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IDAPA 52
TITLE 01
CHAPTER 01

IDAPA 52 - IDAHO STATE LOTTERY COMMISSION

**52.01.01 - RULES OF PRACTICE AND PROCEDURE OF THE IDAHO
STATE LOTTERY COMMISSION**

000. -- 009. (RESERVED).

010. SCOPE AND CONSTRUCTION OF RULES.

01. Proceedings Governed. These rules govern all practice and procedure before the Idaho State Lottery Commission in all investigations, contested cases, licensing, rulemaking and other matters specifically addressed by these rules, unless otherwise directed by the Commission. (7-1-93)

02. Liberal Construction. These rules will be liberally construed to secure just, speedy, and economical determination of all issues presented to the Commission. Unless prohibited by statute, the Commission may permit deviation from these rules when it finds compliance with them is impractical, unnecessary or not in the public interest. (7-1-93)

03. Citation. The title of these rules is the Rules for Practice and Procedure of the Idaho State Lottery Commission. Their official citation is IDAPA 52.01.01. (7-1-93)

04. Captions Of Rules -- Orders Addressing Rules -- References -- Indexes. The captions and titles to these rules are part of these rules and are construed accordingly. Orders adopting, proposing or modifying these rules and the explanation of those orders provide a "legislative history" of these rules for aid in their interpretation or construction. (4-18-89)

011. GENERAL PROVISIONS.

01. Office -- Office Hours -- Mailing Address. Principal office of the Commission is in Boise, Idaho. This office is open from 8 a.m. to 5 p.m. except Saturday, Sunday and legal holidays. The mailing address of the Commission is: P.O. Box 6537, Boise, Idaho 83707-6537. (7-1-93)

02. Communications. All written communications and documents concerning any matter covered by these rules must be filed with the office of the Commission. Unless otherwise provided by statute, these rules, order, or notice, documents are considered filed when received by the Commission, not when mailed. (7-1-93)

03. Identification Of Communications. Communications should embrace but one (1) subject and must include the name and address of the author. When the subject matter pertains to a proceeding, the proceeding must be identified by the case caption and case number. (7-1-93)

04. Service. The Commission serves all notices, orders, summons, and complaints issued by the Commission. All notices and orders served by the Commission may be served by mail. Unless otherwise provided by statute, these rules, order, or notice, service of orders and notices is complete when a copy, properly addressed and stamped, is deposited in the United States mail. (7-1-93)

05. Computation Of Time. Whenever an act is required to be done within a certain number of days of a given day, the given day is not included in the count. If the day the act must be done is a Saturday, Sunday or legal holiday, the act may be done on the first day following that is not a Saturday, Sunday or legal holiday. (7-1-93)

06. Copying. The fees for copying of documents are as follows: (7-1-93)

a. Documents required to be furnished in the course of proceedings by the Commission to parties in a

pending case-no fee; (7-1-93)

b. Copies of documents that are easily reproducible by photocopy methods -- twenty cents (\$.20) per page. (7-1-93)

c. Copies of documents that are not reproducible by photocopy methods--the actual cost of reproduction. (7-1-93)

d. The Commission may waive these fees. (7-1-93)

e. The state lottery is not obligated to copy voluminous documents. The state lottery may authorize persons interested in inspecting a copy of voluminous documents to do so at their own expense, provided that the state lottery may put reasonable conditions on the release of the documents to parties for copying or deny their release altogether. The state lottery is only obligated to provide one (1) copy of any document requested for inspection. (4-18-89)

012. PARTIES--OTHER PERSONS.

01. Parties Listed. Parties to proceedings before the Commission are called applicants, petitioners, complainants, respondents, intervenors or protestants. On reconsideration parties are called by their original titles listed above. (7-1-93)

02. Applicants. Persons seeking any license, right, or authority from the Commission are called "Applicants". (7-1-93)

03. Petitioners. Persons seeking relief from Commission orders or rules or clarification of their rights or obligations, but not seeking a license, right or authority from the Commission, are called "Petitioners". (7-1-93)

04. Complainants. Persons charging other person(s) with any act or omission are called "Complainants". In any proceeding the Commission brings on its own motion in which it charges an act or omission, it is called "Complainant". (7-1-93)

05. Respondents. Persons against whom complaints or petitions are filed or about whom investigations are initiated are called "Respondents". (7-1-93)

06. Intervenors. Persons not original parties to a proceeding, permitted to participate as parties pursuant to Rule Section 014 are called "Intervenors". (7-1-93)

07. Protestant. Persons opposing an application or petition are called "Protestants". (7-1-93)

08. Staff. The staff of the state lottery, without intervention, may appear at any hearing and have all rights of participation as a party to the proceeding. If counsel is desired, the deputy attorney general will represent the state lottery. (7-1-93)

09. Rights Of Parties. Subject to Rule Subsections 019.11 and 019.14, all parties may appear at hearing or argument and introduce evidence, examine witnesses, make and argue motions, state positions, and otherwise fully participate in hearings or arguments. (7-1-93)

10. Persons Defined. The term "person" shall be construed to mean and include an individual, association, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals. "Person" shall also be construed to mean and include departments, commissions, agencies and instrumentalities of the state of Idaho, including counties and municipalities and agencies or instrumentalities thereof. (7-1-93)

11. Interested Parties. A person who may be affected by the proceeding but who does not seek to participate in the proceeding is called an "interested party". (4-18-89)

013. APPEARANCES AND REPRESENTATION.

01. Initial Pleadings By Party--Listing Of Representatives. The initial pleading of each party to a proceeding must name the parties' representative(s) for service and state the representative's address for purposes of receipt of all official documents. Service of documents on the named representative(s) is valid service upon the party for all purposes in that proceeding. No more than two (2) persons may be designated as parties' representatives for purposes of service or receipt of official documents unless otherwise authorized by order of the Commission. The Commission may condition such an order upon reasonable terms concerning payment of copying costs and mailing costs to additional representatives. (7-1-93)

02. Taking Of Appearances. The officer presiding at a hearing will take appearances to identify the representatives of each party at the hearing. Parties whose pleadings have not been received by or distributed to all of the parties may be required to state their interest at the hearing. (7-1-93)

03. Representation Of Parties At Hearing. Appearance and representation of parties at hearing must be as follows: (7-1-93)

a. A natural person must represent himself or herself or be represented by a duly authorized full-time employee or an attorney. (7-1-93)

b. A partnership must be represented by a partner, duly authorized full-time employee, or an attorney. (7-1-93)

c. A corporation must be represented by an officer, duly authorized full-time employee, or an attorney. (7-1-93)

d. A municipal corporation, government agency or subdivision, or non-profit organization must be represented by an officer, a duly authorized full-time employee or an attorney. (7-1-93)

e. All other parties must appear and be represented only by an attorney. (7-1-93)

04. Service On Representative Of Other Parties And Other Persons. From the time a party files its initial pleading in a proceeding, that party must serve all future documents submitted by it in the proceeding upon all other parties' representatives designated pursuant to Rule Subsection 013.01, unless otherwise provided by these rules or by an order or notice of the presiding officer in an open hearing. The hearing officer may order parties to serve past documents filed in the case upon notice to representatives. The hearing officer may order parties to serve past or future documents filed in this case upon persons not a party to the proceeding before the Commission. (7-1-93)

05. Withdrawal Of Parties. A party may withdraw from the proceeding only upon entry of an order by the hearing officer. (7-1-93)

06. Substitution Of Representative--Withdrawal Of Representative. A representative of a party may be changed and a new representative may be substituted by notice to the hearing officer and to all other parties. Any person representing a party who wishes to withdraw his or her representation of a party in a proceeding before the Commission must immediately notify in writing the Commission (or other presiding officer) and serve that notice on all other parties. (7-1-93)

07. Conduct Required. A person in a proceeding must conform to recognized standards of ethical and courteous conduct. (7-1-93)

08. Former Employees--Restriction On Representation Of Parties. No former employee of the state lottery or representative may appear in a representative capacity or as expert witness on behalf of other parties in a proceeding in which he or she previously took an active part. (4-18-89)

014. INTERVENTION.

01. Order Granting Leave To Intervene Required. Persons not original parties to a proceeding who claim a direct and substantial interest in the proceeding must petition for an order from the Commission granting intervention to become a party. (7-1-93)

02. Form And Contents Of Petitions To Intervene. Petitions to intervene must comply with Rule Section 014 and 016. The Petition must set forth the name and address of petitioner and clearly and concisely state the direct and substantial interest of the petitioner in the proceeding. If affirmative relief is sought, petitioner must state the basis for such relief. (7-1-93)

03. Filing Requirements For Petitions To Intervene. A petition for leave to intervene and proof of service on all other parties of record must be filed with the Commission at least seven (7) days prior to the date set for hearing. Petitions not timely filed must state a substantial reason for the delay. The Commission may deny or conditionally grant petitions to intervene that are not timely filed for failure to state a good cause for untimely filing, to prevent disruption, prejudice to existing parties, undue broadening of the issues or other reasons. Intervenors who do not file timely petitions are bound by orders and notices earlier entered as a condition of granting the untimely petition. (7-1-93)

04. Granting Of Petitions To Intervene. If the petition to intervene shows direct and substantial interests in any part of the subject matter of the proceeding and does not unduly broaden the issues, the Commission or the presiding officer may grant leave to intervene to the petitioner subject to such reasonable conditions as may be prescribed. If it later appears that an intervenor has no direct or substantial interest in the proceeding, or that the intervention is not in the public interest, the Commission may dismiss the intervenor from the proceeding. (7-1-93)

05. Orders Granting Intervention--Opposition. No order granting a petition to intervene will be acted upon fewer than five (5) days after its filing, except in a hearing in which any party may be heard. Any party opposing a petition to intervene must do so by motion. (7-1-93)

06. Protestants. (7-1-93)

a. Persons desiring to enter a protest on a petition or application shall file with the Commission a notice of protest. Notice of protest shall comply with Rules Sections 013 and 015. The notice must contain a clear and concise statement of the reason or purpose for the protest. (7-1-93)

b. A notice of protest and proof of service on other parties of record must be filed with the Commission at least seven (7) days prior to the date set for hearing. If an untimely filing is made, the protestant must give a substantial reason for the delay; otherwise, the protest will not be considered and the protestant will not be permitted to participate in the proceedings. (7-1-93)

07. Limitations On Intervenors And Protestants. Where two (2) or more intervenors or protestants have substantially like interest and positions, the Commission may at any time during the hearing, limit the number of intervenors or protestants who will be permitted to testify, cross-examine witnesses or make and argue motions and objections. (4-18-89)

015. PLEADINGS.

01. Pleadings Enumerated. Pleadings before the Commission shall consist of applications, petitions, complaints, answers, motions, protests and orders to show cause or other notices used by the Commission in initiating a hearing upon its own motion. All pleadings must be filed in accordance with Rule Section 016. A party may adopt or join any other party's pleading. Two or more separately stated grounds, claims or answers concerning the same subject matter may be included in one pleading if clearly denominated as such. (7-1-93)

02. General Form Of Pleadings. (7-1-93)

a. All pleadings must comply with Rule Section 013 and be filed and served in accordance with Rule Section 016. In addition, on the filing of a pleading initiating a proceeding, the Commission shall assign a docket number to the proceeding which shall consist of the year in which the pleading was filed and another number showing

its numerical position among the proceedings filed during the year. All future pleadings must refer to the docket number. (7-1-93)

b. All pleadings shall contain a title. If the pleading is an application or petition, then the form shall be as follows:

BEFORE THE IDAHO STATE LOTTERY COMMISSION

IN THE MATTER OF) Docket No.
APPLICATION OR PETITION)
OF JOHN DOE) THE NATURE OF THE
_____) PLEADING

All other pleadings shall contain the following caption:

BEFORE THE IDAHO STATE LOTTERY COMMISSION

JOHN DOE,)
) Docket No.
(title of party),)
)
vs.) (DESCRIPTION OF
) PLEADING)
RICHARD ROW,))
)
(title of party).)
_____) (7-1-93)

c. Pleadings must be double spaced and typewritten on eight and one-half by eleven (8-1/2 x 11) inch paper. (7-1-93)

03. Applications--Defined--Form And Contents. All pleadings requesting a right or authority from the Commission are called "applications". Applications must: (7-1-93)

a. Fully state the facts upon which they are based; (7-1-93)

b. Refer to the particular provisions of statute, rule, order or other controlling documents upon which they are based; and (7-1-93)

c. Request for the order, authority, permission, or license desired. (7-1-93)

04. Petitions--Defined--Form And Contents. All pleadings requesting modification, amendment or stay of existing orders or rules, clarification or construction of orders, rules or statute, rehearing, or intervention are called "petitions". Petitions must: (7-1-93)

a. Fully state the facts upon which they are based; (7-1-93)

b. Refer to the particular statute, rule, order or other controlling documents upon which they are based; (7-1-93)

c. Request the relief desired; and (7-1-93)

d. State the name of the person petitioned against, if any (the respondent). (7-1-93)

05. Complaints--Defined--Form And Contents. All pleadings charging other persons with acts or omissions under the provisions of the Idaho Code administered by the Commission are called "complaints".

