualified organization's charitable host representative and the operator's tournament manager shall display prominently any house rules, which shall govern the poker tournament beyond the official rules for poker tournaments established by the Poker Tournament Directors Association, and the code of conduct and etiquette as governed by Robert's Rules of Poker. Any house rules shall be consistent with the Charitable Gaming Statute, this chapter, the official rules for poker tournaments established by the Poker

Tournament Directors Association, and the code of conduct and etiquette as governed by Robert's Rules of Poker.

7. A game manager or, if a qualified organization uses an operator to administer its poker tournament, the qualified organization's charitable host representative and the operator's tournament manager shall ensure any poker chips, playing cards, or mechanical poker equipment used to conduct the poker tournament are not counterfeit, tampered with, or otherwise affect the integrity of the poker tournament prior to, during, and after the poker tournament. Any poker chips found to be counterfeit or playing cards or mechanical equipment found to be tampered with shall be removed immediately from the poker tournament. Such incidents shall be reported by the qualified organization or jointly by the qualified organization and operator to the department pursuant to 11VAC15-50-170.

8. A game manager or, if a qualified organization uses an operator to administer its poker tournament, the qualified organization's charitable host representative and the operator's tournament manager shall ensure all mechanical poker equipment is fully functional and maintains the integrity of the poker tournament prior to, during, and after the poker tournament. Any mechanical poker equipment not meeting these particular standards shall be removed immediately from the poker tournament by the game manager, or if the qualified organization uses an operator to administer its poker tournament, then the charitable host representative and the operator's tournament manager.

9. A qualified organization shall not manage, operate, or conduct its poker tournament or have its poker tournament administered by an operator in a facility or premises that conducts gambling activities, unless such activities are authorized by Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 of the Code of Virginia; Charitable Gaming Regulations (11VAC15-40); this chapter; Chapter 40 (§ 58.1-4000 et seq.) of Title 58.1 of the Code of Virginia; and Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 of the Code of Virginia.

10. Only qualified organizations, registered operators, and permitted charitable gaming suppliers shall advertise a poker tournament. Any printed advertisement is permitted, provided the name of the qualified organization shall be in a type size equal to or larger than the name of the premises used for the poker tournament, name of the operator, or any word referring to the poker tournament.

## **11VAC15-50-70. Approval of mechanical card shuffler and dealer shoes and other mechanical equipment.**

A. The department shall set testing criteria for all mechanical card shuffler and dealer shoes and other mechanical equipment used during a poker tournament. A

mechanical card shuffler and dealer shoe or other mechanical equipment used during a poker tournament shall not be sold, leased, or otherwise furnished to any person in the Commonwealth of Virginia for use during a poker tournament until an identical sample card shuffler and dealer shoes or equipment containing identical software has been certified by a testing facility that has been formally recognized by the department as a testing facility that upholds the standards of integrity established by the department. The testing facility must certify that the mechanical card shuffler and dealer shoe, other mechanical equipment, associated hardware, and associated software conform, at a minimum, to the requirements of this chapter. Once the testing facility reports the test results to the department, the department will either approve or reject the mechanical card shuffler and dealer shoe or other mechanical equipment and inform the manufacturer of the results. If any such system or equipment does not meet the department's criteria, that system or equipment shall be recalled and shall not be distributed in the Commonwealth. The cost of testing shall be borne by the manufacturer of such equipment.

B. Notwithstanding any other testing criteria established by the department, the mechanical card shuffler and dealer shoe shall be tested to the standards established by Gaming Laboratories International for card shufflers and dealer shoes.

### **11VAC15-50-80. Rules of play.**

Qualified organizations and operators shall adhere to the official rules of the Poker Tournament Directors Association and the code of conduct and etiquette from Robert's Rules of Poker.

### **11VAC15-50-90. Requirements regarding renting premises, agreements, and landlord participation.**

A. No qualified organization shall rent or use any leased premises to be used for poker tournaments unless all terms for rental or use are set forth in a written contract and signed by the parties thereto prior to the issuance of a permit to conduct charitable gaming.

B. Qualified organizations shall not make any payments to a landlord except by check drawn directly from the qualified organization's charitable gaming account and in accordance with the conditions set forth in the written contract described in subsection A of this section.

C. No landlord, its agents, its employees, their immediate family members, or persons residing in their household shall directly or indirectly make any loan to any qualified organization, operator, or supplier of charitable gaming supplies, its members, any persons affiliated or associated with the qualified organization, their immediate family members, or persons residing in their household.

D. No landlord, its agents, its employees, their immediate family members, or persons residing in their household shall

directly or indirectly make any payment to any qualified organization, operator, supplier of charitable gaming supplies, its members, any persons affiliated or associated with the qualified organization, their immediate family members, or persons residing in their household unless such payment from the landlord to the qualified organization is directly related to a written contract and the facility leased for use to hold a poker tournament as required by subsection A of this section and such a payment is made by check from the qualified organization's charitable gaming account directly to the landlord.

E. No landlord, its agent, its employees, their immediate family members, or persons residing in their household shall, at a poker tournament operated, conducted, or administered on the landlord's premises:

1. Participate in the management, operation, conduct, or administration of any poker tournament;

2. Sell, lease, or otherwise provide any charitable gaming supplies, including playing cards, poker chips, or other game pieces;

3. Require as a condition of the written contract that a particular supplier of charitable gaming supplies is used by the qualified organization; or

4. Provide, advise, or direct the qualified organization or operator to use any particular person for the purposes of the management, operation, conduct, or administration of a poker tournament that is to be held in the landlord's facility.

F. No member of a qualified organization involved in the management, operation, or conduct of a poker tournament shall provide any services to a landlord or be remunerated in any manner by the landlord of the facility that a qualified organization is using to operate and conduct its poker tournament.

### **11VAC15-50-100. Bank accounts.**

A. A qualified organization shall maintain a charitable gaming bank account that is separate from any other bank account, and all gaming receipts shall be deposited into the charitable gaming bank account.

B. Disbursements for expenses by the qualified organization other than prizes and reimbursement of meal expenses shall be made by check directly from its charitable gaming account. However, the expenses incurred by an operator administering a poker tournament may be disbursed from the qualified organization's charitable gaming account through an electronic fund transfer to the operator provided that such an arrangement is agreed upon by both the qualified organization and the operator. A written agreement specifying the terms of this arrangement shall be required prior to any electronic fund transfer occurring between the two parties.

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C. All charitable gaming bank account records, including monthly bank statements, canceled checks or facsimiles thereof, and reconciliations, shall be maintained for a minimum of three years following the close of a fiscal year.

D. All receipts from the poker tournament shall be deposited by the second business day following the tournament at which they were received. However, receipts received by an operator for administering a poker tournament for a qualified organization may be deposited through an electronic fund transfer into the qualified organization's charitable gaming account provided that such an arrangement is agreed upon by both the qualified organization and the operator. A written agreement specifying the terms of this arrangement shall be required prior to any electronic fund transfer occurring between the two parties.

## **11VAC15-50-110. Recordkeeping.**

A. In addition to the records required by § 18.2-340.30 D of the Code of Virginia, qualified organizations managing, operating, and conducting poker tournaments or contracting with an operator to administer poker tournaments shall maintain a system of records for a minimum of three years from the close of the fiscal year for each poker tournament on forms prescribed by the department or reasonable facsimiles of those forms approved by the department that include:

1. Charitable gaming supplies purchased and used for poker tournaments;

2. If the qualified organization is managing, operating, and conducting its own poker tournament, then a game manager shall complete and sign a poker tournament reconciliation form within 48 hours of the end of the poker tournament. If an operator is administering the poker tournament, then the operator's tournament manager and charitable host representative shall complete and sign a poker tournament reconciliation form within 48 hours of the end of the poker tournament;

3. All discounts provided;

4. A reconciliation to account for cash received from workers who received payment from players for entry into the poker tournament;

5. An admissions control system that provides a cross-check on the number of players in attendance and sales. This may include a ticket control system, cash register, or any similar system;

6. An itemized record of all receipts and disbursements associated with a poker tournament, including written contracts with an operator, rent, advertisement, and security as well as use of proceeds disbursements. Copies of invoices and other documentation for all such disbursements shall also be maintained;

7. All other operating expenses, for which receipts from a poker tournament were used to pay such expenses. Copies of invoices and other documentation for all such other expenses shall also be maintained;

8. A record of the name and address of each tournament winner who was awarded a prize during or after the conclusion of the poker tournament; and

9. For any prize or jackpot of a value that meets or exceeds the reporting requirements in the IRS's Publication 3079, the name and address of each individual to whom any such prize or jackpot is awarded and the amount of the award.

