



Virginia  
Regulatory  
Town Hall

## Proposed Regulation Agency Background Document

<b>Agency Name:</b>	State Lottery Department
<b>VAC Chapter Number:</b>	11 VAC 5-20-10 et seq.
<b>Regulation Title:</b>	Administration Regulations
<b>Action Title:</b>	Amend
<b>Date:</b>	09/27/2002

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summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed.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 State Lottery Department is amending its Administration Regulations as follows: (i) to clarify the process for retailer licensing informal conferences and formal hearings; (ii) to move the requirement from this chapter to the proposed Lottery Game regulations that certain winners participate in press conferences; (iii) to revise the approximate apportionment of lottery sales revenue; and (iv) to clarify the requirement for ethics in public contracting; (v) to revise the schedule for external audits; (vi) to eliminate specific banking requirements; and (vii) to clarify board committee responsibilities. Procurement issues, included as a possible action in the Notice of Intended Regulatory Act, will be considered at a later date and are not addressed in this regulatory action.

## 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.*

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Section 58.1-4007 of the Code of Virginia authorizes the State Lottery Board to adopt regulations governing the operation of a lottery, and to amend, repeal or supplement the regulations as necessary. Further, this section requires that regulations include, but not be limited to, advertisement of the lottery, apportionment of the total revenues accruing from the sale of lottery tickets, and other matters necessary for the efficient and economical operation and administration of the lottery. 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.

## 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.*

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The proposed amendments will delete obsolete and unnecessary requirements and language, and will provide flexibility for the department to operate more efficiently and effectively in a timely manner. While the amendments are not essential to protect the health, safety or welfare of the citizens of the Commonwealth, these regulations have not been revised since 1996 and updating is necessary to coincide with current department operating procedures.

The Notice of Intended Regulatory Action stated that the repeal of certain procurement procedures would be proposed. Procurement-related revisions, however, will not be included in this regulatory action, but will be considered at a later date.

## 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.*

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The major revisions proposed include the following:

1. Clarifies processes for informal retailer licensing conferences and formal hearings. Revisions (a) add the presumption that the appellant would receive written notice three days after mailing to his last known address; (b) provide that appeal request forms must be received by the department director rather than by a lottery employee or a department regional office; and (c) add that, by mutual agreement, the parties may extend the conference date beyond the 30-day time limit for informal conferences and the 45-day time limit for formal hearings.
2. Deletes the provision from the “advertising” section that winners of certain jackpot or other top lottery prizes participate in press conferences to enhance the public’s winner awareness and moves it to the proposed Lottery Game regulations.
3. Revises the approximate percentages for the allocation of lottery revenues among prizes, retailer compensation, operating expenses and net income to clarify the allocation as determined by the lottery board.
4. Revises and simplifies provisions related to ethics in public contracting to conform to those requirements in the Virginia Public Procurement Act and the State and Local Government Conflict of Interests Act.
5. Requires that external audits of the department be conducted annually rather than monthly, which has been the practice for several years.
6. Deletes specific details regarding banking arrangements. These arrangements have been established in concurrence with the State Treasurer and in accordance with applicable Treasury directives and are not required in department regulations.
7. Deletes provisions that certain board committees may act on behalf of the board. All board committees are “advisory” only and make recommendations to the full board for its consideration and action. No committee acts on behalf of the board.

## 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.*

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Amendments to the regulation will result in less burdensome and less intrusive requirements. They consist primarily of clarifications, editorial changes, elimination of several unnecessary provisions and the elimination of requirements that the department is not required to follow.

The revisions represent no actual policy or procedural change to department operations. None of the revisions are expected to be controversial in nature, and no disadvantages to the public or to the Commonwealth are anticipated.

## 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.*

Because there are no policy or procedural revisions made to department operations, no economic impact is projected. These regulations, however, apply to all lottery game players (estimated at 3.5 million) and lottery vendors, approximately 5,000 lottery retailers, the five members of the State Lottery Board and all employees of the State Lottery Department.

