

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	06/30/2016	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 8/5/2016

2. COMAR Codification

Title Subtitle Chapter Regulation

36	08	01	01-.02
36	08	02	01
36	08	03	01-.06
36	08	04	01-.02

3. Name of Promulgating Authority

Maryland State Lottery and Gaming Control Agency

4. Name of Regulations Coordinator

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5. Name of Person to Call About this Document

James B. Butler

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6. Check applicable items:

New Regulations

Amendments to Existing Regulations

 Date when existing text was downloaded from COMAR online: June 24, 2016.

Repeal of Existing Regulations

Recodification

Incorporation by Reference of Documents Requiring DSD Approval

Reproposal of Substantively Different Text:

:

Md. R

(vol.) (issue)

(page nos)

(date)

Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:

Yes No

8. Incorporation by Reference

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting

OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to General Provisions Article, §3-302(c), Annotated Code of Maryland.

OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

10. Children's Environmental Health and Protection

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Robert T. Fontaine, Assistant Attorney General, (telephone #(410) 230-8780) on June 23, 2016. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Gordon Medenica

Title

Telephone No.

Director

(410) 230-8790

Date

June 30, 2016

Title 36
MARYLAND STATE LOTTERY AND GAMING
CONTROL AGENCY

Subtitle 08 SKILLS-BASED AMUSEMENT DEVICES

36.08.01 General

Subtitle 08 SKILLS-BASED AMUSEMENT DEVICES

36.08.02 Registration

Subtitle 08 SKILLS-BASED AMUSEMENT DEVICES

36.08.03 Amusement Gaming License

Subtitle 08 SKILLS-BASED AMUSEMENT DEVICES

36.08.04 General Standards

Authority: 36.08.01: Criminal Law Article, §§12-301 and 12-301.1; State Government Article, §§9-101 and 9-1B-02, Annotated Code of Maryland; 36.08.02: Criminal Law Article, §§12-301 and 12-301.1, Annotated Code of Maryland; 36.08.03: State Government Article, §9-1B-02, Annotated Code of Maryland; and 36.08.04: Criminal Law Article, §§12-301 and 12-301.1, Annotated Code of Maryland.

Notice of Proposed Action

□

The Maryland State Lottery and Gaming Control Agency proposes to adopt under a new subtitle, Subtitle 08 Skills-Based Amusement Devices:

- (1) New Regulations .01 and .02 under a new chapter, COMAR 36.08.01 General;
- (2) New Regulation .01 under a new chapter, COMAR 36.08.02 Registration;
- (3) New Regulation .01—.06 under a new chapter, COMAR 36.08.03 Amusement Gaming License; and
- (4) New Regulation .01 and .02 under a new chapter, COMAR 36.08.04 General Standards.

This action was considered at the Maryland Lottery and Gaming Control Commission open meeting held on June 23, 2016, notice of which was given pursuant to General Provisions Article, §3-302(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to (1) Define a skills-based amusement device; (2) Require annual registration with the Maryland State Lottery and Gaming Control Commission if the device awards prizes other than the award of free play; (3) Outline the Maryland State Lottery and Gaming Control Commission's licensing requirements over these devices and applicable sanctions for failing to adhere to the amusement gaming license process; and (4) Describe general operation standards and functionality and performance testing, if required.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to James B. Butler, Director of Legislative and Policy Affairs, Maryland Lottery and Gaming Control Agency, 1800 Washington Blvd., Suite 330, Baltimore, MD 21230, or call (410) 230-8781, or email to jbutler@maryland.gov, or fax to (410) 230-8727. Comments will be accepted through September 6, 2016. A public hearing will be held, A public meeting on these regulations will be held on Friday, August 26, 2016, at 10:00 a.m., at the Maryland Lottery and Gaming Control Agency Headquarters, 1800 Washington Boulevard, Suite 330, Baltimore, MD 21230. Please contact James B. Butler, Director of Legislative and Policy Affairs, if additional information is needed or if you require an accommodation in order to participate in the meeting.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2017

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

Yes

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

General (Gaming Proceeds)

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:

To incorporate specific statutory requirements as provided for under Chapter 595 of the 2016 Laws of Maryland (Senate Bill 941) relating to the licensing and regulatory process of Electronic Gaming Devices and Skills-Based Amusement Devices.

