

**THE DISTRICT OF COLUMBIA
LOTTERY AND CHARITABLE GAMES CONTROL BOARD**

NOTICE OF FINAL RULEMAKING

The Executive Director of the District of Columbia Lottery and Charitable Games Control Board, pursuant to the authority set forth in section 4(a) of the Law to Legalize Lotteries, Daily Numbers Games, and Bingo and Raffles for Charitable Purposes in the District of Columbia, effective March 10, 1981 (D.C. Law 3-172; D.C. Official Code § 3-1306(a)), District of Columbia Financial Responsibility and Management Assistance Authority Order issued September 21, 1996, and Office of the Chief Financial Officer Financial Management Control Order No. 96-22 issued November 18, 1996, hereby gives notice of the adoption of amendments for Chapters 3 (Agent Requirements) and 99 (Definitions) of Title 30 (lottery and Charitable Games) of the District of Columbia Municipal Regulations (DCMR). The purposes of this rulemaking are to add a new section 311 (Americans with Disabilities Act Requirements) and to add relevant definitions. No substantive changes have been made to the text of these proposed rules published in the D.C. Register on Vol. 56 DCR 7844 October 1, 2009. These final rules will be effective upon publication of this notice in the D.C. Register.

Chapter 3 of Title 30, DCMR is amended as follows:

A new section 311 is added to read as follows:

311 AMERICANS WITH DISABILITIES ACT REQUIREMENTS

311.1 The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination on the basis of disability in the delivery of programs offered by entities of state or local government. The purpose of this section is to ensure that the Agency is in compliance with the ADA by ensuring that people with disabilities have access to the Lottery Program.

311.2 The following general requirements shall apply to the Lottery Program:

- (a) No lottery sales agent shall discriminate against any individual on the basis of a disability in the full and equal enjoyment of lottery related goods, services, facilities, privileges, advantages, or accommodations of any lottery licensed facility;
- (b) Each sales agent is required to meet a standard of accessibility that enables people with disabilities, including those who use wheelchairs, to enter the lottery licensed facility and participate in the Lottery Program. An Accessible Route must be provided comprised of the following accessible elements:
 - (1) Parking, if parking is provided to the general public;

- (2) Exterior route connecting parking (or a public way, if no parking is provided) to an accessible entrance;
 - (3) Entrance; and
 - (4) Interior route connecting the entrance to a Service Site;
- (c) Each element shall meet the design standards set forth in the ADA Accessibility Guidelines, published in the *Federal Register* on July 26, 1991; and
- (d) In defining the scope or extent of any duty imposed by this section, including compliance with the standard of accessibility required, higher or more comprehensive obligations established by otherwise applicable federal or District laws or regulations may be considered.

311.3 With respect to new license applicants, the Agency shall do the following prior to granting a license:

- (a) Inspect the site of applicants for compliance with this section; and
- (b) Provide the applicants with an Inspection Report that shall identify barrier removal actions, if any, necessary to provide program accessibility.
- (c) The identified barrier removal actions must be completed prior to the granting of a license. The Executive Director will not grant a license to an applicant who is otherwise not in compliance with this section.

311.4 With respect to licensed sales agents, the Agency shall do the following:

- (a) Inspect the site of each licensed lottery sales agent for compliance with this section; and
- (b) Provide to the sales agents an Inspection Report that shall identify barrier removal actions, if any, necessary to provide program accessibility.
- (c) All identified barrier removal actions must be completed within 90 days of receipt of the Inspection Report.
- (d) For good cause shown, the Executive Director may grant an extension of up to 90 days to allow a licensed sales agent to complete barrier removal actions identified in the Inspection Report. Any request for an extension must be in writing, and shall include specific reasons for an extension and supporting documentation.

311.5 Permitted exemptions. The following exemptions to the requirements of this section may be granted by the Executive Director. The Executive Director shall review the circumstances and supporting documentation provided by the sales agent or applicant to determine if the request for an exemption should be granted. In deciding whether to grant an exemption, the Executive Director shall take into

consideration the overriding requirement that the Lottery Program meet all applicable accessibility requirements. The Executive Director shall determine the type and scope of documentation to be required for each exemption classification. All decisions made by the Executive Director shall be final; any sales agent whose request for an exemption is denied by the Executive Director shall be required to satisfy the requirements of this rule as a condition for maintaining its eligibility as a licensed sales agent. In determining whether to grant an exemption the Executive Director shall take into account the requirement that the Lottery Program be in compliance with the ADA and the Executive Director may deny a request for exemption if the Executive Director finds that granting the exemption would cause the D.C. Lottery and Charitable Games Control Board to become out of compliance with any legal obligation pertaining to program accessibility.

