



## Proposed Regulation 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, and to reflect changes in IRS filing requirements.
<b>Date this document prepared</b>	December 5, 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*.

### Brief summary

*In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.*

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, and (iii) reflect changes in Internal Revenue Service (IRS) filing requirements.

### Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

"IRS" means the United States Internal Revenue Service.

"VDACS" means the Virginia Department of Agriculture and Consumer Services.

“VSOC Law” means the Virginia Solicitation of Contributions Law (Va Code § 57-48 *et seq.*).

### 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.*

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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 proposed the amendments to this regulation on December 5, 2013.

### Purpose

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.*

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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 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 that 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, and (iii) reflect changes in IRS filing requirements. 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 briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the “Detail of changes” section.)*

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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, and (iii) reflect changes in IRS filing requirements.

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 in the Department of Agriculture and Consumer Services 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 the Virginia Department of Agriculture and Consumer Services (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 replace the references to the former \$25,000 threshold that currently appear in the regulation with a general reference to the IRS Form 990-N filing threshold.

Currently, the regulation requires that if a charitable organization submits an IRS Form 990 to the agency, the Form must be signed. The IRS now offers electronic filing. As such, organizations that file electronically do not generate a signed Form. The proposed amendments acknowledge the electronic filing option by requiring organizations that file electronically to submit a copy of the IRS Receipt of Filing along with their unsigned IRS Form 990, 990-PF, or 990-EZ.

**Issues**

- Please identify the issues associated with the proposed regulatory action, including:*
- 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.*

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The proposed amendments will improve the clarity of the regulation, making compliance for regulants easier. Increased compliance will increase the information that the agency is able to provide to the

public regarding charitable organizations, ultimately benefitting those citizens who make charitable donations. This regulatory action poses no disadvantages to the public or the Commonwealth.

**Requirements more restrictive than federal**

*Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

There are no applicable federal requirements.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

No locality will bear a disproportionate material impact as a result of the proposed amendments.

**Public participation**

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is 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) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

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

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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 date of the public comment period.

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

**Economic impact**

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that we are looking at the impact of the proposed changes to the status quo.*

<p><b>Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal.</b> Think broadly, e.g., these entities may or may not be regulated by this board</p>	<p>Charitable organizations, professional solicitors, and professional fund-raising counsel will benefit from the proposed amendments which are intended to clarify the regulation.</p>
<p><b>Agency’s best estimate of the number of (1) entities that will be affected, including (2) small businesses affected.</b> Small business means a business, including affiliates, that is independently owned and operated, employs fewer than 500 full-time employees, or has gross annual sales of less than \$6 million.</p>	<p>The agency has registered or granted an exemption to approximately 14,000 charitable organizations pursuant to the VSOC Law.</p> <p>The agency has registered approximately 100 professional solicitors and 400 professional fund-raising counsel pursuant to the VSOC Law.</p> <p>The agency does not collect information from charitable organizations, professional solicitors, and professional fund-raising counsel that would enable it to determine whether any of these entities are small businesses.</p>
<p><b>Benefits expected as a result of this regulatory proposal.</b></p>	<p>The proposed amendments will improve the clarity of the regulation, making compliance for regulants easier. Increased compliance will increase the information that the agency is able to provide to the public regarding charitable organizations, ultimately also benefitting those citizens who make charitable donations.</p>
<p><b>Projected cost to the <u>state</u> to implement and enforce this regulatory proposal.</b></p>	<p>The state will not incur any expenses as a result of the proposed amendments.</p>
<p><b>Projected cost to <u>localities</u> to implement and enforce this regulatory proposal.</b></p>	<p>Localities will not incur any expenses as a result of the proposed amendments.</p>
<p><b>All projected costs of this regulatory proposal for <u>affected individuals, businesses, or other entities</u>.</b> Please be specific and include all costs, including projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses, and costs related to real estate development.</p>	<p>Affected entities will not incur any expenses as a result of the proposed amendments.</p>

## Alternatives

*Please describe any viable 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. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

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The proposed amendments do not place any new regulatory burdens on the regulants, and will improve the clarity of the regulation. Alternatively, retaining the current regulation without the proposed amendments could confuse regulants and unnecessarily complicate their compliance efforts. As such, the agency has determined that the least burdensome alternative for all regulants, including small businesses, is to amend the regulation as proposed.