Complaints must set forth clearly and concisely: (7-1-93)

- a.** The facts or things done or omitted to be done by the persons complained against by reciting the facts constituting the acts or omissions and the dates when they occurred; (7-1-93)
- b.** Refer to statutes, rules, order or other controlling documents involved; (7-1-93)
- c.** Pray for the relief desired; and (7-1-93)
- d.** State the name and address of the person(s) complained against (the respondent(s)). Two (2) or more grounds of complaint concerning the same subject matter may be included in one (1) complaint but must be numbered and stated separately. Two (2) or more complainants may join in one (1) complaint if their respective complaints are against the same person and deal substantially with the same violation of law, rule, regulation or order of the Commission. (7-1-93)

06. Orders To Show Cause--Defined--Form And Contents. All pleadings requiring persons to appear as directed and to present to the Commission evidence and arguments why the order contained in the pleading should not be confirmed are called "orders to show cause". In addition, orders to show cause must set forth: (7-1-93)

- a.** The order; (7-1-93)
- b.** The acts or things done or omitted to be done by the persons complained against by reciting the facts constituting the acts or omissions and the dates when they occurred; (7-1-93)
- c.** The statutes, regulations, rules, orders or other controlling documents involved; (7-1-93)
- d.** The names and addresses of the persons complained against (respondents); and (7-1-93)
- e.** The date, time and place of the hearing. (7-1-93)

07. Motions--Defined--Form And Contents. All other pleadings requesting the Commission to take other action, except pleadings specifically answering other pleadings, are called motions. Motions must: (7-1-93)

- a.** Fully state the facts upon which they are based; (7-1-93)
- b.** Refer to the particular provision of a statute, rule, order, notice or other controlling document upon which they are based; and (7-1-93)
- c.** Pray for the relief sought. If the moving party desires oral argument or hearing on the motion, the party must so request in the motion. Any motion to dismiss, strike or limit a complaint or petition must be filed before the answer is due or be included in the answer. If the motion is directed to an answer, it must be filed within fourteen (14) days after service of the answer. Other motions may be filed at any time upon compliance with Rule Section 016. The Commission will act on motions as provided in Rule Subsection 019.07. (7-1-93)

08. Answers--Defined--Form And Contents. All pleadings responding to the allegations or prayers of complaints, petitions, orders to show cause or motions are called "answers". (7-1-93)

- a.** Answers to complaints or petitions must be filed with the Commission and served on all parties of record within twenty (20) days after service of the complaint or petition, unless the Commission modifies the time in which the answer may be made. Answers to complaints or petitions must admit or deny each material allegation of the complaint or petition. Any material allegation not specifically admitted shall be considered to be denied. Matters alleged by cross-complaint or affirmative defense must be separately stated and numbered. (7-1-93)
- b.** Answers to motions may be filed by persons or parties who are the object of a motion or by parties opposing a motion. An answer to a motion must be filed within fourteen (14) days. The Commission will act upon a motion under Rule Subsection 019.07. (7-1-93)

09. Protest--Defined--Form And Contents. Any pleading by persons who are adversely affected by the granting of an application or petition who are not intervenors in the proceeding is entitled "protest". Persons protesting an application or a petition shall have the right to file a written protest or, in the discretion of the Commission, be heard as a protestant without written pleadings. A protest must: (7-1-93)

- a. Fully state the facts upon which it is based; (7-1-93)
- b. Refer to the particular provision of statute, rule, order, notice or other controlling document upon which it is based; and (7-1-93)
- c. Pray for the relief sought. (7-1-93)

10. Signing Of Pleadings. All pleadings must be signed by the party or representative submitting the pleadings under oath as to the truth of the allegations contained in the pleadings. (4-18-89)

016. FILING, SERVICE, AMENDMENT, AND WITHDRAWAL OF DOCUMENTS

01. Filing Documents With The Commission. An original and five (5) legible copies of all pleadings must be filed with the Commission, except as otherwise provided in these rules. The Commission may require additional copies to be filed by order or notice. (7-1-93)

02. Service By The Commission. All pleadings required to be served by the Commission may be served by mail and service shall be deemed complete when a true and correct copy of such pleading, properly addressed and stamped, is deposited in the United States mail. (7-1-93)

03. Service By Parties. In the case of a complaint, the party against whom the complaint is directed shall be served by the complainant. After any proceeding has been instituted, all pleadings filed by any party must be served on all other parties of record concurrently with the filing thereof with the Commission. (7-1-93)

04. Proof Of Service. The original of every pleading that is filed with the Commission must be attached to or accompanied by proof of service by the following or similar certificate: I hereby certify that I have this _____ day of _____, served the foregoing documents upon all parties of record in this proceeding, by delivering a copy thereof in person to: (list names) by mailing a copy thereof, properly addressed, with postage prepaid, to: (list names).

Dated at _____, _____, this _____ day of _____, 20____. _____
Signature (7-1-93)

05. Defective, Insufficient, Or Late Pleadings. Defective, insufficient or late pleadings may be returned or dismissed. (7-1-93)

06. Amendments To Pleadings. The Commission may allow any pleading to be amended or corrected or any omission to be supplied. Pleadings will be liberally construed, and defects that do not affect substantial rights of the parties will be disregarded. (7-1-93)

07. Withdrawal Of Pleadings. A party desiring to withdraw a pleading must file a notice of withdrawal of the pleading with the Commission and serve all parties with the motion. Unless otherwise ordered by the Commission, the notice is effective fourteen (14) days after filing. (4-18-89)

017. PRE-HEARING PROCEDURE AND RULES PRE-HEARING CONFERENCES.

01. Purposes Of Pre-Hearing Conferences. The Commission may, upon written notice to all interested parties, hold a conference for the purpose of formulating or simplifying the issues, obtaining admissions of fact and of documents which will avoid unnecessary proof, arranging for the exchange of proposed exhibits or prepared testimony, limiting the number of witnesses, consolidating examination of witnesses, determining procedure at any future hearing, and such other matters as may expedite orderly conduct and disposition of the proceedings or

settlement. The parties may agree at such conference to a disposition of the matter by the Commission without further proceedings pursuant to Section 67-5209(d), Idaho Code. In the event such action is taken the conference shall be deemed to satisfy the requirements of law regarding the holding of a hearing. (7-1-93)

02. Notice--Conduct Of Conferences--Order And Notices Resulting From Conferences. (7-1-93)

a. Notice of the place, date and hour of a pre-hearing conference will be served at least fourteen (14) days before the time set for the conference, unless the Commission finds, by order, that public necessity requires a conference be held earlier. (7-1-93)

b. The Commission may issue a pre-hearing order or notice based upon the results of the agreement reached at a pre-hearing conference. The order or notice will bind all persons who could have participated in the pre-hearing conference, but did not, and all those who later file untimely interventions. A pre-hearing order will control the course of subsequent proceedings unless modified by the Commission for good cause. (7-1-93)

03. Facts Disclosed Privileged. Facts disclosed, offers made, and all other aspects of negotiation (except agreements reached) in pre-hearing conferences are privileged and are not part of the record. Except by agreement, they cannot be used against participating parties, before the Commission or elsewhere, unless proved by independent evidence. (4-18-89)

018. DISCOVERY.

01. Kinds And Scope Of Discover Listed. Kinds of discovery recognized and authorized by these rules are: (7-1-93)

a. Depositions; (7-1-93)

b. Requests for production; (7-1-93)

c. Requests for admissions; and (7-1-93)

d. Interrogatories. Unless otherwise provided by these rules, the scope and procedure of discovery is governed by the Idaho Rules of Civil Procedure. The Commission, and all parties to a proceeding have a right of discovery of all other parties to a proceeding. (7-1-93)

02. Discovery Procedure. The scope of discovery and the schedule for conducting discovery shall be established at the pre-hearing conference or by order of the Commission upon motion by a party to the proceeding. (7-1-93)

03. Filing And Service Of Discovery--Related Documents. Three (3) legible copies of notices of deposition, requests for production, requests for admissions, written interrogatories, answers to requests for production of documents, answers to requests for admissions, answers to interrogatories and objections to discovery must be filed with the Commission and copies served on all parties according to Rule Section 016. (7-1-93)

04. Order Compelling Discovery. Upon motion by a party, the Commission, upon finding that a party has failed to comply with discovery, may order the party to answer discovery. (7-1-93)

05. Sanctions For Failure To Obey Order Compelling Discover. The Commission may impose all sanctions recognized by the Idaho Rules of Civil Procedure for failure to comply with an order compelling discovery. (4-18-89)

019. HEARING PROCEDURES HEARING--MISCELLANEOUS PROCEDURE.

01. Notice Of Hearing. (7-1-93)

a. Notice of the place, date and hour of hearing will be served at least fourteen (14) days, or in the case of a complaint, twenty-one (21) days, before the time set for hearing, unless the Commission finds, by order, that

public necessity requires the hearing to be held earlier. Hearings will be held at the office of the Commission unless otherwise designated by notice or order. (7-1-93)

b. All hearings conducted by the Commission are open to the public. (7-1-93)

02. Conduct Of Hearing. All persons attending a hearing must conduct themselves in a respectful manner. Smoking is not permitted at hearings. (7-1-93)

03. Failure To Appear At Hearing. At the time and place set for hearing, if any party fails to appear in person or through a designated representative, the Commission may, with prejudice, deny or dismiss the party's petition, application, complaint, claim, response, intervention or protest, or may, upon good cause shown or in the Commission's discretion, recess the hearing for a further period to enable said party to attend. Any and all costs incurred by the reason of the party's nonappearance may be assessed against the nonappearing party by the Commission. (7-1-93)

04. Opportunity For Hearing. Unless the right to a hearing before the Commission is otherwise provided by statute, any applicant for a permit, license, certificate, approval, registration or similar form of permission required by law to be issued by the Commission, who is aggrieved by a denial or conditional approval ordered by the Commission, and who has not previously been afforded an opportunity for a hearing on the matter, shall be entitled to a hearing before the Commission to contest a denial or conditional approval upon filing with the Commission, within fifteen (15) days after receipt of the denial or conditional approval, a written petition stating the grounds for contesting the action by the Commission and requesting a hearing. (7-1-93)

05. Preliminary Procedure. Before taking evidence the presiding officer will call the hearing to order, take appearances of parties, and act upon any motions or petitions. If the Commission so directs, parties may then make opening statements if necessary to explain their position. (7-1-93)

06. Conference At Hearing. In any proceeding the presiding officer may convene the parties before hearing or recess the hearing to discuss formulation or simplification of the issues, admissions of fact or of documents to avoid unnecessary proof, exchange of documents, exhibits or prepared testimony, limitation of witnesses, establishment of order or procedure, and other matters that may expedite orderly conduct of the hearing. The presiding officer will state the results of the conference on the record. (7-1-93)

07. Procedure On Motion. (7-1-93)

a. The Commission may consider and decide motions with or without oral argument or hearing. If oral argument or hearing on a motion is requested and denied, the Commission must state its grounds for denying the request if asked to do so by any party. (7-1-93)

b. A motion requesting substantive relief on fewer than fourteen (14) days' notice will not be acted upon in less than fourteen (14) days unless it states: (7-1-93)

i. The facts supporting its request to act on shorter notice; and (7-1-93)

ii. That at least one (1) representative of all parties has received actual notice of the motion by telephone or personal delivery of the motion; or (7-1-93)

iii. Stating the efforts made to reach representatives of those parties not contacted and what efforts will continue to be made to contact them. Except as otherwise provided in this subsection, the Commission will allow at least two (2) days (including Saturdays, Sundays and legal holidays) after notification by telephone or actual receipt of the motion for parties to inform the Commission, either in writing personally delivered to the Commission, or by telephone, whether they support or oppose the motion and whether they desire to be heard on the motion in person, in writing or by telephone. Except in extraordinary circumstances in which the Commission states good cause for ruling on a motion without allowing two (2) days for parties to state their positions or to present their position on the motion either in person, in writing or by telephone, the Commission will not rule on a substantive motion. Whenever an order is issued in such extraordinary circumstances, it will expire in no more than seven (7) days. (7-1-93)

c. A motion requesting procedural relief on fewer than fourteen (14) days' notice is properly filed if it complies with the provisions of Subsections 019.07.a. and 019.07.b. The Commission may act on such motion without waiting for responses of other parties. (7-1-93)

08. Consolidation. The Commission may consolidate two (2) or more proceedings in any one (1) conference or hearing where it appears that the issues are substantially the same and the rights of the parties will not be prejudiced by such procedure. Where two (2) or more proceedings are consolidated, the Commission shall determine the order in which all parties shall introduce their evidence and which party or parties shall open and close. (7-1-93)

09. Joint Hearing. The Commission may participate in joint hearings with other state or federal agencies. Unless otherwise ordered by the Commission, the Rules for Practice and Procedure of the Commission shall control. (7-1-93)

10. Stipulations. Parties may stipulate among themselves to any fact at issue by written statement filed with the Commission or presented at hearing or by oral statement on the record. A stipulation binds all parties agreeing to it only according to its terms. The Commission may regard a stipulation as evidence, but the Commission reserves the right to require proof of evidence of the facts stipulated. The Commission is not bound to adopt the stipulation of the parties, but may by order do so. If the Commission rejects a stipulation, it will do so before issuing a final order and it will provide an additional opportunity for the parties to present evidence and arguments on the subject matter of the rejected stipulation. (7-1-93)

11. Order Of Procedure. (7-1-93)

a. Parties' evidence will ordinarily be introduced in the following order: (7-1-93)

i. Upon applications: (a) applicant, (b) intervenors, (c) Commission staff, and (d) rebuttal by applicant. (7-1-93)

ii. Upon complaints or petitions (except when the Commission is complainant): (a) complainant or petitioner, (b) intervenors, (c) Commission staff, (d) respondents, and (e) rebuttal by complainant or petitioner. (7-1-93)

iii. Upon complaints by Commission: (a) Commission staff, (b) intervenors, (c) respondents, and (d) rebuttal by Commission staff. This order of presentation of evidence may be modified by the Commission or presiding officer. Additional evidence may be taken in the discretion of the Commission or presiding officer. The presiding officer may allow additional examination of witnesses or vary the order of examination of witnesses. The presiding officer may vary the order of examination of witnesses to allow parties with interest adverse to the witness to examine the witness after parties of interest similar to the witnesses. (7-1-93)

12. Testimony Under Oath. All testimony presented in formal hearings will be given under oath. Before testifying, each witness must swear or affirm that the testimony he or she will give before the Commission is the truth, the whole truth and nothing but the truth. (7-1-93)

13. Parties And Persons With Similar Interests. Two (2) or more parties or persons having substantially like interests or positions: to expedite the proceeding and avoid duplication, the presiding officer may limit the number of those who testify, cross-examine witnesses or make and argue motions and objections. (7-1-93)

14. Continuance Of Hearings. The Commission may continue proceedings for further hearing. (7-1-93)

15. Prepared Testimony. With the approval of the Commission, a witness may read into the record his testimony on direct examination. Before any prepared testimony is read, unless excused by the Commission, the witness shall deliver copies thereof to the Commission, the reporter and all parties. If the Commission deems that substantial savings in time will result, testimony may be copied into the record without reading. Copies shall have been served upon all parties and the Commission ten (10) days before the hearing unless such prior service is waived in writing or orally at the hearing. (7-1-93)

16. Briefs--Proposed Orders--Statements Of Position. In any proceeding, any party may move to file briefs, proposed orders or statements of position. The Commission or presiding officer may request briefs, proposed orders or statements of position. (7-1-93)

17. Hearing Officers. Hearings may be held before the Commission or before a designated hearing officer. When a hearing officer conducts a proceeding, he or she must prepare and file recommended findings of fact and conclusions of law with the Commission and serve copies of them on all parties of record within fourteen (14) days after receipt of the hearing record. Unless otherwise provided by order or notice, the Commission will issue its decision based upon its independent review of the record and of the hearing officer's recommended findings of fact and conclusions of law. (4-18-89)

020. EVIDENCE.

01. Rules Of Evidence--Rulings. The admission of evidence before the Commission shall be governed by Idaho Code. 67-5210. When a party objects to the admission of evidence, the presiding officer will rule on the objection. The Commission, with or without objection, may exclude inadmissible, incompetent, cumulative or irrelevant evidence and order presentation of such evidence to stop. Objections to evidentiary rulings are governed by Rule Subsection 020.05. Evidence submitted at hearings should be material and relevant to the issue. (7-1-93)