B. The qualified organization and their contracted operator shall each maintain independent records from one another on each poker tournament. The qualified organization shall not have its records managed, maintained, or stored by an operator.

C. All unused charitable gaming supplies shall either be returned for refund to the supplier in unopened original packaging in resalable condition as determined by the supplier or destroyed following notification to the department on a form prescribed by the department. The qualified organization shall maintain a receipt for all such charitable gaming supplies returned to the supplier or destroyed.

## **11VAC15-50-120. Financial reporting, penalties, inspections, and audits.**

A. Each qualified organization shall file an annual report of receipts and disbursements by March 15 of each year on a form prescribed by the department. The annual report shall cover the activity for the fiscal year. The qualified organization may combine this report with its report for other forms of charitable gaming into a single report to satisfy 11VAC15-40-90 and this section.

B. The annual report shall be accompanied by the audit and administration fee as established by the department for the fiscal year unless the fee has been remitted with quarterly reports or the qualified organization is exempt from payment of the fee pursuant to § 18.2-340.23 of the Code of Virginia.

C. A qualified organization desiring an extension to file its annual report for good cause shall request the extension in writing on a form prescribed by the department and shall pay the projected audit and administration fee, unless exempt from payment of the fee pursuant to § 18.2-340.23 of the Code of Virginia. The extension request and payment of projected fees shall be made in accordance with the provisions of § 18.2-340.30 of the Code of Virginia.

D. Unless exempted by § 18.2-340.23 of the Code of Virginia, qualified organizations realizing any gross gaming receipts in any calendar quarter shall file a quarterly report of receipts and disbursements on a form prescribed by the department as follows:

<u>Quarter Ending</u>	<u>Date Due</u>
<u>March 31</u>	<u>June 1</u>
<u>June 30</u>	<u>September 1</u>
<u>September 30</u>	<u>December 1</u>
<u>December 31</u>	<u>March 1</u>

Qualified organizations shall submit quarterly reports with the appropriate audit and administration fee unless the qualified organization is exempt from payment of the fee pursuant to § 18.2-340.23 of the Code of Virginia. The qualified organization may combine this report with other forms of charitable gaming into a single report to satisfy 11VAC15-40-90 and this section. An annual financial report may substitute for a quarterly report if the qualified organization has no further charitable gaming income during the remainder of the reporting period and the annual report is filed by the due date for the applicable calendar quarter.

E. A qualified organization desiring an extension to file its quarterly report for good cause shall request the extension in writing on a form prescribed by the department and shall pay the projected audit and administration fee unless exempt from payment of the fee pursuant to § 18.2-340.23 of the Code of Virginia. The extension request and payment of projected fees shall be made in accordance with the provisions of § 18.2-340.30 of the Code of Virginia.

F. Qualified organizations failing to file required reports, request an extension, or make fee payments when due shall be charged a penalty of \$25 per day from the due date until such time as the required report is filed.

G. Qualified organizations failing to file a quarterly report or annual report on or before the due date as specified in subsections A and D of this section, unless an extension was granted by the department in accordance with subsections C and E of this section, shall have their permit automatically revoked by the department as required by § 18.2-340.30 of the Code of Virginia.

H. Any qualified organization in possession of funds derived from charitable gaming (including those who have ceased operations), regardless of when such funds may have been received or whether it has a valid permit from the department, shall file an annual financial report on a form prescribed by the department on or before March 15 of each year until such funds are depleted. If a qualified organization ceases the conduct of charitable gaming, it shall provide the department with the name of an individual who shall be responsible for filing financial reports. If no such information is provided, the president or the chief executive officer of an organization shall be responsible for filing reports until all charitable gaming proceeds are depleted.

I. If a qualified organization has been identified through inspection, audit, or other means as having deficiencies in

complying with statutory or regulatory requirements or having ineffective internal controls, the department may impose restrictions or additional recordkeeping and financial reporting requirements.

J. Any records deemed necessary to complete an inspection, audit, or investigation may be collected by the department, its employees, or its agents from the premises of an organization or any location where charitable gaming is conducted or any location where the records are located or stored by the organization. The department shall provide a written receipt of such records at the time of collection.

**11VAC15-50-130. Use of proceeds.**

A. All payments by a qualified organization intended as use of proceeds must be made by check written from the qualified organization's charitable gaming account.

B. Use of proceeds payments may be made for scholarship funds or the future acquisition, construction, remodeling, or improvement of real property or the acquisition of other equipment or vehicles to be used for religious, charitable, educational, or community purposes. In addition, a qualified organization may obtain department approval to establish a special fund account or an irrevocable trust fund for special circumstances. Transfers to such an account or an irrevocable trust fund from the qualified organization's charitable gaming account may be included as a use of proceeds if the payment is authorized by the qualified organization's board of directors.

No payments made to such a special fund account shall be withdrawn for other than the specified purpose unless prior notification is made to the department.

C. Expenditures of charitable gaming funds for social or recreational activities or for events, activities, or programs that are open primarily to an organization's members and their families shall not qualify as use of proceeds unless substantial benefit to the community is demonstrated.

D. Payment made to or on behalf of (i) indigent, sick, or deceased members or (ii) the immediate family of an individual listed in clause (i) of this subdivision shall be allowed as use of proceeds provided they are approved by the qualified organization's board of directors and the need is documented.

E. Payments made directly for the benefit of an individual member, member of an individual member's family, or person residing in an individual member's household shall not be allowed as a use of proceeds unless authorized by law or elsewhere in this chapter.

F. Use of proceeds payments by a qualified organization shall not be made for any activity that is not permitted by federal, state, or local laws or for any activity that attempts to influence or finance directly or indirectly political persons or

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committees or the election or reelection of any person who is or has been a candidate for public office.

G. Organizations shall maintain details of all use of proceeds disbursements for a minimum of three years from the close of the fiscal year and shall make this information available to the department upon request.

H. The department may disallow a use of proceeds payment to be counted against the minimum percentage referred to in 11VAC15-50-20 D. If any payment claimed as use of proceeds is subsequently disallowed, a qualified organization may be allowed additional time as specified by the department to meet minimum use of proceeds requirements.

I. The department may publish the amount of fees paid by a qualified organization to an operator for administering its poker tournaments.

J. The department may publish:

1. The amount of proceeds generated by the qualified organization's poker tournaments used for (i) lawful religious, charitable, community, or educational purposes for which the organization is specifically chartered or (ii) those expenses relating 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; and

2. Any other financial information deemed necessary by the department.

## **11VAC15-50-140. Requirements regarding contracts.**

A. If the qualified organization decides to use an operator to administer its poker tournament, then it shall enter into a written contract with the operator.

B. The written contract between the qualified organization and operator shall identify the conditions and cost for the operator to administer the poker tournaments for the qualified organization. This written contract shall:

1. Require the operator to provide assurances to the qualified organization and the department that its owner, partner, president or chief executive officer, treasurer or chief financial officer, and the operator's tournament manager, employees, independent contractors, or agents have never been convicted or pleaded nolo contendere to any felony or any misdemeanor as follows:

a. For any person serving as the operator's tournament manager for the qualified organization's poker tournament:

(1) Convicted of a felony; or

(2) Convicted of any misdemeanor involving fraud, theft, or financial crimes within the preceding five years.

b. For any person serving as a dealer or any other game worker for the qualified organization's poker tournament:

(1) Convicted of any felony within the preceding 10 years; or

(2) Convicted of any misdemeanor involving fraud, theft, or financial crimes within the preceding five years.

c. For any owner, partner, president or chief executive officer, and treasurer or chief financial officer of the operator:

(1) Convicted of or pleaded nolo contendere to a felony in any state or federal court or has been convicted of any offense that, if committed in the Commonwealth, would be a felony; or

(2) Convicted of or pleaded nolo contendere to a crime involving gambling.

2. Require the operator to report to the qualified organization and the department within 20 days if there is any action taken against any valid license, permit, certificate, registration, or other similar documents related to gambling held by the operator in any state, territory, a possession of the United States, the District of Columbia, or any political subdivision thereof.

3. Require the operator to report to the qualified organization and the department within 20 days if it failed to file or has failed to file or has been delinquent in excess of one year in the filing of any tax returns or the payment of any taxes due the Commonwealth or has failed to establish a registered office or registered agent in the Commonwealth if so required by § 13.1-634 or 13.1-763 of the Code of Virginia.

4. Require the operator to provide the qualified organization and the department with access to the operator's financial record for each poker tournament administered on its behalf for at least the past three fiscal years and if necessary, to provide the qualified organization with copies or the department with the originals of such records or any other records deemed necessary to complete an inspection, audit, or investigation without hindrance from the operator. The department shall provide a written receipt for the originals of such records at the time of collection.

