



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	75
VAC Chapter Number:	40
Regulation Title:	Unclaimed Property Administrative Review Process
Action Title:	Promulgate new regulation governing the unclaimed property administrative review process
Date:	3/28/03

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This regulation addresses the process whereby any person (also, the “Applicant”) (i) asserting ownership of property remitted to the Commonwealth under the Uniform Disposition of Unclaimed Property Act, (ii) required to pay or deliver Abandoned Property pursuant to the Uniform Disposition of Unclaimed Property Act, or (iii) otherwise aggrieved by a decision of the Administrator, may file an application for administrative review and correction of the Administrator’s determination. The review process will provide the Applicant with the opportunity to have its issues considered at a different management level in the Department of the Treasury. The Applicant’s participation in the review process is voluntary and completion of this administrative review process is not a condition precedent to litigation. In addition, the form of application is provided.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Promulgation of this regulation is required by § 55-210.27.C. of the *Code of Virginia*, which states that the State Treasurer shall promulgate regulations pursuant to this section. This regulation complies with the statutory requirement and applies to all parties who may be impacted by the Uniform Disposition of Unclaimed Property Act. The Office of the Attorney General has certified that the Department of the Treasury has the statutory authority to promulgate the proposed regulation as authorized by state law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

This regulation addresses the process whereby any person asserting ownership of property remitted to the Commonwealth or any holder of unclaimed property who is required to report and remit such property under the provisions of the Uniform Disposition of Unclaimed Property Act (Chapter 11.1, §§ 55210.1 through 55-210.30 of the *Code of Virginia*) and who is aggrieved by a decision of the Administrator of the Act, may file an application for an administrative review of the Administrator's decision. The goal is to set forth a standard procedure to be followed and a form to be used when disputes regarding claims and remittances occur.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

This regulation allows any person or holder of unclaimed property the opportunity for an administrative review of a decision made by the Administrator of the Uniform Disposition of Unclaimed Property Act to which (1) a denial of payment decision notice was issued to a person asserting ownership of property remitted to the Commonwealth where it was determined the evidence submitted did not provide sufficient proof of ownership, (2) a demand notice was

issued requesting that a holder pay and deliver such property to the Commonwealth as required by the Act along with such penalties and interest, if any, as required by the Act, or (3) for which any person was otherwise aggrieved by a decision of the Administrator. The application for the administrative review must be filed within 90 days from the date such notice is received. The review panel has the ability to approve claims made, correct errors detected and amend or withdraw any denial of payment or other notice from the Administrator, based on any additional evidence and pertinent information presented supporting the basis for the review.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

This regulation provides a benefit to both individual private citizens and holder businesses. Where an individual private citizen who has asserted ownership of property remitted to the Commonwealth and whose claim has been denied because the evidence submitted did not provide sufficient proof of ownership, this regulation provides a review process for this individual to request an administrative review of the decision. Where a holder business has received a demand notice requesting that the holder pay and deliver such unclaimed property to the Commonwealth as required by the Act along with such penalties and interest, if any, as required by the Act, this regulation provides a review process for the business to request an administrative review of the decision. The advantage to the Department of the Treasury's Division of Unclaimed Property is that the review process provides the Department an additional opportunity to review additional information not previously presented by the claimant or the holder and to reconsider its previous decision in light of the new evidence presented. There is no disadvantage to the individual private citizen, the holder business or to the Commonwealth in the promulgation of this regulation.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

This regulation has no fiscal impact on the Commonwealth as unclaimed property is held in perpetuity by the Commonwealth until the rightful owner is found and holders of unclaimed property are required to report and remit such property in accordance with the Act. Further, the Department of the Treasury's Division of Unclaimed Property already addresses matters of this nature in much the same manner as the statutory requirement by virtue of internal procedures and statutory language in the Act. There may be a small fiscal impact on individuals and holder

businesses where such individuals and holder businesses must present additional evidence in the review process in order to overcome a decision by the Administrator, however, statutory language in the Act already requires this review process and promulgation of this regulation will not result in any additional fiscal impact than was already required or in any additional requests for administrative reviews.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

The following provides a section-by-section description of the proposed regulation.

§ 1 provides definitions of words and terms used in the proposed regulation.

§ 2 provides the statutory authority (§ 55-210.27.C. of the *Code of Virginia*) for promulgation of the proposed regulation.

§ 3 will provide for the effective date of the proposed regulation once the final regulation is approved.

§ 4 directs the State Treasurer to give written notice to any person ascertained to have failed to pay or deliver abandoned property as required by the Act and to demand the remittance of the property and payment of any penalties and interest within 90 days from the date the notice is received unless the holder requests and administrative or judicial review. Such notice will be accompanied by a detailed explanation of the person's right to an administrative or judicial review.

§ 6 asserts the right of any person (i) asserting ownership of property remitted to the Commonwealth under the Act, (ii) required to pay or deliver abandoned property pursuant to the Act, or (iii) otherwise aggrieved by a decision of the Administrator to file an application for an administrative review and correction of the Administrator's determination.

§ 7 requires that all such requests for an administrative review are required to be submitted on the form provided in this proposed regulation within 90 days after receipt of the written notice, accompanied by documentation to support the review or an explanation as to why such supporting documentation is not available. However, no application shall be denied solely on the basis that no supporting documentation is available or that additional documentation may be desirable. Failure to submit the application for an administrative review within the prescribed time period will bar administrative, but not judicial review of the matter.

§ 8 provides the administrative review process steps to include: (A) submission of the application for an administrative review within the prescribe time period; (B) response to the applicant to schedule the review meeting within 30 calendar days of receipt of the application; (C) notice of the agreed upon time for holding the review meeting within the next 30 calendar days, during which the applicant is to submit any additional evidence and pertinent information supporting the basis for the review; (D) make-up of the review panel to include the State Treasurer or designee, Director of Unclaimed Property or designee, representative from the Office of the Attorney General. In addition a representative from the Division of Unclaimed Property Audit or Claims area may also participate as well as an agent and/or legal counsel of the applicant; (E) conduct of the review, giving the applicant an opportunity to explain the

reason for the requested correction and the panel the opportunity to ask questions to clarify the understanding of the issues; (F) ability of the review panel to approve claims, correct errors and amend or withdraw any denial of payment or other written notice from the Administrator or the State Treasurer; and (G) issuance by the State Treasurer of a written determination to the applicant within 90 days of receipt of the application for an administrative review.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

No alternative to promulgating this regulation has been considered since promulgation of this regulation is required by § 55-210.27.C. of the *Code of Virginia*. Prior to the statutory requirement, such matters were addressed in much the same manner as the statutory requirement by virtue of internal procedures. An alternative would be to remove the language in § 55-201.27 requiring promulgation of the regulation, but to leave the remainder of the language in this section, which outlines the administrative review process to be followed by the Administrator.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

There were no public comments received during the NOIRA comment period.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

Since there were no public comments during the NOIRA comment period, the Department of the Treasury believes that this is an indication that the proposed regulation is clearly written and easily understandable by the individuals and entities affected.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The Department of the Treasury will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated no later than three years after the proposed regulation is expected to be effective.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed regulatory action will strengthen the protection of owners of unclaimed property by ensuring such property is returned to the rightful owner, thereby increasing potential disposable family income resulting from a return of such property to the owner.