02. Exhibits. (7-1-93)

a. Exhibit numbers shall consist of the letter of a party status and a preassigned set of numbers. Exhibit numbers are assigned by the Commission. (7-1-93)

b. Exhibits offered at hearing must ordinarily be typed or printed on eight and one-half by eleven (8 1/2 x 11) inch white paper. Exhibits may be made from maps, charts, photographs and nondocumentary exhibits. A copy of each documentary exhibit must be furnished to each party present, to the reporter and to each hearing officer, except of unusually bulky or voluminous exhibits that have previously been made available for the parties' inspection. Copies must be of good quality. Exhibits offered as part of a party's direct case, (except exhibits offered on redirect examination) must be timely filed. Exhibits filed pursuant to any order, notice or rule requiring their filing before hearing are timely filed. Otherwise, exhibits must be distributed or made available to all parties long enough before their introduction into evidence to allow the parties a reasonable opportunity to review them and to prepare to examine their substance, except those exhibits that update exhibits previously timely filed may be filed so long as opportunities are afforded other parties to examine the sponsoring witnesses about the changes. Exhibits identified at the hearing are subject to appropriate and timely objection before the close of proceedings. Exhibits to which no objection is made are automatically admitted into evidence without motion from the sponsoring party. (7-1-93)

c. All exhibits accompanying prepared testimony, exhibits introduced during direct examination of a witness, and, to the extent practicable, all other exhibits introduced at the hearing must be labeled with the exhibit number, case number, witness, party and witness sponsoring the exhibit, and any subdivisions within the exhibit, such as separate schedules or charts. (7-1-93)

d. Exhibits prepared from data and work papers, answers to discovery, periodicals, reports or other documentable sources of information must contain a statement of sources. Exhibits especially prepared for introduction into evidence in the proceedings should be descriptively titled to show the contents and purpose. (7-1-93)

03. Depositions. Depositions may be offered into evidence as allowed by the Idaho Rules of Civil Procedure, except that a deposition may be offered into evidence even though the witness is available at hearing. (7-1-93)

04. Official Notice. The Commission may take official notice subject to provisions of Idaho Code, 67-5210(4) of the following matters: (7-1-93)

a. Rules, regulations, official reports, decisions and orders of any regulatory agency, state or federal; (7-1-93)

b. Contents of decisions, orders, certificates and permits issued by the Commission and files, reports and official documents of the Commission or matters filed with the Commission; (7-1-93)

c. Matters of common knowledge and technical or scientific facts of established character; and (7-1-93)

d. Official documents, if pertinent, when properly introduced into the record of formal proceedings by reference; provided, however, that proper and definite identification of such document shall be made by the party offering the same and the same is published and generally circulated so that an opportunity shall be given to all parties of interest in the hearing to examine the same and present rebuttal evidence. Opportunity to contest the matters noticed shall be afforded all parties. (7-1-93)

05. Objections--Offers Of Proof. The grounds for objection to the admission or exclusion of evidence must be stated briefly at the time the evidence is offered. Formal exceptions to rulings admitting or excluding evidence are unnecessary and need not be taken. An offer of proof for the record consists of a statement of the substance of the excluded evidence. (7-1-93)

06. Transcript. The official transcript of the hearing will be by electronic recording. The recording shall be transcribed into typewritten form and certified upon request of a party to the proceeding and the prepayment of the estimated cost of transcribing. If a party desires stenographic notes of the hearing, then the party must file a written request with the Commission five (5) days before the hearing. Stenographic notes must be taken by a qualified court reporter. Further, the party requesting the reporter must pay all expenses of the reporter and must furnish a copy of the transcript to the Commission free of charge. (7-1-93)

07. Transcript Copies. Any person desiring a copy of the official transcript of proceedings when taken at any hearing, must inform the Commission at the time of the hearing. Upon prepayment of the estimated cost of transcription and completion of the record, the Commission shall notify the person requesting a copy of its completion and the additional fee, if any, for producing such record. Upon receipt of the amount of the fee the Commission will prepare and forward a copy of the record to the requesting party. (4-18-89)

021. PROCEDURAL RULES FOR RULEMAKING.

01. Notice Of Proposed Rules. Prior to the adoption, amendment, or repeal of any rule, other than an emergency rule which shall be adopted in accordance with Idaho Code, 67-5203(b), the Idaho State Lottery Commission shall give notice of the intended action: (7-1-93)

a. In accordance with the twenty (20) days notice of intended action requirement provided for in Idaho Code, 67-5203(a)(1); and (7-1-93)

b. Ten (10) days prior to the notice requirement specified in Subsection 021.01.a., transmit notice of intended action, accompanied by the full text of the rule under consideration prepared so as to indicate words added or deleted from the presently effective text, if any, as well as a statement of the substance of the intended action, to the director of the legislative council. The director of the legislative council shall analyze and refer the material under consideration to the germane joint subcommittee created in Section 67-454, Idaho Code, to afford the subcommittee opportunity to submit data, views or arguments in writing to the agency within twenty (20) days as specified in the notice. If a public hearing is held the record shall remain open for ten (10) days thereafter for further written comments from the germane joint subcommittee, and (7-1-93)

c. Afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. In case of substantive rules, opportunity for oral hearing must be granted if requested in writing, within the comment period provided for in Subsection 021.01.a. of this section and as specified in the legal notice, by twenty-five (25) persons, by a governmental subdivision or agency, or by an association presenting a petition with signatures of not less than twenty-five (25) members of the organization. The Commission shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule, the Commission, if requested in writing to do so by an interested person either prior to adoption or within thirty (30) days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations

urged against its adoption.

(7-1-93)

d. Compliance with the hearing requirements of Section 67-5203(a)(3), Idaho Code, is not required when the Commission has no discretion as to the substantive requirements of a proposed amendment to its rules which is designed solely to comply with a controlling judicial decision or court order, or with the provisions of a statute or federal regulation which has been amended since the adoption of the agency rule. (7-1-93)

e. Any person petitioning for initiation of rulemaking or for a declaratory ruling must substantially follow this form. The first paragraph of the Petition must identify the Petitioner and state the Petitioner's interest in the matter. The second paragraph must: (7-1-93)

i. Describe the nature of the rule or amendment to the rule urged to be promulgated and the Petitioner's suggested rule or amendment; or (7-1-93)

ii. State the declaratory ruling that the Petitioner seeks. Succeeding paragraphs should indicate the statute, order, rule, or other controlling documents, and the factual allegations upon which the Petitioner relies to support the Petition. Legal assertions in these paragraphs may be accompanied by citations of cases and/or statutory provisions. The newspapers in which Notice of Proposed Rulemaking will be published are: The Coeur d'Alene Press (Coeur d'Alene), The Idaho State Journal (Pocatello), The Idaho Statesman (Boise), The Lewiston Morning Tribune (Lewiston), The Post Register (Idaho Falls), and The Times-News (Twin Falls). (4-18-89)

022. OFFICIAL RECORDS AND FILES.

01. Records For Decision--Relationship To Official File. The Commission bases its decisions and issues its Orders on the Hearing Record (excluding exhibits denied admission), the Commissioners' Record and items officially noted. The Hearing Record and the Commissioners' Record are part of the Commission's Official File. (7-1-93)

02. The Commission's Official File. The Commission's Official File for a proceeding is the public file maintained by the Commission. This file includes all documents filed with regard to a proceeding, whether filed by parties or other persons, and includes (but is not limited to) documents listed in Rules Subsections 015.01, 018.03, 019.16, and 023.02, correspondence concerning the proceeding directed to the Commission, or a Commissioner (whether by parties or persons not parties), prepared testimony and exhibits, working papers, transcripts, exhibits presented at hearing, orders, notices, press releases, and other matters pertaining to or related to a proceeding and included in the public files of that proceeding by the Commission. (7-1-93)

03. The Hearing Record. The Hearing Record in a proceeding consists of all transcripts of hearings, conferences, arguments and other proceedings on the record and of all exhibits identified, offered, admitted or denied admission at hearing or prehearing conference. Workpapers, requests for discovery, answers to discovery and other documents filed with the Commission and served on the parties, whether or not discussed at hearing, are not part of the Hearing Record unless introduced as exhibits at hearing. The Commission or an individual Commissioner may add to the hearing record by reference to any document in the Commission's official file, but only after notifying the parties of that intention and giving them reasonable opportunity to object, review, examine, and rebut or contest the document. (7-1-93)

04. The Commissioners' Record. The Commissioners' Record in a proceeding automatically includes all pleadings, orders, notices, briefs, proposed orders and position papers. The Commission may add documents officially noticed to the Commissioners' Record. The Commissioner(s) or Hearing Examiner conducting a hearing will have the Commissioners' Record and all prepared testimony and exhibits available at hearing. Parties desiring to refer to additional documents at hearing should notify the Commission Secretary and all other parties of their intention so that these other documents will be available to the Commissioner(s) or Hearing Examiner at hearing or should themselves provide copies at hearing to all other parties and to the Commissioner(s) or Hearing Examiner. (7-1-93)

05. The Reporter. The Reporter at all hearings, conferences, arguments and other proceedings on the record must transcribe all oral proceedings on the record and all exhibits identified at hearing. Except as otherwise directed by the Commission on the presiding officer at hearing, the Reporter must file the complete hearing record of

transcripts and exhibits with the Commission within fourteen (14) days of the close of hearing. (7-1-93)

06. Transcripts. (7-1-93)

a. Transcripts must be prepared on white eight and one-half by eleven (8-1/2 x 11) inch paper. The cover page of each volume of transcript must show the title of the proceeding, the case number, the presiding officer, the time and place of hearing, and other information as shown in the following example.

BEFORE THE IDAHO STATE LOTTERY COMMISSION

(TITLE OF PROCEEDING) Case No. XXXXX

)
_____)

(COMMISSIONER _____, Presiding)
(HEARING OFFICER _____, Presiding)
(Date, e.g., _____, 1993)
(Hearing Room, e.g. Commission Hearing Room)
(Address, e.g. _____)

(7-1-93)

b. Each day of hearings must be transcribed in a volume or volumes separate from other days of hearings. Each volume of transcript must begin with a list of the parties who appeared that day and their representatives of hearing that day. This list must be followed with a list of all witnesses whose testimony is reported in that volume, showing the pages at which each witness's testimony begins, what party (if any) called the witness, the pages upon which each other party's examination begins, the pages upon which each Commissioner's or hearing examiner's examination begins, and the pages upon which redirect examination or any party's, Commissioner's or hearing examiner's re-examination begins. These lists must be followed with a list showing all exhibits identified in that volume of transcript (including exhibits accompanying prepared testimony), the pages upon which they are first identified, and, if any exhibits are denied admission, the pages upon which the exhibits are denied admission.

(7-1-93)

c. The transcript must contain all discussions on the record while the hearing is in order. Unless otherwise directed by the Commission, or the presiding officer prepared testimony must be included in the transcript without change or retyping. Witness's corrections to prepared testimony should be made by distributing replacement pages to the Reporter and describing those corrections on the record and/or distributing an errata sheet; unless otherwise directed, no corrections other than replacement pages will be made in the prepared testimony before it is incorporated in the transcript. Witnesses have seven (7) days after hearing to distribute replacement pages to all parties and to the Reporter, unless the Commission or the presiding officer otherwise directs.

(7-1-93)

d. The testimony of all witnesses reported in the transcript must be designated in the lower right margin by the witness's surname and the party sponsoring the witness's testimony. Witnesses not sponsored by any party must be designated "public". The type of testimony must be shown following the witness's surname as "Di" (direct or redirect), "X" (examination by any part not sponsoring the witness), or "Com" (examination by any Commissioner or Hearing Examiner.) Examples of the designations required by this rule follow:

Accountant, Di; or Accountant, Com; or Retailer, X
ABC CompanyABC Company ABC Company

Discussions on the record that are not testimony or examination may be labeled "Argument," "Decision," "Colloquy," etc., to describe what is reported. (7-1-93)

e. Transcript volumes should not exceed two hundred fifty (250) pages. Transcript volumes and pages of all proceedings on the record, including prehearing conferences, hearing, arguments, and any other proceedings on the record, must be numbered consecutively. For example, if a prehearing conference on the record preceded a hearing, the transcript volume and page numbers of the hearing would be numbered consecutively with that of the prehearing conference. (4-18-89)

023. ORDERS AND REVIEW OF ORDERS.

01. Submission For Decisions. A proceeding is submitted for decision no later than filing of the hearing record with the Commission (unless all Commissioners participating in the decision heard the proceeding), filing of timely briefs, filing of timely orders proposed by the parties and timely written comments or exceptions, oral argument, or receipt of recommended findings of fact of the Hearing Examiner, whichever is last, but not to exceed twenty-eight (28) days after the hearing is closed when a hearing is held. The Commission (or a Hearing Examiner presiding over a matter) may issue a final decision earlier or rule from the bench, but a bench ruling will be followed by written order. (7-1-93)

02. Proposed Orders By Commission. The Commission may issue a proposed order in any proceeding. Any party may file exceptions and briefs to a proposed order within twenty-one (21) days from its date of service, unless a different time is designated by the Commission. A party may file and serve answers and accompanying briefs to the exceptions within seven (7) days after service of the exceptions. The Commission may adopt or revise the proposed order in response and issue a final order accordingly. The proposed order is not an order of the Commission. The order of adoption is the final order for all purposes. (4-18-93)

024. INTERLOCUTORY ORDERS--FINAL ORDERS--REVIEW OR STAY OF ORDERS.

01. Interlocutory Orders. (7-1-93)

a. Interlocutory orders are orders that do not finally decide all previously undecided issues presented in a proceeding, except the Commission may by order decide some of the issues presented in a proceeding and provide in that order that its decision on those issues is final and subject to review by rehearing and appeal, but is not final on other issues. Unless an order contains one (1) of the paragraphs set forth in Rule Subsection 024.02 or a paragraph substantially similar, the order is interlocutory. (7-1-93)

b. The following orders are always interlocutory: orders initiating complaints or investigations; orders joining, consolidating or separating issues, proceedings or parties; orders granting or denying intervention; orders scheduling prehearing conferences, discovery, hearing, arguments or deadlines for written communications; orders proposing modified procedure; orders compelling or refusing to compel discovery. (7-1-93)

c. Interlocutory orders may be reviewed pursuant to Rule Subsections 024.03, 024.04, and 024.05. (7-1-93)

02. Final Orders. (7-1-93)

a. Final orders are all orders and only those orders containing one (1) of the following paragraphs or a paragraph substantially similar:

This is a final order. Any person interested in this order (or in issues finally decided by this order) or in interlocutory orders previously issued in this Case No. XXXXX may petition for reconsideration within twenty-one (21) days of the service date of this order with regard to any matter decided in this order or in interlocutory orders previously issued in this Case No. XXXXX. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration in response to issues raised in the petition for reconsideration.

or

This is a final order on reconsideration (or denying reconsideration). Any party aggrieved by this order or other final or interlocutory orders previously issued in this Case No. XXXXX may appeal to the District Court of Idaho pursuant to the Idaho Administrative Procedure Act and the Idaho Rules of Civil Procedure. Orders may be final on some issues and interlocutory on others. If so, they will explicitly designate the issues upon which they are final. (7-1-93)

b. The Commission must indicate on every order subject to petition for reconsideration the date upon which the order was served on the representatives of parties listed in Rule Subsection 013.01. The Commission must

indicate on every order subject to appeal the date upon which the order was filed and the date upon which the order was served on the representatives of parties listed in Rule Subsection 013.01. (7-1-93)

c. Whenever a party believes that an order not designated as a final order according to the terms of these rules should be a final order, the party may petition the Commission to designate the order as final. If an order is designated as final after its release, its effective date for purposes of reconsideration or appeal is the date of the order of designation. (7-1-93)

d. Final orders may be reviewed pursuant to Rules Subsections 024.03, 024.04, 024.06, 025.01, and 026.01. (7-1-93)

03. Stay Of Orders. Any person may petition the Commission to stay any order, whether interlocutory or final. Orders may be stayed by the judiciary according to statute. The Commission may stay any order on its own motion. (7-1-93)

04. Clarification Of Orders. Any person may petition to clarify any order, whether interlocutory or final. Petitions for clarification from final orders do not suspend or toll the time to petition for reconsideration or to appeal a final order. A petition for clarification may be combined with a petition for reconsideration or stated in the alternative as a petition for clarification and/or reconsideration. The Commission may clarify any order on its own motion. (7-1-93)

05. Review Of Interlocutory Orders. Any person may petition to review any interlocutory order. The Commission may rescind, alter or amend any interlocutory order on its own motion, but will not on its own motion review any interlocutory order affecting any party's substantive rights without giving all parties notice and an opportunity for written comment. (7-1-93)

06. Rescission, Alteration Or Amendment Of Final Orders. (7-1-93)

a. Any person may petition to rescind, alter or amend a final order pursuant to these rules and chapter 52, title 67, Idaho Code. The petition to rescind, petition to alter, or petition to amend must state: (7-1-93)

i. That it is filed pursuant to these rules after an order has been set aside or set aside in part on appeal; or (7-1-93)

ii. That there have been changed circumstances or that new information has become available since the order was issued, or that there are other good and sufficient reasons for rescinding, altering, or amending the order. The Commission may dismiss as defective any such petition not complying with this rule and with Rule Subsection 015.03. (7-1-93)

b. The Commission on its own motion may propose to rescind, alter or amend any final order. The Commission will give all interested persons notice of its proposal to rescind, alter or amend the final order and appropriate opportunity to be heard by evidentiary hearing or written submission. (4-18-89)

025. RECONSIDERATION.

01. Petitions For Reconsideration. (7-1-93)

a. Any person interested in a final order or rule of the Commission may petition for reconsideration. Petitions for reconsideration must set forth specifically the ground or grounds why the petitioner contends that the order or rule is unreasonable, unlawful, erroneous or not in conformity with the law, and a statement of the nature and quantity of evidence or argument the petitioner will offer if reconsideration is granted. (7-1-93)

b. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration in response to any issues raised in the petition for reconsideration. Cross-petitions for reconsideration must set forth specifically the ground or grounds why the cross-petitioner contends that the order or rule is unreasonable, unlawful, erroneous or not in conformity with the law, and a statement of the nature and quantity of evidence or argument that the cross-petitioner will offer if reconsideration is granted. (7-1-93)

c. The petition or cross-petition must state whether the petitioner or cross-petitioner requests reconsideration by evidentiary hearing, written briefs, comments or interrogatories. Grounds for reconsideration or issues on reconsideration that are not supported by specific explanation may be dismissed. (7-1-93)

d. A petition for reconsideration is timely within the meaning of Chapter 52, Title 67, Idaho Code, if it is filed with the Commission or postmarked no later than twenty-one (21) days after the date of service of the final order. Whenever a petition for reconsideration is not personally filed with the Commission within twenty-one (21) days of the date of service of the final order or is not mailed at least three (3) days before that date, on the day the petition for reconsideration is mailed, the petitioner should notify the Commission Secretary and all other parties by telephone that the petition for rehearing has been mailed. (7-1-93)

e. A cross-petition for reconsideration is timely filed within the meaning of Chapter 52, Title 67, Idaho Code, if it is filed with the Commission or postmarked no later than seven (7) days after the petition for reconsideration to which it responds is received in the office of the Commission. Whenever a cross-petition for reconsideration is not personally filed with the Commission within seven (7) days of the date of receipt of the petition for reconsideration by the Commission or is not mailed at least three (3) days before that date, on the day the cross-petition for reconsideration is mailed, the cross-petitioner should notify the Commission Secretary and all other parties by telephone that the cross-petition for reconsideration has been mailed. (7-1-93)

02. Procedure At Reconsideration. The Commission may grant reconsideration upon petition of any interested person or upon its own motion. Prehearing conferences may be convened before reconsideration. Reconsiderations by rehearing are conducted in accordance with the procedure at other hearings, except that parties whose petitions are granted are treated as Complainants or Petitioners under Rule Subsection 019.11. When the order for reconsideration finds that the grounds upon which the petition is granted present only issues of law and not of fact or issues of fact not requiring hearings, the Commission may direct that these grounds be considered on reconsideration by submission of briefs, memoranda, written interrogatories or written statements and not by further submission of evidence at hearing. Rule Subsection 023.01 determines when a matter that is reconsidered is finally submitted. (7-1-93)

03. Effect Of Filing Petition For Reconsideration. Filing a petition for reconsideration does not excuse compliance with any order nor stay the effectiveness of any order, unless otherwise ordered. Petitions to stay may accompany or precede petitions for reconsideration. (4-18-89)

026. APPEALS.

01. Persons Who May Appeal. (7-1-93)

a. After a petition for reconsideration is denied, or, if the petition is granted, then after the rendition of the decision on reconsideration, the State of Idaho or any party aggrieved may appeal from any such order of the Commission by filing with the Commission a notice of appeal conforming to the requirements of the Idaho Rules of Civil Procedure within the time provided by the Idaho Rules of Civil Procedure. (7-1-93)

i. No person is a party aggrieved by an order denying reconsideration unless the person is a party that petitioned for reconsideration and presented the ground(s) and issue(s) on which it contends it was aggrieved by earlier orders of the Commission as issue(s) on reconsideration pursuant to Rule Subsection 025.01 and the Commission denied reconsideration on some or all of those issues. (7-1-93)

ii. No party is aggrieved by an order issued on reconsideration unless: (7-1-93)

(1) The party petitioned or cross-petitioned for reconsideration, its petition or cross-petition was granted, and the order issued on reconsideration did not grant the relief requested in the party's petition or cross-petition for reconsideration with regard to some or all of the grounds and issues on reconsideration presented in its petition or cross-petition; or (7-1-93)

(2) The party did not petition or cross-petition for reconsideration, but stated on the record, by motion, or by brief that it opposed any alteration or change in the Commission's earlier order(s) on some or all of the grounds

associated with issue(s) on reconsideration, and the order issued on reconsideration altered or changed the earlier order(s) with regard to some or all of the grounds or issues on reconsideration that the party opposed. (7-1-93)

02. Notice Of Appeal. The notice of appeal must be filed with the Commission as provided in the Idaho Rules of Civil Procedure. A notice of appeal is not considered filed for any purpose when it is mailed, but is only considered filed when it is received by the Commission Secretary. (7-1-93)

03. Preparation of Appellate Record. The Commission by order may correct the title of an appeal to properly designate all parties as Appellants, Cross-Appellants, Respondents, or Cross-Respondents and to omit those designations for parties before the Commission who are not parties on appeal. All requests for a transcript on appeal must be served on the Reporter and on the Commission. Reporter's fees under the Idaho Rules of Civil Procedure should be paid directly to the Reporter, not to the Commission. The fee under the Idaho Rules of Civil Procedure for preparation of the Agency's record are the same fees provided in that rule for the clerk of the district court to charge for preparation of the clerk's record. (4-18-93)

027. DEFINITIONS.

01. Benefit. Anything, property or money, favorable consideration or advantage, profit, privileges, gain or interest to which a person is not otherwise entitled. (7-1-93)

02. Commission Or State Lottery Commission. The five (5) member commission established and appointed as provided by Chapter 74, Title 67, Idaho Code. (7-1-93)

03. Commissioner. A member of the Idaho State Lottery Commission. (7-1-93)

04. Control Person. A person in a position that is primarily defined according to organizational type. The following are control persons: (7-1-93)

a. In a privately-owned corporation, the officers, directors, and stockholders of the parent company who own five percent (5%) or more of the company's stock and, if applicable, each of its subsidiaries; (7-1-93)

b. In a publicly-owned corporation, the officers and directors of the parent company and each of its subsidiaries. Additionally, stockholders who own five percent (5%) or more of the corporation's stock are control persons; (7-1-93)

c. In a trust, the trustee and all persons entitled to receive income or benefit from the trust; (7-1-93)

d. In an association, the members, officers, and directors; (7-1-93)

e. In a partnership or joint venture, the general partners, limited partners, or joint venturers. (7-1-93)

f. A member of the immediate family of any of the people listed above is a control person. (7-1-93)

g. A subcontractor of a Vendor is a control person if the subcontractor performs more than half of the Vendor's contract with the Idaho State Lottery. (7-1-93)

05. Director. The Chief Executive Officer of the Idaho State Lottery or any other person to whom the Director's authority has been delegated, in writing, by the Director prior to the action being delegated. (7-1-93)

06. Fiscal Year. A period of twelve (12) months beginning on July 1 and ending on June 30. (7-1-93)

07. Gift. A transfer, exchange or delivery of anything, property or money, of any value whatsoever, with or without an expectation by the giver to receive anything, tangible or intangible, in return. (7-1-93)

08. Immediate Family. A natural person's spouse, children, brother, sister, or parent by blood, marriage, or adoption who resides as a member of the same household in the principal place of residence of any contractor, vendor, retailer, member, or employee of the State Lottery. (7-1-93)

- 09. Instant Game.** A game in which a ticket is purchased and upon removal of a latex or similar secure covering on the front of the ticket, the ticket bearer determines his or her winnings, if any. (7-1-93)
- 10. Invitation To Bid.** The solicitation of competitive offers in which specifications, price, and delivery (or project completion) will be the predominant award criteria. (7-1-93)
- 11. Lottery Or State Lottery.** The Idaho State Lottery, established and operated pursuant to the constitution and the Idaho State Lottery Act of 1988. (7-1-93)
- 12. Lottery Contract Or Contract.** Any contract entered into either by the State Lottery or for the Lottery by another public agency, for the purchase, lease, or sale of goods or services. (7-1-93)
- 13. Lottery Contractor Or Contractor.** A person with whom the State Lottery has contracted for the purpose of providing goods and services for the State Lottery. (7-1-93)
- 14. Lottery Employee Or Employee.** Any person who works full- or part-time for the State Lottery. (7-1-93)
- 15. Lottery Game Or Game.** Any procedure authorized by the Commission whereby prizes are distributed among persons who have paid, or unconditionally agreed to pay, for tickets or shares which provide the opportunity to win such prizes. Lottery game themes shall be approved by the Commission, shall be consonant with the dignity of the state. (7-1-93)
- 16. Lottery Game Retailer Or Retailer.** A person with whom the State Lottery has issued a certificate to and contracted for the purpose of selling tickets or shares in Lottery games to the public. (7-1-93)
- 17. Lottery Vendor Or Vendor.** Any person who submits a bid, proposal, or offer to provide goods or services for the State Lottery for major procurement contracts. (7-1-93)
- 18. Major Procurement.** Any contract with a vendor supplying lottery tickets or shares, data processing systems utilized to track, sell, distribute or validate lottery tickets or shares, any goods or services involving the determination or generation of winners in any lottery game or any auditing services. (7-1-93)
- 19. On-Line System.** The Lottery's on-line computer wagering system consisting of ticket issuing terminals, central processing equipment, and a communications network. (7-1-93)
- 20. Person.** Shall be construed to mean and include an individual, association, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals. "Person" shall also be construed to mean and include departments, commissions, agencies and instrumentalities of the state of Idaho, including counties and municipalities and agencies or instrumentalities thereof. (7-1-93)
- 21. Play Symbols.** The numbers or symbols appearing in the designated area under the removable covering on the front of the ticket. (7-1-93)
- 22. Prize.** Any award, financial or otherwise, awarded by the Director. (7-1-93)
- 23. Request For Proposal.** The solicitation of competitive proposals, or offers, to be used in part as a basis for making an acquisition, or entering into a contract, when specification and price will not necessarily be the predominant award criteria. (7-1-93)
- 24. Retailer Validation Code.** The symbols found under the removable rub-off covering over the play symbols on the front of each ticket. (7-1-93)
- 25. Sensitive Procurement.** Those procurement actions or contracts, other than "major procurements", which may either directly or indirectly affect the integrity, security, honesty, and fairness of the operation and

administration of the Lottery. A typical example of this class of procurement is the acquisition of security systems required to protect the security and integrity of the Lottery. (7-1-93)

26. State Lottery Act Of 1988 Or Act. The Act approved by the legislature creating the State Lottery, and which became effective November 23, 1988, and any amendments thereto, which Act is found at Chapter 74, Title 67, Idaho Code. (7-1-93)

27. Subcontractor. Any third party not in the employment of a Contractor, who is performing all or part of the work in the Contractor's Agreement with the State Lottery under a separate contract with the Contractor. The term "subcontractor" means subcontractor(s) of any tier. (7-1-93)

28. Temporary Retailer. A retailer under contract with the State Lottery for a temporary or seasonal period. A temporary contract may be made subject to such special conditions or limitations as the Director may deem prudent. These limitations or conditions may include, but are not limited to: (7-1-93)

- a. Length of ticket sale period; (7-1-93)
- b. Hours or days of sale; (7-1-93)
- c. Location of sale; (7-1-93)
- d. Specific persons who may sell lottery tickets; (7-1-93)
- e. Specific sporting, charitable, social, or other special events where lottery tickets may be sold. (7-1-93)