## 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.*

11 VAC 5-20-10 – Definitions of “conference officer” and “hearing” are revised to coincide with the Administrative Process Act; “contract,” “goods” and “services,” are revised to coincide with the Virginia Public Procurement Act. Because of bank mergers, the definition of “bank” is revised to eliminate the requirement that a bank’s principal place of business be in the Commonwealth. “Immediate family” is added to specify those persons ineligible to purchase lottery tickets. “Instant ticket vending machine,” “personal interest” and “self-service terminal” are deleted because the terms are not used in regulation. “Person” and “transaction” are revised to coincide with statutory definitions in § 58.1-4009 and § 2.2-3101.

11 VAC 5-20-60 -- Language duplicative of the statute is eliminated. A provision is removed that required the department to approve all lottery retailers’ advertising materials. Language is deleted that would permit the department to require that lottery prize winners participate in press conferences and to permit the department to use winners’ names and prize amounts in public announcements. This provision was erroneously included in the “advertising” section of the regulations, and has been moved to the Lottery Game regulations (discussion is contained in the background document for that regulation). The purpose of the release of winners’ names, etc., is not an advertising function.

11 VAC 5-20-70 – Unnecessary language in this section is deleted. (Paragraph C) – The regulation language regarding the apportionment of revenues has been revised to more clearly reflect the actual annual distribution of total moneys received from the sales of tickets and other sources. Approximate percentages, which may change from game to game as determined by the board, are allocated among prizes, retailer compensation, operating expenses and net income. (Paragraph F) - Specific reference to monthly audits of the department by the Auditor of Public Accounts is deleted. Currently, the APA conducts only annual audits of the department.

11 VAC 5-20-80 through 110 – Detailed language regarding bank/depository selection, etc., is deleted as unnecessary. The process occurs in accordance with State Treasury agreements and policies.

11 VAC 5-20-120 – Amendment provides flexibility for the timing of the election of officers of the board.

11 VAC 5-20-130 – Language is revised so that special board meeting notice will be given to the public contemporaneously with that provided to the board members. Also, conflict of interest language (also contained in sections 180 and 420) is removed because the provisions of the State and Local Government Conflict of Interest Act, contained in the Code of Virginia, apply to all Lottery employees and board members and it would be redundant to repeat the provisions in this regulation.

11 VAC 5-20-140 -- Because the committees of the board act in an advisory capacity only, language authorizing committees to act on behalf of the board is unnecessary and is deleted.

11 VAC 5-20-150 – Language regarding licensing actions that is duplicative of that contained in Section 160 is deleted. Also, the section clarifies that a formal hearing is conducted only upon request of the appellant.

11 VAC 5-20-160 – Amendment clarifies the presumption that the appellant receives a written notice three days after the notice is mailed to the appellant's last known address, which may be obtained from a retailer on-line survey or application form; and it clarifies that an appeal request form that is delivered by hand or mailed by the appellant to a department regional office or a lottery sales representative is not deemed to be received by the department director, as required by regulation.

11 VAC 5-20-170 and 180 -- Procedures for conducting informal fact finding licensing conferences and formal licensing hearings are revised to more closely coincide with requirements of the Administrative Process Act. It also is clarified that the request for a formal hearing should be addressed to the chairman of the lottery board at the headquarters address.

11 VAC 5-20-420 – Revisions state that the department will comply with the ethics in public contracting requirements of the Virginia Public Procurement Act and will be subject to the provisions of the State and Local Government Conflict of Interests Act. The revisions also delete unnecessary specific details previously contained in this section.

**Public Comment**

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

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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.*

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The agency, through examination of the regulation, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

**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.*

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Although the agency is exempt from this requirement, it will conduct periodic reviews of the regulation to determine its continued effectiveness.

**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.*

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This regulation has no impact upon families.