

DEPARTMENT OF FINANCE

OFFICE OF THE STATE LOTTERY

Statutory Authority: 29 Delaware Code, Section 4819 (29 **Del.C.** §4819)

EMERGENCY

PUBLIC NOTICE

205 Charitable Video Lottery Rules and Regulations

AUTHORITY

Delaware Department of Finance, Office of the State Lottery, pursuant to 29 **Delaware Code**, Section 4819A(h), is adopting amendments to 10 **DE Admin. Code** 205 without prior notice or public hearing in response to the signing of House Bill #1, an Act to Amend Title 29 of the Delaware Code Relating to Lotteries, on January 30, 2013.

REASON FOR THE EMERGENCY ORDER

An Act to Amend Title 29 of the Delaware Code Relating to Lotteries, signed into law January 30, 2013, and scheduled to sunset on June 30, 2013, authorized the introduction of Charitable Video Lottery Machines at Charitable Gaming Organizations, defined as an organization in existence as of January 1, 2013, that is a fraternal or veterans organization with national affiliation or an organization, in existence as of January 1, 2013, whose membership consists primarily of veterans honorably discharged or active duty service members. §4819A(h) of the Act states "The Department of Finance shall enact regulations on an emergency basis to implement the operation of the charitable video lottery machines for the approved charitable gaming organizations." In order to ensure the integrity of this new form of gaming, it is imperative that newly authorized Charitable Video Lottery Agents and Charitable Video Lottery Vendors be held to a standardized set of operational regulations consistent with their business and trade style. As with any expansion of government gaming, it is in the best interests of the program administrator, in this case the State, to establish and ensure compliance with regulations and standards commonly associated with gaming operations in order to maintain the public confidence and trust currently held by the Lottery.

These regulations effectively allow for the start-up and operation of Charitable Video Lottery Machines within the confines of Charitable Gaming Organizations as newly defined by HB #1, which, in part, states "...community organizations are in need of a source of revenue in order to support their operations and charitable activities..."

Due to the condensed time frame allowed based on the urgency for these organizations to start generating funds as referenced above, it is necessary to implement these newly created emergency regulations.

EFFECTIVE DATE OF THE ORDER

This Emergency Order shall take effect at 12:01 a.m. February 25, 2013 and shall remain in effect for 120 days.

ORDER

It is hereby ordered the 25th day of February that the above referenced amendment to 10 **DE Admin. Code** 205 is adopted pursuant to 29 **Delaware Code**, Section 4819.

Tom Cook, Secretary, Department of Finance

205 Charitable Video Lottery Rules and Regulations

1.0 Introduction: Role of State Lottery Office

These regulations are authorized pursuant to 29 **Del.C.** §4819A(h) of Title 29 of the Delaware Code. Charitable Video Lottery operations in the State of Delaware are strictly regulated by the Delaware State Lottery Office through the powers delegated to the Director of the Lottery pursuant to Title 29 of the Delaware Code.

2.0 Definitions

For the purposes of these regulations, the following words and phrases have the meaning ascribed to them in this Section unless the context of the regulation clearly indicates otherwise, or unless they are inconsistent with the manifest intention of the Delaware State Lottery Office.

"agency" or "lottery office" - the Delaware State Lottery Office created pursuant to 29 **Del.C.** Ch. 48.

"agent" or "licensed agent" or "charitable gaming organization" or "charitable video lottery agent" - any person licensed by the Director of the agency to conduct charitable video lottery operations.

"applicant" - any person applying for a license authorized under these regulations.

"background investigation" - the security, fitness and background checks conducted of an applicant.

"charitable video lottery" - any lottery conducted with a charitable video lottery machine or linked charitable video lottery machines with an aggregate progression prize or prizes.

"charitable video lottery facility" - a building containing a gaming room or rooms.

"charitable video lottery machine" - any machine in which coins, credits or tokens are deposited in order to play any game of chance in which the results, including options available to the player, are randomly and immediately determined by the machine. A machine may use spinning reels or video displays or both, and may or may not dispense coins or tokens directly to winning players. A machine shall be considered a charitable video lottery machine notwithstanding (i) the use of an electronic credit system making the deposit of bills, coins, or tokens unnecessary.

"charitable video lottery vendor" - any person who supplies or services charitable video lottery machines or associated equipment.

"certification" - the authorization by the lottery in accordance with its inspection and approval process of charitable video lottery machines and video games, such certification to relate to either hardware or software.

"credit slip" - the receipt issued from a charitable video lottery machine for payment of credits by an agent.

"credit" - the opportunity provided to a player to play a video game or redeem the credit for cash.

"DGE" - the Division of Gaming Enforcement of the Department of Safety and Homeland Security, as authorized by the Delaware Code.

"Director" - the Director of the Delaware State Lottery Office as established by Title 29 of the Delaware Code.

"gaming" - the dealing, operating, carrying on, maintaining or exposing for play any charitable video lottery machine in a licensed charitable gaming organization.

"gaming area" - A location in a charitable gaming organization where gaming activity is conducted at charitable video lottery machines.

"gaming vendor" - any vendor offering goods or services relating to the manufacture, operation, maintenance, security, distribution, service or repair of charitable video lottery machines.

"hearing officer" - a member of the Lottery Commission or other qualified person designated by the Chairperson of the Lottery Commission to conduct a hearing on any matter within the jurisdiction of the Lottery.

"license" - the authorization granted by the agency which permits an applicant to engage in defined charitable video lottery activities as an agent or charitable gaming vendor;

"license application" - the process by which a person requests licensing for participation in the charitable video lottery operations.

"licensee" - any person authorized by the Director to participate in charitable video lottery operations.

"lottery" - the public gaming system or games established and operated by the Delaware State Lottery Office.