29. Provisional Retailer. A retailer granted a provisional certificate in accordance with these rules. A provisional certificate shall contain all of the restrictions as a temporary retailer, and may contain additional restrictions deemed necessary by the director. (7-1-93)

30. Ticket. A lottery ticket or share issued by the State Lottery for sale to the general public. (7-1-93)

31. Ticket Bearer. The person who has signed the ticket or has possession of the unsigned ticket. (7-1-93)

32. Ticket Validation Number Or Validation Number. The multidigit number found on the front of the ticket. It is either uncovered or found underneath the "Do Not Remove" area on the ticket or any stub. (7-1-93)

33. Total Annual Revenue Or Annual Revenue. The sum of all proceeds and accrued interest earned and recognized from the sale of tickets in a fiscal year. Total annual revenue does not include any income which is characterized as a reduction or recovery of expenses. (7-1-93)

34. Unclaimed Prize. Any award, financial or otherwise, of more than twenty-five dollars (\$25) for which exists physical, tangible evidence of eligibility but for which the prize has not been paid within one (1) year. (7-1-93)

35. Executive Staff. The director of security and the deputy directors appointed by the director. (7-1-93)

36. Certificate. The signed document issued by the director authorizing a retailer to sell lottery products. (7-1-93)

028. GENERAL PROVISIONS.

01. Purpose. These rules are established by the Idaho State Lottery Commission to define and regulate the operation and administration of the Idaho State Lottery and the Idaho State Lottery Commission. (7-1-93)

02. State Lottery Commission. The Idaho State Lottery Commission hereinafter called “the Commission,” is the Commission appointed by the Governor pursuant to Subsection a, Section 20, Article 3, of the Idaho Constitution. The Commission is charged with the authority and duty to regulate lottery activities in the state of Idaho, consistent with the Constitution and the enabling legislation. The headquarters of the Commission and the State Lottery shall be in Boise. (7-1-93)

03. Powers And Duties Of The Commission. (7-1-93)

a. Rules. The Commission shall promulgate rules and conditions under which a statewide lottery may be conducted. Subjects covered in such rules shall include but need not be limited to: (7-1-93)

i. The type of lottery to be conducted; (7-1-93)

ii. The price of tickets in the lottery; (7-1-93)

iii. In general the number and size of prize disbursements, the manner and frequency of prize drawings, and the manner in which payment shall be made to holders of winning tickets; (7-1-93)

iv. The locations at which lottery tickets may be sold, the manner in which they are to be sold, and contracting with lottery vendors, retailers and contractors; (7-1-93)

v. The manner in which lottery sales revenues are to be collected; (7-1-93)

vi. The amount of compensation to be paid to retailers; (7-1-93)

vii. All other areas relating to the efficient and economical operation and administration of a statewide lottery consonant with the public interest. (7-1-93)

b. Delegation to Director. In addition to those duties assigned to the Director in the Lottery Act, the Commission may, insofar as is consistent with the Constitution and the Lottery Act, delegate the performance of executive or administrative functions to the Director. (7-1-93)

04. Authority Of The Commission. The rules of the Commission are adopted and promulgated under the authority of Chapters 52 and 74, Title 67, Idaho Code. (7-1-93)

05. Time And Place Of Meetings. (7-1-93)

a. Regular meetings of the Commission which are open to the public shall be held at least quarterly; date, time, and place to be set by the Commission and if possible with at least two (2) weeks’ advance notice. The Commission shall meet with the Director to make recommendations and set policy, to approve or reject reports of the Director, to adopt rules, and to transact other business. (7-1-93)

b. Additional meetings which are open to the public necessary to discharge the business of the Commission may be called from time to time by the chairman or by a quorum of the Commission. (7-1-93)

06. Public Meeting Law. All meetings of the Idaho State Lottery Commission shall be held in accordance with Idaho’s Open Meeting Law, Section 67-2340 et seq., Idaho Code, and Section 67-7442, Idaho Code. (7-1-93)

07. Director Of The Idaho State Lottery. The Director of the Idaho State Lottery, hereinafter called “the Director,” is the Director appointed by the Governor pursuant to Section 67-7407, Idaho Code. The Director is responsible for the operation of the Idaho State Lottery and for managing the affairs of the Commission. The Deputy Director for Administration shall act for the Director in the absence of the Director. (7-1-93)

08. Powers And Duties Of The Director. (7-1-93)

a. The Director shall have the authority to implement and execute such procedures as he or she may

deem appropriate for the efficient administration of the Lottery. Furthermore, the Director shall recommend rules and regulations governing the establishment, administration, and operation of the Lottery to the Commission for its approval; (7-1-93)

b. The Director shall employ such staff as may be required to carry out the functions of the Commission and the Lottery; (7-1-93)

c. The Director shall contract with retailers for the sale of lottery games and suspend or terminate any contract in accordance with the provisions of the Act and the rules of the Commission; (7-1-93)

d. The Director shall continuously study and investigate all matters pertinent to the efficient operation of the Lottery; and (7-1-93)

e. The Director shall maintain full and complete records of the operation of the Lottery. The Director shall report on at least a monthly basis to the Commission and to the Governor on the status of the Lottery. (7-1-93)

f. The duties and responsibilities of the Director which are not otherwise specified in Idaho law or the rules adopted by the Commission will be maintained as a policy of the Commission for the purpose of establishing a working relationship between the Director and the Commission. (7-1-93)

09. Lottery Offices. (7-1-93)

a. The principal office of the Lottery is located at 1199 Shoreline Lane, Suite 100, Boise, Idaho 83702. (7-1-93)

b. The State Lottery may also operate such other offices and facilities throughout the State as deemed appropriate to fulfill its responsibilities under law. (7-1-93)

10. Lottery Budgets And Financial Statements. The Director shall: (7-1-93)

a. Submit quarterly financial statements to the Commission, the governor, the state treasurer, and the legislature. Such financial statements shall be prepared in accordance with generally accepted accounting principles and shall include a balance sheet, a statement of operations, a statement of changes in financial position, and related footnotes. Such financial statements are to be provided within forty-five (45) days of the last day of each quarter. (7-1-93)

b. Submit annual financial statements to the Commission, the governor, the state treasurer, and each member of the legislature. Such financial statements shall be prepared in accordance with generally accepted accounting principles and shall include a balance sheet, a statement of operations, a statement of changes in financial position, and related footnotes. Such financial statements shall have been examined by the state auditor or a firm of independent certified public accountants in accordance with generally accepted auditing standards and shall be provided within ninety (90) days of the last day of the lottery's fiscal year. (7-1-93)

11. Contingency Reserve. (7-1-93)

a. The Director may, with the approval of the Commission allot from moneys available to pay administrative expenses an amount to be transferred to a contingency reserve established by the Commission. The money allotted can include amounts retained to fund specific future expenses or can be undesignated as to purpose. (7-1-93)

b. The Commission shall determine the amount necessary for a reasonable contingency reserve. (7-1-93)

c. Upon approval of the Commission, money in the contingency reserve may be authorized to be used for specific purposes of the Idaho State Lottery or to be used to fund general administrative expenses in the event of a revenue shortfall. Expenses funded from the contingency reserve shall not be included with other administrative expenses for purposes of determining compliance with current administrative expenditure limitations. (7-1-93)

12. Special Drawings. (7-1-93)

a. The Director may authorize special drawings to award prizes, such as vacation trips, automobiles, or other tangible items in addition to, or in lieu of, cash awards. The nature and number of awards will be determined by the Director for each special drawing. Special drawings for promotional awards may be held independently of the lottery's regular prize drawings or may be incorporated therein. The promotional drawings may be cosponsored and conducted in conjunction with lottery retailers or other independent businesses. In view of the temporary nature and indeterminate frequency of the promotional awards drawings, a press announcement and normal advertising media will be used to inform the public of the rules and prizes for each special drawing. (7-1-93)

b. Notwithstanding the provisions of Subsection 028.12.a. of this rule, the Director may, at his or her discretion, award in lieu equivalent cash awards to the winners of tangible items, in those instances where deemed appropriate. The value of noncash items shall be estimated by using either the cost of the item or its fair-market value. (7-1-93)

13. Retail Drawings. The Director and his designee may authorize Retailers to conduct drawings using non-winning Idaho Lottery tickets in conjunction with a particular lottery game. Such authorization must be in writing, shall specify the type of drawing to be conducted and set forth the methodology to be used in conducting the drawing. (7-1-93)

14. Retail Ticket Price Discounts. (7-1-93)

a. Notwithstanding the price adopted for the retail sale of a ticket in the rules for a specific lottery game, the Commission may offer discounts for the retail sale of lottery tickets. (7-1-93)

i. Discounts for the retail sale of lottery tickets may be offered to the public through the use of coupons approved by the Director or by any other method approved by the Director. (7-1-93)

ii. Coupons which offer a discount on the retail price of lottery tickets shall be distributed using methods designed to reach the public. These methods may include, but are not limited to, the use of direct mail, newspaper advertising, or by having coupons available at State Lottery offices and retailer locations. (7-1-93)

b. Rules for a promotion conducted by the State Lottery using retail ticket discounts shall be announced by the Director and made available at the State Lottery's offices and retailer locations. (7-1-93)

15. Allocation Of Revenues For Prizes. (7-1-93)

a. Purpose: The primary objective of the Idaho State Lottery is to produce the maximum amount of net revenues to benefit the public purpose of raising revenue consonant with the dignity of the state and the sensibilities of its citizens. In accomplishing this objective, at least forty-five percent (45%) of the total annual revenues shall be returned in the form of prizes. The State Lottery may design and conduct games which return more than forty-five percent (45%) of the revenues received from the sale of tickets in the form of prizes as an incentive to increase the total amount of game sales over the level of sales which otherwise would have been reasonably expected using a lower prize percentage. Games may also be authorized that return less than forty-five percent (45%) of that game's revenues so long as forty-five percent (45%) of the total annual revenues is returned as prizes. (7-1-93)

b. Prize payments: In addition to cash prize payments, money set aside by the lottery and restricted for the payment of prizes shall be considered in satisfying the requirement of returning at least forty-five percent (45%) of total revenues to the public in the form of prizes. (7-1-93)

c. Averaging game prize payments: Notwithstanding the prize structure adopted for a lottery game, the amount of revenue returned for prizes among all the games offered by the State Lottery may be reallocated so long as at least forty-five percent (45%) of the total revenue earned from all games is returned to the public in the form of prizes on an annual basis. The Director will report to the Commission on any reallocations made pursuant to this rule. (7-1-93)

16. Ownership Of Lottery Tickets. (7-1-93)

a. Except for tickets claimed jointly in accordance with the provisions of Subsection 028.16.d., until such time as a name is imprinted or placed upon a lottery ticket in the area designated for "name," the ticket shall be owned by the bearer of said instant ticket. When a name is placed on the ticket in the place designated therefor, the person whose name appears in that area shall be the owner of said ticket and shall be entitled to any prize attributable thereto. (7-1-93)

b. If more than one (1) name appears on a ticket, the ticket must be claimed in accordance with the joint ownership procedures listed in Subsection 028.16.d. (7-1-93)

c. Groups, family units, clubs, or other organizations may claim a winning ticket if the organization possesses a Federal Employer Identification Number (FEIN) issued by the Internal Revenue Service and such number is shown on the claim form. (7-1-93)

d. If a ticket is claimed to be owned by two (2) or more people, the following steps shall be taken for payment of the prize: (7-1-93)

i. All people claiming ownership shall complete and sign a request and release form. (7-1-93)

ii. At least one (1) of the people claiming ownership of the ticket must sign the ticket; that person's signature must also appear on the request and release form. (7-1-93)

iii. The State Lottery reserves the right to issue a single prize check instead of multiple prize checks to the owners of a ticket if the value of each individual prize check would be less than fifty dollars (\$50). (7-1-93)

iv. Multiple winners of a lottery prize shall be paid only through the Boise Lottery office. Lottery retailers shall not be required to pay more than one (1) winner of a single prize. (7-1-93)

17. Claims. (7-1-93)

a. By submitting a claim, the player agrees that the state, the Lottery Commission, the State Lottery and the officials, officers, and employees of each shall be discharged from all further liability upon payment of the prize. (7-1-93)

b. By submitting a claim, the player also agrees that the prize winner's name and photograph may be used for publicity purposes by the lottery. (7-1-93)

c. Claim period. Prizes may be claimed for a period of one hundred eighty (180) days after the drawing in which the prize was won or from the last day tickets from the specific instant game were sold. Prizes won through an electronic terminal shall be payable in accordance with rules and regulations of the State Lottery. If a claim is not made for the prize within the applicable period, the prize money shall be added to future prize pools, to be used in addition to prize allotments already allocated, except as provided in Section 67-7433, Idaho Code. (7-1-93)

d. Invalid tickets not entitled to prize payment. If a ticket presented to the lottery is invalid pursuant to the terms of these rules or the specific game rules, the ticket is not entitled to prize payment. (7-1-93)

e. Ticket is a bearer instrument. A ticket is a bearer instrument until signed in the space designated on the ticket for signature, if a signature space is provided. The person who signs the ticket is thereafter considered the owner of the ticket. Payment of any prize may be made to the physical possessor of an unsigned ticket or to the person whose signature appears on the ticket. All liability of the state, the lottery Commission, the lottery, the director, and the employees of the lottery, terminates upon payment. (7-1-93)

f. Time of prize payment. All prizes shall be paid within a reasonable time after a claim is verified by the State Lottery and a winner is determined. The date of the first installment payment of any prize to be paid in

installment payments shall be the date the claim is validated and processed unless a different date is specified for a particular game in these rules or the specific game rules. Subsequent installment payments shall be made approximately weekly, monthly, or annually, from the date the claim is processed and validated in accordance with the type of prize won and the rules applicable to the prize. The State Lottery may, at any time, delay any prize payment in order to review a change in circumstances relative to the prize awarded, the payee, or the claim. (7-1-93)

g. Prizes payable for the life of the winner. If any prize is for the life of the winner, only an individual may claim and receive the prize for life. If a group, corporation, or other organization is the winner, the life of the winner shall be deemed to be twenty (20) years. (7-1-93)

18. Prizes Payable After Death Of Winner. All prizes, and portions of prizes, which remain unpaid at the time of the prize winner's death shall be payable to the court appointed representative of the prize winner's estate once satisfactory evidence of the representative's appointment has been made, and the State Lottery is satisfied that payment to the representative is lawful and proper. The State Lottery may rely wholly on the presentation of a certified copy of a court order appointing an administrator, executor, or other representative of the prize winner's estate or may petition the court to determine the proper payee. Payment to the representative of the estate of the deceased owner of any prize winnings shall absolve the State Lottery and employees of the State Lottery of any further liability for payment of prize winnings. (7-1-93)