## Regulatory flexibility analysis

*Pursuant to §2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

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The proposed amendments will improve the clarity of the regulation, making compliance for regulants easier. The proposed amendments do not place any new regulatory burdens on the regulants. The agency has determined that this regulation's requirements are necessary to ensure that the agency receives adequate information from charitable organizations, professional solicitors, and professional fund-raising counsel in order to assist the agency in informing the public about these entities' use of charitable donations. The agency determined that small businesses are not unnecessarily burdened by the requirements of this regulation.

## Public comment

*Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.*

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The agency did not receive any comments during the public comment period following the publication of the NOIRA.

## Family impact

*Please assess the 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.*

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

**Detail of changes**

*Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the **pre-emergency** regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulation(s) or regulations that are being repealed and replaced, use this chart:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change, intent, rationale, and likely impact of proposed requirements</b>
10	N/A	Definitions	The proposed amendments remove references to the former Office of Consumer Affairs, update references to other states agencies, and replace the definition for “treasurer’s report” with a definition for “certified treasurer’s report” in order to emphasize the current requirement that the organization’s treasurer must sign the report. These amendments do not substantively alter the regulation.
20	N/A	This section establishes the documentation that a charitable organization must submit in order to obtain a registration to solicit contributions.	We propose to cite the section of the Code of Virginia that prescribes the registration fees rather than citing the registration form. This is not a substantive amendment.  The proposed amendments eliminate the requirement that registration applications be notarized.  Currently, the regulation requires that if a

			<p>charitable organization submits an IRS Form 990 to VDACS, the Form must be signed. The IRS now offers electronic filing. As such, organizations that file electronically do not generate a signed Form. We propose to amend the regulation to acknowledge the electronic filing option by requiring organizations that file electronically to submit a copy of their IRS Form 990, 990-PF, or 990-EZ, as filed with the IRS, and a copy of their IRS Receipt of Filing.</p> <p>The IRS recently increased 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 Chapter 313 of the 2012 Acts of 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 replace the references to the former \$25,000 threshold that currently appear in the regulation with a general reference to the IRS Form 990-N filing threshold.</p> <p>“Treasurer’s report” has been replaced with “certified treasurer’s report” in order to emphasize the current requirement that the organization’s treasurer must sign the report. This amendment does not substantively alter the regulation.</p> <p>This section also includes amendments to references to the Code of Virginia in order to properly cite the Code in accordance with the <u>Form, Style and Procedure Manual for Publication of Virginia Regulations</u>.</p>
30	N/A	This section establishes the documentation that a charitable organization must submit in order to renew its	We propose to cite the section of the Code of Virginia that prescribes the registration fees rather than citing the registration form. This is not a substantive



		<p>annual registration to solicit contributions.</p>	<p>amendment.</p> <p>The proposed amendments eliminate the requirement that the renewal application be notarized.</p> <p>Currently, the regulation requires that if a charitable organization submits an IRS Form 990 to the agency, the Form must be signed. The IRS now offers electronic filing. As such, organizations that file electronically do not generate a signed Form. We propose to amend the regulation to acknowledge the electronic filing option by requiring organizations that file electronically to submit a copy of their IRS Form 990, 990-PF, or 990-EZ, as filed with the IRS, and a copy of their IRS Receipt of Filing.</p> <p>The IRS recently increased 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 Chapter 313 of the 2012 Acts of 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 replace the references to the former \$25,000 threshold that currently appear in the regulation with a general reference to the IRS Form 990-N filing threshold.</p> <p>“Treasurer’s report” has been replaced with “certified treasurer’s report” in order to emphasize the current requirement that the organization’s treasurer must sign the report. This amendment does not substantively alter the regulation.</p> <p>This section also includes amendments to references to the Code of Virginia in order to properly cite the Code in accordance</p>
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			with the <u>Form, Style and Procedure Manual for Publication of Virginia Regulations</u> .
N/A	35	N/A	<p>This section establishes certain disclosures that charitable organizations must make when conducting solicitations.</p> <p>The disclosure requirements that appear in the new Section 35 currently appear in Section 40. Section 40 pertains to exemptions from annual registration and is not the most logical section for the disclosure requirements to appear.</p>
40	N/A	<p>This section establishes the documentation that a charitable organization must submit in order to claim an exemption for the VSOC Law's registration requirements.</p>	<p>We propose to cite the section of the Code of Virginia that prescribes the exemption application fee rather than stating the fee amount in the regulation. This is not a substantive amendment.</p> <p>The proposed amendments eliminate the requirement that the renewal application be notarized.</p> <p>Currently, the regulation requires that if a charitable organization submits an IRS Form 990 to the agency, the Form must be signed. The IRS now offers electronic filing. As such, organizations that file electronically do not generate a signed Form. We propose to amend the regulation to acknowledge the electronic filing option by requiring organizations that file electronically to submit a copy of their IRS Form 990, 990-PF, or 990-EZ, as filed with the IRS, and a copy of their IRS Receipt of Filing.</p> <p>The IRS recently increased 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 Chapter 313 of the 2012 Acts of 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</p>

