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Exempt Action: Re-Proposed Regulation Agency Background Document

Agency name	Department of Agriculture and Consumer Services
Virginia Administrative Code (VAC) Chapter citation(s)	11 VAC 20-30 11 VAC 20-20
VAC Chapter title(s)	Texas Hold'em Poker Tournament Regulations (11 VAC 20-30) Charitable Gaming Regulations (11 VAC 20-20)
Action title	Promulgation of regulations for Texas Hold'em poker tournaments by the Department of Agriculture and Consumer Services
Date this document prepared	September 15, 2023

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

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

This regulatory action seeks to promulgate regulations to prescribe the requirements for those charitable organizations wishing to conduct Texas Hold'em poker tournaments to generate funds for their charitable cause.

Section 18.2-340.19 of the Charitable Gaming Law (Article 1.1:1 of Chapter 8 of Title 18.2 of the Code of Virginia) (Law) requires the Department of Agriculture and Consumer Services (VDACS) to adopt regulations that prescribe the conditions under which a qualified organization may manage, operate, contract with operators of, or conduct Texas Hold'em poker tournaments. Chapters 554 and 609 of the 2022 Acts of Assembly require the Commissioner of Agriculture and Consumer Services (Commissioner) to prescribe regulations that are consistent with the provisions of Chapter 982 of the 2020 Acts of

Assembly. The proposed regulations prescribe the conditions under which Texas Hold'em poker tournaments shall be conducted in the Commonwealth.

To effectively regulate Texas Hold'em poker tournaments, the agency has determined that it will (i) promulgate 11 VAC 20-30, *Texas Hold'em Poker Tournament Regulations*, and (ii) amend 11 VAC 20-20, *Charitable Gaming Regulations*, to include poker-specific provisions where appropriate. In the previous proposed stage of this regulatory action, VDACS was unable to include proposed amendments to 11 VAC 20-20 as that chapter was not in effect at that time. As 11 VAC 20-20 is now in effect, the agency has included the poker-specific amendments to 11 VAC 20-20 in a re-proposed stage for this regulatory action. During this re-proposed stage, the agency is publishing the proposed poker-specific amendments to 11 VAC 20-20 and the proposed text of 11 VAC 20-30, with amendments the agency determined are appropriate in response to the comments received during the initial proposed stage. This will afford the regulated community and interested stakeholders the opportunity to review and comment on all of the Texas Hold'em poker tournament regulatory provisions before the provisions become effective.

Below is a summary of the proposed 11 VAC 20-30, *Texas Hold'em Poker Tournament Regulations*, with any changes from the previous version noted, as well as agency responses to comments received from the public during the initial proposed stage. Below is also a summary of the proposed amendments to 11 VAC 20-20, *Charitable Gaming Regulations*.

11 VAC 20-30, *Texas Hold'em Poker Tournament Regulations*

The proposed regulations provide that a charitable organization wishing to conduct Texas Hold'em poker tournaments must obtain a permit from the department and establishes the requirements for a charitable organization to conduct Texas Hold'em poker tournaments, including (i) required documents that must be provided to the department, (ii) prohibited acts, (iii) recordkeeping and bank account requirements, and (iv) contract and lease requirements.

The regulations require that any person administering a Texas Hold'em poker tournament for a charitable organization must register with the department as an operator. The regulation defines "administer" as the "conduct of activities by an operator that are associated with production of a poker tournament." Operators who provide charitable gaming supplies must obtain a charitable gaming supplier permit in accordance with §18.2-340.34 of the Code of Virginia. The regulations also require the registration of a landlord who rents, leases, or otherwise provides a premises to a charitable organization to hold a Texas Hold'em poker tournament.

The regulations establish requirements for Texas Hold'em poker tournaments including the requirement for a fixed entry fee, specific requirements for poker cards and poker chips, a requirement for posting house rules, and prohibited acts. The regulations prohibit wagering currency as part of the Texas Hold'em poker tournament.

The regulation outlines training requirements for all persons working or volunteering at a poker tournament. The regulation prohibits staff of the charitable organization or the operator from participating as a player in the poker tournament.

In accordance with Chapters 554 and 609 of the 2022 Acts of Assembly, VDACS held a 30-day public comment period on the proposed regulation from April 10, 2023, until May 10, 2023. VDACS also held a public hearing on May 3, 2023. The agency received 376 comments related to the proposed *Texas Hold'em Poker Tournament Regulations*, 11 VAC 20-30. Those comments and agency changes to *Texas Hold'em Poker Tournament Regulations* are summarized below.

- The proposed regulations prohibited concurrent poker tournaments. VDACS received comments that requested that the agency allow concurrent tournaments and disputed the agency's authority to regulate concurrent tournaments. Sections 3.2-102, 18.2-340.15, 18.2-340.19(A)(12), and 18.2-340.28:2 of the Code of Virginia provide VDACS with the authority to prohibit or restrict

concurrent tournaments. The agency has amended the regulations to allow concurrent tournaments with several restrictions, including the number of concurrent tournaments that may be played at any given time.