19. Disability Of Prize Winner. The State Lottery may petition any court of competent jurisdiction for a determination of the rightful payee for the payment of any prize winnings which are or may become due a person under a disability because of, but not limited to, under age, mental deficiency, or physical or mental incapacity. (7-1-93)

20. Stolen Or Lost Tickets. The State Lottery has no responsibility for paying prizes attributable to stolen or lost tickets. (7-1-93)

21. Effect Of Game Rules. In purchasing a ticket the player agrees to comply with Chapters 52 and 74, Title 67, Idaho Code, these rules, the specific game rules, State Lottery instructions and procedures, and the final decisions of the State Lottery. The State Lottery's decisions and judgments in respect to the determination of winning tickets or any other dispute arising from the payment or awarding of prizes shall be final and binding upon all participants in the lottery. If a dispute between the State Lottery and a player occurs as to whether a ticket is a winning ticket and the prize is not paid, the State Lottery may, solely at the State Lottery's option, replace the ticket with an unplayed ticket of an equivalent price from any game or refund the price of the ticket. This shall be the sole and exclusive remedy of the player. (7-1-93)

22. Disputed Prizes. If there is a dispute, or it appears that a dispute may occur relative to the payment of any prize, the State Lottery may refrain from making payment of the prize pending a final determination by the State Lottery or by a court of competent jurisdiction as to the proper payment of the prize. (7-1-93)

029. CONFLICT OF INTEREST POLICY.

01. Public Officials. A commissioner, director, deputy director, or lottery employee is considered a "public official". If a statutory provision, rule, or policy applicable to the Idaho State Lottery conflicts with Section 67-7443, Idaho Code, the more stringent provision applies. (7-1-93)

02. Statements For Economic Interest. Members of the Commission, the director, and the employees of the lottery shall not directly or indirectly, individually, or as a member of a partnership, or as a shareholder of a corporation, or as a participant in a joint venture or association with any other person, have an interest in dealing in a lottery or in the ownership or leasing of property used by or for a lottery. (7-1-93)

03. Persons Ineligible For Prizes. The following individuals shall not, except as provided in Section 67-7440, Idaho Code, purchase a lottery ticket or share, and shall not receive a lottery prize: (7-1-93)

- a.** Any commissioner or lottery employee; (7-1-93)
- b.** Any officer, director, or employee of any vendor of lottery tickets or manufacturer of equipment

used to determine winners in computerized lottery games, or any of their subcontractors who may affect the security, integrity, or honesty of the Lottery; (7-1-93)

c. Any lottery contractor or consultant under agreement with the Lottery to review the Lottery's security procedures. Any other contractor or consultant may be deemed ineligible by the Director if the Director reasonably determines that the security, honesty, and integrity of the Lottery may be adversely affected; (7-1-93)

d. An immediate family member of any individual described in Subsections 029.03.a., 029.03.b., and 029.03.c. and who is a member of the same household. (7-1-93)

04. Gift Prohibitions. (7-1-93)

a. Except as provided in Subsection 029.03.b. of this rule, Lottery Commissioners and all Lottery employees, including members of their immediate family, are prohibited from soliciting or receiving, directly or indirectly, a gift in excess of one hundred dollars (\$100) from any person who might reasonably be expected to receive a benefit from the Idaho State Lottery. (7-1-93)

b. In appearances before civic groups and other organizations it is permissible to accept a meal or other travel reimbursement if it is offered and it is the established practice of that group or organization. (7-1-93)

05. Persons Prohibited From Providing Services. The following individuals and entities shall not be a lottery game retailer, lottery vendor, or lottery contractor, and shall not provide audits or study services as specified by Chapter 74, Title 67, Idaho Code: (7-1-93)

a. A commissioner, director, deputy director, or lottery employee; (7-1-93)

b. A member of the immediate family and who is a member of the same household of any individual described in Subsection 029.04.a. of this rule; (7-1-93)

c. Other than a lottery game retailer any entity which has a control person who is an immediate family member of and who is a member of the same household of any individual described in Subsection 029.05.a. of this rule; (7-1-93)

i. A Commissioner; or (7-1-93)

ii. A person on the State Lottery's Executive Staff; or (7-1-93)

iii. Any Lottery employee in a position designated by the Director that affects the security, integrity, and honesty of the State Lottery. Such designation shall be kept on file at the Office of the Idaho State Lottery. (7-1-93)

06. Outside Activities Restricted. (7-1-93)

a. The director, deputy directors, and full-time lottery employees shall render full-time service to the duties of their office. Part-time, temporary, or seasonal employees of the Lottery shall render full service to the extent of their employment with the Lottery and shall not accept other employment which may conflict with the integrity of the Idaho State Lottery. (7-1-93)

b. Except when requested to assist another state lottery, no commissioner, director, deputy director or lottery employee shall provide consulting or contractual services, or accept an honorarium related to his or her state lottery expertise. (7-1-93)

c. When assisting another state lottery, it is permissible for the other state to reimburse normal travel costs to the individual providing the service, but no honorarium or pay to the individual will be accepted. If the other state has a policy of paying for the time of another state's employee while providing assistance, the payment shall be made to the State Lottery. (7-1-93)

d. Nothing contained in Subsections 029.06.a. through 029.06.d. of this rule shall be construed to prevent a commissioner, director, deputy director or other employee of the Idaho State Lottery from participating in and traveling to educational or industry related programs. Actual expenses incurred may be reimbursed by a sponsoring entity if the integrity of the Idaho State Lottery is not adversely impacted. (7-1-93)

07. Conduct Of Commission Business. Business transactions conducted by the Lottery Commission, the director, deputy directors, or lottery employees with lottery vendors shall be conducted in the offices of the Idaho State Lottery to the maximum extent possible. (7-1-93)

08. Personal Conduct. Personal conduct that is illegal or generally considered improper and brings discredit on the Idaho State Lottery may be subject to appropriate disciplinary action by the Director. (7-1-93)

09. Use Of Lottery Property. No Commissioner or employee of the Idaho State Lottery shall use any lottery vehicle or other property for personal use. (7-1-93)

10. Signature Of Conflict Policy Required. Employees of the State Lottery shall be required to sign the foregoing conflict of interest policy as a condition of employment. "I have read and understand the pertinent Sections of Idaho Constitution Article 7, Section 10, and Chapter 7, Title 59, Idaho Code, and these conflict of interest policies."

Signature

Typed Name

Date

(4-18-89)

030. LOTTERY CONTRACTING RULES.

01. Classification Of Lottery Contracts. (7-1-93)

a. State Lottery contracts for the acquisition of materials, supplies, services and personal and professional services are classified according to relative sensitivity, which in turn determines the level of review, procurement method and the extent of disclosure required by State Lottery Vendors or if no disclosure is required as in the case of lottery contractors. The three (3) levels of procurement are as follows: (7-1-93)

i. General procurements: These procurements are the least sensitive and are for materials, supplies, equipment, services and personal and professional services required to satisfy the day-to-day administrative, ministerial and operating needs of the State Lottery. Disclosure filings by State Lottery vendors are not normally required for this class of procurements. State Lottery contractors may supply general procurement items. The State Lottery may use formal invitations to bid, informal competitive quotes and requests for proposals to solicit contracts for these acquisitions, as may be determined by the Director to be the most appropriate process for a specific acquisition. (7-1-93)

ii. Sensitive procurements: These procurements are of intermediate sensitivity and are for materials, supplies, equipment, services and personal and professional services which may have direct or indirect impact upon the security, credibility and integrity of the State Lottery. Also included are special studies and services required by statute (demographic, communications and performance studies). The normal procedure for acquiring the materials and services is by request for proposal; however, the Director may authorize the use of competitive quotes when the cost of the acquisition is less than fifteen thousand dollars (\$15,000). The Director may prescribe special disclosure requirements governing State Lottery contractors or vendors for this class of contracts. (7-1-93)

iii. Major procurements: This class is the most sensitive of State Lottery contracts. The Lottery Act requires these procurements to be let by the Commission and the filing of comprehensive disclosure statements by State Lottery vendors. (7-1-93)

b. The procedures for announcing or soliciting various classes of State Lottery contracts outlined in

Subsection 030.01.a. of this rule are intended to be advisory only and shall not in any way limit the Commission or the Director in the selection of the most appropriate process to acquire a given product or service. (7-1-93)

02. General Policy. (7-1-93)

a. In all decisions affecting the State Lottery, the Commission and Director are specifically directed by statute to take into consideration the particularly sensitive nature of the State Lottery and to act in a manner to promote and insure the integrity, security, honesty and fairness of the State Lottery. Additionally, the Director, in awarding contracts in response to solicitations for proposals, shall award such contracts to the responsible contractor or vendor submitting the lowest and best proposal which provides maximum benefits to the state in relation to cost in the areas of security, competence, experience, timely performance, and maximization of net revenues to benefit the public purpose of the State Lottery. Consistent with these statutory directives, it shall be the policy of the State Lottery, to the extent possible, to conduct its contracting affairs in an open, competitive manner. However, the security and integrity of the State Lottery shall be fundamental and overriding considerations in all decisions. (7-1-93)

b. Although the State Lottery is exempt from the provisions of Section 67-5715, Idaho Code, it shall be the policy of the State Lottery to conduct its contracting affairs generally in accordance with the state's competitive bidding principles contained in Section 67-5715 et seq., Idaho Code, and consistent with the specific directives contained in Subsection 030.02.a. of this rule. In implementing this policy, the State Lottery reserves the right to use the procedures developed by the department of administration as guidelines to govern its procurement actions. Notwithstanding this reservation, the State Lottery equally reserves the right to use alternate contracting and purchasing practices that take account of market realities and modern or innovative contracting and purchasing methods which are also consistent with the public policy of encouraging competition. Such methods may include, but not be limited to, specialized vendor prequalifications, competitive negotiations, performance incentives and disincentives, life cycle costing and solicitations emphasizing the request for proposal process. (7-1-93)

c. When the State Lottery uses a Request for Proposal (RFP) for a planned acquisition, the major considerations in determining the contract award shall be the quality of the product or service, the likelihood of timely performance, and price. Qualitative factors shall normally address such issues as the Vendor's demonstrated experience in performing comparable projects, performance credibility, availability of qualified personnel and equipment, and such other special factors as may be applicable to a particular contract. The RFP shall normally specify the criteria which will be used in the evaluation of offers and the award of the contract. (7-1-93)

d. Because of the specialized character of State Lottery contracts, the State Lottery will not normally advertise bid proposals. Rather, the State Lottery shall circulate bid and proposal requests for materials, equipment and services to vendors known to specialize in the required procurement or to those the State Lottery may reasonably expect to have an interest in providing such services. The State Lottery will develop such mailing lists as the service need arises. (7-1-93)

e. The Director shall prepare standard terms and conditions to govern the acquisition of materials, supplies and services by the State Lottery. To the extent possible, the standard terms and conditions shall be as uniform as possible with the standard terms and conditions governing contracts entered into by other state agencies. (7-1-93)

f. All major departures from the contracting guidelines referenced in Subsection 030.02.b. of this rule shall be approved by the Commission. In the event of conflict between the referenced guidelines and the State Lottery's adopted rules, the State Lottery rules shall take precedence. (7-1-93)

03. Delegation Of Purchasing Authority. (7-1-93)

a. Authority is granted to the Director to initiate all purchase actions and enter into and execute contracts for materials, supplies and services, on behalf of the Commission and the Idaho State Lottery, except as follows: (7-1-93)

i. General contracts having an estimated one-time or annual cost in excess of fifty thousand dollars (\$50,000); (7-1-93)

ii. Contracts defined as Sensitive Procurements having a one-time or annual cost of more than fifty thousand dollars (\$50,000); (7-1-93)

iii. Contracts defined as Major Procurements; (7-1-93)

iv. All personal service contracts other than major or sensitive procurements having a one-time or annual cost in excess of fifteen thousand (\$15,000); and (7-1-93)

v. Procurement actions which are executed in a manner other than as provided in the contract exemption guidelines. (7-1-93)

b. Notwithstanding the provisions of Subsection 030.03.a.i. of this rule, the Commission, having once approved a planned procurement action involving a general contract acquisition, grants authority to the Director to execute a contract or contracts for the purchase or service without further action by the Commission. (7-1-93)

c. The Commission, having once approved a particular contract, delegates authority to the Director to make all disbursements and payments as provided in the contract, without further, specific approval action by the Commission. (7-1-93)

d. The Commission grants authority to the Director to enter into emergency contracts when immediate and decisive action is required to protect the security, credibility or integrity of the State Lottery or a lottery game. All emergency contracts let by the Director in which the cost exceeds the delegated authority, contained in Subsection 030.03.a. of this rule, shall be reported to the Commission within five (5) days of the contract award date, or at the next scheduled Commission meeting, whichever is sooner. Such procurement actions may be taken without competitive bid. The dollar value of a contract awarded by the Director under the provisions of this section may not exceed fifty thousand dollars (\$50,000). Any emergency contract for a major procurement in which the cost exceeds fifty thousand dollars (\$50,000), if not acted upon at a regularly scheduled Commission meeting, shall be subject to Commission action by telephonic or electronic vote. (7-1-93)

04. State Central Services Agenda. As provided in Section 67-7408, Idaho Code, the State Lottery may contract with other state agencies for the performance of such contracting responsibilities as may be required by the State Lottery. Such services may include, but are not limited to, the acquisition of Fidelity and Faithful Performance Bonds covering the Commissioners, officers, and employees of the State Lottery; bonding of retailers, annuity contracts; general equipment and supplies; equipment financing agreements; and disposal of surplus State Lottery property. The State Lottery will be bound by all statutes and rules governing the actions of the state agency when the State Lottery uses such services. (7-1-93)

05. Idaho Preference. (7-1-93)

a. In all contracts, the State Lottery shall prefer goods or services that have been manufactured or produced in this state if price, fitness, availability and quality are otherwise equal. (7-1-93)

b. Where a State Lottery contract is awarded to a foreign contractor and the contract price exceeds ten thousand dollars (\$10,000), the contractor shall promptly report to the tax commission on forms to be provided by the tax commission the total contract price, terms of payment, length of contract and such other information as the tax commission may require before final payment can be received on the State Lottery contract. The State Lottery shall satisfy itself that the requirement of this subsection has been complied with before it issues a final payment on a State Lottery contract. For the purposes of this subsection, a foreign contractor is one who is not domiciled in or registered to do business in the state of Idaho. (7-1-93)

06. Affirmative Action Contracts. The State Lottery is an equal opportunity employer and shall also participate in all on-going state affirmative action programs. (7-1-93)