- (a) Historic properties. To the extent a historic building is exempt under federal law, and if barrier removal would threaten or destroy the historic significance of the structure, this rule shall not apply to a qualified historic building or facility that is listed in or is eligible for listing in the National Register of Historic Places under the National Historic Preservation Act or is designated as historic under any other federal or District law.
- (b) Legal impediment to barrier removal. Any law, act, ordinance, federal or District regulation, ruling or decision which prohibits the lottery sales agent from removing a structural impediment or from making a required improvement to the facility may be the basis for an exemption to this rule. A lottery sales agent requesting an exemption for a legal impediment will not be required to formally seek a zoning variance to establish such impediment, but will be required to document that they have applied for and have been refused whatever permit(s) are necessary to remove the identified barrier(s).
- (c) Landlord refusal. An exemption may be granted based on the refusal of a landlord to grant permission to a sales agent to make improvements required by the Agency under this rule or based on the refusal of a landlord to pay for improvements required by the Agency under this rule. To request such an exemption, the sales agent must submit documentation to the Executive Director that the sales agent requested the landlord's permission and financial participation to make the required structural improvements, that such request was denied by the landlord, and the reasons for the denial. In making a decision on the exemption request, the Executive Director shall take into consideration, but not be limited to, the sufficiency of the reasons provided by the landlord for denying the sales agent's request.
- (d) Undue financial hardship. A limited exemption may be granted if a sales agent can demonstrate that the cost of removing a structural barrier or of making the required structural modification(s) to the sales agent's facility is an undue financial hardship in that the cost of making such a change(s)

exceeds 25% of the sales agent's compensation from the lottery for the prior calendar year (An annualized sales figure based upon the sales agent's most current 13-week sales period shall be used for those sales agent locations with less than a full year's history of sales.) Under the terms of this limited exemption, a sales agent would be required to annually make those improvements and modifications that can be financed within an amount that is approximately equal to 25% of the total compensation earned from the Agency in the prior calendar year. This requirement would continue on a year-to-year basis until all the improvements and modifications required by this rule have been completed. A sales agent shall provide all supporting documentation requested by the Executive Director to substantiate the cost estimates of making the required improvements to the sales agent's location.

- (e) Technical Infeasibility. A permanent exemption may be granted if a sales agent can demonstrate that the removal of architectural barriers identified in the Inspection Report is not possible due to technical infeasibility. If such a claim is made, the Agency may have the barrier removal action evaluated by a person knowledgeable in accessibility codes and construction to determine the merits of the claim.
- (f) Alternative methods. Where an exemption is granted in accordance with the provisions of this rule, the sales agent shall make the lottery related goods and services available through alternative methods. Examples of alternative methods include, but are not limited to:
 - (1) Providing curb service; or
 - (2) Directing by signage to the nearest accessible Lottery sales agent.

311.6 Complaints Relating to Non-Accessibility

- (a) An aggrieved party may file an accessibility complaint with the Executive Director or designee for review. Complaints must be in writing and, where possible, submitted on an Agency ADA complaint form. As soon as practical, but not later than 30 days after the filing of a complaint, each complaint will be investigated. After the completion of the investigation, if the agency determines that the lottery sales agent is not in compliance with this regulation, a letter of non-compliance will be issued to the Lottery sales agent with a copy to the complainant. If the Lottery sales agent is determined to be in compliance, a letter so stating will be mailed to the sales agent and complainant. Regardless of whether a complaint has been filed, the agency will issue a letter of noncompliance within 30 days after the completion of an onsite inspection of the Lottery sales agent facility if the agency determines that the lottery sales agent is not in compliance with this regulation.

