



Fast Track Proposed Regulation Agency Background Document

Agency name	DPOR/Auctioneers Board
Virginia Administrative Code (VAC) citation	18 VAC 25-21-150
Regulation title	Virginia Auctioneers Board Regulations
Action title	Amend regulations to permit credit card transactions
Date this document prepared	December 30, 2008

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

The amendment would clarify the existing regulation regarding the proceeds which are paid via credit cards. The existing regulations require proceeds to be deposited the next business day which is unattainable if paying by credit card, causing possible violations for regulants.

Statement of final agency action

Please 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 October 16, 2008, the Auctioneers Board moved to amend Board regulation 18 VAC 25-21-150.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

§§ 54.1-602 of the Code of Virginia authorizes the Board to promulgate regulations for a regulatory system. While the Board is mandated to establish regulations, the content of the regulations is up to the discretion of the Board.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the regulation is to allow the necessary time for the transfer of credit card funds and avoid possible violation to the regulations. The amendment would clarify the acceptance of payment by credit cards.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

There will be no adverse impact on the public and no opposition is anticipated. In addition, the amended regulation negates a possible violation to the Board's current requirements.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

The amendment to 18 VAC 25-21-150 would allow the necessary time for the transfer of funds and avoid possible violation to the regulations. The amendment would clarify the acceptance of payment by credit cards.

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 there are no disadvantages to the public or the Commonwealth, please indicate.

The public and the Commonwealth are better served with the anticipated amendment to the regulations. There are no anticipated disadvantages to the public or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need 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.

Not applicable.

Regulatory flexibility analysis

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.*

By amending the existing regulations the current compliance requirements will be less stringent and will provide less stringent deadlines.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	See below.
Projected cost of the regulation on localities	See below.
Description of the individuals, businesses or other entities likely to be affected by the regulation	
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	See below.
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	See below.

Summary:

In order to clarify the regulations, the Auctioneers Board regulations are being revised. The proposed regulatory change clarifies the section regarding escrow funds for the proceeds from a personal property auction when the proceeds are from credit card sales.

All costs incurred in support of board activities and regulatory operations are paid by the Department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies. The board has no other source of income.

Fiscal Impact:

	FY 2009	FY 2010	FY2011	FY2012
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Fund	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)
Program/Service Area	560 46	560 46	560 46	560 46

Impact of Regulatory Changes:				
One-Time Costs	0	\$3,300	0	0
Ongoing Costs	0	0	0	0
Total Fiscal Impact	0	\$3,300	0	0
FTE	0.00	0.00	0.00	0.00

Description of Costs:

One-Time: Printing (\$1,650) and mailing (\$1,650) costs for the notifications of the regulation change to be mailed to the affected regulants.

Ongoing: No ongoing costs are expected as a result of this regulatory change.

Cost to Localities: No change anticipated.

Description of Individuals, Businesses, or Other Entities Impacted: This regulation change will affect all Auctioneers and Auction Firms who are licensed in Virginia.

Estimated Number of Regulants: This regulatory change will impact 1,425 Auctioneers and 223 Auction Firms.

Projected Cost to Regulants: No change in licensing fees is anticipated as a result of this regulatory change as costs will be absorbed by the current fee structure. No other costs to the regulants are expected.

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.

The only alternative is to leave the existing regulations in place; however, regulants may be in violation of the Board’s regulations.

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 contemplated changes are not anticipated to have any significant impact on Virginia's families.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

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

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
18 VAC 25-21-150	Add subsection B		Notwithstanding the provisions of subsection A of 18 VAC 25-21-150, for proceeds which are paid via credit card, the payment of such proceeds from the credit card issuer shall be deposited into an auction escrow account upon receipt from the credit card issuer.