07. Personal Services Contract. (7-1-93)

a. Contracts between the State Lottery and persons or firms such as advertising agencies, security

consultants, auditors, other consultants required to conduct or prepare special studies and reports and such other personal services contracts as may be required to fulfill the State Lottery's responsibilities, shall be awarded as outlined in the following subsections. The award of contracts shall be either direct, informal or formal depending upon the sensitivity and estimated dollar value of the contract. In awarding personal services contracts the State Lottery shall consider the firm's qualifications in such areas as demonstrated competency, availability, experience in successfully performing comparable projects, availability of qualified personnel, likelihood of timely performance, history of cost containment, compensation requirements and such other special factors as may be applicable to a particular contract. (7-1-93)

b. Direct Award Procedures. (7-1-93)

i. Any personal services contract having an estimated one-time or annual value of ten thousand dollars (\$10,000) or less may be awarded directly by the Director if the Director believes reasonable steps have been taken to obtain competitive quotes, if feasible, and the award will not negatively affect the security, credibility or integrity of the State Lottery. (7-1-93)

ii. The Director, with the approval of the Commission, may directly award personal services contracts in any appropriate or reasonable amount, without competitive solicitations, when the project consists of work which has been substantially described, planned or otherwise studied in an earlier State Lottery contract and the new contract would be a continuation of the earlier project, provided that the earlier contract was awarded by a formal selection procedure. In awarding contracts under this provision the Commission and Director shall take into account the impact of such action on the security, credibility and integrity of the State Lottery; and further, ensure that such contract awards will not encourage favoritism or substantially diminish competition and will result in substantial cost savings to the State Lottery. (7-1-93)

iii. The Director, with the approval of the Commission, may directly award personal service contracts without competitive solicitation when an emergency or other condition exists which requires prompt and decisive action. The Commission and Director shall exercise the provisions of this subsection only when immediate action is required to correct a situation which would threaten integrity, security, honesty, and fairness in the operation and administration of the State Lottery and the objective of raising net revenues for the benefit of the public purpose described in The Idaho State Lottery Act. (7-1-93)

c. Informal Award Procedure: The Director may award any personal services contract having an estimated one-time annual value of more than ten thousand dollars (\$10,000), but not more than twenty-five thousand dollars (\$25,000), if the following informal award procedure is followed: (7-1-93)

i. An attempt shall be made to obtain a minimum of three (3) competitive quotes. If three (3) quotes are not available, a lesser number will suffice provided a written record is made of the effort to obtain three (3) quotes. (7-1-93)

ii. A written record shall be maintained of the source and amount of quotes received. (7-1-93)

iii. Contract award shall be made to the lowest priced vendor who best meets the contract award criteria entered in Subsection 030.07.a. of this rule. (7-1-93)

iv. The Director shall maintain work papers documenting the basis of award to ensure that the award will not negatively affect the security, credibility and integrity of the State Lottery. (7-1-93)

d. Formal Award Procedures: Unless otherwise awarded under the provisions of Subsections 030.07.b.ii. or 030.07.b.iii. of this rule, all personal services contracts having an estimated one-time or annual cost of more than twenty-five thousand dollars (\$25,000) shall be awarded according to the formal award procedure, as follows: (7-1-93)

i. The State Lottery shall distribute copies of the proposal (usually a Request for Proposal) to State Lottery vendors or to appropriate contractors who have indicated an interest, or are anticipated to have an interest, in providing the required service to the State Lottery. Request for Proposal shall include a response deadline date. All responses received by the State Lottery after the deadline may be rejected. (7-1-93)

ii. The Director shall appoint an evaluation panel consisting of at least four (4) persons, at least two (2) of whom shall be members of the executive staff. The Director of Security will normally be one of the appointees to evaluate the responses for any project involving the security of the State Lottery. (7-1-93)

iii. The evaluation panel shall develop a system to evaluate the vendor responses and shall score each vendor's response. Based upon this evaluation, the evaluation panel shall rank the three best responses and develop an award recommendation. (7-1-93)

iv. The contract shall be awarded to the vendor who best meets the award criteria. (7-1-93)

e. No contract or other agreement for the purpose of providing services to the State Lottery shall be entered into, renewed, or extended with any person, unless the person certifies in writing, under penalty of perjury, that the person is not in violation of any Idaho state tax laws on a form prescribed by the Commission. A copy of the certification form may be obtained from the State Lottery or the tax commission. The original certification shall be retained in the State Lottery's contract file. (7-1-93)

08. Major Procurements. (7-1-93)

a. All bid announcements, invitations, or proposals covering major procurements shall identify that the planned acquisition is classified as a major procurement. (7-1-93)

b. All contracts or procurement actions classified as major procurements shall be subject to the disclosure requirements specified in Section 67-7421, Idaho Code. Commission Subsection 030.01 defines the term "control person" which relates to the disclosure requirements. The State Lottery shall enclose a copy of the disclosure requirements with each bid announcement or proposed request for such procurement. All disclosure filings are subject to the review and approval of the Director of Security. Failure of any State Lottery vendor to properly execute or timely submit the disclosure requirement shall be grounds for rejection of the bid or proposal. (7-1-93)

c. No contract for a major procurement with any State Lottery vendor shall be entered into if any control person of that State Lottery vendor has been convicted of a crime, other than traffic infractions. Background checks shall be made by the Director of Security to rigorously enforce this requirement. (7-1-93)

d. The State Lottery may prequalify State Lottery vendors as having met the disclosure filing requirements for major procurements. Such disclosure prequalifications shall be renewed by July 1 of each year. The prequalifications will satisfy the disclosure requirement of the State Lottery Act, providing a certification is received from the State Lottery vendor, at the time of submitting any subsequent bid, proposal or offer, that no changes have occurred in the vendor's status, or that of its control persons, since the last filing of the complete disclosure statement. (7-1-93)

e. Each State Lottery vendor for a major procurement shall maintain its disclosure filing in a current status during the tenure of the contract. Unless otherwise provided in the contract document, any changes in the status of the vendor, any of its listed control persons or additional control persons, shall be reported to the Director within fourteen (14) days of the known change, and will require written submission of the same disclosure information to the Commission. (7-1-93)

f. Each State Lottery vendor for a major procurement shall post a performance bond with the Commission as provided in Section 67-7427, Idaho Code. The performance bond shall be issued by a surety licensed to do business in this state and shall be for the duration specified in the procurement announcement. (7-1-93)

09. Sensitive Procurements. (7-1-93)

a. All bid announcements, invitations, or Requests for Proposal covering sensitive procurements as defined in Rule Section 030 shall identify that the planned acquisition is a sensitive procurement and shall be subject to the provisions of this rule. (7-1-93)

b. The Director may establish special disclosure requirements governing State Lottery contracts for

sensitive procurements which shall be included in the procurement announcement. Failure of any State Lottery vendor or contractor to properly execute or timely submit the disclosure requirement shall be grounds for rejection of the bid or proposal. All disclosure filings are subject to the review and approval of the Director of Security. (7-1-93)

c. No contract for a major procurement with any State Lottery vendor shall be entered into if any control person of that State Lottery vendor has been convicted of a crime, other than traffic infractions. Background checks shall be made by the Director of Security to rigorously enforce this requirement. (7-1-93)

d. The State Lottery may prequalify State Lottery vendors as having met the disclosure requirements of this rule. The prequalification will satisfy the disclosure filing requirement providing a certification is received from the State Lottery vendor, at the time of submitting any subsequent bid, proposal or offer, that no changes have occurred in the vendor's status or any of its principals since the last filing of the full disclosure statement. (7-1-93)

e. Each State Lottery vendor for a sensitive procurement shall maintain its disclosure filing in a current status during the tenure of the contract. Unless otherwise provided in the contract document, any changes in the vendor's status or any of its principals, shall be reported to the Director within fourteen (14) days of the known change, and will require written submission of the same disclosure information to the Commission. (7-1-93)

f. Each State Lottery contractor for a sensitive procurement may be required to post a performance bond with the State Lottery. The performance bond shall be issued by a surety licensed to do business in this state and be for the amount and duration specified in the procurement announcement. (7-1-93)

10. Advertising And Promotional Contract. Because advertising and promotional contracts involve unique marketing strategies for State Lottery games, the acquisition of such services and purchases may be made directly without using competitive procurement procedures. The prudent person rule shall apply in the award of such contracts or the acquisition of such services. This exemption applies to all advertising and promotional contracts, whether placed through the State Lottery's advertising agency or directly by the Commission or the Director. For the purpose of this rule, advertising and promotional contracts include but are not limited to: agreements with radio and television stations, acquisition of prizes, media selection, placement of advertising contracts, promotional printing, art work and development and placement of all forms of commercials and display presentations. (7-1-93)

11. Investment Contracts. The State Lottery may enter into contracts for the acquisition of structured settlements, place investments or acquire annuities related to the pay-off of major prize winners without following competitive bidding procedures. The State Lottery will follow the prudent person rule in the placement of such investments. (7-1-93)

12. Prequalification Of Annuity Vendors. (7-1-93)

a. For the purpose of acquiring annuities related to the pay-off of major prize winners, the State Lottery maintains an ongoing prequalification list of annuity vendors. A vendor must first be prequalified by the State Lottery before submitting a bid to the State Lottery for the award of an annuity contract. Vendors may submit their qualifications to the State Lottery for evaluation any time in the year. (7-1-93)

b. The following criteria must be met by each vendor before being placed on the prequalification list: (7-1-93)

i. Each bidder must be an insurance company licensed to do business in the State of Idaho and have been in business for a period of two (2) years immediately prior to submitting its bid. (7-1-93)

ii. An insurance company must be a Best's "A+" rated company and must have at least a Best's Class VII financial size classification. (7-1-93)

iii. Each bidder's request for qualification must contain: (7-1-93)

(1) The name, address, telephone number and contact person for the bidder. (7-1-93)

(2) The current financial statement of the bidder certified by an independent Certified Public

Accountant. (7-1-93)

(3) The names, addresses and phone numbers of three current or past annuity client references whom the State Lottery may contact. (7-1-93)

c. After a vendor has been prequalified, the vendor may submit bids to the State Lottery in accordance with the procedures established by the Director. Furthermore, a vendor shall keep its qualifications current by promptly reporting any changes in their status to the State Lottery. (7-1-93)

d. The total amount of annuities awarded to an insurance company shall not exceed five percent (5%) of its stated surplus. (7-1-93)

e. Nothing contained herein shall preclude a brokerage company from representing or submitting a bid on behalf of a qualified bidder. (4-18-89)

031. CRITERIA FOR REVIEW OF RETAILER APPLICATIONS AND CONDUCT OF OPERATIONS.

01. Retailers Application. Any person interested in obtaining a contract for a certificate to sell lottery tickets must first file an application on forms provided by the Director. The forms shall include, but are not limited to, an applicant's personal, financial, and criminal history, and an authorization to investigate the applicant's criminal and credit history. (7-1-93)

02. Fees, Procedure, And Criteria Precluding Issuing Contract. (7-1-93)

a. All certificate applications must be accompanied by a minimum, nonrefundable, fee of twenty-five dollars (\$25). If a certificate is awarded, an additional, nonrefundable, certificate fee of one hundred dollars (\$100) must be paid. (7-1-93)

b. Certified retailers may apply for a certificate modification to allow the sale of additional lottery products. A current retailer may be required to complete an additional application or application supplements. If a current retailer requests that the existing certificate be modified to allow the sale of additional lottery products, no additional application fee will be charged. (7-1-93)

c. The State Lottery may waive the payment of any certificate fee to facilitate an experimental program or a research project. (7-1-93)

03. Provisional Certifications. (7-1-93)

a. The State Lottery may issue a provisional certificate to an applicant for a lottery certificate after receipt of a fully completed certificate application, the authorization of a complete personal background check, completion of a credit check, and completion of a preliminary background check. The provisional certificate shall expire at the time of issuance of the requested certificate or ninety (90) days from the date the provisional certificate was issued, whichever occurs first, unless the provisional certificate is extended by the lottery. (7-1-93)

b. The following criteria shall preclude the Director from entering into a contract with an applicant. No contract shall be made with an applicant: (7-1-93)

i. Who is under eighteen (18) years of age; (7-1-93)

ii. Who will be engaged exclusively in the business of selling tickets; (7-1-93)

iii. Who is an employee of the State Lottery; (7-1-93)

iv. Who is, or is owned or controlled or affiliated with, a supplier of instant tickets or a manufacturer of computer equipment used to operate instant and/or on-line games; (7-1-93)

v. Who is not a resident of this state, or a corporation that is not incorporated in this state or

authorized to do business in this state; (7-1-93)

vi. Who has been found to have violated any rule, regulation, or order of the Commission or the Director; (7-1-93)

vii. When any person, firm, association, or corporation other than the applicant will participate in the management of the affairs of the applicant. (7-1-93)

04. Criteria Which May Be Grounds For Refusal. Before contracting with an applicant, the Director shall consider the factors set out below. In considering these factors, the Director shall seek to determine which applicants will best serve the economical and efficient operation of a statewide lottery through their ticket sales. If the facts in respect of a particular applicant which are relevant to any of these factors lead the Director to determine that contracting with the applicant would not so promote the economical and efficient operation of a statewide lottery consonant with the public interest, or would not serve the public interest, convenience, or trust, the Director may deny the application. (7-1-93)

a. The Director shall consider the financial responsibility and security of the person and the person's business or activity. The Director shall consider the person's credit worthiness and integrity in past financial transactions. In this connection, the State Lottery may conduct an investigation into the credit worthiness of the applicant by utilizing the services of a commercial credit reporting agency. The Director shall also consider the physical security of the applicant's place of business to determine that tickets which are sold to the applicant, and the proceeds from ticket sales, will be kept safe. (7-1-93)

b. The Director shall consider the accessibility to the public of an applicant's place of business or activity. The Director's purpose shall be to contract with applicants who have regular contact with significant numbers of persons at the applicant's place of business. Before contracting with any organization that has restricted membership policies, the Director shall determine whether such restrictions are generally acceptable to the public and whether contracting with such groups or organizations would best serve the interests of the State Lottery. (7-1-93)

c. The Director shall consider the sufficiency of existing retailers to serve the public interest. The Director shall seek to maximize total ticket sales by encouraging retailers with the highest potential volume in a particular area or neighborhood. (7-1-93)

d. The Director shall consider the volume of expected sales by the applicant. In determining the anticipated actual sales volume of the applicant, the Director may rely upon the experience and knowledge of the State Lottery's staff as well as any other available professional expertise. The Director should determine that the volume of an applicant's sales will be such that contracting with the applicant will be economically feasible. (7-1-93)

e. The Director shall consider the types of products, services, or entertainment offered at the applicant's place of business. The Director shall determine whether the aforementioned products, services, or entertainment are generally acceptable to the public and whether they bear adversely upon the general credibility, integrity, and reputation of the State Lottery. (7-1-93)

f. The Director shall consider the experience, character, or general fitness of the applicant. Entering into a contract with the applicant must be consistent with the public interest, convenience, and trust. (7-1-93)

g. The Director shall consider the veracity and completeness of the information submitted with the retailer's application. The Director shall consider the criminal history of the applicant and any person whose name is required to be disclosed under Section 67-7412, Idaho Code, of the Idaho State Lottery Act and may refuse to enter into a contract with any applicant when the applicant or such person has been convicted of violating any of the gambling laws of this state, general or local, or has been convicted at any time of any crime other than traffic infraction. (7-1-93)

