

# Virginia Department of Agriculture and Consumer Services

Division of Consumer Protection - Office of Weights and Measures

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## Agency Guidance Document

**Document number:** 2017-01

**Subject:** Guidelines for approval of Public Weighmaster licenses

**Issue date:** April 1, 2017

**Expiration date:** In effect until rescinded or amended

### Purpose:

The purpose of this bulletin is to provide guidelines for processing and approving the public weighmaster license applications received by the Virginia Department of Agriculture and Consumer Services (VDACS).

### Background:

VDACS's Office of Weights and Measures (OWM), is responsible for administering and enforcing the provisions of the Virginia Public Weighmasters Law (Law)<sup>1</sup>. The Law authorizes the Commissioner of Agriculture and Consumer Services to grant licenses to prospective public weighmasters and adopt guidelines for determining whether an applicant possesses the qualifications prescribed in §3.2-5802 of the Law<sup>2</sup>. This document will prescribe the manner in which VDACS OWM will evaluate each application for a public weighmaster license.

### Guidance:

- I. VDACS OWM will provide the application for a public weighmaster license, as approved by the Commissioner, on the VDACS website.
- II. The OWM Program Manager or his designee shall review each submitted application for completion and shall notify the applicant if he has not submitted the appropriate fee or completed the application in its entirety with the required signatures. The OWM Program Manager or his designee shall review each complete application to confirm the following:
  - A. The applicant is lawfully admitted to the United States for permanent residence as determined by the Employment Eligibility Verification;
  - B. The applicant is currently employed with a company operating a public scale;
  - C. The applicant is 18 years of age or older; and
  - D. The applicant has the ability to accurately weigh and make correct weight certificates.

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<sup>1</sup> Va. Code § 3.2-5800 *et seq.*

<sup>2</sup> Va. Code § 3.2-5804

- III. The Program Manager shall sign the Criminal History Record Request and ensure that the signature is notarized. The Program Manager or designee shall then send the Criminal History Record Request to the Virginia State Police Criminal Records Unit for processing.
- IV. If no criminal history record is found by the Virginia State Police Criminal Records Unit, a license may be granted to the applicant by the Program Manager or designee.
- V. If a criminal history record is found by the Virginia State Police Criminal Records Unit, the Program Manger shall examine the criminal history record to determine whether the applicant is of good moral character as required by § 3.2-5802 of the Law. An application for public weighmaster license shall be denied if:
  - A. The applicant has a felony or misdemeanor conviction for a crime of moral turpitude. Moral turpitude crimes involve lying, stealing, or cheating and include, but are not limited to:
    - 1. Robbery;
    - 2. Burglary;
    - 3. Larceny;
    - 4. Embezzlement;
    - 5. Fraud;
    - 6. Forgery; and
    - 7. False Statements; or
  - B. The applicant has a felony or misdemeanor conviction of a crime that involves an act of “baseness, vileness or depravity”<sup>3</sup> that would call in to question the applicant’s fitness to faithfully carry out the duties of a public weighmaster. Examples include, but are not limited to, crimes enumerated in Article 7 of Chapter 4 of Title 18.2 of the Code of Virginia, which pertains to criminal sexual assault and Chapter 8 of Title 18.2 of the Code of Virginia, which pertains to crimes involving morals and decency.
- VI. Notwithstanding Section V., if the applicant has been convicted of a crime referenced in Section V., the Program Manager may grant a license if the applicant:
  - A. Has no felony convictions in the five years preceding the date of the application;
  - B. Has no misdemeanor conviction for a crime of moral turpitude in the five years preceding the date of the application;

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<sup>3</sup> Tasker v. Commonwealth, 202 VA.1019, 1024, 121 S.E.2d 459, 463 (1961)

- C. Has no misdemeanor conviction in the three years preceding the date of the application. The Program Manager may still grant a license if the applicant has conviction, in the three years preceding the date of the application, for a violation of a provision of Title 46.2 of the Code of Virginia pertaining to motor vehicles, if the conviction was not a felony;
  - D. Is not on active probation; and
  - E. Does not have a history of violating the terms of probation or parole in the five years preceding the date of the application.
- VII. If the Program Manager or his designee determines that the applicant does not appear to meet the qualifications established for public weighmasters in Va. Code § 3.2-5803, the Program Manager or designee will send a letter to the applicant stating such and notifying the applicant of the right to request an informal fact finding proceeding pursuant to Va. Code § 2.2-4019 before the application is denied. The letter shall state that the applicant must request this proceeding within 15 days of receipt of the letter.
- VIII. Upon receipt of a request for an informal fact finding proceeding from the applicant, the Program Manager or his designee shall notify the Director of the Division of Consumer Protection. The Director or his designee shall serve as the conference officer for the requested informal fact finding proceeding.
- IX. The Director of the Division of Consumer Protection shall schedule an informal fact finding proceeding and notify the applicant and Program Manager of the location, date, and time of the proceeding.
- X. The conference officer shall hold the informal fact finding proceeding. The conference officer shall notify the applicant of his decision in writing, notify the applicant of the right to appeal the decision of the informal fact finding proceeding in a formal hearing authorized by Va. Code § 2.2-4020, and notify the applicant that a request for a formal hearing must be made in writing to the Commissioner of Agriculture and Consumer Services within 15 days of receipt of the conference officer's decision.
- XI. Upon receipt of a properly filed request for a formal hearing, the Commissioner shall request that the Program Manager arrange for a Hearing Officer, court reporter, and location for the formal hearing and notify the applicant of the location, date, and time of the formal hearing.
- XII. The Hearing Officer shall hear the relevant information about the license application and applicant, transmit his findings and recommendations to the Commissioner as required by Va. Code § 2.2-4024(D), and inform the applicant of his right under Va. Code § 2.2-4021(A) to address the Commissioner.
- XIII. The Commissioner shall consider the findings and recommendations of the hearing officer and render a case decision within the timeframe established in Va. Code § 2.2-4021(C).