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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Lottery
Virginia Administrative Code (VAC) Chapter citation(s)	11 VAC 5-90 (new chapter)
VAC Chapter title(s)	Casino Gaming
Action title	Promulgation of casino gaming regulations
Date this document prepared	REVISED February 16, 2021 as requested by DPB February 3, 2021

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), 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 the subject matter, intent, and goals 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 or changes. If applicable, generally describe the existing regulation.

The Lottery Board was directed during the 2020 General Assembly to adopt regulations specifying requirements for licensure of casino gaming operators and the conduct of casino gaming within 280 days of the enactment of Virginia Code § 58.1-4100 et seq. (Chapter 1248 of the 2020 Acts of Assembly). As such, the regulations are considered emergency regulations. The Board intends to replace the emergency regulations with permanent regulations.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

Not applicable

Mandate and Impetus (Necessity for Emergency)

Explain why this rulemaking is an emergency situation in accordance with § 2.2-4011 A and B of the Code of Virginia. In doing so, either:

- a) Indicate whether the Governor's Office has already approved the use of emergency regulatory authority for this regulatory change.
- b) Provide specific citations to Virginia statutory law, the appropriation act, federal law, or federal regulation that require that a regulation be effective in 280 days or less from its enactment.

As required by § 2.2-4011, also describe the nature of the emergency and of the necessity for this regulatory change. In addition, delineate any potential issues that may need to be addressed as part of this regulatory change

Chapter 1248 of the Acts of Assembly (2020) authorizes casino gaming in the Commonwealth to be regulated by the Virginia Lottery Board. The Chapter specifies the requirements for licensure of casino gaming operators and the conduct of casino gaming and imposes criminal and civil penalties for violations of the casino gaming law. The location of casino gaming establishments shall be limited to eligible host cities that meet specified criteria: the Cities of Portsmouth, Richmond, Norfolk, Danville, and Bristol. The bill requires each eligible host city to hold a referendum on the question of whether to allow casino gaming in the city and, with the exception of the City of Richmond, to hold such referendum at the November 2020 general election. The bill provides that the Virginia Lottery Board shall promulgate regulations implementing its provisions within 280 days of enactment.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts and Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The Virginia Lottery Board is promulgating these regulations pursuant to **Chapter 1248 of the 2020 Virginia Acts of Assembly**. The Board derives its authority to regulate casino gaming from **Virginia Code § 58.1-4102(2)**, which states: The Board shall have the power and duty to: ... 2. Adopt regulations regarding the conditions under which casino gaming shall be conducted in the Commonwealth and all such other regulations it deems necessary and appropriate to further the purposes of this chapter. **Virginia Code § 58.1-4101.A** states: The Board is vested with control of all casino gaming in the Commonwealth, with authority to prescribe regulations and conditions under this chapter.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

These regulations are being promulgated pursuant to legislative mandate.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

This regulation establishes:

- **how the Virginia Lottery will issue casino licenses and permits;**
- **casino facility and gaming security and control standards;**
- **rules and guidelines for slot machine, mechanical casino games and table games and on-premises mobile casino gaming;**
- **reporting requirements;**
- **facility, employee, and equipment investigation procedures and non-monetary sanctions and penalties for violations, and**
- **procedures for payment of taxes, fees, and penalties.**

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

Virginia Code § 58.1-4101.A sets forth the General Assembly's intent in enacting the underlying legislation:

Casino gaming shall be licensed and permitted as herein provided to benefit the people of the Commonwealth. The Board is vested with control of all casino gaming in the Commonwealth, with authority to prescribe regulations and conditions under this chapter. The purposes of this chapter are to assist economic development, promote tourism, and provide for the implementation of casino gaming operations of the highest quality, honesty, and integrity and free of any corrupt, incompetent, dishonest, or unprincipled practices.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

As this regulatory action is the result of legislative mandate, there are no viable alternatives.

Periodic Review and Small Business Impact Review Announcement

This Emergency/NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulatory proposal, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

INSERT:

The Virginia Lottery is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>.

