

BEFORE THE STATE LOTTERY COMMISSION  
DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM ) NOTICE OF PROPOSED  
2.63.203, 2.63.204, 2.63.403, 2.63.404, ) AMENDMENT  
2.63.406, 2.63.407, 2.63.606, 2.63.607, )  
2.63.611, 2.63.801, 2.63.1002, ) NO PUBLIC HEARING  
2.63.1004, 2.63.1201, and 2.63.1202 ) CONTEMPLATED  
pertaining to definitions; retailer )  
applications, required rule reading, )  
bonding, and commission; licenses; )  
business changes; electronic funds )  
transfer; tickets; prizes; and winner )  
redemptions )

TO: All Concerned Persons

1. On June 12, 2018, the State Lottery Commission proposes to amend the above-stated rules with an effective date of July 1, 2018.

2. The State Lottery Commission will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, please contact the State Lottery Commission no later than 5:00 p.m. on May 23, 2018, to advise us of the nature of the accommodation that you need. Please contact Denise Blankenship, State Lottery, 2525 North Montana Avenue, P.O. Box 200544, Helena, Montana 59601; telephone (406) 444-5801; fax (406) 444-5830; TDD/Montana Relay Service (406) 444-9642; or by e-mail at dblankenship@mt.gov.

3. The rules proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

2.63.203 DEFINITIONS In addition to the definitions found in ~~32-7-103~~ 23-7-103, MCA, the following definitions apply to this chapter:

(1) "Chain" means three or more places of business having the same owner.

(2) "License" means the document issued by the lottery which authorizes a retailer to sell lottery ~~scratch~~ tickets at a fixed place of business.

(3) "Lottery ticket" means all lottery tickets, including scratch tickets and terminal-issued tickets.

~~(3)~~(4) "Place of business" means the premises where any Montana business is conducted and includes but is not limited to:

(a) retail businesses;

(b) businesses of religious, charitable, civic, or fraternal organizations;

(c) senior citizen centers; and

(d) businesses of the state or any of its political subdivisions.

~~(4)~~(5) "Provisional license" means a license issued by the director which temporarily authorizes a licensee to conduct the sale of lottery tickets pending processing of the license application ~~or renewal~~.

~~(5)~~(6) "Retailer" means a licensed ticket or chance sales agent provided for in 23-7-301, MCA.

(7) "Scratch Ticket" means a lottery ~~scratch~~ ticket that has a removable coating covering symbols that determine the amount of prize a player can win.

~~(6)~~(8) "Terminal-issued ticket" means a lottery ticket printed by a terminal connected to a computer.

AUTH: 23-7-202, MCA

IMP: 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed amendment in the introductory phrase is to correct an inadvertent transposition of numbers in the MCA title number. Title 23, rather than 32, contains the laws governing the Lottery. Many sections of these rules refer to all ticket types; however, ARM 2.63.203 does not include a term that encompasses all tickets. The Montana Lottery offers a few types of tickets beyond just scratch tickets. Therefore, clarification of the definition of "Lottery tickets" is proposed to include both "Scratch tickets" and "Terminal-issued tickets." The reference to renewal in (5) is proposed for deletion because ARM 2.63.610 requiring license renewal was previously repealed.

2.63.204 GENERAL PROVISIONS (1) The lottery shall provide ~~scratch and terminal-issued lottery games~~ lottery tickets and promotional coupons to the public whenever the director, with the commission's concurrence, finds it feasible and in the state's best interest.

(2) through (2)(g) remain the same.

(3) The director shall determine, with the commission's concurrence, the length of each ~~scratch~~ lottery game or promotional coupon. The starting date and closing date of each game or coupon must be publicly announced.

(4) The director shall adopt rules for ~~each scratch~~ all games, including, but not limited to:

(a) ~~definition of winners~~ prize structures;

(b) through (5) remain the same.

(6) The director may conduct a grand prize event in conjunction with the ~~scratch~~ games. The procedures for conducting preliminary drawings and for the grand prize event shall be determined by the director, subject to 23-7-102, MCA.