"Lottery Commission" - the Lottery Commission of the State of Delaware as established by 29 **Del.C.** §4837.

"MEAL" - a written Machine Entry Authorization Log stored inside the charitable video lottery machine.

"net charitable video lottery game proceeds" - the total amount of credits or cash played less the total amount of credits or cash won by the players. "Net charitable video lottery game proceeds" does not include sums withheld from player winnings for tax liabilities incurred by the players, nor does it include amounts held in reserve for large or progressive prizes yet to be won by players.

"owner" - a person who owns, directly or indirectly, ten percent or more of an applicant or licensee.

"person" - an individual, general partnership, limited partnership, corporation or other legal entity.

"player" - an individual who plays a charitable video lottery machine.

"premises" - the building and grounds occupied by a licensed agent where the agent's charitable video lottery operations occur or support facilities for such operations exist, such as facilities for the service of food or drink, including those areas not normally open to the public, such as areas where records related to charitable video lottery operations are kept.

"terminal" - a charitable video lottery gaming device.

"video game" - any game played on a charitable video lottery machine, including but not limited to a variation of poker, blackjack, pull tabs, instant or line-up games.

"video game event outcome" - the result of a video game achieved by a player at a charitable video lottery machine.

3.0 Licensing of Agents

- 3.1 Any applicant desiring to obtain a license to act as an agent shall apply to the agency on forms specified by the Director from time to time. Application forms shall require the applicant to provide the following, without limitation:

 - 3.1.1 The applicant's legal name, address, type of organization (fraternal, veterans), organizational ID# or Federal Employer's Identification Number (FEIN), the names, addresses, social security numbers (if applicable) and dates of birth (if applicable) of all officers assuming responsibility for the organization.
 - 3.1.2 Certified copies of the applicant's charter, articles of incorporation, and other documents which constitute or explain the legal organization of the applicant.
 - 3.1.3 Any and all other information as the Director may require to determine the competence, honesty and integrity of the applicant as required by Title 29 of the Delaware Code.
- 3.2 The application, as well as other documents submitted to the agency by or on behalf of the applicant for purposes of determining the qualifications of the applicant or agent, shall be sworn to or affirmed before a notary public. If any form or document is signed by an attorney for the applicant, the signature shall certify that the attorney has read the forms or documents and that, to the best of his or her knowledge, information and belief, based on diligent inquiry, the contents of the form or documents so supplied are true.
- 3.3 Upon request of the agency, the applicant shall supplement the information provided in the application form as deemed necessary by the agency. The applicant shall furnish all information, including financial data and documents, certifications, consents, waivers, individual history forms, tax returns, cancelled checks or other materials required or requested by the agency for purposes of determining the qualifications of the applicant or agent.
- 3.4 To the extent, if any, that the information supplied in the application or otherwise supplied by the applicant or on the applicant's behalf, becomes inaccurate or incomplete, the applicant shall so notify the agency in writing as soon as it is aware that the information is inaccurate or incomplete, and shall at that time supply the information necessary to correct the inaccuracy or incompleteness of the information.
- 3.5 The applicant shall cooperate fully with the agency and the Division of Gaming Enforcement (DGE) with respect to its background investigation of the applicant. Among other things, the applicant, upon request, shall make available any and all of its books or records for inspection by the agency or the DGE.
- 3.6 As soon as the agency has determined that the application is complete, it shall forward same to the DGE which shall, as soon as practicable, undertake and complete the background investigation of the applicant and the officers assuming responsibility for the organization and report its findings to the agency.
- 3.7 The Director shall weigh the following factors in his or her evaluation of the application:

 - 3.7.1 The criminal background, if any, of the applicant or any of its officers. No license shall be issued to any applicant if any of the persons identified in this subsection have been convicted, within ten (10) years prior to the filing of the application, of any felony, a crime of moral turpitude or a crime involving gambling.
 - 3.7.2 The degree to which the applicant has supplied accurate and complete information pursuant to the requirements of these regulations.
 - 3.7.3 The extent to which the applicant has cooperated with the agency and the DGE in connection with the background investigation.
 - 3.7.4 Whether the person, or any of its officers, are known to associate with persons of nefarious backgrounds or disreputable character such that the association could adversely affect the general credibility, security, integrity, honesty, fairness or reputation of the lottery.
 - 3.7.5 With respect to any past conduct which may adversely reflect upon the applicant, the nature of the conduct, the time that has passed since the conduct, the frequency of the conduct and any extenuating circumstances that affect or reduce the impact of the conduct or otherwise reflect upon the applicant's fitness for the license.
 - 3.7.6 The extent, if any, to which the applicant has failed to comply with any applicable tax laws of the federal, state or local governments.
 - 3.7.7 Any other information before the Director, including substantially similar background investigations performed by other agencies or jurisdictions, which relates to the applicant's competency, financial capability, honesty, integrity, reputation, habits, or associations.
- 3.8 A license shall be issued to the applicant if the Director is satisfied, upon consideration of the factors specified in subsection 3.7, that the applicant would be a fit agent and not pose a threat to the public interest, the reputation of the lottery, or the effective control of the lottery.
- 3.9 The approval of any license or the renewal of a license to an agent is subject to the following conditions:

- 3.9.1 Operation pursuant to a license issued under these regulations shall signify agreement by the agent to abide by all provisions of the regulations, including those contained in this section.
- 3.9.2 The agent shall at all times make its premises available for inspection by authorized representatives of the agency or the DGE personnel, during all operational hours. The Lottery and the DGE shall be authorized entry to the premises and access to any charitable video lottery machines or records of the agent without acquiring a warrant.
- 3.9.3 To the extent permitted by law, an agent accepts all risks of adverse public notice, embarrassment, criticism, damages, or financial loss which may result from any disclosure or publication of material or information supplied to the agency in connection with the application for the agent's operations.
- 3.9.4 An agent shall immediately notify the agency of any proposed or effective change regarding the makeup of the officers assuming responsibility of the agent.
- 3.9.5 An agent has a continuing duty to maintain suitability for licensure. A license does not create a property right, but is a revocable privilege contingent upon continuing suitability for licensure.
- 3.9.6 Any license granted may not be transferred, assigned or pledged as collateral. Any loss of charter or any action that occurs which causes the agent to no longer qualify as a Charitable Gaming Organization as defined in 29 Del.C. §4803 of Title 29, after the Director has issued a license, shall automatically terminate the license ninety (90) days thereafter.
- 3.10 To the extent provided by law, any information obtained pursuant to this Section 3 shall be held in confidence and not subject to the Delaware Freedom of Information Act, 29 Del.C. chapter 100.