Comments may also be submitted by mail or email to:

Amy Roper
 Virginia Lottery
 600 E. Main Street
 Richmond VA 23219
 (804) 692-7133 phone
aroper@valottery.com

In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

New chapter-section number	New requirements to be added to VAC	Other regulations and laws that apply	Change, intent, rationale, and likely impact of new requirements
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11VAC5-90-10	Definitions	N/A	<p>Intent/rationale – to define words/phrases applicable to all sections.</p> <p>Impact – minimal – legislation was mandated and the regulation offers necessary guidance to casino license/permit holders.</p>
11VAC5-90-20	Unclaimed Jackpots	§37.2-314.1	<p>Intent/rationale – to define “unclaimed jackpot”, to state the 180-day jackpot winner claim requirement and to explain that unclaimed funds will be deposited to the Problem Gambling Treatment and Support Fund.</p> <p>Impact – minimal – legislation was mandated and the regulation offers necessary guidance to casino license/permit holders.</p>
11VAC5-90-30	Waiver Requests	N/A	<p>Intent/rationale – to explain the process for the submission and review of a regulation waiver request.</p> <p>Impact – minimal – legislation was mandated and the regulation offers necessary guidance to casino license/permit applicants/holders.</p>
11VAC5-90-40	Licenses and Permits Generally	<p>Article 1, Chapter 40 (§ 58.1-4007)</p> <p>Virginia Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2</p> <p>§ 58.1-4105</p> <p>11 VAC 5-90-30</p>	<p>Intent/rationale – to explain the application, review, Informal Fact Finding Conference, hearing, and issuance/denial processes pertaining to and requirements of casino gaming licenses/permits/identification cards.</p> <p>Specifically, to advise of:</p> <ul style="list-style-type: none"> • a 5 year waiting period after a denial/non-renewal before the submitter may re-apply • bond/fee specifications (not to exceed \$50 million for a facility operator or supplier and not to exceed \$100,000 for a service permit holder), and • identification card fees (\$20 for temporary, \$40 for replacement). <p>Impact – minimal – legislation was mandated and the regulation offers necessary guidance to casino license/permit applicants/holders.</p>

11VAC5-90-50	Investigations	Article 1, Chapter 14 (§ 13.1-1201)	<p>Intent/rationale – to provide specific details pertaining to information/disclosures required by applicants and personal and background investigations (to include criminal history records check and fingerprinting) of:</p> <ul style="list-style-type: none"> • an individual applying for a license/permit, • every individual who is an officer/director/principal of a licensee or applicant for a license, • all individual security personnel of any licensee, and • all permit holders and officers/directors/principals/employees of permit holders whose duties relate to gaming operations in Virginia. <p>To advise of:</p> <ul style="list-style-type: none"> • the non-refundable application and background investigation fee of \$50,000, per principal, for preferred casino gaming operator submitting a facility operator’s license; • the non-refundable application fee of \$5,000 and the non-refundable background investigation fee of \$50,000, per principal, for supplier permit applicants; • the nonrefundable fee of \$500 for the administrative costs of personal/background checks and permit issuance of a service permit applicant; • the variable/dependent administrative costs association with the conducting of personal/background investigations for which the applicant is responsible; • the mandatory processing fee required by the Federal Bureau of Investigation (national criminal history records check); and • the mandatory processing fee required by Interpol (international criminal history records check for non-United States citizens). <p>Impact – minimal – legislation was mandated and the regulation offers necessary guidance to casino license/permit applicants/holders.</p>
11VAC5-90-60	Applications for and Issuance of Facility Operator’s License	§58.1-4107F and §58.1-4109	<p>Intent/rationale – to provide guidance as to: who may apply for a facility operator’s license;</p>

		<p>§ 58.1-4111</p>	<ul style="list-style-type: none"> • the application, evaluation and license issuance/denial (to include substantiation that the applicant has made (or will make prior to license issuance) a \$300 million capital investment in the facility and possesses an equity interest of at least 20% in the facility); • the necessary and appropriate certification pertaining to an applicant that is a Virginia Indian Tribe; • facilities, property, tax, infrastructure, site and jurisdictional certifications and substantiations; • the use of a temporary facility; and • that a facility operator’s license continues for ten years from the date of issuance. <p>Impact – minimal – legislation was mandated and the regulation offers necessary guidance to casino license/permit applicants/holders.</p>
<p>11VAC5-90-70</p>	<p>Applications for and Issuance of Supplier Permits</p>	<p>§ 58.1-4114</p>	<p>Intent/rationale – to:</p> <ul style="list-style-type: none"> • list the four types of suppliers (contractor, key manager, manufacturer, and slot machine management system provider); • advise that the required fees for a supplier permit (amounts listed in earlier section) are required for the applicant itself, its principals, if applicable, and all known key managers; • instruct that after successful background investigation and prior to permit issuance, a \$5,000 annual permit fee is required of the applicant; • provide the application review and permit issuance process/requirements (to include that a supplier permit may be temporary or conditional and expires 60 days after the date of issuance (which may be extended for one period of 60 days); • advise that the annual permit fee must be submitted before the start of the next annual term; and • advise that every five years a permit holder shall submit a renewal application (six to three months before the expiration of the permit term) and pay any associated fees.