~~(7) The lottery shall provide a type of terminal issued game to the public whenever the director, with the concurrence of the commission, finds it feasible and in the best interest of the state.~~

AUTH: 23-7-202, MCA

IMP: 23-7-110, 23-7-202, 23-7-211, 23-7-212, 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed amendments are necessary to conform terminology changes with amendments proposed to ARM

2.63.203. Additionally, amendment of (4)(a) is proposed to use current terminology defining the game winners for all game types. Removal of (7) is proposed because it duplicates ARM 2.63.204(1).

2.63.403 RETAILER APPLICATIONS AND FEES (1) A person interested in obtaining a license as a retailer shall:

(a) complete an eStop application and pay the required licensing fee on the state licensing system portal at [www.eStop.mt.gov](http://www.eStop.mt.gov); and

(b) file ~~an~~ a traditional or Montana sports action (MSA) lottery retailer application for a license ~~on an application form provided by the director~~ using the application forms on the Montana Lottery website at [www.montanalottery.com/en/view/retailers](http://www.montanalottery.com/en/view/retailers).

(2) There is a one-time non-refundable \$50 application fee for a traditional license.

(3) There is an annual \$75 fee for an MSA license, which is collected for and transferred to the Board of Horse Racing. To apply for an MSA license, a retailer must first have a current gaming license.

(2) remains the same, but is renumbered (4).

AUTH: 23-7-202, MCA

IMP: 23-7-202, 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: Because there has been some confusion regarding licensing methods, the proposed amendments to this rule are necessary to clarify the process. The payment for a lottery license is completed through the state licensing system called eStop. This is not a physical form, but a web-based application and payment process. The eStop service is convenient and helps streamline the licensing process, reducing cost to businesses and government.

Traditional licenses are issued for convenience stores, grocery stores, markets, drug stores, restaurants, newsstands, and service stations. MSA licenses are issued for taverns, bars, lounges, casinos, and liquor stores.

There are no proposed cost increases; these are existing fees. The lottery believes it to be helpful to include the fees in rule so that customers know what the fees are.

2.63.404 RETAILER REQUIRED RULE READING (1) remains the same.

(a) read the lottery laws and commission rules of the ~~commission~~ concerning retail licenses and be familiar with ~~such~~ these laws and rules; and

(b) sign ~~an official log~~ all official application forms indicating that ~~he or she~~ the retailer is familiar with the laws and commission rules of the ~~commission~~ and agrees not to violate ~~such~~ these laws or rules.

AUTH: 23-7-202, MCA

IMP: 23-7-202, 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: A log is no longer necessary as the Montana Lottery maintains physically signed documents from each retailer indicating compliance, so this reference should be removed. Additional changes are to improve readability.

2.63.406 RETAILER BONDING (1) The director may require a surety bond from the owner or corporation making the application to the lottery to become a ~~scratch ticket or terminal issue~~ lottery retailer. A determination for this bonding requirement is made based on the applicant's credit risk score exceeding a maximum allowable score of 30.

AUTH: 23-7-202, 23-7-301, MCA

IMP: 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed amendment to this rule is necessary to conform the language with proposed amendments to ARM 2.63.203.

2.63.407 RETAILER COMMISSION (1) Retailers who sell lottery tickets are entitled to a 5 percent base commission of the face value of tickets sold.

~~(a) Each retailer is assigned a scratch ticket sales base.~~

~~(b) For each scratch ticket quarterly sales period, the retailer's scratch tickets activated and not returned are measured against the assigned base.~~

~~(c) For each 2 percent increase in retailer's sales during the quarterly period over his established base sales, the retailer's commission shall be increased by an additional 0.5 percent, to a cap of 10 percent total commission for any quarterly period.~~

~~(d) Retailer scratch ticket sales bases may be adjusted annually at the discretion of the commission.~~

(2) Retailers who sell scratch tickets may increase the scratch ticket commission up to an additional 5 percent.

(a) Each retailer is assigned a scratch ticket sales base.

(b) For each sales quarter, the retailer's scratch tickets are measured against the assigned base by scratch tickets activated and not returned to the lottery.

(c) For each 2 percent increase in retailer's sales over the established base sales during the sales quarter, the retailer's commission must be increased by an additional 0.5 percent, not to exceed a 10 percent total commission for any quarter.