5. Require the operator to provide the qualified organization with a copy of a detailed invoice for each poker tournament it administers on behalf of the qualified organization, which the invoice shall meet the requirements specified in subsection H of 11VAC15-50-40.

6. Require the operator to retain all bank account records, including monthly bank statements, canceled checks or facsimiles thereof, and reconciliations, which shall be

maintained for a minimum of three years following the close of a fiscal year.

7. Require the operator to purchase any mechanical card shuffler or other mechanical equipment approved pursuant to 11VAC15-50-70 from a charitable gaming supplier permitted pursuant to § 18.2-340.34 of the Code of Virginia and require any purchase of playing cards or poker chips from a nonpermitted charitable gaming supplier to be reported to the department.

8. Require the operator's tournament manager, dealers, and other game workers to wear badges that meet the requirements set forth in subsection E of 11VAC15-50-40 and for each of them to possess a current photo identification, such as a driver's license or other government issued identification while they administer the qualified organization's poker tournament. The operator's tournament manager, dealers, and other game workers shall provide the badge, current photo identification, or both upon request by the department, its employees, or its agents.

9. Require the operator to display prominently its operator's registration during each poker tournament administered on the qualified organization's behalf.

10. Require the operator to display prominently any house rules, which shall govern the poker tournament beyond the official rules for poker tournaments established by the Poker Tournament Directors Association, and the code of conduct and etiquette as governed by Robert's Rules of Poker during each poker tournament administered on the qualified organization's behalf. Any house rules shall be consistent with the charitable gaming statutes, this chapter, the official rules for poker tournaments established by the Poker Tournament Directors Association, and the code of conduct and etiquette as governed by Robert's Rules of Poker.

11. Require the operator to display prominently a poster, which bears a toll-free telephone number for "Gamblers Anonymous" or other organization that provides assistance to compulsive gamblers, during each poker tournament administered on the qualified organization's behalf.

12. Require the operator to provide the qualified organization with a copy of written internal control policies and procedures, which will be used during each poker tournament administered on the qualified organization's behalf.

13. Require the operator to refrain from administering poker tournaments for unauthorized persons or entities, such as qualified organizations not duly permitted by the department pursuant to 11VAC15-50-30, unless it is exempted from obtaining or possessing a permit pursuant to § 18.2-340.23 of the Code of Virginia; engages or

participates in illegal gambling; or is not authorized to conduct business in the Commonwealth.

14. Require the operator to obtain a surety or surety bond payable to the qualified organization if the operator fails to perform its contractual obligation. The amount of the surety or surety bond shall (i) be agreed upon between both the qualified organization and the operator and (ii) be sufficient to cover any liability resulting from the administration of the qualified organization's poker tournaments. The written contract shall contain specific information, including the name and contact information on the provider of the surety or surety bond on how the qualified organization shall make a claim against the surety, surety bond, or another form of guaranty. The operator shall inform the qualified organization on any changes related to this subsection.

15. Require the operator to comply with any restrictions or additional recordkeeping and financial reporting requirements imposed upon the qualified organization by the department due to deficiencies identified through inspection, audit, or other means.

16. Require no more than 50% of the gross receipts from the poker tournament shall go to the operator as payment to the operator for the expense of administering the qualified organization's poker tournament. Such payment may include a fixed fee, but such a fee shall not exceed 50% of the gross receipts from the poker tournament. Any fee, up to the allowable amount shall be specified within the written contract.

17. Require the operator to pay all expenses, other than prizes, to be made by check directly from its account.

18. Require the operator to prohibit its directors, officers, owners, partners, tournament managers, employees, independent contractors, and agents from participating in or otherwise playing in any poker tournaments it administers for the qualified organization.

19. A provision relating to any negotiated expenses associated with the administration of the poker tournament. These expenses shall be specifically identified in the written contract with a specified amount. The total amount of expenses related to the administration of the poker tournament shall not exceed the allowable expense identified in subdivision 16 of this subsection.

20. A provision prohibiting the operator from charging, assessing, levying, collecting, or otherwise requesting the payment of any fees, charges, or any other assessments against the qualified organization for administering its poker tournament except, for the fee allowed in subdivision 16 of this subsection.

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21. A provision specifying the duration of the written contract period, and the termination rights for the qualified organization and operator.

22. If agreed upon by both the qualified organization and the operator, the receipts received by an operator due to the operator's administering of a poker tournament for a qualified organization may be deposited through an electronic fund transfer into the qualified organization's charitable gaming account provided that such an arrangement is agreed upon by both the qualified organization and the operator. A written agreement specifying the terms of this arrangement shall be required prior to any electronic fund transfer occurring between the two parties.

23. If agreed upon by both the qualified organization and the operator, the expenses incurred by an operator administering a poker tournament may be disbursed from the qualified organization's charitable gaming account through an electronic fund transfer to the operator provided that such an arrangement is agreed upon by both the qualified organization and the operator. A written agreement specifying the terms of this arrangement shall be required prior to any electronic fund transfer occurring between the two parties.

24. If the operator leases a facility for the purposes of administering the qualified organization's poker tournament, then the written contract shall prohibit the landlord from serving as an operator and meets the conditions set forth in 11VAC15-50-90.

C. Qualified organizations shall only contract with those operators that adhere to the provisions of the Charitable Gaming Statute and this chapter.

D. An organization shall provide a copy of all written contracts between the qualified organizations and the operator to the department upon application for a permit or upon the entering into any contract subsequent to the application.

## **11VAC15-50-150. Suppliers of charitable gaming supplies.**

For purposes of this chapter, a supplier shall be subject to the provisions of 11VAC15-40-120.

## **11VAC15-50-160. Procedural rules for informal fact-finding conferences and hearings.**

A. Informal fact-finding conference; notification, appearance, and conduct.

1. Unless automatic revocation or immediate suspension is required by law, no permit issued to a qualified organization to manage, operate, and conduct poker tournaments or registration issued to an operator to administer poker tournaments shall be denied, suspended, or revoked except (i) after review and approval of such

proposed denial, suspension, or revocation action by the board and (ii) upon notice stating the basis for such proposed action and the time and place for an informal fact-finding conference as set forth in § 2.2-4019 of the Code of Virginia unless waived by both the named party and the department.

2. If a basis exists for a refusal to renew, suspend, or revoke a permit or registration, the department shall notify by certified mail or by hand delivery to the interested persons at the address of record maintained by the department.

3. Notification shall include the basis for the proposed action and afford interested persons the opportunity to present written and oral information to the department that may have a bearing on the proposed action at an informal fact-finding conference. If there is no withdrawal, an informal fact-finding conference shall be scheduled at the earliest mutually agreeable date, but no later than 60 days from the date of the notification. Qualified organizations or operators that wish to waive their right to a conference shall notify the department at least 14 days before the scheduled conference.

4. If, after consideration of evidence presented during an informal fact-finding conference, a basis for action still exists, the interested persons shall be notified in writing within 90 days of the informal fact-finding conference via certified or hand-delivered mail of the decision and the right to a formal hearing. Parties to the conference may agree to extend the report deadline if more time is needed to consider relevant evidence.

B. Hearing; notification, appearance, and conduct.

1. If, after an informal fact-finding conference, a sufficient basis still exists to deny, suspend, or revoke a permit or registration, interested persons shall be notified by certified or hand-delivered mail of the proposed action and of the opportunity for a hearing on the proposed action. If a qualified organization or operator desires to request a hearing, it shall notify the department within 14 days of receipt of a report on the conference. Parties may enter into a consent agreement to settle the issues at any time prior to or subsequent to an informal fact-finding conference.

2. Unless otherwise provided by law, if a party without good cause fails to attend or appear at a formal hearing conducted in accordance with § 2.2-4020 of the Code of Virginia, or at an informal fact-finding proceeding conducted pursuant to § 2.2-4019 of the Code of Virginia, the presiding officer may issue a default order in accordance with § 2.2-4020.2 of the Code of Virginia.

3. Oral and written arguments may be submitted to and limited by the hearing officer. Oral arguments shall be recorded in an appropriate manner.

C. Hearing location. Hearings before a hearing officer shall be held, insofar as practicable, in the county or city in which the qualified organization or operator is located. If the parties agree, hearing officers may conduct hearings at locations convenient to the greatest number of persons or by telephone conference, video conference, or similar technology in order to expedite the hearing process.

D. Hearing decisions.

1. Recommendations of the hearing officer shall be a part of the record and shall include a written statement of the hearing officer's findings of fact and recommendations as well as the reasons or basis for the recommendations. Recommendations shall be based upon all the material issues of fact, law, or discretion presented on the record.