			<p>organizations complete the Form 990. The proposed amendments replace the references to the former \$25,000 threshold that currently appear in the regulation with a general reference to the IRS Form 990-N filing threshold.</p> <p>“Treasurer’s report” has been replaced with “certified treasurer’s report” in order to emphasize the current requirement that the organization’s treasurer must sign the report. This amendment does not substantively alter the regulation.</p> <p>This regulation was last amended in 2002. The proposed amendments update references to state agencies that have changed their names subsequent to 2002.</p> <p>Additionally, subsequent to 2002, the VSOC Law was amended to include additional exemption categories. The proposed amendments include subdivisions that prescribe the documentation an organization must submit when requesting an exemption under one of the categories added to the VSOC Law following 2002. Chapter 85 of the 2002 Acts of Assembly added an exemption for Area Health Education Centers (see proposed 2VAC5-610-40 B 13). Chapter 580 of the 2004 Acts of Assembly added an exemption for regional emergency medical services councils (see proposed 2VAC5-610-40 B 14). Chapter 316 of the 2005 Acts of Assembly added an exemption for nonprofits that solicit only through grant proposals (see proposed 2VAC5-610-40 B 15).</p> <p>This section also includes amendments to references to the Code of Virginia in order to properly cite the Code in accordance with the <u>Form, Style and Procedure Manual for Publication of Virginia Regulations</u>.</p> <p>Section 40 pertains to exemptions from</p>
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			<p>annual registration and is not the most logical section for the disclosure requirements that appear in 2VAC5-610 D through 2VAC5-610 F. As such, we propose to create a new section, Section 35, for the disclosure requirements.</p>
50	N/A	<p>This section establishes the documents a charitable organization must submit to the agency upon the organization’s discontinuance of solicitations.</p>	<p>Currently, the regulation requires that if a charitable organization submits an IRS Form 990 to the agency, the Form must be signed. The IRS now offers electronic filing. As such, organizations that file electronically do not generate a signed Form. We propose to amend the regulation to acknowledge the electronic filing option by requiring organizations that file electronically to submit a copy of their IRS Form 990, 990-PF, or 990-EZ, as filed with the IRS, and a copy of their IRS Receipt of Filing.</p> <p>The IRS recently increased 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 Chapter 313 of the 2012 Acts of 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 replace the references to the former \$25,000 threshold that currently appear in the regulation with a general reference to the IRS Form 990-N filing threshold.</p> <p>“Treasurer’s report” has been replaced with “certified treasurer’s report” in order to emphasize the current requirement that the organization’s treasurer must sign the report. This amendment does not substantively alter the regulation.</p>
60	N/A	<p>This section establishes the registration requirements for professional fund-raising counsel.</p>	<p>We propose to cite the section of the Code of Virginia that prescribes the registration fees rather than stating the fee amount in the regulation. This is not a substantive</p>

			<p>amendment.</p> <p>This section includes amendments to references to the Code of Virginia in order to properly cite the Code in accordance with the <u>Form, Style and Procedure Manual for Publication of Virginia Regulations</u>.</p>
70	N/A	<p>This section establishes the registration requirements for professional solicitors.</p>	<p>We propose to cite the section of the Code of Virginia that prescribes the registration fees and required bond amount rather than stating the fee and bond amounts in the regulation. This is not a substantive amendment.</p> <p>This section includes amendments to references to the Code of Virginia in order to properly cite the Code in accordance with the <u>Form, Style and Procedure Manual for Publication of Virginia Regulations</u>.</p> <p>The proposed amendments remove a reference to the former Office of Consumer Affairs.</p>