(3) Retailers who sell terminal-issued tickets designated in lottery policy may increase the terminal-issued commission for participating games up to an additional 5 percent.

(a) Each retailer is assigned a terminal-issued ticket sales base for participating games.

(b) For each sales quarter, the retailer's terminal-issued tickets are measured against the assigned base by gross sales for participating games.

(c) Retailers who achieve the minimum sales quarter growth requirement must receive an additional bonus rate commission for participating terminal-issued games, not to exceed a 10 percent total commission for any quarter.

(4) Retailer ticket sales bases, minimum requirements, and bonus rates may be adjusted annually at the discretion of the commission.

~~(e)~~(5) Annually, the director's staff shall review the plan for providing additional commissions to sales agents based on incremental sales and report to the commission. This review will include a recommendation for maintaining the existing plan or modifying the plan for the next year.

AUTH: 23-7-202, 23-7-301, MCA  
IMP: 23-7-202, 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed addition of the commission for terminal-issued tickets is necessary because the scratch incentive program only provides a bonus opportunity for traditional retailers. The Lottery Commission believes it to be fair to provide that sales of designated terminal-issued tickets are eligible for commissions as well as giving both traditional and MSA retailers similar opportunity to earn a bonus. Additional proposed changes are to conform the language with proposed amendments to ARM 2.63.203 and to adhere to drafting conventions.

2.63.606 DUPLICATE LICENSES (1) Upon the loss, mutilation, or destruction of any license issued by the director, ~~the person holding such license may apply to the director for a duplicate~~ retailer shall submit a written request to replace the license to the director.

~~(2) The application shall be made on a form provided by the director.~~

~~(3)~~(2) The application request for a duplicate license shall must be accompanied by a statement signed under oath or penalty of perjury stating the details of the circumstances under which the license was lost, mutilated, or destroyed, and bearing a certification that ~~such~~ the license was, in fact, lost, mutilated, or destroyed.

~~(4)~~(3) The application request for a duplicate license shall must be accompanied by a fee of \$10.

~~(5)~~(4) The existing pieces of any mutilated or partially destroyed license shall be surrendered to the director at the time ~~application~~ a request for a duplicate license is made.

~~(6)~~(5) If a licensee finds ~~any~~ a lost license after a duplicate has been issued, the licensee shall immediately surrender such license to the director.

AUTH: 23-7-202, MCA  
IMP: 23-7-211, MCA

STATEMENT OF REASONABLE NECESSITY: Because no form is provided to the retailer to request a duplicate license, a written request by the retailer for a replacement license is all that is required, necessitating this amendment. Additional changes are to improve readability and follow drafting convention.

2.63.607 BUSINESS CHANGES (1) through (1)(d) remain the same.  
(e) changes in the board of directors; ~~and~~

- (f) change of business address; and
  - (g) any change of bank account information.
- (2) remains the same.

AUTH: 23-7-202, MCA  
IMP: 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: Along with board members and address changes, the lottery consistently must remind retailers to notify the lottery of bank account changes that affect the weekly accounting sweep to avoid accounting issues. Adding this proposed requirement to the rule should help alleviate the problem.

2.63.611 REVOCATION OR SUSPENSION OF LICENSE (1) through (1)(f) remain the same.

(g) intentionally amassed packs of scratch tickets or taken other intentional actions to gain an advantage over other lottery sales locations while benefiting financially, either directly or indirectly, from sale of those tickets.

(2) through (5) remain the same.

AUTH: 23-7-202, MCA  
IMP: 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: This proposed amendment is necessary to provide a bit broader definition to include intentional actions that may impact the integrity of the lottery such as preprinting tickets and clerk theft of winning tickets at the time of validation, known as palming, or pin-pricking tickets to determine a winning ticket before it is sold. The lottery has experienced these intentional actions, and it is important for licensees to know that their license could be revoked or suspended if these actions occur.

2.63.801 ELECTRONIC FUNDS TRANSFER (1) and (2) remain the same.

(3) The retailer shall bring any accounting error, bank account change, or dispute to the attention of the lottery before the next scheduled sweep.

(4) and (5) remain the same.

