



**Virginia
Regulatory
Town Hall**

**Proposed Regulation
Agency Background Document**

Agency Name:	Agriculture and Consumer Services
VAC Chapter Number:	2 VAC 5-610
Regulation Title:	Rules Governing the Solicitation of Contributions
Action Title:	Amend
Date:	May 2, 2001

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summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed.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.

The purpose of the proposed regulatory action is to review the regulation for effectiveness and continued need, including the following: Amending the regulation to conform with amendments to the Virginia Solicitation of Contributions (VSOC Law) relating to (1) the annual registration process and exemption to such registration; (2) rules governing a professional solicitor; and (3) general provisions relating to disclosure requirements by for-profit organizations and the use of private mailboxes by the regulated entities.

The VSOC Law governs the solicitation of contributions for charitable purposes in Virginia. Under this law, charitable organizations and any person acting as a professional fund-raising counsel or professional solicitor, must be properly registered with the agency before soliciting contributions in Virginia. The law specifies certain disclosures that regulated entities must make to potential donors, grants certain exemptions from registration requirements with the agency, and fully exempts other organizations from any registration requirements. The VSOC Law also provides the legal definition for the terms “charitable organization,” “professional fund-raising counsel,” and “professional solicitor.”

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.

Section 57-66 of the Code of Virginia (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+57-66>) gives the Board of Agriculture and Consumer Services the discretionary authority to make and publish rules and regulations for the enforcement of the VSOC Law and for the achievement of uniform regulation of charitable solicitations in Virginia.

The Office of the Attorney General's certification that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law is attached.

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.

Prior to enactment of the VSOC Law in 1974 and adoption of the regulation in 1978, there were no means in Virginia, except through 14 local ordinances, to register charitable organizations, professional solicitors and professional fund-raising counsel. In the absence of regulations, entities involved in raising funds for charitable causes were able to operate without having to disclose how contributions were used.

Based on statistical figures provided by the American Association of Fund Raising Counsel, an association that represents professionals who, under contract, provide logistical fund-raising advice to charitable organizations, and on other data obtained from statistical abstracts of the United States and the Commonwealth of Virginia, it is estimated that \$2.5 billion is donated to charitable or civic organizations annually in the Commonwealth of Virginia. This estimate excludes religious contributions, which account for nearly one-half of all charitable contributions.

This regulation protects the welfare of citizens who give donations to charitable causes by requiring that certain specific public disclosures appear in the materials provided to those citizens throughout the solicitation process. The regulation facilitates the review and maintenance of records submitted to the agency by regulated entities, and it increases public access to records that include the organizations' income and expense statements.

Amendments made to the VSOC Law over the years have resulted in an increase in both the number of entities that qualify for exemption from annual registration, and in the number of forms required to accommodate every new type of exempt organization. The agency seeks to consolidate the existing number of forms into a streamlined document that will (1) provide citizens with meaningful basic information about the organizations to which they are considering donating, (2) reduce both the number of inquiries from staff of regulated entities who contact the agency seeking additional form completion guidance, and (3) when necessary, reduce time spent by investigators researching basic operational information about regulated entities.

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.

The new substantive provisions and changes to the regulation are:

1. To include instructions regarding the submission of a national standardized Unified Registration Statement, which is a form created by the National Association of Attorneys General and the National Association of State Charity Officials to consolidate the information and data requirements of all states requiring registration.
2. To add categories for groups granted exemption from annual registration due to amendments to the VSOC Law, and to simplify the application process for organizations wishing to qualify for said exemption.
3. To reduce paperwork burden on regulated entities, to provide for the assessment of late filing fees against non compliant entities, to establish procedures for regulated entities to obtain extensions for the submission of certain required documents, and to clarify the information disclosures that regulated entities must make to prospective donors.
4. Establish certain disclosure requirements specifically applicable to for-profit organizations, and to regulated entities that use private mailboxes. A private mailbox is a mailbox rented by a business or an individual from a private contractor who receives and forwards mail to their clients for a fee. A typical private mailbox operation consists of multiple private boxes at a single, unique physical address. All clients have the same street address, but the box numbers are different.

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.

Regulated Entities:

The total number of categories of organizations exempted from annual registration has increased from eight in 1991 to 12 in 1996, a fact that has resulted in a commensurate increase in the number of exemption application forms. The agency intends to simplify the exemption

application process by consolidating basic organizational information on one single form, the Virginia Exemption Application for a Charitable or Civic Organization, and including an additional page to address technical questions frequently asked by staff of the regulated entities related to specific exemptions. Such form consolidation should reduce the paperwork burden on regulated entities. Those entities will also benefit from the formulation of specific steps required to obtain official extension to the filing of Final Accounting Reports.

There are no disadvantages to compliant regulated entities associated with the proposed regulatory action.

