



Proposed Regulation Agency Background Document

Agency name	State Lottery Department
Virginia Administrative Code (VAC) citation	11VAC5-31
Regulation title	Licensing Regulations
Action title	Promulgate review and update of Licensing Regulations
Date this document prepared	1-9-2012

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

The existing regulation will be amended to reflect a general review by the State Lottery Department of this chapter. All sections within this chapter were reviewed for content, accuracy and clarity.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

N/A

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

The State Lottery Department is adopting amended administration regulations pursuant to Chapters 575 and 321, 2008 Acts of Assembly (<http://leg1.state.va.us/cgi-bin/legp504.exe?081+ful+CHAP0575> and <http://leg1.state.va.us/cgi-bin/legp504.exe?081+ful+CHAP0321>).

Section 58.1-4007 states The Board shall have the power to adopt regulations governing the establishment and operation of a lottery. The regulations governing the establishment and operation of the lottery shall be promulgated by the Board after consultation with the Director. Such regulations shall be in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq.).

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

It has been over nine (9) years since this chapter has been reviewed for changes and/or updates. In an effort to become more customer focused, the Agency is pursuing expanding our presence to the citizens of the Commonwealth and ensuring the integrity of our licensed retailers.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)

Added language to further clarify the necessary documentation required to become a new license retailer and renewal of existing lottery retailers. Introduced a new classification, "special retailer licensing", to allow for the possible expansion of the Lottery's products into the market place. Added more flexibility for our licensed retailers to receive or maintain bonding requirements. Added language to define the expected ethical requirements of the Department's licensed retailers.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.

Advantages: The proposed amendments to this chapter will further enhance our transparency to our citizens and add additional clarification to our regulations. Adding language to allow for "Special retailers

licensing” and expanding on various surety instruments available to bond existing or potential retailers could have a positive impact on expanding our retailer base.

Disadvantages: The agency does not foresee any disadvantages to the citizens and businesses of the Commonwealth.

Other: No other impact is anticipated.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale 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 requirements of the proposed amendments that exceed 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.

The proposed amendments will be applicable to the entire state. No locality will be singularly affected by the proposed amendments.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email or fax to Mitch Belton, 900 E. Main Street, Richmond, VA 23219, phone: (804) 692-7136, fax: (804) 692-7603, email mbelton@valottery.com . Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

A public hearing will not be held.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirements creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.	None
Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.	None
Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.	Businesses that have seasonal sales, special event sponsors and businesses that would only want to sell scratch tickets and not redeem any prizes would likely benefit from the proposed changes.
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.	Approximately 50 small businesses would be affected.
All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	There are no projected costs associated with the amended regulation for individuals, business, or other entities.
Beneficial impact the regulation is designed to produce.	The proposed amendments to this chapter will further enhance our transparency to our citizens and add additional clarification to our regulations.

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 proposed regulations were evaluated by the Department for accuracy and further clarification/transparency to our citizens. No anticipated cost of the proposed regulations was identified for small businesses.

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.

The proposed regulations do not impact any existing compliance or reporting requirements. In addition, no further compliance or reporting requirements were added.

Small business impact review result

In order to minimize the economic impact of regulations on small businesses, please include, pursuant to Code of Virginia § 2.2-4007.1 E and F, a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to the which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency’s determination of whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

All sections of this chapter were reviewed for the continued need by the Department. It has been over nine (9) years since the regulations were reviewed. Section 11VAC5-31-40 and 11VAC5-31-50 were modified to include reference to the Code of Virginia for further clarification. Deleted item “G” in section 11VAC5-31-130, as age requirements are already specified in the Code of Virginia. Again, while reviewing this chapter, the Department’s goal was to reduce and simplify our regulations. There are no projected costs or small business impact associated with the amended regulation for individuals, business, or other entities.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

No comments were received.

Commenter	Comment	Agency response

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.

This regulatory action will have no impact on the institution of the family or family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

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

For changes to existing regulation(s), use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
	11VAC5-31-10		Amended the definition of “Lottery retailer,” lottery sales agent” or “retailer”. Amended definition of “Person”.
	11VAC5-31-20		Removed reference to submission of an application and/or forms does not entitle a retailer to sell lottery products.
	11VAC5-31-30		Inserted the removed verbiage from 31-20, (B), in reference to submission of forms does not entitle a retailer to sell products. Added language to clarify that failure to submit all required forms could cause the

			loss of opportunity to continue or become a lottery retailer.
	11VAC5-31-40		<p>Added reference to the Code of Virginia (§ 58. 1-4009) relating to licensing procedures for further clarification.</p> <p>Added language to further defined ethical expectations of our licensed retailers to protect the citizens of Virginia.</p> <p>Added “Special retailer licensing” to allow for possible expansion of product distribution i.e. seasonal sales, special events and limited products.</p>
	11VAC5-31-50		<p>Bond values were deleted and modifications were made to comply with the Code of Virginia § 58.1-4006, B., 3.</p> <p>Added language for combinations of surety instruments to include cash. This could allow more flexibility to attract new and existing retailers at renewal.</p>
	11VAC5-31-70		<p>Amended license term to define a specific term.</p> <p>Added reference to retailer accessibility based on the consent decree by the Circuit Court, on 1-27-11.</p>
	11VAC5-31-80		<p>Added license fee ceiling of \$100.</p> <p>Added annual license fee ceiling of \$70.00.</p>
	11VAC5-31-90		Amended language to further clarify the inability of a sales agent to transfer or assign a license to anyone else.
	11VAC5-31-100		Removed requirement that a retailer display the license at all times.
	11VAC5-31-110		Repealed. Process is part of the retailer training.

	11VAC5-31-120		Practice is no longer required.
	11VAC5-31-130		<p>Added language to further define retailer's responsibilities to avoid possible attempts to reveal winning tickets or plays.</p> <p>Added language that restricts retailers from charging an additional fee for selling or cashing a winning ticket.</p> <p>Added language to restrict retailer from purchasing a winning ticket from a player at a discounted price.</p> <p>Deleted item "G". The item is defined in the Code of Virginia, § 58.1-4007, 10.0</p>
	11VAC5-31-150		<p>Amended item "A" to allow variance of "up to" compensation to retailers. This modification reflects the changes in VAC5-31-40 for "Special retailer licensing". Retailers may not always be full service; therefore, would not be compensated as such.</p> <p>Added language to refer to the Code of Virginia as it relates to the Director's authorization of bonuses or incentive programs.</p>
	11VAC5-31-160		<p>Added number (5) to further define ethical requirements of retailers to further protect the public's interest.</p> <p>Added number (6) to further define ethical requirements of retailers to further protect the public's interest.</p> <p>Added number (7) to further define ethical requirements of retailers to further protect the public's interest.</p> <p>Added number (8) to further define ethical requirements of retailers to further protect the public's interest.</p> <p>Added number (9) to refer to the consent decree entered buy the Circuit Court regarding retailer accessibility.</p> <p>Added language to ensure any licensees that do not comply with the law and</p>

			policy can be subject to suspension, revoking or refusal of their license.
	11VAC5-31-180		Added language to allow the removal of lottery materials. Designed to protect the property of the lottery.
	11VAC5-31-190		Added language referencing inspection of premises will be held during normal business hours of the retailer. Modified to become more customer focused.
	FORMS (11VAC5-31)		Deleted forms that are no longer used or referenced in our regulations. Amended version number for the "Retailer License Application" form.

If a new regulation is being promulgated, use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements

Enter any other statement here