4.0 Licensing of Gaming Vendors

- 4.1 A person expressing an interest to be selected as a charitable gaming vendor shall file an application for a charitable gaming vendor license in accordance with these regulations.
- 4.2 A charitable gaming vendor shall be licensed in accordance with these regulations prior to conducting any business with the Lottery or charitable video lottery agent, provided however, that upon a finding of good cause by the Director for each business transaction the Director may permit an applicant for said license to conduct business transactions prior to the issuance of the license.
- 4.3 Each person desiring to obtain a license from the agency as a charitable gaming vendor shall submit a license application on a form specified and supplied by the agency. The license application shall, among other things:
 - 4.3.1 Give notice that the applicant will be required to submit to a background investigation.
 - 4.3.2 Require the applicant to supply specified information and documents related to the applicant's fitness and the background of its owners.
 - 4.3.3 Require the applicant to disclose its legal name, form or entity (e.g., general or limited partnership, corporation).
- 4.4 The Director shall weigh the following factors in his or her evaluation of the application:
 - 4.4.1 The criminal background, if any, of the applicant or any of its officers. No license shall be issued to any applicant if any of the persons identified in this subsection have been convicted, within ten (10) years prior to the filing of the application, of any felony, a crime of moral turpitude or a crime involving gambling.
 - 4.4.2 The degree to which the applicant has supplied accurate and complete information pursuant to the requirements of these regulations.
 - 4.4.3 The extent to which the applicant has cooperated with the agency and the DGE in connection with the background investigation.
 - 4.4.4 Whether the person, or any of its officers, are known to associate with persons of nefarious backgrounds or disreputable character such that the association could adversely affect the general credibility, security, integrity, honesty, fairness or reputation of the lottery.
 - 4.4.5 With respect to any past conduct which may adversely reflect upon the applicant, the nature of the conduct, the time that has passed since the conduct, the frequency of the conduct and any extenuating circumstances that affect or reduce the impact of the conduct or otherwise reflect upon the applicant's fitness for the license.
 - 4.4.6 The extent, if any, to which the applicant has failed to comply with any applicable tax laws of the federal, state or local governments.
 - 4.4.7 Current prosecution for any offense listed in 4.4.1 of this section, provided that, at the request of the applicant, the Director shall defer its decision on the application during the pendency of the charge.
 - 4.4.8 Any other information before the Director, including substantially similar background investigations performed by other agencies or jurisdictions, which relates to the applicant's competency, financial capability, honesty, integrity, reputation, habits, or associations.

- 4.5 A license shall be issued to the applicant if the Director is satisfied, upon consideration of the factors specified in subsection 3.7, that the applicant would be a fit agent and not pose a threat to the public interest, the reputation of the lottery, or the effective control of the lottery.
- 4.6 Charitable gaming vendors shall have a valid license to conduct business in the State of Delaware, shall comply with all applicable tax provisions, and shall in all other respects be qualified to conduct business in Delaware.
- 4.7 Each charitable video lottery machine certified by the Director shall bear a unique serial number and shall conform to the machine model certified by the Director.
- 4.8 Charitable gaming vendors shall hold harmless the agency, the State of Delaware, and their respective employees for any claims, loss, cost, damage, liability or expense, including, without limitation, legal expense arising out of any hardware or software malfunction resulting in the wrongful award or denial of credits or cash.
- 4.9 A charitable gaming vendor shall not distribute a charitable video lottery machine for placement in the state unless the charitable video lottery machine has been approved by the agency. Only charitable gaming vendors may apply for approval of a charitable video lottery machine or associated equipment.
- 4.10 The charitable gaming vendor is responsible for the assembly and initial operation, in the manner approved and licensed by the agency, of all its charitable video lottery machines and associated equipment. The charitable gaming vendor may not change the assembly or operational functions of any of its charitable video lottery machines approved for placement in Delaware unless a "request for modification to an existing charitable video lottery machine prototype" is made to the agency, that request to contain all appropriate information relating to the type of change, reason for change, and all documentation required. The agency must approve such request prior to any changes being made, and the agency shall reserve the right to require second testing of charitable video lottery machines after modifications have been made.
- 4.11 The following duties are required of all licensed charitable gaming vendors, without limitation:
 - 4.11.1 Promptly report to the agency any violation or any facts or circumstances that may result in a violation of State or Federal law and/or any rules or regulations adopted pursuant thereto.
 - 4.11.2 Conduct charitable video lottery operations in a manner that does not pose a threat to the public health, safety, or welfare of the citizens of Delaware, or reflect adversely on the security or integrity of the lottery.
 - 4.11.3 Hold the agency and the State of Delaware and its employees harmless from any and all claims that may be made against the agency, the State of Delaware, or the employees of either, arising from the charitable gaming vendor's participation in or the operation of a charitable video lottery game.
 - 4.11.4 Maintain all required records.
 - 4.11.5 It shall be the ongoing duty of the charitable gaming vendor licensee to notify the Director of any change in ownership. The failure of any new owner to satisfy a background investigation may constitute "cause" for the suspension or revocation of the license.
 - 4.11.6 Supervise its employees and their activities to ensure compliance with these rules.
 - 4.11.7 Comply with such other requirements as shall be specified by the Director.