General Public:

Documents filed by regulated entities as a result of the filing requirements of the VSOC Law provide the general public with information about the organizations to which they are considering donating, thus enabling them to make more informed financial decisions. The agency's attempt to streamline the registration process and associated forms should result in more meaningful information available to the public. The promulgation of specific information disclosure requirements should allow the public to more readily identify the nature and purpose of solicitation appeals conducted by professional solicitors or any of their subcontractors. The amendment would also require solicitors to make certain disclosures on the front of the invoice or thank you letter typically sent to the consumers in response to a pledge. Additionally, the agency intends to add specific questions to the Solicitation Notice and all registration forms that will disclose any use of private mailboxes and the ultimate destination of mail received at those boxes. Many solicitors and other direct mail fundraisers use private mailboxes for the collection and forwarding of mail from consumers. These mailboxes are usually selected based on their geographical proximity to the consumers being solicited, thus leading them to believe that their donations are going to a local or regional charity when, in fact, their donations may be forwarded to another state. This will help consumers determine that companies other than the charities themselves are handling their donations.

There are no disadvantages to the general public associated with the proposed regulatory action.

Agency:

By simplifying filing instructions and providing a list of answers to questions that are frequently-asked by staff of the regulated entities, the agency should save time and resources through a reduction in the number of requests for assistance from the regulated entities themselves on matters such as interpretation of the regulation or completion of required forms.

The agency's ability to investigate non-compliant or fraudulent entities in an effective and efficient manner should also improve through the reduction in the number of documents that agency staff must review. Finally, the specific listing of late filing fines for late Final Accounting Reports, as provided by the VSOC Law, should encourage timely submissions of said reports by all regulated entities, particularly by those that have been traditionally non compliant.

There are no disadvantages to the agency associated with the proposed regulatory action.

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.

The proposed amendment will not result in additional costs to the agency, citizens, or regulated entities. At most, the proposed amendment will be cost neutral.

The agency will not require additional staff or resources (Cost Code 910/Fund 02/Detail 00) to implement the proposed changes to the registration process.

The agency reviews approximately 3,000 registration packets and supporting documentation submitted by regulated entities every year. It also maintains records on approximately 8,000 organizations that are exempt from annual registration. Upon request, the information contained in those records is provided to the public in order to allow potential donors to make educated decisions about their contributions. The regulated entities may see a reduction in staff time and resources required to process the registration forms. Likewise, the listing of specific steps to follow in order to request extensions to file the Final Accounting Reports should allow compliant entities to avoid fines for late filing.

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 proposed regulatory action seeks to make the language of certain sections of the regulation compatible with the VSOC Law, as follows:

2VAC5-610-20 Rules governing charitable and civic organizations.

- Provide instructions on filing the Unified Registration Statement, a nationally standardized registration document that the agency currently accepts from charities that operate in multiple states.
- Amend the exemption category for health care institutions to include “free clinics.”
- Add an exemption category for non-profit debt counseling services.
- Add an exemption category for area agencies on aging.
- Add an exemption category for labor groups and trade associations.
- Simplify application procedures for exemption from regulation by streamlining exemption applications from twelve forms to one form.

2VAC5-610-45 Rules governing a professional solicitor.

- Reduce the number of supporting documents that solicitors must submit to the agency prior to engaging in a solicitation campaign.
- Add a provision for late filing fees by professional solicitors who file a Final Accounting Report late and establish procedures for professional solicitors to file for an extension of time to file the Final Accounting Report.
- Clarify that professional solicitors must communicate to consumers in writing certain specific information, including the professional solicitor's full name , a statement indicating affirmatively that the professional solicitor is being paid for his services, and the name of the charity on whose behalf funds are being solicited.
- Clarify the specific form that solicitors must use for purposes of submitting a Final Accounting Report.
- Clarify the disclosure that is required of a solicitor's subcontractor.

2VAC5-610-55 General provisions.

- Add a requirement that for- profit organizations that solicit contributions disclose that the contributors' donations are not tax-deductible on the contributors' income tax returns.
- Add a new requirement that regulated entities disclose whenever they engage in the use of private mailboxes in any communication with a consumer.

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.

During the periodic review the agency considered eliminating the regulation. However, this option would be detrimental to all parties involved. The elimination of uniform reporting and disclosure standards would cause significant confusion among legitimate regulated entities and the public and would also increase the likelihood of fraud and misrepresentation by unscrupulous individuals or organizations. There are no other viable alternatives in the absence of either a national regulatory framework or a practical self-regulatory model for this industry.

Public Comment

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

The agency received no public comment in response to the Notice of Intended Regulatory Action.

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.

The regulation is clearly written and easily understandable. However, the number of amendments to the VSOC Law have resulted in an increase in the number of entities that now qualify for exemption for annual registration requirements. The increase in forms to accommodate every new type of exempt organization appears to have caused confusion among the regulated entities.

The agency seeks to address this concern by consolidating the existing forms into a single document that will (1) provide consumers with necessary information about the organizations to which they are considering donating, and (2) reduce both the number of inquiries from clients requesting clarification and the investigative time spent researching basic operational information about each regulated entity.

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 agency will review this regulation three years after the effective date of any amendments made as a result of this proposal.

The specific and measurable goals of the regulation are (1) to protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth; (2) to prevent solicitation fraud through registration requirements, public warnings of unregistered solicitations, investigations of fund-raising activities, and referral of violations to legal officials for prosecution, and (3) to set specific information disclosure procedures for both charitable organizations and professional solicitors with respect to registration, identification, and submission of financial statements.

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 amendments will not impact family formation or autonomy, but may favorably impact the stability of a family by assisting them in the wise use of their financial resources. There are no adverse effects on the family.