AUTH: 23-7-202, 23-7-301, MCA  
IMP: 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: The changes to this rule are proposed because the timely notification of retailer changes to banking information is necessary to avoid accounting issues.

2.63.1002 SCRATCH LOTTERY TICKET PRICE (1) The price of a scratch lottery ticket ~~will be~~ is determined by the lottery commission. A retailer may not sell a lottery ticket for more than the price printed on the ticket. A retailer may give away tickets.

AUTH: 23-7-202, MCA  
IMP: 23-7-202, 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed amendments are necessary to conform terminology changes with amendments proposed to ARM 2.63.203, and to improve grammar.

2.63.1004 SCRATCH LOTTERY TICKETS - RETAILER (1) The retailer is responsible for all lottery tickets after acceptance and bears the burden of any loss, including theft or damage.

AUTH: 23-7-202, MCA  
IMP: 23-7-202, 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed amendment is necessary to conform terminology changes with amendments proposed to ARM 2.63.203.

2.63.1201 PRIZES (1) Winning tickets will be redeemed:  
(a) by any retailer for lottery tickets less than \$600; or  
(b) if the lottery ticket value is \$600 or more, by presenting the ticket, a claim form, and valid, unexpired photo identification to the lottery, either by mail or in person. Playslip and sales receipt may not be used to claim a prize. Acceptable types of identification include an original or copy of:  
(i) through (vii) remain the same.  
(2) A winning lottery ticket may be redeemed only by an organization with a federal employer's identification number or by an individual.  
(3) remains the same.  
(4) Unless otherwise provided in the rules for a specific game, a claimant shall sign the back of a winning lottery ticket.  
(5) The lottery may deny a claim for a winning lottery ticket if the ticket:  
(a) through (6) remain the same.  
(7) A lottery ticket is a bearer instrument until signed. The person who signs the lottery ticket is the bearer of the lottery ticket. Payment of any prize may be made to the bearer, and all liability of the lottery terminates upon such payment.  
(8) remains the same.  
(9) A lottery ticket not passing all validation checks is invalid and no prize may be paid on such ticket.  
(10) through (14) remain the same.

AUTH: 23-7-202, MCA  
IMP: 23-7-202, 23-7-211, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed amendments are necessary to conform terminology changes with amendments proposed to ARM 2.63.203.

2.63.1202 SCRATCH LOTTERY TICKET WINNER REDEMPTIONS

- (1) Retailers are responsible for the security of all winning lottery tickets they redeem. Retailers will bear the burden of any loss incurred as a result of:
- (a) multiple redemptions of winning lottery tickets;
  - (b) nonwinning lottery tickets redeemed in error as winning tickets; or
  - (c) failure to redeem winning lottery tickets in the manner determined by the director.

AUTH: 23-7-202, MCA

IMP: 23-7-202, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed amendments are necessary to conform terminology changes with amendments proposed to ARM 2.63.203.

4. Concerned persons may submit their data, views, or arguments concerning the proposed actions to Anne Charpentier, Marketing and Sales Director for the Montana Lottery, at 2525 North Montana Avenue, Helena, Montana 59601; telephone (406) 444-7090; fax (406) 444-5830; or by e-mail to ACharpentier@mt.gov, and must be received no later than 5:00 p.m. on June 8, 2018.

5. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Anne Charpentier at the above address no later than 5:00 p.m., on June 8, 2018.

6. If the commission receives requests for a public hearing on the proposed actions from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed actions; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 80 persons based on the number of lottery retailers in the state.

7. The State Lottery Commission maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the commission.

8. An electronic copy of this proposal notice is available through the department's web site at <http://doa.mt.gov/administrativerules>. The department strives to make the electronic copy of the notice conform to the official published version but advises all concerned persons that if a discrepancy exists between the official text of the notice and the department's online version of the notice, only the official text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the commission has determined that the proposed rule amendments will not significantly and directly impact small businesses.

By: /s/ Wilbur Rehmann  
Wilbur Rehmann, Chair  
Montana Lottery Commission

By: /s/ Michael P. Manion  
Michael P. Manion, Rule Reviewer  
Department of Administration

Certified to the Secretary of State May 1, 2018.