5.0 Agents: Duties

- 5.1 The following duties are required of all licensed agents:
 - 5.1.1 Provide a secure location for the placement, operation, and play of all licensed charitable video lottery machines located on the licensed agent's premises.
 - 5.1.2 Permit no person to tamper with or interfere with the approved operation of any licensed charitable video lottery machine or other gaming equipment without prior written approval of the agency, unless otherwise directed by the Lottery.
 - 5.1.3 With respect to charitable video lottery operations, contract only with suppliers of charitable video lottery equipment and paraphernalia authorized by the agency to participate in charitable video lottery operations within the State of Delaware.
 - 5.1.4 Ensure that no gaming equipment or any other related accessory shall be used in a charitable video lottery facility if the equipment, materials and suppliers have not been previously approved by the agency.
 - 5.1.5 Ensure licensed charitable video lottery machines are placed and remain as placed unless the agency authorizes their movement within the sight and control of the agent or a designated employee, through physical presence.
 - 5.1.6 Monitor charitable video lottery machine play and prevent access to or play by persons who are under the age of twenty-one (21) years or who are intoxicated, or whom the agent has reason to believe are intoxicated, and prohibit play by persons who are barred by law or self-barrred from playing any charitable video lottery machine.

- 5.1.7 Commit no violations of the laws of this State concerning the sale, dispensing, and consumption on the premises of alcoholic beverages that result in suspension or revocation of an alcoholic beverage license.
- 5.1.8 Maintain at all times sufficient cash in denominations accepted by the video machines located in the premises.
- 5.1.9 Report promptly all charitable video lottery machine malfunctions to the appropriate charitable gaming vendor and agency and notify the agency of any technology provider failure to provide service and repair of such terminals and associated equipment.
- 5.1.10 Assume responsibility for the proper and timely payment to players of credits awarded.
- 5.1.11 Prohibit the possession, use or control of gambling paraphernalia on the premises not directly related to the lottery and prohibit illegal gambling on the premises.
- 5.1.12 Attend all meetings, seminars, and training sessions required by the agency.
- 5.1.13 Supervise its employees and their activities to ensure compliance with these rules.
- 5.1.14 Assume responsibility for the proper and immediate redemption of all credits; however, no credits may be redeemed by a person under twenty-one (21) years of age. No credits or prizes may be redeemed by or for any person illegally on the agent's premises or persons who have requested that they be self-banned from the agent's premises.
- 5.1.15 Provide dedicated power and a proper charitable video lottery machine environment in accordance with the specifications of the agency.
- 5.1.16 Immediately report to the agency any violation or any facts or circumstances that may result in a violation of State or Federal law and/or any rules or regulations pursuant thereto by the agent, its employees, or anyone acting on behalf of the agent, excluding violations concerning motor vehicle laws.
- 5.1.17 Conduct charitable video lottery operations in a manner that does not pose a threat to the public health, safety, or welfare of the citizens of Delaware, or reflect adversely on the security or integrity of the lottery.
- 5.1.18 Hold the Director, the State of Delaware, and employees thereof harmless from and defend and pay for the defense of any and all claims which may be asserted against the Director, the State or the employees thereof, arising from the participation in the charitable video lottery system, except claims arising from the negligence or willful misconduct of the Director, the State or the employees thereof.
- 5.1.19 Maintain all required records.
- 5.1.20 Provide at the request of the Director or the DGE immediate access to the premises and to all records related to any aspect of these regulations, including without limitation the duties imposed by these regulations.
- 5.1.21 Keep current on all payments, tax obligations and other obligations to the agency and other licensees with whom charitable video lottery business is conducted. The agent shall pay the players and transfer the net charitable video lottery game proceeds to the State lottery fund in conformity with the requirements set forth in these regulations and 29 **Del.C.** Ch. 48.
- 5.1.22 Comply with such other requirements as shall be specified by the Director.
- 5.1.23 Notify the Director on a continuing basis of any change in officers assuming responsibility of the organization.
- 5.1.24 Such persons will also be subject to a background investigation. The failure of any of the above-mentioned persons to satisfy a background investigation may constitute "cause" for the suspension or revocation of the charitable video lottery agent's license, provided that an agent is first given a reasonable opportunity to remove or replace such person if the agent was unaware of such "cause" prior to the background investigation.
- 5.1.25 Comply on a continuing basis with the requirements for obtaining or retaining a license under the provisions of these regulations and 29 **Del.C.** Ch. 48.
- 5.1.26 Immediately notify the DGE and agency about, and submit any evidence of, any gaming equipment or other device used in a charitable video lottery facility which has been, or there is reasonable suspicion that it may have been, tampered with or altered in such a way that the integrity or conformity of the gaming equipment or the device may have affected its use.
- 5.1.27 Immediately notify the DGE about any illegal and/or suspicious activities that occur or are occurring in the agent's charitable video lottery facility that relate to the safety, security and/or gaming operations of the facility. An agent shall also immediately notify the DGE of any illegal or suspicious activities that occur outside of the charitable video lottery facility that relate to the safety, security and/or gaming operations of the charitable video lottery facility.
- 5.1.28 Immediately notify the DGE if anyone acting on behalf of the agent physically detain a person suspected of a violation of 11 **Del.C.** 1471.

- 5.2 The agent who has retained any gaming equipment or other devices, under a reasonable suspicion that said gaming equipment or article was tampered with or altered, or who has retained any device of those specified in these regulations under a reasonable suspicion that said device was introduced or used or intended to be used in the charitable video lottery facility in violation of the law or the regulations, shall keep said equipment or article in the state in which it was found when it was retained, and shall deliver said equipment or article to a representative of the DGE as soon as possible.
- 5.3 The agent shall be responsible for ensuring that any gaming equipment or any other device and any evidence related to the same which should be submitted to the DGE is maintained in a secure manner until the arrival of an authorized representative of the DGE.

6.0 Game Requirements

- 6.1 Each video game shall display the amount wagered and the amount awarded for each possible winning occurrence based on the number of credits wagered.
- 6.2 Each player shall be at least twenty-one (21) years of age. In the event an underage player attempts to claim a prize, the charitable video lottery agent should treat the play of the game as void and the underage player shall not be entitled to any prize won or a refund of amounts bet. In the event a person illegally on the premises or a self-barred person attempts to claim a prize, the charitable video lottery agent will also treat the play of the game as void and the person shall not be entitled to any prize won or a refund of amounts bet.
- 6.3 No person may play or attempt to play credits on a charitable video lottery machine that were won by another player on that machine and inadvertently or accidentally left on the machine by the original player. Any such play of another person's credits shall be treated as void and the person who plays another player's credits that were accidentally left on the machine shall not be entitled to any prize won or a refund.
- 6.4 No payment for a credit slip or a prize claim form for a prize awarded on a charitable video lottery machine may be made unless the credit slip or prize claim form meets the following requirements:
- 6.4.1 It is presented on a fully legible, valid, printed credit slip on paper approved by the agency, containing the information as required;
- 6.4.2 It is not mutilated, altered, unreadable, or tampered with in any manner, or previously paid;
- 6.4.3 It is not counterfeit in whole or in part; and
- 6.4.4 It is presented by a person authorized to play.
- 6.5 Method of Payment - The management of each licensed agent shall designate employees authorized to redeem credit slips during the hours of operation. Credits shall be immediately paid in cash or by check when a player presents a credit slip for payment meeting the requirements of this section.
- 6.6 Restrictions on Payment - Agents may only redeem credit slips for credits awarded on charitable video lottery machines located on its premises. The agency and the State of Delaware are not liable for the payment of any credits on any credit slips.
- 6.7 Redeemed Tickets Defaced - All credit slips redeemed by a licensed agent shall be marked or defaced in a manner that prevents any subsequent presentment and payment.
- 6.8 Liability for Malfunction - The agency and the State of Delaware are not responsible for any charitable video lottery machine malfunction or for any error by the agent that causes credit to be wrongfully awarded or denied to players.

7.0 Accounting and Distribution Procedures; Forms, Records and Documents

- 7.1 Each agent and charitable gaming vendor shall submit to the Director such financial and operating information as the Director shall require from time to time at such times and in such format as the Director shall specify.
- 7.2 The agency may periodically prescribe a set of standard reporting forms and instructions to be used by each charitable video lottery agent for filing reports.
- 7.3 The agency or its designated agents shall have the right to audit the books and records including without limitation tax returns and IRS withholding and reporting records of any agent and each charitable gaming vendor. To such end, the agents and service companies shall fully cooperate with whomever undertakes the audit.
- 7.4 The net charitable video lottery game proceeds returned to the state shall be remitted weekly, bi-weekly or monthly to the agency at the discretion of the Lottery Director through the electronic transfer of funds to an EFT account. To the extent, if any, that such weekly, bi-weekly or monthly remission cannot be achieved due to the unavailability of bank services, the remission shall be made on the first day that such services are available. Agents shall furnish to the agency all information and bank authorizations required to facilitate the timely

transfer of monies to the State lottery fund. Agents shall provide the agency thirty (30) days advance notice of any proposed account changes in order to assure the uninterrupted electronic transfer of funds.

- 7.5 The agency is not responsible for resolving discrepancies which are differences between actual money collected and the amount shown on the accounting meters or billing statement. Further, the agency is not responsible for the loss or theft of money prior to its deposit in the agency's account in the bank.
- 7.6 Agents shall comply with all prescribed Federal requirements for tax withholding, recording and reporting, including, without limitation, those requirements relating to the transfer of funds withheld from player winnings from the agents to the tax authorities.
- 7.7 Any discrepancy regarding settlement of accounts will be resolved by the Director as he or she deems appropriate.
- 7.8 All information required to be placed on any form, record, or document shall be recorded on such form, record, or document in ink or other permanent form.
- 7.9 Each agent shall maintain complete, accurate, and legible records of all transactions pertaining to revenue and gaming activities. Each agent shall maintain detailed, supporting, subsidiary records sufficient to meet financial reporting requirements prescribed by the Lottery Director. Each agent shall also establish an inventory system of retained financial documents that facilitates their preservation and makes them readily available for review or copying by regulatory authorities and other authorized individuals or groups, and provides procedures for destruction.

8.0 Maintenance of Charitable Video Lottery Machines

- 8.1 No charitable video lottery machine may be placed in operation in Delaware until the charitable gaming vendor has provided its personnel with sufficient and appropriate training in the service and repair of each of its approved charitable video lottery machine models.
- 8.2 Each charitable gaming vendor shall service and maintain its charitable video lottery machines, current software, and associated equipment in the manner and condition required by the agency and in accordance with its contractual arrangements.
- 8.3 A MEAL book shall be kept within the main cabinet access area in each charitable video lottery machine. Every person, including agency personnel, who gains entry into any internal space of a charitable video lottery machine shall sign the MEAL book, indicate the time and date of entry, and reason for entry. The MEAL books shall be retained by agents for a period of three years from the date of the last entry. The MEAL books shall be made available upon request for inspection by the agency.
- 8.4 Service companies shall provide the agency or its designee upon request with a master key for access into each locked compartment of each charitable video lottery machine placed in operation (i.e., cash box, main cabinet, logic box).

