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Exempt Action: Final Regulation Agency Background Document

Agency name	Department of Agriculture and Consumer Services
Virginia Administrative Code (VAC) Chapter citation(s)	11 VAC 20-30 11 VAC 20-20
VAC Chapter title(s)	Texas Hold'em Poker Tournament Regulations (11 VAC 20-30) Charitable Gaming Regulations (11 VAC 20-20)
Action title	Promulgation of regulations for Texas Hold'em poker tournaments by the Department of Agriculture and Consumer Services
Final agency action date	February 23, 2024
Date this document prepared	February 23, 2024

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This regulatory action will promulgate regulations to prescribe the requirements for those charitable organizations wishing to conduct Texas Hold'em poker tournaments to generate funds for their charitable cause. The final regulations contain three technical amendments, which are found in 11 VAC 20-20-30 E 3, 11 VAC 20-30-100 M 5, and 11 VAC 20-30-100 M 6. The final regulations include no substantive amendments to requirements proposed during the repropounded stage that was submitted for review by the Office of the Attorney General, Office of Regulatory Management, and the Governor's office and subject to a 30-day public comment period.

Section 18.2-340.19 of the Code of Virginia (Article 1.1:1 of Chapter 8 of Title 18.2 of the Code of Virginia) (Charitable Gaming Law) requires the Department of Agriculture and Consumer Services

(VDACS) to adopt regulations that prescribe the conditions under which a qualified organization may manage, operate, contract with operators of, or conduct Texas Hold'em poker tournaments. Chapters 554 and 609 of the 2022 Acts of Assembly require the Commissioner of Agriculture and Consumer Services (Commissioner) to prescribe regulations that are consistent with the provisions of Chapter 982 of the 2020 Acts of Assembly. The regulations prescribe the conditions under which Texas Hold'em poker tournaments shall be conducted in the Commonwealth.

To effectively regulate Texas Hold'em poker tournaments, VDACS has determined that it will (i) promulgate 11 VAC 20-30, *Texas Hold'em Poker Tournament Regulations*, and (ii) amend 11 VAC 20-20, *Charitable Gaming Regulations*, to include poker-specific provisions where appropriate.

Below is a summary of 11 VAC 20-30, *Texas Hold'em Poker Tournament Regulations*, as well as VDACS responses to comments received from the public during the repropose stage. Below is also a summary of the amendments to 11 VAC 20-20, *Charitable Gaming Regulations*.

11 VAC 20-30, *Texas Hold'em Poker Tournament Regulations*

The regulations provide that a charitable organization wishing to conduct Texas Hold'em poker tournaments must obtain a permit from VDACS and establishes the requirements for a charitable organization to conduct Texas Hold'em poker tournaments, including (i) required documents that must be provided to VDACS, (ii) prohibited acts, (iii) recordkeeping and bank account requirements, (iv) contract and lease requirements, and (v) restrictions on conducting concurrent tournaments.

The regulations require that any person administering a Texas Hold'em poker tournament for a charitable organization must register with VDACS as an operator. The regulation defines "administer" as the "conduct of activities by an operator that are associated with production of a poker tournament." Operators who provide charitable gaming supplies must obtain a charitable gaming supplier permit in accordance with §18.2-340.34 of the Charitable Gaming Law. The regulations also require the registration of a landlord who rents, leases, or otherwise provides a premises to a charitable organization to conduct a Texas Hold'em poker tournament.

The regulations establish requirements for Texas Hold'em poker tournaments including the requirement for a fixed entry fee, specific requirements for poker cards and poker chips, a requirement for posting house rules, and prohibited acts. The regulations prohibit wagering currency as part of the Texas Hold'em poker tournament.

The regulations outline training requirements for all persons working or volunteering at a poker tournament. The regulation provides restrictions for staff of the charitable organization or the operator who participate as a player in a poker tournament.

11 VAC 20-20, *Charitable Gaming Regulations*

The final regulations add definitions to 11 VAC 20-20, *Charitable Gaming Regulations* that are consistent with 11 VAC 20-30, *Texas Hold'em Poker Tournament Regulations*, which allow for the conduct of Texas Hold'em poker tournaments by qualified organizations.

The regulations establish the criteria for receiving a permit to conduct Texas Hold'em poker tournaments, including documentation that must be provided with the permit application.

The regulations establish prohibited acts that, if the organization is found to have committed, would result in the denial, revocation, or suspension of the organization's permit.

Additional recordkeeping requirements have been added to 11 VAC 20-20 for those organizations conducting Texas Hold'em poker tournaments.

Throughout the regulations, amendments were made to conform with the Charitable Gaming Law and the concurrently proposed 11 VAC 20-30, *Texas Hold'em Poker Tournament Regulations*.

VDACS held a 30-day public comment period on the re-proposed regulation from January 15, 2024, until February 14, 2024. VDACS received 18 comments related to 11 VAC 20-30, *Texas Hold'em Poker Tournament Regulations*, and 11 VAC 20-20, *Charitable Gaming Regulations*, those comments and the VDACS responses are summarized below.

- The initial proposed regulations prohibited concurrent Texas Hold'em poker tournaments. VDACS received comments during the first comment period that requested VDACS allow concurrent tournaments. VDACS amended the regulation during the re-proposed stage to allow concurrent tournaments with several restrictions, including allowing the occurrence of two concurrent tournaments at the same premises in a 24-hour period.

