



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	State Lottery Department
VAC Chapter Number:	11 VAC 5-31-10 et seq.
Regulation Title:	Licensing Regulations
Action Title:	Promulgate
Date:	03/17/2003

Please refer 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* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

The State Lottery Department is promulgating new regulations that set out the requirements for licensing lottery retailers for both instant and online games. These new regulations consolidate, revise and replace lottery licensing provisions currently contained in the department's Instant Game Regulations (11 VAC 5-30-10 et seq.) and On-Line Game Regulations (11 VAC 5-40-10 et seq.), both of which will be repealed. The final regulations contain an increase in the licensing periodic review fee from \$25 to \$35, not contained in the proposed regulations, but which was made by the board subsequent to adoption of the proposed regulations.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On March 5, 2003, the State Lottery Board unanimously adopted these final regulations.

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, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

Section 58.1-4007 of the Code of Virginia authorizes the State Lottery Board to promulgate regulations governing the operation of the lottery, including provisions for the licensing of retailers to sell lottery products. Further, §§ 58.1-4009 through 58.1-4012, 58.1-4014 and 58.1-4021 set out specific requirements for licensing lottery retailers and provide that the following must be addressed in department regulations: display of license, bonding, license fee, retailer compensation, suspension or revocation of license, sale of tickets and banking arrangements. The Office of the Attorney General has certified that the agency has the statutory authority to promulgate these final regulations and that they comport 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 final 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.

These regulations combine provisions for lottery instant and online game retailer licensing that are currently contained in two separate existing regulations (Instant Game Regulations 11 VAC 5-30 and On-Line Game Regulations 11 VAC 5-40). They reduce or eliminate duplication of similar provisions for different types of games and update the language based upon provisions of the law and department operational practices that have occurred since 1996, when the two existing regulations were last revised. The two current regulations are being repealed. These revisions will have no effect on the health, safety or welfare of citizens, other than to simplify the understanding of department regulations.

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 of the regulatory action's detail.

These regulations establish lottery retailer licensing requirements, including provisions for retailer eligibility, application procedures, bonding requirements, bank account and payment procedures, license terms and periodic reviews, fees, retailer compensation, standards of conduct, criteria for license denial or revocation, and audit of retailer records.

The regulations contain essentially the same provisions as are currently set out in the department's Instant Game and On-Line Game Regulations, with the following primary revisions:

- (i) the department will issue a general license to sell lottery tickets instead of separate instant and on-line licenses;
- (ii) general licensing eligibility criteria are expanded to include "ease of physical access" by players to the retail locations;
- (iii) greater flexibility is provided for timing of periodic rather than annual licensing reviews by the department;
- (iv) the basis for continued license eligibility will include maintaining a standard of sales level;
- (v) retailer compliance with written licensing and equipment agreements will be required; and
- (vi) the specific costs for lottery equipment services are deleted from regulations and included in individual retailer contracts.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the 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.

The primary advantage to the public, including approximately 3.5 million lottery players and approximately 5,000 lottery retailers, is that these regulations will replace two existing, obsolete regulations (Instant Game Regulations 11 VAC 5-30-10 et seq. and On-Line Game Regulations 11 VAC 5-40-10 et seq.) and will be issued as one single source for lottery licensing requirements. They will reflect current provisions of the law as well as current department

practice. Language duplication in the two existing regulations and the burden of multiple regulations will be eliminated.

Also, in order to perform department functions in an enterprise environment and to simplify the regulations, operating procedures not specifically required by the Code of Virginia to be included in regulations are removed and are contained in retailer manuals or contracts, which each lottery retailer receives. Operational revisions that have been made due to technological advances make it easier and more convenient for the department, retailer and player to participate in lottery games and have resulted in no negative effect or comment received from the public.

There are no disadvantages to the public, the agency or the Commonwealth by the promulgation of these regulations.

Statement of Changes Made Since the Proposed Stage

Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.