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

To incorporate specific statutory requirements as provided for under Chapter 595 of the 2016 Laws of Maryland (Senate Bill 941) relating to the licensing and regulatory process of Electronic Gaming Devices and Skills-Based Amusement Devices.

G. Small Business Worksheet:

Attached Document:

(June 24, 2016)

Subtitle 08 SKILLS-BASED AMUSEMENT DEVICES

36.08.01 General

Criminal Law Article, §§12-301 and 12-301.1; State Government Article, §§9-101 and 9-1B-02, Annotated Code of Maryland

.01 Scope.

A. This subtitle applies to skills-based amusement devices regulated by the Commission under Criminal Law Article, §§12-301 and 12-301.1, and State Government Article, Title 9, Subtitle 1B, Annotated Code of Maryland.

.02 Definitions.

A. In this subtitle, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Merchandise device" means a skills-based amusement device by which a player controls a mechanical or electromechanical claw or other device to retrieve merchandise or prizes.

(2) "Minimal value" means having a wholesale value of not more than \$30.

(3) "Reasonable player" means a first-time player of average levels of intelligence, physical and mental skills, reaction time, and dexterity.

(4) "Redemption device" means a skills-based amusement device that issues only tickets, tokens or other objects that represent or that can be converted into merchandise or prizes.

(5) "Skill" means:

(a) A learned ability of doing a thing competently;

(b) A particular ability, strategy, or tactic;

- (c) A coordinated set of actions, including, but not limited to, eye-hand coordination;
- (d) Dexterity, fluency, or coordination in the executing of learned physical or mental tasks or combination thereof;
- (e) Technical proficiency or expertise;
- (f) Development or implementation of a strategy or tactics in order to achieve a goal; or
- (g) Knowledge of the means or methods of accomplishing a task.
- (6) "Skills-based amusement device" means a machine, apparatus, or device that:
 - (a) Operates or can be made to operate by inserting, depositing, or placing with another person money, a token, or another object; and
 - (b) Through the use of skill awards the user:
 - (i) Merchandise or prizes;
 - (ii) A ticket, token, or other object that represents or that can be converted into merchandise or prizes; or
 - (iii) The right to receive an item specified in §B(6)(b)(i) or (ii) of this regulation.

36.08.02 Registration

Criminal Law Article, §§12-301 and 12-301.1, Annotated Code of Maryland

.01 Registration.

A. The owner of a skills-based amusement device shall annually register with the Commission if the device awards prizes other than the award of free play.

B. A person required to register shall provide in a manner specified by the Commission:

- (1) The name and address of owner of the device;
- (2) The address of the location where the device is operated;
- (3) A total count of the devices in operation with an indication whether the device is:
 - (a) A redemption device;
 - (b) A merchandiser device; or
 - (c) Another type of skills-based amusement device;
- (4) Evidence of payment of admissions and amusement taxes as required under Tax General Article, Title 4, Annotated Code of Maryland; and

(5) Any additional information required by the Commission.

C. For each device registered under this chapter, the Commission shall:

- (1) Assign a skills-based amusement device registration number; and
- (2) Issue a registration certificate and sticker.

D. The owner of a skills-based amusement device required to register under this chapter shall adhere the registration sticker to the device in a location visible to inspection.

E. An owner registered under this regulation may operate skills-based amusement devices in accordance with this subtitle.

36.08.03 Amusement Gaming License

State Government Article, §9-1B-02, Annotated Code of Maryland

.01 Definitions.

A. In this subtitle, the following terms have the meanings indicated.

B. Terms defined. "Family entertainment center" has the same definition as provided under State Government Article, Title 9, Subtitle 1B, Annotated Code of Maryland.