2. The department shall review the recommendation of the hearing officer and render a decision on the recommendation within 30 days of receipt. The decision shall cite the appropriate rule, relief, or denial thereof as to each issue.

E. Agency representation. The commissioner's designee may represent the department in an informal fact-finding conference or at a hearing.

**11VAC15-50-170. Reporting violations.**

A. Unless otherwise required by law, the identity of any individual who provides information to the department or its agents regarding alleged violations shall be held in strict confidence.

B. Any officer, director, or game manager of a qualified organization or any officer or director of an operator shall immediately report to the department any information pertaining to the suspected misappropriation or theft of funds or any other violation of the Charitable Gaming Statutes or this chapter, including counterfeit poker chips or playing cards or mechanical poker equipment that appear to have been tampered with.

C. Failure to report the information required by subsection B of this section may result in the denial, suspension, or revocation of a permit or registration.

D. Any officer, director, or game manager of a qualified organization involved in the management, operation, or conduct of charitable gaming shall immediately notify the department upon being convicted of a felony or a crime involving fraud, theft, or financial crimes.

E. Any officer, director, partner, or owner of an operator shall immediately notify the department upon being convicted of or pleading nolo contendere to a felony or a crime involving gambling or an action against any valid license, permit, certificate, registration, or other similar documents related to gambling held by the operator in any state, territory, a possession of the United States, any political subdivision thereof, or the District of Columbia.

F. Failure to report information required by subsection D or E of this section by any officer, director, or game manager of a qualified organization or by any operator may result in the denial, suspension, or revocation of a permit or registration.

G. Any officer, director, or game manager of a qualified organization shall immediately report to the department any change the IRS makes in the tax status of the organization, or if the organization is a chapter of a national organization covered by a group tax exempt determination, the tax status of the national organization.

H. All qualified organizations permitted by the department or operators registered by the department shall display prominently a poster advising the public of a phone number where complaints relating to poker tournaments may be made. Such posters shall be in a format prescribed by the department.

NOTICE: Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (11VAC15-50)

[Annual Financial Report, Form 101 \(eff. 2020\)](#)

[Charitable Gaming Permit Application – New Applicants, Form 201-N \(eff. 2020\)](#)

[Charitable Gaming Permit Application – Renewal Applicants, Form 201-R \(eff. 2020\)](#)

[Destruction of Unused Charitable Gaming Supplies, Form 112 \(rev. 3/2014\)](#)

[Permit Amendment \(rev. 8/2013\)](#)

[Quarterly Financial Report Form, Form 102 \(eff. 2020\)](#)

[Report of Game Termination \(rev. 7/2013\)](#)

[Texas Hold'em Game Operator Registration, Form 307 \(eff. 2020\)](#)

[Texas Hold'em Tournament Reconciliation Summary, Form 114 \(eff. 2020\)](#)

DOCUMENTS INCORPORATED BY REFERENCE (11VAC15-50)

[Poker Tournament Directors Association Rules, 2019, September 17, 2019, Poker Tournament Directors Association, <https://www.pokertda.com/>](#)

[Robert's Rules of Poker, Version 11, 2012, Robert Ciaffone](#)

VA.R. Doc. No. R21-6520; Filed October 19, 2020, 12:33 p.m.

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## TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

### STATE CORPORATION COMMISSION

#### Final Regulation

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

**Title of Regulation:** 20VAC5-200. Public Utility Accounting (amending 20VAC5-200-21).

**Statutory Authority:** § 12.1-13 of the Code of Virginia.

**Effective Date:** November 1, 2020.

**Agency Contact:** Justin Morgan, Manager, Division of Utility Accounting and Finance, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9981, FAX (804) 225-1071, or email [justin.morgan@scc.virginia.gov](mailto:justin.morgan@scc.virginia.gov).

#### Summary:

*The amendments (i) clarify the circumstances under which a cooperative may use the streamlined ratemaking procedures, (ii) clarify how customers are to be notified of the proposed rates, and (iii) specify when the commission will hold a hearing to consider proposed rates under the streamlined procedures. Outdated references to a division of the commission are corrected.*

AT RICHMOND, OCTOBER 8, 2020

APPLICATION OF  
THE VIRGINIA, MARYLAND &  
DELAWARE ASSOCIATION OF  
ELECTRIC COOPERATIVES

CASE NO. PUR-2020-00023

For Rulemaking to Amend the Commission's  
Streamlined Rate Case Rules for Electric  
Cooperatives

#### ORDER ADOPTING REGULATIONS

On February 10, 2020, the Virginia, Maryland and Delaware Association of Electric Cooperatives (the "Association")<sup>1</sup> filed an Application for Rulemaking ("Application") requesting that the State Corporation Commission ("Commission") initiate a rulemaking to revise the Commission's Streamlined Rate Case Rules, at 20 VAC 5-200-21(C).

On April 28, 2020, the Commission issued an Order Establishing Proceeding, which, among other things, directed that the revisions proposed by the Association (hereafter, "Proposed Rules") be forwarded to the Registrar of Regulations for publication in the Virginia Register of Regulations, and invited comments from the public on the Proposed Rules. Ordering Paragraph (5) of the Order Establishing Proceeding required that "[o]n or before June 1, 2020, each of the Association's Virginia members shall serve a copy of this Order upon each of their customers and file a certificate of service no later than June 15, 2020...."

On April 30, 2020, the Association filed a Motion to Amend Notice Requirements and Procedural Schedule ("Motion"), in which the Association requested that the Commission modify the public notice required in the Order Establishing Proceeding and permit the Association's members to provide notice by publication. On May 6, 2020, the Commission entered an Order granting the Motion.

Notice of the proceeding and the Proposed Rules were published in the Virginia Register of Regulations on May 25, 2020. Interested persons were directed to file any comments and requests for hearing on the Proposed Rules on or before September 8, 2020.<sup>2</sup>

On September 4, 2020, the Office of the Attorney General, Division of Consumer Counsel ("Consumer Counsel") filed comments on the Proposed Rules. Consumer Counsel stated that it neither supported nor opposed the Proposed Rules but offered "comments on several of the proposed changes to provide additional context for the Commission in its consideration of the Application."<sup>3</sup> On September 8, 2020, the Association filed comments.<sup>4</sup>

The Commission has considered the comments of Consumer Counsel but does not believe that modifications to the Proposed Rules are necessary at this time.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the regulations attached hereto as Appendix A should be adopted as final rules, as discussed herein.

Accordingly, IT IS ORDERED THAT:

(1) The Rules Governing Streamlined Rate Proceedings for Electric Cooperatives Subject to the State Corporation Commission's Rate Jurisdiction, as shown in Appendix A to this Order, are hereby adopted and are effective as of November 1, 2020.

(2) A copy of this Order with Appendix shall be forwarded to the Registrar of Regulations for publication in the Virginia Register of Regulations.

(3) On or before January 4, 2021, each of the Association's Virginia members shall file with the Clerk of the Commission, in this docket, one (1) original document containing any revised tariff provisions necessary to

implement the regulations adopted herein, and shall also file a copy of the document containing the revised tariff provisions with the Commission's Division of Public Utility Regulation. The Clerk of the Commission need not distribute copies but shall make such filings available for public inspection in the Clerk's Office and post them on the Commission's website at: [scc.virginia.gov/pages/Case-Information](http://scc.virginia.gov/pages/Case-Information).

(4) This docket shall remain open to receive the filings to be made pursuant to Ordering Paragraph (3).

A COPY hereof shall be sent electronically by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission.

<sup>1</sup>The Virginia members of the Association include A&N Electric Cooperative, BARC Electric Cooperative, Central Virginia Electric Cooperative, Community Electric Cooperative, Craig-Botetourt Electric Cooperative, Mecklenburg Electric Cooperative, Northern Neck Electric Cooperative, Northern Virginia Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative, and Southside Electric Cooperative.

<sup>2</sup>The Commission's Order inadvertently set the comment date for September 7, 2020, which was Labor Day, a state holiday. Pursuant to 5 VAC 5-20-140, comments were thus due on the next business day, September 8, 2020. The deadline for comments published in the Virginia Register of Regulations was September 8, 2020.

<sup>3</sup>Consumer Counsel Comments at 8.

<sup>4</sup>The Association's comments were filed in response to Consumer Counsel's comments. As the Commission's April 28, 2020 Order Initiating Comments did not invite reply comments, the Commission has not considered the Association's comments in this order.

**20VAC5-200-21. Streamlined rate proceedings and general rate proceedings for electric cooperatives subject to the State Corporation Commission's rate jurisdiction.**

A. Nothing in this section shall be interpreted to apply to applications for temporary reductions of rates pursuant to § 56-242 of the Code of Virginia.