			<p>Impact – minimal – legislation was mandated and the regulation offers necessary guidance to casino license/permit applicants/holders.</p>
<p>11VAC5-90-80</p>	<p>Applications for and Issuance of Service Permits</p>	<p>§ 58.1-4118</p>	<p>Intent/rationale – to:</p> <ul style="list-style-type: none"> • list the four categories of service permits (gaming employee, non-gaming employee, vendor-major, and vendor-minor (the latter being the two types of concessionaires for which service permits are required under 58.1-4118)); • advise that the required fees for a service permit (amounts listed in earlier section) are required for the applicant itself, any employees who require a service permit under this chapter and, if applicable, all principals and managers; • provide the application review and permit issuance process/requirements (to include that a supplier permit may be temporary or conditional and expires 60 days after the date of issuance (which may be extended for one period of 60 days)); and • advise that every five years a permit holder shall submit a renewal application (three to two months before the expiration of the permit term) and pay any associated fees. <p>Impact – minimal – legislation was mandated and the regulation offers necessary guidance to casino license/permit applicants/holders.</p>

<p>11VAC5-90-90</p>	<p>Enforcement</p>	<p>§§ 58.1-4101; 58.1-4102; 58.1-4116; 58.1-4121; § 2.2-3700 et seq.</p>	<p>Intent/rationale – to advise:</p> <ul style="list-style-type: none"> • that a licensee or permit holder is subject to and shall not interfere with, unannounced inspections, without a warrant, in order to evaluate and verify the entity’s compliance with the casino gaming law and that the premises where casino gaming is conducted, where casino games, table games, equipment, monitoring systems, etc. are designed, built, sold, etc. may be inspected; • that the seizing/impounding/assuming of physical control of the aforementioned games/equipment/systems as well as books/records/ledgers, etc. may occur for the purposes of examination and inspection; • that, during an inspection, a licensee or permit holder and their employees, agents and representatives shall make records available, and/or authorize persons to provide records, to the inspector(s); • that a written report of an unannounced inspection shall be considered a public record to the extent allowable under the Virginia Freedom of Information Act ((§ 2.2-3700 et seq. of the Code of Virginia); and • to adhere to any corrective action plan. <p>Impact – minimal – legislation was mandated and the regulation offers necessary guidance to casino license/permit applicants/holders.</p>
<p>11VAC5-90-100</p>	<p>General Facility Operator Requirements</p>	<p>§§ 58.1-4108-4113; § 58.1-4122; § 58.1-4105</p>	<p>Intent/rationale – to assist economic development, promote tourism, and provide for the implementation of casino gaming operations of the highest quality, honesty, and integrity and free of any corrupt, incompetent, dishonest, or unprincipled practices by:</p> <ul style="list-style-type: none"> • ensuring that applications are complete prior to evaluation and that they comply with the minimum standards provided in the gaming law and this chapter; • that the Department, Board and Director are advised, and advise

			<p>others, as applicable, of their responsibilities with respect to gaming law and to impose fines or penalties (not to exceed \$1,000,000), in proceedings commenced pursuant to 58.1-4105, upon any person determined to have violated any of the provisions of Chapter 41 for regulations promulgate by the Board.</p> <p>Impact – minimal – legislation was mandated and the regulation offers necessary guidance to casino license/permit applicants/holders.</p>
<p>11VAC5-90-110</p>	<p>Casino Gaming Facility Internal Control Standards</p>	<p>§§ 58.1-4101, 58.1-4102; 58.1-4108; 58.1-4113; and 58.1-4114</p>	<p>Intent/rationale – to:</p> <ul style="list-style-type: none"> • define terms that have specific meaning to this section; • advise that a facility operator shall maintain complete, accurate, and legible records of all transactions pertaining to the revenue and expenses of a facility, using a double entry system of accounting recorded on a basis consistent with generally accepted accounting principles in the United States; advise that those records should identify for each casino game on a week-to-date, month-to-date, and year-to-date basis the handle, payout, win amount, win percentage, and average payout percentage; • advise that a facility operator shall develop a written description of its administrative and accounting procedures to include the system of internal controls (meeting the minimum requirements of this section) over casino gaming operations and that these internal controls shall be submitted for review and written approval 60 days before casino gaming operations are to commence; and • advise that no later than 90 days after the end of its fiscal year, a facility operator shall submit a copy of its audited financial statements and any management letter/report prepared with regard to its financial statements by its independent certified public accountant and, if the facility operator or any of its affiliates are publicly held, a copy of any report required to be filed with the Securities and Exchange