.02 Amusement Gaming License.

A. A family entertainment center in Worcester County may apply for an amusement gaming license with the Commission if the family entertainment center:

- (1) Pays:
 - (a) State and local property tax;
 - (b) Sales and use tax; and
 - (c) Admissions and amusement tax;
- (2) Has a location with a street address;
- (3) Is located in a building that is owned, leased, or occupied by the family entertainment center for the primary purpose of providing amusement devices to the public;
- (4) Receives a majority of the gross receipts from amusement, merchandise, redemption or skills-based devices;
- (5) Markets its business to families with children;
- (6) Offers attractions such as amusement devices, arcade games, crane games, video games, interactive and sporting games, amusement rides, miniature golf, and bowling; and
- (7) Has been in continuous operation in the same geographic location since 1975.

B. A family entertainment center applying for an amusement gaming license shall provide in a manner specified by the Commission:

- (1) The owner's name and address;*
- (2) The family entertainment center address;*
- (3) Documentation verifying, to the satisfaction of the Commission, conformity with the requirements listed under §A of this regulation; and*
- (4) A listing of the skills-based amusement devices that award merchandise or prizes with a wholesale value of more than \$30 but less than \$600 including:*
 - (a) Whether the device is a:*
 - (i) Redemption device;*
 - (ii) Merchandiser device; or*
 - (iii) Another type of skills-based amusement device;*
 - (b) Maximum wholesale prize value offered;*
 - (c) Manufacturer;*
 - (d) Model name or number;*
 - (e) Serial Number;*
 - (f) Theme; and*
 - (g) Any additional information required by the Commission.*

C. An amusement gaming license is valid for five years.

D. An amusement gaming licensee shall register annually under COMAR 36.08.02 if the licensee owns any skills-based amusement devices that award prizes other than the award of free play.

E. A family entertainment center that holds an amusement gaming license may operate up to 10 skills-based amusement devices that award noncash merchandise or prizes with a wholesale value that is more than \$30 but less than \$600.

F. Upon review of the information provided under §B of this regulation, the Commission may:

- (1) Require the manufacturer to submit a prototype of the device for testing under COMAR 36.08.04; and*
- (2) Determine that the applicant is:*
 - (i) Qualified and grant the license; or*
 - (ii) Conduct a hearing in accordance with Regulation .06 of this chapter to deny the license.*

G. A family entertainment center that holds an amusement gaming license issued under this regulation may not transfer the license to another geographic location.

.03 Corrective Action.

A. Deficiency. If the Director determines that an amusement gaming licensee under this chapter no longer meets an amusement gaming license requirement of this subtitle, or that there is cause for imposing sanctions under Regulation .04 of this chapter, the Director may:

- (1) Assess the seriousness of the deficiency;*
- (2) Require the amusement gaming licensee to develop a corrective action plan;*
- (3) Conduct periodic monitoring of an amusement gaming licensee for which the Director required a corrective action plan to assess the licensee's progress toward remedying the deficiencies;*
- (4) Evaluate and, if acceptable to the Director, approve the corrective action plan;*
- (5) Determine appropriate timelines for the completion of corrective action;*
- (6) Determine whether it is necessary during the pendency of the corrective action process to emergently suspend the amusement gaming license; and*
- (7) Recommend that the Commission impose a sanction under Regulation .04 of this chapter.*

B. Deficiency Notice. Upon determining that corrective action is required to remedy a deficiency, the Director shall give written notice to an amusement gaming licensee that includes:

- (1) A description of the violation;*
- (2) A description of the possible sanctions; and*
- (3) The requirement for the licensee to submit a corrective action plan to the Director within a time frame established by the Director.*

C. Corrective Action Plan.

(1) Within 10 days of receipt of a deficiency notice under §B of this regulation, the amusement gaming licensee shall submit a corrective action plan to the Director for the Director's approval.

(2) The Director shall review the corrective action plan and inform the licensee whether the corrective action plan is acceptable.

(3) If the licensee fails to submit an acceptable corrective action plan within the time described under §C(1) of this regulation, the Director may:

- (a) Provide the licensee with additional time to submit a revised corrective action plan; or*
- (b) Impose a sanction on the licensee under Regulation .04 of this chapter.*

(4) If the Director provided a licensee notice under §B of this regulation and received no timely written response, the Commission may adopt as final the Director's decision to impose a sanction under Regulation .04 of this chapter.

D. Corrective Action Outcomes.

(1) *If at any time during the corrective action plan period the Director determines that the amusement gaming licensee has failed to fulfill a requirement of the corrective action plan or has made insufficient progress toward remedying a deficiency, the Director may:*

- (a) *For good cause, extend the time for completion of a corrective action plan; or*
- (b) *Emergently suspend the licensee's license.*

(2) *If at the end of the corrective action plan period the licensee has failed to adequately remedy a deficiency, the Director may impose a sanction under Regulation .04 of this chapter.*

.04 Sanctions.

A. The Director may impose sanctions on an amusement gaming licensee for:

(1) *Violating or failing to fulfill the licensee's responsibilities or a condition of a license under this subtitle;*

(2) *Violating:*

- (a) *A provision of law;*
- (b) *A regulation adopted under law; or*
- (c) *An order or directive of the Commission;*
- (3) *Providing the Commission with false or misleading information;*
- (4) *Failing to cooperate with the Commission;*
- (5) *Failing to prepare, submit, or implement an adequate corrective action plan under Regulation .03C of this*

chapter; or

(6) *Other activities or action deemed by the Director to require the imposition of a sanction.*

B. Types of Sanctions. Sanctions may include emergency suspension, suspension, revocation, and placement of conditions on the amusement gaming license.

C. Suspension, Revocation and Conditions.

(1) *Except as set forth in §D of this regulation, the Director shall give the amusement gaming licensee notice of the intended suspension, revocation, or imposition of a condition at least 15 days before the imposition of the intended sanction.*

(2) *A licensee may appeal the Director's imposition of a sanction before the date the sanction is imposed by submitting a request for a hearing before the Commission.*

(3) *The final action on a sanction is subject to judicial review as provided in State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.*

D. Emergency Suspension.

(1) *Notwithstanding any other requirement of this chapter, if the Director determines that immediate action is necessary to protect against an imminent, serious threat by an amusement gaming licensee to the security, financial stability, reputation or integrity of the State, the Director may suspend a license without prior notice.*

(2) *If the Director emergently suspends a license, the Director shall provide the licensee with written notice that includes:*

- (a) *A statement of the authority upon which the suspension is based;*
- (b) *The nature of the violation;*
- (c) *The duration of suspension;*
- (d) *Information about the licensee's obligation to submit to the Agency a corrective action plan; and*
- (e) *A statement of the licensee's right to request a Commission hearing.*

(3) *If after a license is emergently suspended, the licensee does not submit a timely written request for a Commission hearing, the Director may move to revoke the license by giving the licensee notice under §C(1) of this regulation.*

.05 Settlement.

A. The Commission may provide an amusement gaming licensee with the opportunity to discuss with staff a means of entering into a settlement agreement between the licensee and the Commission by which the violation is settled without a penalty or sanction.

B. A settlement agreement:

(1) *Shall be signed by an authorized representative of the amusement gaming licensee and the Director or the Director's designee; and*

(2) *May not be considered final and binding until approved by the Commission.*

C. If an amusement gaming licensee violates a term of a settlement agreement, nothing in this regulation shall be construed to prevent the Commission from imposing a penalty or sanction against the licensee for that, or the underlying, violation.

.06 Hearings.