During the re-proposed stage comment period, commenters requested that the cap on the number of permissible concurrent tournaments be removed so that charitable organizations can operate similar to casinos in order to increase player participation and support the business model of operators that will administer Texas Hold'em poker tournaments on behalf of charitable organizations. Sections 18.2-340.15, 18.2-340.19(A)(12), and 18.2-340.28:2 of the Charitable Gaming Law as well as Va. Code § 3.2-102 authorize VDACS to prescribe the conditions under which a qualified organization may manage, operate, or contract with operators of, or conduct Texas Hold'em poker tournaments, including prohibiting or restricting concurrent tournaments. VDACS has determined that in order to maintain the integrity of charitable gaming, it is appropriate to retain the limit on concurrent tournaments. If the regulations allowed multiple concurrent tournaments similar to that which is found in casinos, additional regulatory requirements, like those promulgated for casinos related to security, cash controls, game management, and regulatory inspections, would be necessary. Both a charitable organization that will occasionally conduct Texas Hold'em poker tournaments with the assistance of its volunteer members as well as a charitable organization that will hire an operator to conduct poker tournaments on its behalf on a regular basis are subject to the requirements in 11 VAC 20-30, *Texas Hold'em Poker Tournament Regulations*. As such, VDACS developed regulations, including its concurrent tournament provisions, that it expects all organizations will have the capacity to implement and follow.

Some commenters suggested that other forms of charitable gaming, such as bingo, are allowed to be played concurrently. Charities are currently prohibited from conducting concurrent bingo tournaments in accordance with 11 VAC 20-20-60 T, *Charitable Gaming Regulations*.

For-profit gaming utilizes the Virginia Voluntary Exclusion Program to allow individuals who struggle with gambling addiction to exclude themselves from playing. However, charitable gaming has no such safeguards other than the statutory and regulatory requirements for how the games are played. This is an additional aspect VDACS considered when determining the frequency with which concurrent tournaments should occur.

- The re-proposed regulations prohibit anyone involved in the management, operation, conduct, and administration of a poker tournament, including dealers, from receiving gratuities. Commenters opposed this prohibition and requested that the regulations be amended to allow dealers to receive gratuities. The agency consulted with the Office of the Attorney General and determined the Charitable Gaming Law does not allow gratuities; therefore, the prohibition on tipping will remain.
- VDACS received comments in opposition to the requirement that the charitable organization contribute a minimum of 10 percent of its Texas Hold'em poker tournament revenue to its charitable cause (commonly known as "use of proceeds"). Commenters recommended 3.5 percent use of proceeds for Texas Hold'em poker tournaments. In addition, commenters requested that use of proceeds be based on net revenue, rather than gross revenue. The current use of proceeds requirement for all charitable gaming, except for electronic gaming, is 10 percent of gross revenue.

The Charitable Gaming Law requires use of proceeds for all charitable gaming, except for electronic gaming, to be based on gross revenue and prohibits the use of charitable gaming revenue for an organization’s social or recreational activities. Charitable gaming generates revenue that, in turn, provides funding to support the organization’s charitable cause. Reducing the use of proceeds from 10 percent to the commenters’ proposed 3.5 percent reduces funding provided to an organization’s charitable cause. VDACS has made no changes to the proposed regulations, which establish that the required use of proceeds for Texas Hold’em poker tournaments is 10 percent of gross revenue, which is the same requirement for all other forms of charitable gaming, other than electronic gaming. The required use of proceeds for electronic gaming is based on net revenue, as required by the Charitable Gaming Law.

- Multiple commenters mentioned that they receive financial support from money raised from the play of charitable games and expressed concern that the regulation will reduce the funds that may be available for an organization to use towards charitable causes. VDACS has not yet issued any permits allowing charitable organizations to conduct poker tournaments. Once this regulation becomes effective, VDACS will be able to issue permits allowing charitable organizations to conduct Texas Hold’em poker tournaments. As such, this regulation will provide charitable organizations an opportunity to increase the funds it is able to raise and provide for its charitable causes.
- A general issue raised by multiple commenters is the contention that charitable organizations should be able to conduct Texas Hold’em poker tournaments in the same manner as casinos and for-profit gambling. Casino regulations currently contain over 270 pages of requirements. In order to allow casino-style gambling by charities, it would be necessary for VDACS to significantly regulate the activity, which would stifle those charities wishing to conduct Texas Hold’em poker tournaments occasionally throughout the year.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

Section 18.2-340.19 of the Charitable Gaming Law requires VDACS to adopt regulations that prescribe the conditions under which a qualified organization may manage, operate, or contract with operators of, or conduct Texas Hold’em poker tournaments. Chapters 554 and 609 of the 2022 Acts of Assembly require the Commissioner to promulgate regulations regarding Texas Hold’em poker tournaments that are consistent with the provisions of Chapter 982 of the 2020 Acts of Assembly. Chapters 554 and 609 of the 2022 Acts of Assembly include an enactment clause that exempt the initial adoption of these regulations from the Administrative Process Act, except that VDACS must provide an opportunity for public comment on the regulations prior to adoption.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On February 23, 2024, the Commissioner of Agriculture and Consumer Services adopted as final 11 VAC 20-20, *Charitable Gaming Regulations*, and 11 VAC 20-30, *Texas Hold’em Poker Tournament Regulations*, and authorized staff to take any and all steps necessary to have this regulation become a

final regulation of VDACS through an exempt regulatory action as authorized by Chapters 554 and 609 of the 2022 Acts of Assembly.