B. All streamlined or general rate applications for jurisdictional electric distribution cooperatives ("cooperatives" or "applicants") shall be subject to the following requirements:

1. Pursuant to § 56-235.4 of the Code of Virginia and the exceptions stated therein, the regulated operating revenues of a cooperative shall not be increased more than once within any 12-month period. However, streamlined rate relief may become effective in less than 12 months after a

preceding increase provided that regulated base operating revenues are not increased more than once in any calendar year.

2. An applicant may select any test period it wishes to use to support its application.

3. Any increase in revenues under this section shall be allocated in accordance with a properly designed cost of service study.

4. A cooperative which has outstanding wholesale power cost riders which reflect permanent changes in power costs approved by a regulatory agency shall adjust its base rates to reflect such changes at the same time it increases its rates in a rate application.

5. a. Except as otherwise provided herein, all applications for rate relief shall be filed in the original and 15 copies with the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218.

- b. Where a filing contains information that the applicant claims to be confidential, the filing may be made under seal provided it is accompanied by both a motion for protective order or other confidential treatment and an additional five copies of a redacted version of the filing to be available for public disclosure. Unredacted filings containing the confidential information shall, however, be immediately available to the commission staff for internal use at the commission.

Filings containing confidential (or redacted) information shall be so stated on the cover of the filing, and the precise portions of the filing containing such confidential (or redacted) information, including supporting material, shall be clearly marked within the filing.

6. An electric cooperative intending to file a rate application shall notify the State Corporation Commission ("commission") and all parties of record appearing in the cooperative's last rate case at least 60 days in advance of the filing of the application. Also, public notice of the intent to file a rate application shall be provided 60 days in advance of the filing of said application to all of the cooperative's customers, using any of the methods of publication set out in subdivision C 12 of this section.

7. The commission retains the right to waive any or all parts of this section for good cause shown.

8. An application shall not be deemed filed under § 56-238 of the Code of Virginia unless it is in full compliance with this section.

C. An applicant may file a complete application for streamlined rate relief provided the following limitations in subdivisions 1 through 17 of this subsection are met. Should any provision of this subsection conflict with other portions

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of this section, this subsection shall prevail with respect to filings pursuant to this section.

1. The increase in total operating revenues as calculated in column (5) of Schedule 3 of Appendix A, ~~included herein,~~ is not more than ~~the test period increase in the Consumer Price Index ("CPI"), or 5.0%, whichever is less. The CPI shall be defined as the Consumer Price Index for all Urban Consumers (CPI-U) for all items, as estimated by the U.S. Department of Labor, Bureau of Labor Statistics, and published in its Summary Data from the Consumer Price Index News Release, or its successor. As calculated in this publication, the percentage change in the CPI-U for a test year will be the index for the last month of the test year divided by the index for the same month one year prior, minus one, multiplied by 100;~~ 4.0%; and

2. Earnings after the proposed increase must not produce financial ratios ~~which exceed the level approved by the commission in the applicant's most recent general rate case beyond a times interest earned ratio (TIER) of 2.5, a rate of return of 4.2%, or such other relevant ratios that the cooperative proposes that satisfy the burden of proof as just and reasonable.~~ Subject to the provisions set forth ~~below in this subsection,~~ a cooperative ~~which that~~ files an application for streamlined rate relief may petition the commission requesting that its rates be made permanent no less than 30 days from the date the application is deemed complete and filed with the commission if there are insufficient customer objections to the application or if the commission does not suspend the proposed increase and convene a hearing.

3. A cooperative filing a rate application under the streamlined rate procedure shall not:

a. Increase rates by more than ~~the increase in the test period CPI or 5.0% (whichever is less)~~ 4.0% of adjusted Virginia jurisdictional operating revenues;

b. Request earnings, after the proposed increase, which produce ~~inappropriate~~ financial ratios that exceed those ~~approved by the commission in the applicant's most recent general rate case~~ stated within subdivision C 2 of this section; or

c. ~~Propose revisions to its terms and conditions of service; or~~

~~✘~~ Propose revisions to its rate structure as part of its application.

4. The commission may, on its own motion, suspend a cooperative's proposed rate increase and tariff revisions pursuant to § 56-238 of the Code of Virginia and may convene a hearing on the cooperative's streamlined application.

5. The commission may suspend a cooperative's proposed tariff revisions and increase in rates and shall schedule a

hearing thereon if ~~the lesser of 150 or 5.0% of the customers or other persons within a class and subject to a change in a rate, toll, or charge object to the proposed revision or increase in a rate or if the lesser of 150 or 5.0% of the customers or consumers or other persons subject to such rate, toll or charge of a cooperative object to the proposed rate or tariff revision.~~ any of the following object to a proposed tariff revision or increase in rates: (i) the lesser of 150 or 5.0% of any of the cooperative's members; (ii) one-quarter of the customers [ with within ] a rate class that is the subject of a revision or increase; or (iii) all of the customers within a rate class that is the subject of a revision or increase if the rate class contains 20 or fewer customers. Customers on a contract rate are excluded from those customers who may count toward objections for purposes of this subsection.

6. The commission may, in its discretion, suspend an electric cooperative's rate increase and proposed tariff revisions in a streamlined rate proceeding on the motion of its own staff, on the motion of the Virginia Attorney General's Division of Consumer Counsel, or on the motion of any person subject to such change who requests a hearing and states a substantive reason why a hearing is necessary.

7. The requested rate increase for streamlined rate relief shall be supported by a fully adjusted financial status statement (Schedule 3 of Appendix A included herein).

8. Adjustments to test year cost of service shall be limited to the amount of increase or decrease that will be in effect during the rate year.

9. A cooperative shall not file more than three ~~consecutive~~ applications for streamlined rate relief; ~~nor shall there lapse more than five years since the later of the date of the final order or the effective date of rates specified in the final order in the applicant's last general rate case when filing an application for streamlined rate relief in any 10-year period and any application for streamlined rate relief that is granted by the commission will begin a new three-year period for purposes of any use of statutory authority by the cooperative pursuant to § 56-585.3 A 2 of the Code of Virginia.~~

10. An application filed under the streamlined rate procedure shall include:

a. The name ~~and~~ post office address, and website of the applicant and the name and post office address of counsel of record, if any.

b. A brief narrative statement describing the change in rates and tariff revisions and explaining the need for a change in rates and tariff revisions. This statement shall include a description of the actions taken by the cooperative to advise its membership of the change in rates and contents of its application.

- c. A copy of the resolution calling for a change in rates adopted by the Board of Directors of the cooperative.
  - d. A copy of the completed notice given to the public by the cooperative, including a description of the method of publication used.
  - e. Schedules 1 through 9 of Appendix A included herein.
11. Public notice of the increase and tariff revisions shall be completed 30 days in advance of the date the cooperative files its application for revised rates with the commission. Actual proof of public notice shall be furnished to the commission as part of the rate application.
12. The public notice of the increase and tariff revisions in an application for streamlined rate relief may be given by:
- a. Direct mailing to each customer (bill inserts or bill messages are acceptable);
  - b. Publication in Cooperative Living magazine, or the cooperative's regular member publication;
  - c. Newspapers of general circulation in the area served;
  - d. Electronic notice to customers via email addresses (provided that notice pursuant to subdivision C 12 a, b, or c of this section is also given);
  - e. Publication of the notice on the cooperative's website (provided that notice pursuant to subdivision C 12 a, b, or c of this subsection is also given);
  - ~~f.~~ f. Any combination of these methods; or
  - e. g. Any other method of publication authorized by the commission.
13. A copy of the notice shall be served on the ~~Commonwealth's Attorney and Chairman~~ Chair of the Board of Supervisors of each county (or equivalent officials in the counties having alternative forms of government) ~~in the state~~ in which the cooperative offers service in the Commonwealth, and on the mayor or manager and the attorney of every city and town (or equivalent officials in towns and cities having alternative forms of government) in the state in which the cooperative offers service and upon the Division of Consumer Counsel, Office of the Attorney General. Service shall be made by either personal delivery or first class mail, postage prepaid, to the customary place of business of the person served or ~~his~~ the person's residence.
14. The public notice shall, at a minimum, include the following information:
- a. The amount of the total increase in revenues, both in percentages and dollar amounts;
  - b. The percentage increase being applied to each of the cooperative's rate schedules;
  - c. The identity of all wholesale power cost riders to be rolled-in to base rates;
  - d. The locations where copies of the information required to be filed with the commission can be reviewed;
  - e. The date the application will be delivered to the commission;
  - f. A notice that any person subject to the change or changes proposed by the cooperative has the right to request a hearing within 30 days of the application's delivery to the commission;
  - g. A notification that requests for hearing should be directed to the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218;
  - h. A statement advising that the commission may convene a hearing, and if a hearing is held, the commission may order rate relief, redesign rates or adopt tariff revisions which differ from those appearing in the cooperative's application;
  - i. A statement advising the public that if ~~the lesser of 150 or 5.0% of the customers or other persons within a class and subject to a change in a rate, toll, or charge do not request a hearing, and if the lesser of 150 or 5.0% of the customers or consumers or other persons subject to such rate, toll or charge of the cooperative do not object to a rate change or tariff revision~~ the commission receives fewer objections than set forth in subdivision C 5 of this section, the cooperative may petition the commission to make rates permanent without hearing within 30 days after the application is filed with the commission; and
  - j. A statement advising the public of the cooperative's proposed effective date for its new rates.
15. If the commission determines that a hearing on the application for streamlined rate relief is required, then the commission shall issue a procedural order which, among other things, shall specify the date by which the cooperative shall file with the Clerk of the Commission an original and 15 copies of any direct testimony the cooperative intends to rely on in support of its application, together with the remaining schedules set forth in Appendix A. That order shall specify such additional notice of the hearing to the electric cooperative's members that the commission deems appropriate.
16. Subdivision B 6 of this section shall not apply to streamlined applications under subsection C of this section, except that the cooperative shall notify the staff of the commission no less than 60 days in advance of the cooperative's filing.