			<p>Department and specific forms listed in this section.</p> <p>Impact – minimal – legislation was mandated and the regulation offers necessary guidance to casino license/permit applicants/holders.</p>
11VAC5-90-120	Casino Gaming Facility Standards	§§ 58.1-4101; 58.1-4102; 58.1-4108; 58.1-4113; and 58.1-4114	<p>Intent/rationale – to establish the standards for hours of operation, facility design standards (to include wiring, power backup, equipment storage, locks, surveillance, alarm and recording systems, etc.) and a gaming floor plan (to be prepared by Commonwealth of Virginia-certified and licensed architect at 1/8-inch scale with specific and required notations, that must be submitted at least 60 days before gaming operations are to commence.</p> <p>Impact – minimal – legislation was mandated and the regulation offers necessary guidance to casino license/permit applicants/holders.</p>
11VAC5-90-130	On-premises Mobile Casino Gaming	§§ 58.1-4133 – 58.1-4141	<p>Intent/rationale – to advise how facility operators shall offer on-premises mobile casino gaming to include requirements pertaining to the location of the area within the facility and the security, design, wagering, and responsible gaming requirements.</p> <p>Impact – minimal – legislation was mandated and the regulation offers necessary guidance to casino license/permit applicants/holders.</p>
11VAC5-90-140	Transportation and Testing of Gaming Machines and Equipment	15 U.S.C. §§1171-1178 , commonly known as the Johnson Act	<p>Intent/rationale – to advise that the transporting of a slot machine, mechanical casino gaming device or table game equipment shall comply with applicable provisions of the Johnson Act and to list the requirements for transporting, storage, registration, and testing the functionality of these types of gaming equipment.</p> <p>Impact – minimal – legislation was mandated and the regulation offers necessary guidance to casino license/permit applicants/holders.</p>
11VAC5-90-150	Slot Machines	§§ 58.1-4101; 58.1-4102; 58.1-4114; 58.1-4122	<p>Intent/rationale - to define terms that have specific meaning to this section and to establish the requirements for comprehensive testing and certification by an independent laboratory of slot machines and for approving slot machines and their related equipment, systems, or software.</p>

			<p>Impact – minimal – legislation was mandated and the regulation offers necessary guidance to casino license/permit applicants/holders.</p>
11VAC5-90-160	Mechanical Casino Games	§§ 58.1-4101; 58.1-4102	<p>Intent/rationale – to specify the testing and certification requirements for mechanical casino games and their related equipment,</p> <p>Impact – minimal – legislation was mandated and the regulation offers necessary guidance to casino license/permit applicants/holders.</p>
11VAC5-90-170	Table Games Definitions and Equipment	§§ 58.1-4101; 58.1-4102; 58.1-4114; 58.1-4122	<p>Intent/rationale – to define terms specific to this section, to specify criteria pertaining to gaming equipment (chips, dice, roulette wheels, etc.) to include required physical and play elements, and to establish the processes and procedures for the receipt, storage, inspection, removal, and destruction of this gaming equipment.</p> <p>Impact – minimal – legislation was mandated and the regulation offers necessary guidance to casino license/permit applicants/holders.</p>
11VAC5-90-180	Table Games Procedures	§§ 58.1-4101; 58.1-4102; 58.1-4114; 58.1-4122	<p>Intent/rationale – to specify the types of personnel a facility operator may use to operate table games, the minimum staffing requirements for operation of table games, the conduct of table inventory, coupon redemption, the opening and closing of a table game, and the completion and distribution of required documentation,</p> <p>Impact – minimal – legislation was mandated and the regulation offers necessary guidance to casino license/permit applicants/holders.</p>