9.0 Transportation, Registration, and Location of Charitable Video Lottery Machines

- 9.1 No person shall ship or transport a charitable video lottery machine into or out of the State without first obtaining a written authorization for such transport from the Director or designee. Transporting of charitable video lottery machines within the State of Delaware shall be accomplished by the charitable gaming vendor or his designate, with the concurrence of the Director. Charitable video lottery agents are not authorized to transport charitable video lottery machines at any time without agency approval. Any person transporting a charitable video lottery machine from one location to another within the State shall notify the agency in writing prior to the transportation of said charitable video lottery machine. Requests to transport machines shall include the following information:
 - 9.1.1 The full name and address of the person transporting the charitable video lottery machine;
 - 9.1.2 The reason for transporting the charitable video lottery machine;
 - 9.1.3 The full name and address of the person where the charitable video lottery machine is currently located;
 - 9.1.4 The full name and address of the person to whom the terminal is being sent and the destination of the charitable video lottery machine, if different from the address;
 - 9.1.5 The serial and model numbers (if applicable) of each charitable video lottery machine received;
 - 9.1.6 The manufacturer of the charitable video lottery machine; and
 - 9.1.7 The expected date and time of charitable video lottery machine installation.
- 9.2 If the charitable video lottery machine will not be placed in operation, the charitable gaming vendor shall notify the agency of the address where said terminal is to be warehoused or otherwise kept. Prior to use, the storage facility shall be inspected and approved for charitable video lottery machine storage by the agency.
- 9.3 Project Request Forms

- 9.3.1 A charitable video lottery agent or charitable gaming vendor must complete a Project Request Form whenever it seeks approval for the movement of charitable video lottery terminals or for other modifications or changes to charitable video lottery terminals and other gaming related equipment.
- 9.3.2 A Project Request Proposal Form must be submitted whenever an agent or service provider seeks: i) to move or modify a charitable video lottery machine on the premises; ii) to convert a game theme on a charitable video lottery machine; iii) to convert the play denomination on a charitable video lottery machine; iv) to change the percentage payout on a charitable video lottery machine; v) to change any software on a charitable video lottery machine; vi) to change the jackpot lockup amount on a charitable video lottery machine; vii) to change the configuration of a charitable video lottery machine; viii) to perform a wholesale replacement of parts of a charitable video lottery machine; ix) to make any type of adjustment to mechanical or electronic meters.
- 9.3.3 No project is approved until the Lottery has signed the Project Request Form and distributed copies of the completed form to the appropriate parties. The Lottery will strictly enforce the approved start and end time on the Project Request Form. No charitable video lottery agent or service provider under any circumstances will be permitted to shut down or otherwise modify any charitable video lottery terminal prior to the approved start time or after the approved end time listed on a Project Request Form without written approval from the Lottery Office.
- 9.3.4 A charitable video lottery agent must notify the Lottery Office if any project is cancelled or not completed as originally submitted based on a decision of the charitable video lottery agent. A charitable gaming vendor must notify the Lottery Office if any project is cancelled or not completed as originally submitted based on a decision of the charitable gaming vendor.

10.0 Enforcement and Hearings

- 10.1 The Director shall not deny, refuse to renew, or revoke any license unless it has first afforded the applicant or licensee an opportunity for a hearing on an appeal for reconsideration before the Lottery Commission.
- 10.2 If the Director determines that an applicant or licensee has not satisfied or continued to satisfy the license requirements for the granting or retention of an application or license, a written notice of an intent to deny or revoke the application or license shall be served upon the applicant or licensee. The written notice shall include the reasons for the intended denial or revocation and shall advise the applicant or licensee of the right to request a hearing on an appeal for reconsideration before the Lottery Commission.
- 10.3 An applicant or licensee who has received a notice of intent to deny or revoke an application or license shall have an opportunity to request a hearing on an appeal for reconsideration before the Lottery Commission within thirty (30) days of receipt of the written notice.
- 10.4 If an applicant or licensee desires a hearing, it shall provide the Lottery Commission and Director with a written statement within ten (10) days of receipt of the notice which contains the following:
 - 10.4.1 A clear and concise statement indicating the reasons for appealing the decision of the Director;
 - 10.4.2 A verification by the applicant or licensee that the information provided is true and accurate; and
 - 10.4.3 The signature of the applicant or licensee.
- 10.5 If an applicant or licensee fails to timely file an appeal for reconsideration or withdraws the appeal for reconsideration, the Director shall determine that there is a waiver of the right to a hearing and an admission of all allegations of fact set forth in the Director's notice of intent to deny or revoke a license. The Director shall take final action, including denying or revoking a license.
- 10.6 The appeal for reconsideration shall be heard by the Lottery Commission, provided however, that the Chairperson of the Lottery Commission may, in his discretion, designate a member of the Lottery Commission, or other qualified person other than an employee of the Lottery Commission, to serve as hearing officer in a particular matter. The hearing shall be conducted within thirty (30) days of the receipt of the letter of appeal unless extenuating circumstances require a longer period.
- 10.7 At the hearing, the Director or his designee shall be responsible for presenting the matter in support of his determination to the Lottery Commission, including calling witnesses, introducing any relevant evidence and making any necessary arguments.
- 10.8 Notice of the hearing shall be given to the parties at least twenty (20) days before the date it is to be held.
- 10.9 If the parties agree to a settlement prior to the conclusion of the hearing before the Lottery Commission or the designated hearing officer, a written stipulation signed by all parties shall be submitted to the Lottery Commission. The settlement shall be scheduled for disposition by the Lottery Commission at a public meeting at which the Lottery Commission shall:
 - 10.9.1 Approve the settlement;
 - 10.9.2 Approve the settlement as modified by the Lottery Commission with the consent of the parties;

10.9.3 Reject the settlement and schedule the matter for further proceedings; or

10.9.4 Take such action as the Lottery Commission deems appropriate.

- 10.10 No settlement shall be approved by the Lottery Commission unless the settlement agreement is voluntary, consistent with the law and fully dispositive of all issues in controversy.
- 10.11 An executed stipulation of settlement shall, upon approval by the Lottery Commission, be considered a withdrawal of an appeal for reconsideration and evidence of informed consent to such final Lottery Commission action as described therein.
- 10.12 The applicant or licensee may appear individually, by legal counsel, or by any other duly authorized representative. In the absence of the applicant or licensee, written evidence of a representative's authority shall be presented to the Lottery Commission in a form satisfactory to the Lottery Commission.
- 10.13 The applicant or licensee, his legal counsel or duly authorized representative may, with the approval of the Lottery Commission, waive the hearing and agree to submit the case for decision on the record, with or without a written brief. Such a waiver or agreement shall be in writing and placed in the record.
- 10.14 The applicant or licensee shall be given an opportunity for argument within the time limits fixed by the Lottery Commission or designated hearing officer following submission of the evidence. The Lottery Commission or hearing officer, upon request of the applicant or licensee, may accept briefs in lieu of argument. The briefs shall be filed within ten (10) days after the hearing date or within such other time as fixed by the Lottery Commission or hearing officer.
- 10.15 The Lottery Commission or hearing officer may admit any relevant evidence, except that it shall observe the rules of privilege recognized by law. The Lottery Commission or hearing officer may exclude any evidence which is irrelevant, unduly repetitious, or lacking a substantial probative effect.
- 10.16 A record shall be made of all hearings and all witnesses shall be sworn and subject to cross examination.
- 10.17 An applicant or licensee shall have the affirmative obligation to establish by clear and convincing evidence that the Director's determination was in error under the criteria for licensing established by these regulations.
- 10.18 A written decision shall be rendered by the Lottery Commission, or by a designated hearing officer, setting forth findings of fact and conclusions of law within forty-five (45) days of the hearing unless extenuating circumstances require a longer period. An order shall be entered memorializing the decision. All orders and decisions made by the Lottery Commission under this appeal procedure are final.
- 10.19 A copy of the written decision and order of the Lottery Commission or hearing officer shall be submitted to the Director who shall serve the order and written decision upon the applicant or licensee and any attorney of record in person or by registered or certified mail.
- 10.20 In cases where the written decision is rendered by a designated hearing officer, a person aggrieved by the decision of the hearing officer may, within thirty (30) days of the decision, file a notice of an intent to contest the findings of fact and conclusions of law of the hearing officer, which shall set forth the reasons for contesting the decision. A written response to the notice of intent to contest the findings of fact and conclusions of law may be filed within twenty (20) days by the opposing party. Upon the filing of the notice of intent, the aggrieved person shall be afforded an opportunity to appear before the Lottery Commission within thirty days (30) of said filing. The Lottery Commission may adopt, remand for further proceedings, modify or reverse the decision of the hearing officer, by written decision and order, within forty-five (45) days of the decision of the hearing officer. A copy of the written decision and order of the Lottery Commission shall be submitted to the Director who shall serve the order and written decision upon the applicant or licensee and any attorney of record in person or by registered or certified mail.
- 10.21 If a notice of intent is not filed in accordance with the timelines set forth herein, the matter shall be submitted to the Lottery Commission for final disposition. An order memorializing the decision of the Lottery Commission shall be entered within forty-five (45) days of the decision of the hearing officer. The Lottery Commission may adopt, remand for further proceedings, modify or reverse the decision of the hearing officer by written decision and order. A copy of the order of the Lottery Commission shall be submitted to the Director who shall serve the order upon the applicant or licensee and any attorney of record in person or by registered or certified mail.
- 10.22 A person aggrieved by a final decision or order of the Lottery Commission made after a hearing may obtain judicial review thereof by appeal to the Superior Court pursuant to §10142 of Title 29. The filing of an appeal shall not stay enforcement of the decision or order of the Lottery Commission unless a stay is obtained from the court upon application in accordance with the rules of court or from the Lottery Commission.
- 10.23 An applicant or licensee whose license has been revoked or whose application for a license has been denied shall be prohibited from reapplying for any license for a period of five (5) years from the date of the order denying or revoking the license.
- 10.24 Any party may, within ten (10) days after the service of a final order of the Lottery Commission, file a motion for reconsideration which motion may seek to reopen the record. The motion shall be in writing and shall state the

grounds upon which relief is sought. The Lottery Commission may grant such motion, under such terms and conditions as the Commission may deem appropriate, when the Lottery Commission finds just cause for reconsideration of the order based upon legal, policy or factual argument advanced by the movant or raised by the Lottery Commission on its own motion.