A. The Commission shall conduct a hearing in order to:

- (1) *Deny an amusement gaming license;*
- (2) *Suspend an amusement gaming license; or*
- (3) *Revoke an amusement gaming license.*

B. Denial of an amusement gaming license.

- (1) *After reviewing an application submitted under this chapter, the Director may recommend that the Commission deny an amusement gaming license.*
 - (2) *If the Director recommends that the Commission deny a license, the Director, or the Director's designee, shall promptly provide the applicant with written notice of the:*
 - (a) *Recommendation for denial;*
 - (b) *Basis for the recommendation; and*
 - (c) *Applicant's right to request a reconsideration meeting with the Director or the Director's designee.*
 - (3) *An applicant may submit to the Commission a written request for a reconsideration meeting within 15 days of the date of the notice described in §B(2) of this regulation.*
 - (4) *If an applicant fails to timely submit a request under §B(3) of this regulation, the Commission may adopt as final the recommendation of the Director or the Director's designee.*
 - (5) *During a reconsideration meeting, an applicant may:*
 - (a) *Be represented by counsel; and*
 - (b) *Present evidence as to why the amusement gaming license should be granted;*
 - (6) *If after the reconsideration meeting the applicant is dissatisfied with the recommendation of the Director or the Director's designee, the applicant may submit to the Commission, in writing:*
 - (a) *A request for hearing before the Commission on the recommendation of the Director or the Director's designee; and*
 - (b) *The applicant's legal and factual bases for disagreeing with the recommendation of the Director or the Director's designee.*
 - (7) *An applicant may submit a hearing request to the Commission within 15 days of the date of the recommendation of the Director or the Director's designee after the reconsideration meeting.*
 - (8) *If an applicant fails to timely submit a hearing request under §B(6), the Commission may adopt as final the recommendation of the Director or the Director's designee.*
 - (9) *A hearing request that complies with §B(6) of this regulation shall be the subject of a hearing before the Commission, after which the Commission shall:*
 - (a) *Determine that the applicant is qualified and grant an amusement gaming license; or*
 - (b) *Determine that the applicant is not qualified or disqualified; and*
 - (i) *Deny the amusement gaming license; and*
 - (ii) *Prepare an order denying the amusement gaming license with a statement of the reasons and specific findings of fact.*
 - (10) *The Commission's decision is final.*
- C. A Commission hearing shall be conducted in the manner specified in:*
- (1) *State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland; and*
 - (2) *COMAR 36.01.02.06.*

36.08.04 General Standards

Criminal Law Article, §§12-301 and 12-301.1, Annotated Code of Maryland

.01 General Standards.

- A. A skills-based amusement device is not legally operated if:*
- (1) *Unless authorized under COMAR 36.08.03, the merchandise, prizes, tickets, tokens, or other objects awarded per play exceeds minimal value;*
 - (2) *The device awards a cash prize or a prize that is readily convertible to cash;*
 - (3) *The outcome of the game is based on a preponderance of chance;*
 - (4) *The ability of any player to succeed at the game is impacted by the number or ratio of prior wins to prior losses of that device;*
 - (5) *The outcome of the game can be controlled by a source other than the player of the game;*
 - (6) *The success of any player is or may be determined by a chance event which cannot be altered by player actions;*
 - (7) *The ability of a player to succeed at the game is impacted by game features not visible or known to a reasonable player; or*
 - (8) *The ability of a player to succeed at the game is impacted by the exercise of skill that no reasonable player could exercise.*
- B. The merchandise, prizes, tickets, tokens or other objects that are awarded by a skills-based amusement device may be accumulated and exchanged for non-cash merchandise or prizes of value that is similar to the cumulative value of the items exchanged.*

.02 Testing.

- A. The Commission may require testing of a prototype of a skills-based amusement device for:*
- (1) *Overall operational integrity;*

- (2) Compliance with this subtitle; and*
- (3) Any other function that the Commission determines may be necessary to validate the proper functionality and performance of the device.*
- B. The Commission may accept testing by:*
 - (1) Commission staff; or*
 - (2) A testing facility recognized by the Commission.*
- C. The costs of testing required under this chapter shall be the responsibility of the licensee.*