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17. The commission may waive any provision of these streamlined rules upon its own motion or for good cause shown.

D. 1. A cooperative seeking (i) an increase that produces financial ratios in excess of those allowed in the applicant's most recent general rate case; (ii) an increase in jurisdictional adjusted operating revenues of more than the test period increase in the CPI (as defined in subdivision 1 of subsection C of this section); (iii) revision of its terms and conditions of service; or (iv) to redesign or restructure its rates shall file an original and 15 copies of a general rate application with the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218.

2. An application seeking a general rate increase shall include:

a. The name and post office address of the applicant and the name and post office address of counsel of record, if any.

b. A brief narrative statement describing the change in rates and tariff revisions and explaining the need for a change in rates and tariff revisions. This statement shall include a description of the actions taken by the cooperative to advise its membership of the change in rates and contents of the rate application.

c. A copy of the resolution calling for a change in rates adopted by the cooperative's Board of Directors.

d. All direct testimony which the cooperative intends to rely on in support of its rate application.

e. Exhibits consisting of the Schedules 1 through 14, found in Appendix A included herein. Such schedules shall be identified with the appropriate schedule number and shall be prepared in accordance with the instructions contained in Appendix A included herein and the following general instructions:

(1) Attach a table of contents to the cooperative's application, including exhibits.

(2) The applicant shall be expected to verify the accuracy of all data and calculations contained in and pertaining to every exhibit submitted, as well as support any adjustments, allocations or rate design upon which it relies.

(3) Each exhibit shall be labeled with the name of the applicant and the initials of the sponsoring witness in the upper right hand corner as shown below:

Exhibit No. (Leave Blank)

Witness: (Initials)

Statement or Schedule Number

The first page of all exhibits shall contain a caption which describes the subject matter of the exhibit.

(4) The required accounting and statistical data shall include three copies of all work papers and other information necessary to ensure that the items, statements and schedules found in the application are not misleading.

f. Exhibits consisting of additional schedules may be submitted with the cooperative's direct testimony. Such schedules shall be identified as Schedule 15 (this exhibit may include numerous subschedules labeled 15A et seq.) and shall conform to the general instructions contained in subdivision 2e of subsection D of this section.

g. The commission shall prescribe the general notice to be given to the public and the date by which such notice shall be completed in its procedural order.

h. The applicant shall serve a copy of the information required in subdivisions ~~2a through 2e of subsection D~~ 2 a, b, and c of this section upon the Commonwealth's Attorney and ~~Chairman~~ Chair of the Board of Supervisors of each county or (equivalent officials in counties having alternative forms of government) in the state affected by the proposed increase and upon the mayor or manager and the attorney of every city and town (or equivalent officials in towns and cities having alternative forms of government) in the state affected by the proposed increase. The applicant shall also serve each such official with a statement that a copy of the complete application may be obtained by such official at no cost by making a request thereof orally or in writing to a specified company official or location. In addition, the applicant shall serve a copy of its complete application upon the Division of Consumer Counsel of the Office of the Attorney General in Virginia. All such service specified by this section shall be made either by (i) personal delivery or (ii) first class mail, to the customary place of business or to the residence of the person served.

E. Rate reductions and tariff revisions filed pursuant to § 56-40 of the Code of Virginia shall be filed with the commission's Division of ~~Energy Regulation~~ Public Utility Regulation and shall include the following:

1. A descriptive statement of and justification for the tariff revision;

2. Load data if applicable;

3. A certified excerpt from the minutes of the cooperative's Board of Directors, wherein the ~~Board~~ board approved the tariff revision;

4. Identification of all customers that may be eligible for the tariff revision;

5. A revenue impact study; and

6. An affidavit by the cooperative's manager that the proposed tariff revision affects no increase in rates.

**EDITOR'S NOTE:** Subsections F, G, and H and Appendix A of 20VAC5-200-21 are not amended; therefore, the text of those subsections and Appendix A is not set out.

VA.R. Doc. No. R20-6353; Filed October 13, 2020, 1:18 p.m.

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# GUIDANCE DOCUMENTS

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## PUBLIC COMMENT OPPORTUNITY

Pursuant to § 2.2-4002.1 of the Code of Virginia, a certified guidance document is subject to a 30-day public comment period after publication in the Virginia Register of Regulations and prior to the guidance document's effective date. During the public comment period, comments may be made through the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) or sent to the agency contact. Under subsection C of § 2.2-4002.1, the effective date of the guidance document may be delayed for an additional period. The guidance document may also be withdrawn.

The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, Richmond, Virginia 23219.

### COMMON INTEREST COMMUNITY BOARD

#### Titles of Documents:

[Regarding the Applicability of the Common Interest Community Ombudsman Regulations on Solely Commercial Condominiums.](#)

[Regarding that Letters of Credit may be accepted in Lieu of Bonds to Comply with § 55.1-1968 of the Code of Virginia.](#)

[Regarding Specific Maximum Allowable Fees Set by the Condominium Act and Property Owners Association Act that may be charged by the Preparer of Disclosure Packets and Resale Certificates.](#)

[Requests for Waiver of Filing Fee for Notice of Final Adverse Decision.](#)

[Summary of Board Interpretations, Policies, and Guidance Documents.](#)

[Determining Value of Blanket Surety Bonds Filed by Developers in Lieu of Escrow Deposits.](#)

[Regarding the Requirement to Obtain and Maintain a Separate Fidelity Bond or Insurance Policy Required for Common Interest Community Managers to Comply with § 54.1-2346\(D\) of the Code of Virginia and 18VAC48-50-30 E of the Board's Regulations.](#)

[Procedure for Determination of Compliance with §§ 55.1-2220 and 55.1-2234 of the Code of Virginia.](#)

Public Comment Deadline: December 9, 2020.

Effective Date: December 10, 2020.

Agency Contact: Joseph C. Haughwout, Jr., Board Administrator, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, or email [cic@dpor.virginia.gov](mailto:cic@dpor.virginia.gov).

### BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Title of Document: [Affordable and Special Needs Housing - Consolidated Application Program Guidelines 2020 - 2021.](#)

Public Comment Deadline: December 9, 2020.

Effective Date: December 10, 2020.

Agency Contact: Kyle Flanders, Senior Policy Analyst, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-6761, or email [kyle.flanders@dhcd.virginia.gov](mailto:kyle.flanders@dhcd.virginia.gov).

### BOARD OF NURSING

#### Titles of Documents:

[Guidelines for Training of Public School Employees in the Administration of Insulin and Glucagon.](#)

[Guidance Document on the Practice of Conversion Therapy.](#)

Public Comment Deadline: December 9, 2020.

Effective Date: December 10, 2020.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Perimeter Center, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

### SAFETY AND HEALTH CODES BOARD

Title of Document: [VOSH Procedures to Comply with OSHA Enforcement Exemptions and Limitations under the Federal Appropriations Act, OSHA Instruction CPL 02-00-051 \(formerly CPL 2-0.51J\); Appendix "A" Revision.](#)

Public Comment Deadline: December 9, 2020.

Effective Date: December 10, 2020.

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## Guidance Documents

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Agency Contact: Holly Trice, Attorney, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804)786-2641, or email [holly.trice@doli.virginia.gov](mailto:holly.trice@doli.virginia.gov).