- 10.25 Any party may, within one (1) year after the service of a final order of the Lottery Commission, file a motion to reopen the record based upon newly discovered evidence. The motion shall be supported by an affidavit of the moving party or counsel showing with particularity the materiality and necessity of the additional evidence and the reason why such evidence was not presented at the original hearing or on a motion for reconsideration. The Lottery Commission may grant such motion upon a showing that the newly discovered evidence is material and necessary, that sufficient reason existed for failure to present such evidence, and that the evidence is reasonably likely to change the final decision of the Lottery Commission. Upon reconsideration, the Lottery Commission may modify its decision and order as the additional evidence may warrant.
- 10.26 Any party may, within one (1) year of the service of a final order of the Lottery Commission, file a motion for relief from such an order. The motion shall be in writing and shall state the grounds upon which relief is sought. The Lottery Commission may grant such motion and vacate or modify the order, reopen the record, or grant a hearing upon a showing of the following:
- 10.26.1 Mistake, inadvertence, surprise or excusable neglect;
- 10.26.2 Fraud, misrepresentation or other misconduct of an adverse party; or
- 10.26.3 Any other reason consistent with public policy and in the interests of justice.
- 10.26.4 No motion filed pursuant to this section, and no order granting such motion, shall suspend the operation of any order of the Lottery Commission unless otherwise specified by order of the Lottery Commission.
- 10.27 Any money or thing of value which has been obtained by any person prohibited from gaming activity in a charitable video lottery facility shall be subject to an order of forfeiture by the Director, following notice to the prohibited person and an opportunity for the prohibited person to file an appeal for reconsideration by the Lottery Commission in accordance with the procedures set forth in 13.1 et seq.
- 10.28 Whoever violates the Lottery chapter 29 Del.C. Ch. 48, or any Lottery rule or regulation duly promulgated thereunder, or any condition of a license issued pursuant to 29 Del.C. §4805, or any Administrative Order issued pursuant to Lottery statutes or regulations shall be punishable as follows:
- 10.28.1 If the violation has been completed by a civil penalty imposed by Superior Court, which by 29 Del.C. §4823 shall have jurisdiction of civil penalty actions brought pursuant to this section, of not less than \$1,000 nor more than \$10,000 for each completed violation. Each day of a continued violation shall be considered as a separate violation if, on each such day, the violator has knowledge of the facts constituting the violation and knows or should know that such facts constitute or may constitute a violation. Lack of knowledge regarding such facts or violation shall not be a defense to a continued violation with respect to the first day of its occurrence.
- 10.28.2 If the violation is continuing or if there is a substantial likelihood that it will reoccur, the Director may also seek a temporary restraining order, preliminary injunction, or permanent injunction in the Court of Chancery, which shall have jurisdiction of an action for such relief.
- 10.29 In his discretion, the Director may impose an administrative penalty of not more than \$1,000 for each administrative penalty for each violation. Each day of continued violation shall be considered as a separate violation if the violator has knowledge of the facts constituting the violation and knows or should know that such facts constitute or may constitute a violation. Lack of knowledge regarding such facts or violations shall not be a defense to a continued violation with respect to the first day of its occurrence. Prior to the assessment of an administrative penalty, written notice of the Director's proposal to impose such penalty shall be given to the violator, and the violator shall have thirty (30) days from receipt of such notice to file an appeal for reconsideration before the Lottery Commission in accordance with the procedures set forth above. A hearing, if requested, shall be held prior to the imposition of the penalty in accordance with the procedures set forth above. If no hearing is timely requested, the proposed penalty shall become final and shall be paid no later than sixty (60) days from receipt of the notice of proposed penalty. Assessment of an administrative penalty shall take into account the circumstances, nature, and gravity of the violation, as well as any prior history of violations, the degree of culpability, the economic benefit to the violator resulting from the violation, any economic loss to the State, and such other matters as justice may require. In the event of nonpayment of an administrative penalty within thirty (30) days after all legal appeal rights have been waived or otherwise exhausted, a civil action may be brought by the Director in Superior Court for the collection of the penalty, and for interest, from the date payment was due, attorneys' fees and other legal costs and expenses. The validity or amount of such administrative penalty shall not be subject to review in an action to collect the penalty. Any

penalty imposed after a public hearing is held pursuant to this subsection shall be appealable to Superior Court, and such appeal shall be governed by §10142 of Title 29.

10.30 In his discretion, the Director may endeavor to obtain compliance with requirements of the Lottery chapter, 29 Del.C. Ch. 48, by written Administrative Order. Such order shall be provided to the responsible party, shall specify the complaint, and propose a time for correction of the violation. It may also provide an opportunity for a public hearing, at which the Director shall hear and consider any submission relevant to the violation, corrective action, or the deadline for correcting the violation.

10.31 The Director shall enforce Ch. 48, 29 Delaware Code and any rules, regulations, or Administrative Orders issued thereunder.

10.32 Any interest, costs or expenses collected by the Lottery under actions instituted by 29 Del.C. §4823 or these regulations shall be appropriated to the State Lottery Office to carry out the purposes of 29 Del.C. Ch. 48.

11.0 Severability

The sections and subsections of these rules and regulations shall be deemed severable. Should any section or subsection be deemed by judicial opinion or legislative enactment to be invalid, unconstitutional or in any manner contrary to the laws of the State of Delaware, then such opinion or enactment shall invalidate only that particular section or subsection of these rules and regulations and all other sections shall remain in full force and effect.

12.0 Key Controls

12.1 Any key that is considered sensitive and is required to be controlled and maintained by these regulations and any corresponding locking device shall be approved by the agency. Such keys shall be legally duplicated only by the manufacturer or other approved entity and shall be capable of unlocking the locking device on no more than one (1) type of secure box, compartment or location used or maintained within the charitable video lottery facility. Nothing herein shall preclude the agency from exempting a type of secure box, compartment or location from the requirements of this subsection upon a determination that the security of such box, compartment or location would not otherwise be compromised.

12.2 The agent shall establish key control for any sensitive key. Such procedures shall provide for, at a minimum, the following:

12.2.1 The requisitioning of keys and locking devices from vendors, blank stock, and destruction; and

12.2.2 The security and restrictions which control access to keys, whether manually or through an electronic system, and records and reports generated or prepared.

13.0 Bank Secrecy Act, Title 31, Anti-Money Laundering

Consistent with the requirements of the federal Bank Secrecy Act, (31 U.S.C. 5311, et seq) and regulations promulgated thereunder, each licensed agent shall comply with federal law pertaining to reportable currency transactions and transactions that are believed to be suspicious.

16 DE Reg. 903 (03/01/13) (Emer.)