- (b) If the letter of non-compliance shows deficiencies in the accessibility of the sales agent facility, the lottery sales agent shall submit a plan to the agency within 30 days of the issuance of the letter of non-compliance. The plan shall describe in detail how the lottery sales agent will achieve compliance with this regulation. Compliance shall be accomplished within 90 days of the letter of non-compliance. The lottery may, upon request, grant the lottery sales agent additional time to submit the plan for good cause.
- (c) Within 20 days of the submission of the plan to the Agency, the Agency shall notify the lottery sales agent of the agency's acceptance or rejection of the plan. If the plan is rejected, the notification shall contain the reasons for rejection of the plan and the corrections needed to make the plan acceptable to the Agency. If the sales agent agrees to make the required corrections, the Agency shall accept the plan as modified.
- (d) If a sales agent fails to submit a plan within 30 days of issuance of the letter of noncompliance and has not requested an extension of time to submit a plan, the Agency may proceed to initiate enforcement proceedings.
- (e) If approved, the plan must be completely implemented within 60 days of the agency's notice of approval. The Agency may, upon request, grant the lottery sales agent additional time for good cause. Notice of any extension will also be sent to the complainant, if applicable. Any such extension will commence immediately upon expiration of the first 60 day period.
- (f) If the corrective action taken by the lottery sales agent corrects the deficiencies specified in the letter of noncompliance as originally issued or as later revised or reissued or if the onsite inspection of the lottery sales agent facility reveals compliance with this regulation, the Agency will issue a notice of compliance. Until this notice is issued, a complaint will be considered pending.
- (g) Failure to make the identified modifications in compliance with the accessibility standards and within the required time period will result in the initiation of proceedings to suspend or revoke the lottery license by the Agency.
- (h) A license will be suspended if the Agency determines that the lottery sales agent has made significant progress toward correcting deficiencies listed in the compliance report, but has not completed implementation of the approved compliance plan. If the Agency determines that the lottery sales agent has not made a good faith effort to correct the deficiencies listed in the compliance report, this inaction will result in the revocation of the sales agent license for that lottery licensed facility.

- (i) While proceedings to suspend or revoke a lottery sales agent's license are pending pursuant to this regulation, and until a notice of compliance is issued pursuant to subsection (c) of this section, the lottery shall withhold incentive payments from the lottery sales agent. In addition, if a license is revoked pursuant to this regulation, and incentive payments and other privileges have been withheld from the affected sales agent pending review of the complaint, the lottery sales agent forfeits any claim to such incentive payments or other privileges.

311.7 A sales agent may request a hearing pursuant to Chapter 4 of this title, if the Agency proposes the denial of an application for a sales agent license or the suspension or revocation of a sales agent's license pursuant to this section.

311.8 Remedies established by this section are not intended to supplant, restrict, or otherwise impair resort to remedies otherwise available under law, including those authorized by the ADA and D.C. Official Code § 2-1401.01 *et seq.*

Chapter 99 of Title 30, DCMR is amended as follows:

Subsection 9900.1 is amended by adding new definitions to read as follows:

Accessible - means complying with the technical requirements found in the ADA Accessibility Guidelines, published in the *Federal Register* on July 26, 1991.

Accessible Route - a continuous unobstructed path connecting all accessible elements and spaces of a building or facility. Interior accessible routes may include corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures. Exterior accessible routes may include parking access aisles, curb ramps, crosswalks at vehicular ways, walks, ramps, and lifts.

ADA - the Americans with Disabilities Act of 1990, approved July 26, 1990 (104 Stat. 329; 42 U.S.C. § 12101 *et seq.*).

Disability - shall have the same meaning as set forth in section 3 of the ADA (42 U.S.C. § 12102).

Entrance - any access point to a building or portion of a building or facility used for the purpose of entering. An entrance includes the approach walk, the vertical access leading to the entrance platform, the entrance platform itself, vestibules if provided, the entry door(s) or gate(s), and the hardware of the entry door(s) or gate(s).

Facility - all or any portion of buildings, structures, site improvements, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property located on a site.

Lottery Program - on-line and instant games offered to the public through licensed sales agents or directly by the Agency.

Inspection Report - a completed survey of the sales agent or applicant facility that identifies barriers to program accessibility, if any, and suggests possible solutions.

Service Site - an area within a sales agent facility where a customer can purchase a lottery-related product. This is usually the cashier's station.

Technically Infeasible - means, with respect to an alteration of a building or a facility, that it has little likelihood of being accomplished because existing structural conditions would require removing or altering a load-bearing member which is an essential part of the structural frame; or because other existing or site constraints prohibit modification or addition of elements, spaces, or features which are in full and strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility.