



## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Board of Agriculture and Consumer Services
<b>Virginia Administrative Code (VAC) citation</b>	2 VAC 5-610
<b>Regulation title</b>	Rules Governing the Solicitation of Contributions
<b>Action title</b>	Amendments to remove references to the Office of Consumer Affairs, to update references to other state agencies, to reflect changes in IRS filing requirements, and to revise the regulation as determined to be necessary during upcoming stakeholder meetings.
<b>Date this document prepared</b>	April 2, 2013

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

The proposed regulatory action will amend 2 VAC 5-610 *et seq.*, *Rules Governing the Solicitation of Contributions*, to (i) remove references to the Office of Consumer Affairs, (ii) update references to other state agencies, (iii) reflect changes in Internal Revenue Service (IRS) filing requirements, and (iv) revise the regulation as determined to be necessary during upcoming stakeholder meetings.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.*

Section 57-66 of the Code of Virginia authorizes the Board of Agriculture and Consumer Services (Board) to make rules and regulations for the enforcement of the Virginia Solicitation of Contributions Law (Va Code § 57-48 *et seq.*). The Board authorized the filing of a Notice of Intended Regulatory Action for this regulation on March 28, 2013.

### Need

*Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

This regulation prescribes (i) the specific information charitable organizations must provide in order to complete a new or renewal registration, or to receive an exemption from annual registration, (ii) the requirements for reporting contributions received, (iii) the information that professional solicitors and fund-raising counsel must provide in order to complete registration, (iv) the specific information that professional solicitors must disclose in the course of soliciting contributions, and (v) the requirements regarding the financial reports that must be filed with the Virginia Department of Agriculture and Consumer Services (VDACS).

According to the IRS, in 2008, Virginians donated approximately \$4.2 billion to charitable organizations. This regulation protects the welfare of Virginia's citizens through its registration, disclosure, and reporting requirements which assist the agency in providing potential donors with information that can educate their charitable donation decisions. This regulatory action will amend the regulation to (i) remove references to the Office of Consumer Affairs, (ii) update references to other state agencies, (iii) reflect changes in IRS filing requirements, and (iv) revise the regulation as determined to be necessary during upcoming stakeholder meetings. These amendments will improve the clarity of the regulation, making compliance for regulants easier. Increased compliance will ultimately benefit the welfare of those citizens who make charitable donations.

### Substance

*Please detail any changes that will be proposed. Be sure to define all acronyms. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.*

The proposed regulatory action will amend 2 VAC 5-610 *et seq.*, *Rules Governing the Solicitation of Contributions*, to (i) remove references to the Office of Consumer Affairs, (ii) update references to other state agencies, (iii) reflect changes in IRS filing requirements, and (iv) revise the regulation as determined to be necessary during upcoming stakeholder meetings.

The current regulation makes multiple references to the Office of Consumer Affairs, the former name of the program that was responsible for administering the Virginia Solicitation of Contributions Law (VSOC Law). In July 2012, as a result of the Governor's government reorganization efforts, certain responsibilities of the Office of Consumer Affairs were transferred to another agency and the remaining

responsibilities were consolidated into a new program VDACS called the Office of Charitable and Regulatory Programs. The proposed amendments will remove references to the Office of Consumer Affairs, which no longer exists, and, where appropriate, replace those references with references to VDACS.

The current regulation also references multiple state agencies that have changed their names subsequent to 2002, when this regulation was last amended. The proposed amendments will replace those obsolete references with the current names of the appropriate state agencies.

Charitable organizations seeking to solicit contributions in Virginia must file, among other documents, a financial statement certified by an independent public accountant or a copy of IRS Form 990, *Return of Organization Exempt from Income Tax*. The IRS recently raised the threshold for organizations that are allowed to file the abbreviated Form 990-N from \$25,000 to \$50,000. The VSOC Law was amended by the 2012 Session of the General Assembly to remove references to the \$25,000 threshold so that the law would not continue to require organizations with gross revenue between \$25,000 and \$50,000 to submit the Form 990 to VDACS when the IRS was not requiring that these organizations complete the Form 990. The proposed amendments will remove the references to the former \$25,000 threshold that currently appear in the regulation.

The agency intends to convene a stakeholder group to explore whether additional amendments can be made to the regulation to reduce the regulatory burden on the regulated entities while maintaining necessary protections for Virginia’s citizens.

**Alternatives**

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.*

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This proposed regulatory action will provide updates necessary to improve the clarity of this regulation. The current regulation includes references to the Office of Consumer Affairs, which is no longer in existence, and to certain state agencies that have changed their names since this regulation was last amended in 2002. To allow these obsolete references to remain in the regulation will create confusion for the regulated entities.

The agency considered whether repealing this regulation was a viable alternative to amending it. This regulation prescribes specific registration and reporting requirements that clarify the general requirements prescribed in the VSOC Law. As such, the agency determined that it is necessary to retain this regulation to provide for uniform reporting, which, ultimately, improves the information that is available to the public to inform their charitable donation decisions.

**Public participation**

*Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the*

*alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.*

*Please also indicate pursuant to your Public Participation Guidelines whether a panel will be appointed to assist in the development of the proposed regulation. Please state one of the following: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is \_\_\_\_\_; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.*

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The agency is seeking comments on this regulatory action, including but not limited to 1) ideas to be considered in the development of this proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives, and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to:

Erin Williams  
Policy & Planning Coordinator  
VDACS Division of Consumer Protection  
PO Box 1163  
Richmond, VA 23218  
Phone: 804-786-1308  
Fax: 804-371-7479  
Erin.Williams@vdacs.virginia.gov

Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

### Family impact

*Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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.*

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The proposed regulatory action will have no impact on the institution of the family and family stability.

**Periodic review/small business impact review result**

***If this NOIRA is not the result of a periodic review/small business impact review of the regulation, please delete this entire section.***

*If this NOIRA is the result of a periodic review/small business impact review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, please include, pursuant to Code of Virginia § 2.2-4007.1 E and F, a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.*

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The public comment period for the periodic review of this regulation ran from November 5, 2012 through November 26, 2012. The agency did not receive any comments during the public comment period.

The regulation is necessary for the protection of the welfare of Virginia citizens as it assists the agency in providing citizens with information that enables them to make educated financial decisions regarding their charitable donations. The agency has determined that the regulation is clearly written and will be easily understandable with the amendments proposed in this regulatory action.

This regulation prescribes specific registration and reporting requirements that clarify the general requirements prescribed in the VSOC Law. As such, the agency determined that it is necessary to retain this regulation to provide for uniform reporting, which, ultimately, improves the information that is available to the public to inform their charitable donation decisions. The agency has determined that this regulation is not unnecessarily complex or burdensome for the regulated entities. This regulation does not overlap, duplicate, or conflict with any federal or state law or regulation. The amendments proposed in this regulatory action will align the regulation with the IRS requirements regarding the filing of IRS Form 990 and IRS Form 990-N and with the Code of Virginia, which was amended in 2012 to reflect the IRS's increased threshold for organizations that are allowed to file IRS Form 990-N.

The regulation was last amended in 2002. During the recent periodic review, the agency identified provisions of the regulation that need to be amended to reflect changes that have occurred subsequent to its last amendment, such as changes to the names of state agencies and changes to IRS filing requirements.