- The proposed regulations prohibit many acts that would be deemed a conflict of interest. Many commenters wanted VDACS to allow an operator or the operator's employees to play in the poker tournaments that the operator administers. Commenters also wanted to allow a qualified organization's game managers, workers, dealers, charitable host representatives, or family members to play in poker tournaments that the organization sponsors. Commenters also wanted VDACS to allow landlords to participate in poker tournaments that are held at their facilities, as well as be able to give or receive loans or other payments to a qualified organization. The agency also received comments requesting that landlords be able to act as operators. VDACS believes these allowances could result in significant conflicts of interest and made no related changes to the regulations. However, the agency did amend the regulations to allow a dealer of an operator to play in a poker tournament only if the dealer does not deal in that tournament or within 48 hours of the dealer's shift.
- VDACS received comments that were opposed to the requirement that a dealer's last name appear on the dealer's identification badge, as it was deemed by the commenters to be a safety concern. The agency has removed the requirement for the last name to appear on the badge.
- The proposed regulations prohibit anyone involved in the management, operation, conduct, and administration of a poker tournament, including dealers, from receiving gratuities. Many commenters were opposed to this prohibition and requested that the regulations be amended to allow dealers to receive gratuities. After consultation with the Office of the Attorney General, VDACS did not modify the prohibition on gratuities.
- Several commenters wanted VDACS to allow re-buys. They also commented that the definition of re-buy was not correct. Section 18.2-340.16 of the Law provides that players are eliminated from the poker tournament upon running out of poker chips and, as such, prohibits re-buys. VDACS amended the definition of "re-buy" and defined "add-on." The regulation now prohibits re-buys and allows add-ons under certain circumstances.
- VDACS received comments that disputed the agency's authority to prohibit organizations from conducting poker tournaments outside of the county, city, or town or adjacent county, city, or town where the organization is located. VDACS has removed this prohibition from the regulation.
- VDACS received comments related to the calendar day/week operating times for poker tournaments. The regulations do not contain requirements restricting the time periods when the poker tournament must occur; therefore, the agency has made no changes to the regulations related to the calendar day/week for conducting poker tournaments.
- VDACS received comments that were opposed to the prohibition on the use of microprocessors, as it would prevent the use of computer software to manage a tournament. The agency has amended the proposed regulations to allow the use of computer software to manage poker tournaments.
- VDACS received comments in opposition to the requirement that the charitable organization contribute a minimum of 10 percent of its Texas Hold'em poker tournament revenue to its charitable cause (commonly known as "use of proceeds"). Commenters recommended one to two percent use of proceeds for Texas Hold'em poker tournaments. In addition, commenters requested that use of proceeds be based on net revenue, rather than gross revenue, and that charitable organizations should be permitted to use Texas Hold'em poker revenue for the organization's social and recreational activities. The current use of proceeds requirement for all charitable gaming, except for electronic gaming, is 10 percent of gross revenue. The Charitable

Gaming Law requires use of proceeds for all charitable gaming, except for electronic gaming, to be based on gross revenue and prohibits the use of charitable gaming revenue for an organization’s social or recreational activities. The agency has made no changes to the proposed regulations, thereby requiring that the use of proceeds for Texas Hold’em poker tournaments be 10 percent of gross revenue, the same as other forms of charitable gaming, other than electronic gaming.

- VDACS received comments on other topics, including waivers for landlord registration, minimum training requirements, the requirement for a representative of the charity to be present during the poker tournament, fixed operator fees, and the requirement to maintain independent records. The agency made no changes to the regulations concerning these topics.

11 VAC 20-20, Charitable Gaming Regulations

The re-proposed regulations add definitions to 11 VAC 20-20 that are consistent with 11 VAC 20-30, which allow for the conduct of Texas Hold’em poker tournaments by qualified organizations.

The regulations establish the criteria for receiving a permit to conduct Texas Hold’em poker tournaments, including documentation that must be provided with the permit application.

The regulations establish prohibited acts that, if the organization is found to have committed, would result in the denial, revocation, or suspension of the organization’s permit.

Additional recordkeeping requirements have been added for those organizations conducting poker tournaments.

Throughout the regulations, amendments were made to conform with the Charitable Gaming Law and the concurrently proposed 11 VAC 20-30.

Mandate and Impetus

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

Section 18.2-340.19 of the Charitable Gaming Law requires VDACS to adopt regulations that prescribe the conditions under which a qualified organization may manage, operate, or contract with operators of, or conduct Texas Hold’em poker tournaments. Chapters 554 and 609 of the 2022 Acts of Assembly require the Commissioner to promulgate regulations regarding Texas Hold’em poker tournaments that are consistent with the provisions of Chapter 982 of the 2020 Acts of Assembly. Chapters 554 and 609 of the 2022 Acts of Assembly include an enactment clause that exempt the initial adoption of these regulations from the Administrative Process Act, except that the agency must provide an opportunity for public comment on the regulations prior to adoption.