### **VIRGINIA SOIL AND WATER CONSERVATION BOARD**

Title of Document: [Virginia Soil and Water Conservation Board Guidance Document on the Methodology for Identifying Perennial Streams](#).

Public Comment Deadline: December 9, 2020.

Effective Date: December 10, 2020.

Agency Contact: Lisa McGee, Policy and Planning Director, Department of Conservation and Recreation, 600 East Main Street, 24th Floor, Richmond, VA 23219, telephone (804) 786-4378, or email [lisa.mcgee@dcr.virginia.gov](mailto:lisa.mcgee@dcr.virginia.gov).

### **STATE WATER CONTROL BOARD**

Title of Document: [Storage Tank Program Technical Manual, Volume 1: Regulatory and Statutory Framework for Storage Tank Cleanups](#).

Public Comment Deadline: December 9, 2020.

Effective Date: December 10, 2020.

Agency Contact: James Barnett, State Lead Program Manager, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4289, or email [james.barnett@deq.virginia.gov](mailto:james.barnett@deq.virginia.gov).

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Title of Document: [Monitoring and Assessment of Lakes and Reservoirs](#).

Public Comment Deadline: December 9, 2020.

Effective Date: December 11, 2020.

Agency Contact: Sandra Mueller, Environmental Manager, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4324, or email [sandra.mueller@deq.virginia.gov](mailto:sandra.mueller@deq.virginia.gov).

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# GENERAL NOTICES/ERRATA

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## DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

### Proposed Renewal of Variances to Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services (12VAC35-115)

Notice of action: The Department of Behavioral Health and Developmental Services (DBHDS), in accordance with Part VI, Variances (12VAC35-115-220), of the Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services (12VAC35-115), hereafter referred to as the "Human Rights Regulations," is announcing a decision on applications for renewal of existing variances to the Human Rights Regulations. The purpose of the regulations is to ensure and protect the legal and human rights of individuals receiving services in facilities or programs operated, licensed, or funded by DBHDS.

Each variance application references the specific part of these regulations to which a variance is needed, the proposed wording of the substitute rule or procedure, and the justification for a variance. Such application also describes time limits and other conditions for duration and the circumstances that will end the applicability of the variance. After considering all available information including comments, DBHDS intends to submit a written decision deferring, disapproving, modifying, or approving each variance renewal application. All variances shall be approved for a specific time period. The decision and reasons for variance will be published in a later issue of this Register.

Purpose of notice: After considering all available information, at its meeting on September 10, 2020, the State Human Rights Committee (SHRC) voted to approve the applications for renewal of variances to the Human Rights Regulations. The variances were approved for a three-year period with annual updates to the SHRC and quarterly updates to the local human rights committee (LHRC).

Variance is approved for the following sections:

#### Variance to Procedures to Ensure Dignity:

I. 12VAC35-115-50 C 7 and C 8:

In order to maintain the safety and security of residents (youth) the programs restrict communication via telephone and visitation to only those placed on a list generated at admission with input from the parent/legal guardian and the resident.

1. Holiday House (C 8 only).
2. Barry Robinson Center.

1. Kempsville Center for Behavioral Health. (The Clinical Treatment Team is also involved in the creation of the list.)

2. Newport News Behavioral Health Center.

3. Virginia Beach Department of Human Services Residential Crisis Stabilization Program. (The Recovery Center)

#### Variance to Procedures for Restrictions on Freedoms of Everyday Life:

12VAC35-115-100 A 1 a and A 1 g:

In order to utilize a point level system (Behavior Management Model) affecting movement of an individual within the service setting (grounds, community, purchases in program store).

1. Harbor Point Behavioral Health Center.
2. Kempsville Center for Behavioral Health. (Requiring an individual earn points through a level system in order to access the store.)
3. Newport News Behavioral Health Center (A 1 a only).

#### Variance to Procedures for Use of Seclusion, Restraint, and Time Out:

12VAC35-115-110 C 16: In order to utilize time out as part of the unit restriction policy.

1. Kempsville Center for Behavioral Health. (At times deemed necessary due to unsafe behaviors, to provide additional safety and security measures by preventing movement by an individual from their assigned unit for periods longer than 30 minutes.)

Contact Information: Taneika Goldman, Deputy Director, Office of Human Rights, Department of Behavioral Health and Developmental Services, 1220 East Bank Street, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 524-7398, FAX (804) 804-371-2308, or email [taneika.goldman@dbhds.virginia.gov](mailto:taneika.goldman@dbhds.virginia.gov).

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Bartonsville Energy Facility LLC Notice of Intent for Small Renewable Energy Project (Solar) Revised - Frederick County

Bartonsville Energy Facility LLC has provided the Department of Environmental Quality a revised notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Frederick County. The project will be located on approximately 1,160 (originally 750) acres of privately owned land to the south of Middle Road in Frederick County and Stephens City. The project will have a maximum capacity of 130 (originally 80) megawatts alternating current and will consist of ground-mounted solar photovoltaic modules installed on single-axis

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## General Notices/Errata

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tracking structures and associated inverters. The original notice of intent was published in the Virginia Register of Regulations on April 27, 2020.

**Contact Information:** Mary E. Major, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, or email [mary.major@deq.virginia.gov](mailto:mary.major@deq.virginia.gov).

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

#### Draft Pharmacy Appendix D Provider Manual

Comment period: October 19, 2020, through November 18, 2020.

The draft Pharmacy Manual (Appendix D) is now available on the Department of Medical Assistance Services website at <https://www.dmas.virginia.gov/#/manualdraft> for public comment until November 18, 2020.

**Contact Information:** Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, TDD (800) 343-0634, or email [emily.mcclellan@dmas.virginia.gov](mailto:emily.mcclellan@dmas.virginia.gov).

#### Public Comments Sought on High Needs Support Benefit Delivery System Design

Comment period: October 14, 2020, through November 12, 2020.

The Department of Medical Assistance Services (DMAS) is seeking public comment for new Medicaid program features, including a supportive housing and employment benefit (High Needs Supports) targeted to certain high need Medicaid enrollees, through the state's § 1115 Medicaid demonstration. This benefit will assist Medicaid-enrolled individuals with complex physical or behavioral health needs or who need assistance with activities of daily living and who are at risk for housing and employment instability in obtaining and sustaining stable housing and employment in order to improve quality of life and health outcomes.

DMAS welcomes public comment on the entire High Needs Supports benefit delivery system design.

For more information regarding the High Needs Support Benefit, please visit <https://www.dmas.virginia.gov/#/highneedssupport>.

Instructions for public comment submission: The draft High Needs Support Policy Paper is now available on the DMAS website at <https://www.dmas.virginia.gov/#/highneedssupport> for public comment until November 11, 2020.

**Contact Information:** Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical

Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, TDD (800) 343-0634, or email [emily.mcclellan@dmas.virginia.gov](mailto:emily.mcclellan@dmas.virginia.gov).

### BOARD OF PHARMACY

#### Placement of Chemicals in Schedule I

Comment period: October 16, 2020, through December 10, 2020.

Pursuant to § 54.1-3443 D of the Code of Virginia, the Virginia Department of Forensic Science has identified 12 compounds for recommended inclusion into the Code of Virginia.

The following compound is classified as a synthetic opioid. Compounds of this type have been placed in Schedule I (subdivision 1 of § 54.1-3446 of the Code of Virginia) in previous legislative sessions.

1. N,N-diethyl-2-[(4-methoxyphenyl)methyl]-1H-benzimidazole-1-ethanamine (other name: Metodesnitazene), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation.

Based on their chemical structure, the following compounds are expected to have hallucinogenic properties. Compounds of this type have been placed in Schedule I (subdivision 3 of § 54.1-3446) in previous legislative sessions.

1. 4-fluoro-3-methyl-alpha-pyrrolidinovalerophenone (other name: 4-fluoro-3-methyl-alpha-PVP), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.
2. 4-fluoro-alpha-methylamino-valerophenone (other name: 4-fluoropentredone), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers (optical, position, and geometric), and salts of isomers is possible within the specific chemical designation.
3. N-(1,4-dimethylpentyl)-3,4-dimethoxyamphetamine (other name: N-(1,4-dimethylpentyl)-3,4-DMA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers (optical, position, and geometric), and salts of isomers is possible within the specific chemical designation.
4. 4,5-methylenedioxy-N,N-diisopropyltryptamine (other name: 4,5-MDO-DiPT), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers (optical, position, and geometric), and salts of isomers is possible within the specific chemical designation.

5. Alpha-pyrrolidinocyclohexanophenone (other name: alpha-PCYP), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers (optical, position, and geometric), and salts of isomers is possible within the specific chemical designation.