11 VAC 5-31-80 -- The periodic review licensing fee was changed from \$25 to \$35 and a phrase has been added that states “or as otherwise determined from time to time by the board.” Even though the wording was accurate at the time the proposed regulations were adopted, and the wording is accurate under existing law, the revision was made to reflect the board’s subsequent approval of a fee increase and to clarify that the amount is subject to change. The fee change occurred during the public comment period. No comment was received.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

No public comment was received during the public comment period held from December 2, 2002 to February 14, 2003 or during the public hearing held on March 5, 2003.

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 crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

11 VAC 5-31-10 -- Sets out definitions for “license,” “lottery retailer,” “person” (as it relates to licensing), and “vacuum fluorescent display.”

11 VAC 5-31-20 -- Establishes eligibility criteria for submitting an application for lottery licensure; age (18 years of age or older) and bondable. It states that no person may be licensed whose business is engaged primarily in the business of selling lottery tickets, and that department and certain vendor board members, officers or employees are ineligible for licensure, as well as those residing in their households.

11 VAC 5-31-30 -- Establishes an application procedure for licensing.

11 VAC 5-31-40 -- Lists general standards for licensing that are considered before issuing or renewing a license, including, but not limited to, financial responsibility, security issues, accessibility, expected sales and nature of business. Authorizes the director to issue and publish additional criteria, as needed.

11 VAC 5-31-50 -- Establishes bonding requirements for all lottery retailers and sets the maximum bond amounts at \$50,000 for instant game retailers and \$100,000 per clerk-activated terminal for on-line game retailers. This ensures the safety of funds belonging to the Commonwealth.

11 VAC 5-31-60 -- Sets out retailer bank account and electronic funds transfer requirements.

11 VAC 5-31-70 -- Provides for a issuance of a “general” lottery license issued subject to a periodic determination of continued retailer eligibility and payment of required fees, and issuance of a “special” license for specific events and activities.

11 VAC 5-31-80 -- Establishes the initial general license fee at \$50 and the periodic review fee at \$35, subject to change by the board.

11 VAC 5-31-90 -- Prohibits the transfer of an issued license to another person or location.

11 VAC 5-31-100 -- Requires a licensed lottery retailer to publicly display his lottery license.

11 VAC 5-31-110 -- States that instructions for retailer reporting requirements and settlement procedures will be issued by the director.

11 VAC 5-31-120 -- Requires that each retailer or his representative participate in lottery-provided training.

11 VAC 5-31-130 -- Sets out minimum requirements for lottery retailer conduct, such as compliance with applicable laws, regulations and rules; and the sale of lottery tickets only at the price fixed by the board, during all normal business hours and at the location licensed. Provides that no ticket exchanges are permitted between or among lottery retailers; no retailer may attempt to pre-determine the winning tickets; and specifies the minimum age for retailer employees who sell lottery tickets.

11 VAC 5-31-140 -- Provides for the deposit of lottery receipts by retailers, as well as the interest and penalty amounts for late payments or dishonored electronic transactions or checks.

11 VAC 5-31-150 -- Establishes lottery retailer compensation at 5% based on net ticket sales and 1% of the cash value of prizes that the retailer paid; establishes bonus and incentive systems, and prohibits a lottery retailer from accepting any other compensation for the sale of lottery tickets.

11 VAC 5-31-160 -- Lists the reasons for denial, suspension or revocation of a retailer's lottery license; and provides for notification of the retailer and an appeal process.

11 VAC 5-31-170 -- Provides for voluntary termination of a lottery license by the retailer.

11 VAC 5-31-180 -- Authorizes the department to inspect the licensed premises.

11 VAC 5-31-190 -- Provides for inspection by the department of a retailer's lottery-related records, materials and equipment.

11 VAC 5-31-200 -- Authorizes the department director to require the retailer to submit an audit of his lottery account conducted by an independent certified public accountant.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the 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.

These regulations have no impact upon families.