6. 3,4-methylenedioxy-alpha-pyrrolidinoheptiophenone (other name: MDPV8), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers (optical, position, and geometric), and salts of isomers is possible within the specific chemical designation.

Based on their chemical structure, the following compounds are expected to have depressant properties. Compounds of this type have been placed in Schedule I (subdivision 4 of § 54.1-3446) in previous legislative sessions.

1. Bromazolam, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

2. Deschloroetizolam, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

3. 7-chloro-5-(2-fluorophenyl)-1,3-dihydro-1,4-benzodiazepin-2-one (other name: Norfludiazepam), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The following compounds are classified as cannabimimetic agents. Compounds of this type have been placed in Schedule I (subdivision 6 of § 54.1-3446) in previous legislative sessions.

1. Methyl 2-[1-(4-fluorobutyl)-1H-indole-3-carboxamido]-3,3-dimethylbutanoate (other name: 4-fluoro-MDMB-BUTICA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

2. Ethyl 2-[1-(5-fluoropentyl)-1H-indole-3-carboxamido]-3-methylbutanoate (other name: 5-fluoro-EMB-PICA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

Contact Information: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4456, FAX (804) 527-4472, or email [caroline.juran@dhp.virginia.gov](mailto:caroline.juran@dhp.virginia.gov).

## STATE WATER CONTROL BOARD

### Proposed Consent Special Order for GPM Oil LLC

The State Water Control Board proposes to issue a consent special order to GPM Oil LLC for alleged violation of the State Water Control Law at 31862 Tidewater Trail, Center Cross, Virginia 22437 and 26959 Tidewater Trail, Dunnsville, Virginia 22454. A description of the proposed action is available at the Department of Environmental Quality office listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Aree Reinhardt will accept comments by email at [aree.reinhardt@deq.virginia.gov](mailto:aree.reinhardt@deq.virginia.gov) or postal mail at Department of Environmental Quality, Piedmont Regional Office (Enforcement), 4949-A Cox Road, Glen Allen, VA 23060, from November 9, 2020, to December 11, 2020.

### Proposed Consent Special Order for the City of Richmond

An amendment is proposed to the special order by consent issued March 17, 2005, under the authority of §§ 10.1-1185 and 62.1-44.15 of the Code of Virginia between the State Water Control Board and the City of Richmond to address combined sewer overflow impacts on the James River (2005 Order). The purpose of the amendment is to revise certain provisions of the 2005 Order to align with requirements in Chapter 634 of the 2020 Acts of Assembly approved April 2, 2020, and made effective July 1, 2020. The amendment is available for review and comment at the Department of Environmental Quality office listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Please provide comments from November 9, 2020, to November 23, 2020 by email to [jefferson.reynolds@deq.virginia.gov](mailto:jefferson.reynolds@deq.virginia.gov) or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060.

### Proposed Consent Order for Woodstock Shell LLC

An enforcement action has been proposed for Woodstock Shell LLC for violations at the Handy Mart 8 in Woodstock, Virginia. The State Water Control Board proposes to issue a consent order with penalty and injunctive relief to Woodstock Shell LLC to address noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office listed. Eric Millard will accept comments by email at [eric.millard@deq.virginia.gov](mailto:eric.millard@deq.virginia.gov), FAX at (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, from November 9, 2020, to December 9, 2020.

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## General Notices/Errata

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### Community Meeting and Public Comment Period for Water Quality Study (TMDL) for the South Fork Rivanna River

Meeting time: Wednesday, November 18, 2020, from 6 p.m. to 7:30 p.m.

Given the existing State of Emergency related to the COVID-19 pandemic, this meeting will be held entirely virtually. A computer or a telephone are necessary to participate virtually. All meeting attendees are encouraged to access the meeting using a computer to view the meeting visuals. Attendees may also use a phone for audio and a computer for visual to avoid possible interruptions in computer audio. Although the use of a phone for audio only participation is possible, since the meeting will rely on visuals, audio only participation is discouraged. The URL to register for the virtual meeting is provided. Once registered for the meeting, registrants will receive an email with the URL and telephone information to participate in the meeting. If meeting attendees experience any interruption in the meeting broadcast, they should call the technical support line that is also provided at the end of this notice.

In the event that the Governor's State of Emergency is lifted, the meeting will be held on the same date and time at: Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, VA 22801.

To register for this virtual meeting and to receive access information, sign up at <https://attendee.gotowebinar.com/register/9045925564054225936>.

For technical assistance during the meeting, call: (703) 583-3906.

Purpose of notice: The Department of Environmental Quality (DEQ) and its contractors, James Madison University, and 3E Consulting will discuss the process that will be used to complete a water quality study known as a total maximum daily load (TMDL) for the South Fork Rivanna River and its tributaries. The river is listed on the § 303(d) TMDL Priority

List and Report as impaired due to violations of Virginia's water quality standards for aquatic life use. This is an opportunity for local residents to learn about the condition of the river, share information about the area, and become involved in the process of local water quality improvement.

Meeting description: A public informational meeting will be held to introduce the local community to the water quality improvement process in Virginia, known as the TMDL process, provide information on biological monitoring efforts and sources, invite participation and solicit input, review the next steps, and accept volunteers to be part of a technical advisory committee. Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report. The meeting will be open to the public and all are welcome.

Description of study: The South Fork Rivanna River and 12 of its tributaries in Albemarle County have been placed on Virginia's impaired waters list for failing to support the benthic water quality standard (Table 1). This standard is intended to protect the aquatic life designated use, which states that all of the Commonwealth's waterways will support a diverse and abundant population of aquatic life. This water quality study will include a benthic stressor analysis to determine the most likely pollutant responsible for the impairments, and it will report on the sources of these pollutant and recommend reductions to meet a total maximum daily load (TMDL) for the impaired stream segments. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality in the South Fork Rivanna River and its tributaries, pollutant levels will need to be reduced to the TMDL amount. Through this process, Virginia agencies will partner with a technical advisory committee (TAC) made up of local stakeholders to complete a benthic stressor analysis and identify the pollutant of concern in the watershed in addition to pollutant sources and the reductions needed from these sources to meet the TMDL. All are welcome to participate in this committee, and TAC meetings are open to the public.

Table 1. Benthic impairments in the South Fork Rivanna River included in TMDL study.

Waterbody Name	Impairment Description	Length (Miles)	Initial Listing Date
Broad Axe Run	Headwaters to confluence with Mechums Creek	8.31	2004
Lickinghole Creek	Headwaters to confluence with Mechums Creek	8.93	2010
Mechums River	Confluence with Stockton to Lickinghole confluence	2.07	2004
	Headwaters to confluence with Stockton Creek	13.09	2004
Spring Creek	Headwaters to upper end of Lake Albemarle	3.48	2012

Waterbody Name	Impairment Description	Length (Miles)	Initial Listing Date
Slabtown Branch	Headwaters to confluence with Lickinghole Creek	4.92	2010
Parrott Branch X-trib	Headwaters to confluence with Parrott Creek	1.15	2010
Fishing Creek	Headwaters to confluence with SF Rivanna River Reservoir	12.53	2012
Ivy Creek	5 mile upper limit of PWS designation to confluence with SF Rivanna Reservoir	2.56	2008
	Little Ivy Creek confluence to 5 mile upper limit of PWS designation	4.02	2008
	Headwaters to confluence with Little Ivy Creek	5.49	2010
Little Ivy Creek X-trib	Headwaters to confluence with Ivy Creek	4.44	2016
Naked Creek	Headwaters to confluence with SF Rivanna River	9.82	2010
Powell Creek	Headwaters to confluence with SF Rivanna River	10.36	2010
SF Rivanna	RWSA public water intake to confluence with Rivanna River	3.47	2010
SF Rivanna X-trib	Headwaters to confluence with SF Rivanna River	3.2	2010

How to comment and participate: All meetings in support of TMDL development are open to the public and all interested parties are welcome. Written comments will be accepted November 18, 2020, through December 18, 2020, and should include the name, address, and telephone number of the person submitting the comments. For more information, or to submit written comments, please contact Nesha McRae, Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7850, FAX (540) 574-7878, or email [nesha.mcrae@deq.virginia.gov](mailto:nesha.mcrae@deq.virginia.gov).

**VIRGINIA CODE COMMISSION**  
**Notice to State Agencies**

**Contact Information:** *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* [varegs@dls.virginia.gov](mailto:varegs@dls.virginia.gov).

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

**Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed:** A table listing

regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is

available at <http://register.dls.virginia.gov/documents/cumulatab.pdf>.

**Filing Material for Publication in the Virginia Register of Regulations:** Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