05. Duplicate Certificate. Upon the loss, mutilation, or destruction of any certificate issued by the lottery, application for a duplicate shall be made. A statement signed by the retailer which details the circumstances under which the certificate was lost, mutilated, or destroyed may be required by the State Lottery. (7-1-93)

06. Reporting Changes In Circumstances Of The Retailer. Every change of business structure of a certificated business, such as from a sole proprietorship to a corporation, and every change in the name of a business must be reported to the lottery prior to the change. Substantial changes in the ownership of a certificated business must also be reported to the lottery prior to the change. A substantial change of ownership is defined as the transfer of ten percent (10%) or more equity in the certificated business from or to another single individual or legal entity. If a change involves the addition or deletion of one or more existing owners or officers, the certificate holder shall submit a certificate application reflecting the change and any other documentation the State Lottery may require. All changes will be reviewed by the lottery to determine if the existing certificate should be continued. (7-1-93)

07. Certificate Not A Vested Right. The possession of a certificate issued by the State Lottery to any person to act as a retailer in any capacity is a privilege personal to that person and is not a legal right. The possession of a certificate issued by the State Lottery to any person to act as a retailer in any capacity does not automatically entitle that person to sell tickets or obtain materials for any particular game. (7-1-93)

08. Suspension Or Revocation Of A Certificate. The State Lottery may suspend or revoke any certificate issued pursuant to these rules for one or more of the following reasons: (7-1-93)

a. Failure to meet or maintain the eligibility criteria for certificate application and issuance established by Chapter 74, Title 67, Idaho Code, or these rules; (7-1-93)

b. Violation of any of the provisions of Chapter 74, Title 67, Idaho Code, these rules, or the certificate terms and conditions; (7-1-93)

c. Failure to file any return or report or to keep records required by the State Lottery; (7-1-93)

d. Failing to maintain an acceptable level of financial responsibility as evidenced by the financial condition of the business, incidents of failure to pay taxes or other debts, or by the giving of financial instruments which are dishonored; (7-1-93)

e. Fraud, deceit, misrepresentation, or other conduct prejudicial to the public confidence in the lottery; (7-1-93)

f. If the public convenience is adequately served by other certificate holders, failing to sell a minimum number of tickets as established by the State Lottery; (7-1-93)

g. A history of thefts or other forms of losses of tickets or revenue from the business; (7-1-93)

h. Violating federal, state, or local law or allowing the violation of any of these laws on premises occupied by or controlled by any person over whom the retailer has substantial control; (7-1-93)

i. Obtaining a certificate by fraud, misrepresentation, concealment or through inadvertence or mistake; (7-1-93)

j. Making a misrepresentation of fact to the Commission or State Lottery on any report, record, application form, or questionnaire required to be submitted to the Commission or State Lottery; (7-1-93)

k. Denying the State Lottery or its authorized representative, including authorized local law enforcement agencies, access to any place where a certificate activity is conducted; (7-1-93)

l. Failing to promptly produce for inspection or audit any book, record, document, or other item required to be produced by law, these rules, or the terms of the certificate; (7-1-93)

m. Systemically pursuing economic gain in an occupational manner or context which is in violation of the criminal or civil public policy of this state if such pursuit creates cause to believe that the participation of such person in these activities is inimical to the proper operation of the authorized State Lottery; (7-1-93)

n. Failing to follow the instructions of the State Lottery for the conduct of any particular game or

special event; (7-1-93)

o. Failing to follow security procedures of the State Lottery for the management of personnel, handling of tickets, or for the conduct of any particular game or special event; (7-1-93)

p. Making a misrepresentation of fact to a purchaser, or prospective purchaser, of a ticket, or to the general public with respect to the conduct of a particular game or special event; (7-1-93)

q. Allowing activities on the licensed premises which could compromise the dignity of the state. (7-1-93)

09. Surrender Of Certificate Upon Revocation. Upon revocation or suspension of a retailer's certificate, the retailer shall surrender to the lottery, by a date designated by the lottery, the certificate and all other lottery property. (7-1-93)

10. Certified Retailers. All lottery retailers shall be certified in the manner provided in these rules. Retailers shall abide by all applicable laws and administrative rules, the terms and conditions of the contract and certificate, and all other directives and instructions issued by the State Lottery. (7-1-93)

11. Requirements For The Sale Of Tickets. (7-1-93)

a. Retailers shall be knowledgeable about the State Lottery and lottery products and may be required to take training in the operation of lottery games. Retailers shall make the purchase of tickets convenient to the public. (7-1-93)

b. Tickets shall be sold at the price designated by the State Lottery. Retailers shall not sell tickets for a greater amount than the amount specified by the State Lottery. Retailers may sell tickets for a lesser amount for promotional purposes if authorized by the State Lottery. (7-1-93)

c. No retailer or any employee or member of a retailer shall attempt to identify a winning ticket prior to the sale of the ticket. (7-1-93)

d. Retailers shall pay all prizes which the State Lottery requires retailers to pay during normal business hours at the location designated on the certificate. (7-1-93)

e. Retailers shall not purchase tickets previously sold by the retailer. (7-1-93)

12. Display Of Certificate And Other Materials. Retailers shall display the lottery certificate in an area visible to the general public wherever tickets are being sold. Retailers shall also display point-of-sale material provided by the State Lottery in a manner which is readily seen by and available to the public. Retailers may advertise and use or display other appropriate promotional and point-of-sale material. The State Lottery may require the removal of objectionable material or the discontinuance of objectionable advertising which may have an adverse impact on the State Lottery. (7-1-93)

13. Ticket Stamping. On the back of each scratch ticket sold by a retailer, the retailer shall stamp the retailer's name, address, and retailer number in the area provided for retailer identification using the equipment provided by the State Lottery. (7-1-93)

14. Dishonored Checks And Electronic Fund Transfers. Any payment made to the State Lottery by an applicant for a certificate or by a certificated retailer either by a check which is dishonored or by an electronic funds transfer (EFT) which is not paid by the depository, shall be grounds for immediate denial of the application for a certificate or for the suspension or revocation of an existing certificate. The State Lottery may assess a surcharge of ten dollars (\$10) for each dishonored check or EFT. The State Lottery may also alter the payment terms of a retailer's certificate and require a retailer to reimburse the State Lottery for costs which occur as a result of a dishonored check or EFT. (7-1-93)

15. Retailer Identification Card. The State Lottery may issue to each retailer an identification card

which must be presented by its authorized representative when taking delivery of tickets. In the event that the identification card is lost or otherwise misplaced or mutilated, the retailer must immediately notify the State Lottery. (7-1-93)

16. Inspection Of Lottery Materials And Retailer Premises. Retailers shall allow the State Lottery to enter upon the certificated premises in order to inspect lottery materials, tickets, and the premises. All books and records pertaining to the retailer's lottery activities shall be available to the State Lottery for inspection and copying during the normal business hours of the retailer and between 8 a.m. and 5 p.m., Monday through Friday. All books and records pertaining to the retailer's lottery activities are subject to seizure by the State Lottery without prior notice. (4-18-89)

032. GENERAL INSTANT TICKET GAME OPERATING RULES.

01. Instant Games-Authorized-Director's Authority. (7-1-93)

a. The Commission hereby authorizes instant games which meet the criteria set forth in these rules. (7-1-93)

b. The Director is hereby authorized to select, operate, and contract relating to and for the operation of instant games which meet the criteria set forth in these rules. (7-1-93)

02. Definitions. (7-1-93)

a. "Director" means the Director of the Idaho Lottery or any other person to whom the Director's authority is lawfully delegated. (7-1-93)

b. "Ticket" means an Idaho instant game ticket. (7-1-93)

c. "Play Symbols" are the figures printed in approved ink which appear under each of the rub-off spots on the front of the ticket. (7-1-93)

d. "Ticket Validation Number" is the unique number on the front of the ticket. (7-1-93)

e. "Play Symbol Caption" is the small printed material appearing below each play symbol which repeats or explains the play symbol. One and only one of these play symbol captions appears under each play symbol. (7-1-93)

f. "Retailer Validation Code" means the small letters found under the removable rub-off covering over the play symbols on the front of the ticket, which the ticket retailer uses to verify winners of twenty-five dollars (\$25) or less. The letters appear in varying locations beneath the removable rub-off covering and among the play symbols. (7-1-93)

g. "Book" means a pack of fanfolded instant game tickets which are attached to each other by perforations, which perforations the retailer tears when he/she sells a ticket, and which fanfolded tickets are packed in plastic shrink-wrapping. (7-1-93)

h. "Book-Ticket Number" is the number printed on the ticket. A game identification number shall be included in the book-ticket number. (7-1-93)

i. "Instant Ticket Validation Bar Code" means the bar code that enables retailers to validate instant tickets. (7-1-93)

j. "Boomerang & GVT" means the devices that read the validation bar code. (7-1-93)

k. "ITA System" means the Instant Ticket Automation system that validates winning instant tickets. (7-1-93)

03. Sale Of Tickets. (7-1-93)

a. No person other than a retailer under a contract for the sale of tickets with the State Lottery may sell lottery tickets except that nothing in this section shall be construed to prevent a person who may lawfully purchase tickets from making a gift of lottery tickets to another. (7-1-93)

b. Unless authorized by the State Lottery, tickets may not be sold at a location other than the address listed on the Retailer's contract with the State Lottery. (7-1-93)

c. Nothing in this section shall be construed to prohibit the Commission from designating certain of its agents and employees to sell lottery tickets directly to the public. (7-1-93)

04. Retailer Compensation. (7-1-93)

a. The compensation paid to Lottery retailers shall be five percent (5%) of the retail price of the tickets or shares. (7-1-93)

b. Instant ticket retailers may be paid a commission of up to one percent (1%) of the tickets sold by the retailer by the director as a bonus to the retailer. The Director may pay lottery game retailers and additional one percent (1%) incentive bonus based on attainment of sales volume or other objectives specified by the Director for each lottery game. (7-1-93)

05. Instant Games Ticket Price. The price of an instant game ticket shall be authorized by the Director. No person may sell a ticket at a price other than that established in accordance with these rules. (7-1-93)

06. Prize Structures. The Director shall provide to all lottery game retailers a detailed tabulation of the estimated number of prizes of each particular prize denomination that are expected to be awarded in each lottery game and the close approximation of the odds of winning such prizes. (7-1-93)

07. Number And Value Of Instant Ticket Prizes. Lottery game prize structures, odds of winning, number of tickets, number and value of prizes, play symbol and captions used for validation will not be adopted by administrative rules. Rather, the director shall submit proposed games to the Commission, who shall approve each game's general format prior to the initiation of each game. All instant games shall be conducted in accordance with the rules of the Commission. (7-1-93)

08. Official Start Of Game. (7-1-93)

a. Games with a prize structure adopted by the Commission under the above rule may be started at a time selected by the Director. The Director shall publicly announce the starting date of a new game by use of a press release or any other appropriate means. The Director shall also issue game information which includes a description of the game, odds of winning a prize, the number and value of prizes, and the play symbols and captions used for prize validation. (7-1-93)

b. Games using a prize structure other than a prize structure previously approved by the Commission must be approved by the Commission before game tickets can be sold to the public. (7-1-93)

09. Determination Of Winners. (7-1-93)

a. Winners of an instant game are determined by the matching or specified alignment of the play symbols on the tickets. The play symbols are revealed by scratching or rubbing off the latex or similar secure material covered spots on the ticket. The ticket bearer must notify the State Lottery of the win and submit the winning ticket to the State Lottery as specified in these rules. The winning ticket must be validated by the State Lottery through use of the validation number or by any other means as specified by the Director. (7-1-93)

b. Unless otherwise provided by game rules, only the highest instant prize amount will be paid on a given ticket. (7-1-93)

c. No portion of the play symbol captions, retailer validation codes, display printing nor any extraneous matter whatever shall be usable or playable as a part of the instant game. (7-1-93)

d. The ticket validation number or any portion thereof is not a play spot and is not usable or playable as such. (7-1-93)

e. In all events, the determination of prize winners shall be subject to the general ticket validation requirements set forth in Subsections 028.15 et seq., 032.11 of these rules set out below, and the requirements set out on the back of each instant game ticket. (7-1-93)

f. The length of operation of an instant game shall be determined by the Director. The start date and closing date of the instant game shall be publicly announced. (7-1-93)

10. Payment Of Prizes. The procedures for claiming instant ticket prizes are as follows: (7-1-93)

a. Instant ticket prizes of six hundred dollars (\$600) or less shall be claimed by one (1) of the following methods: (7-1-93)

i. By presenting the winning ticket to any Lottery retailer. The retailer shall verify the claim and, if acceptable, make payment of the amount due the claimant. In the event the retailer cannot verify the claim, the claimant shall fill out a claim form, which the retailer shall provide, and present the completed form together with the disputed ticket to the Director. If the claim is validated by the Director, a check shall be forwarded to the claimant in payment of the amount due. In the event that the claim is not validated by the Director, the claim shall be denied and the claimant shall be promptly notified. (7-1-93)

ii. A retailer may pay prizes in cash or by business check, or money order, or any combination thereof. A retailer that pays a prize with a check which is dishonored may be subject to suspension or termination of the retailer's contract. (7-1-93)

iii. By bringing the ticket to the Boise lottery office or by completing a claim form and mailing it with the ticket to the Idaho State Lottery, P.O. Box 6537, Boise, Idaho 83707-6537 (registered mail recommended). Claim forms may be obtained from any lottery game retailer or from the Lottery at the following address: 1199 Shoreline Lane, Suite 100, Boise, Idaho 83702. (7-1-93)

b. To claim an instant prize of six hundred dollars (\$600) or more, the claimant must either bring the winning ticket to the Boise lottery office or complete a claim form and mail the completed form together with the winning ticket to the Idaho State Lottery, P.O. Box 6537, Boise, Idaho 83707-6537 (registered mail recommended) (7-1-93)

c. Prizes of six hundred dollars (\$600) or more can be paid only from the Boise lottery office. Upon validation by the Director, a check shall be forwarded to the claimant in payment of the amount due, less any applicable federal income tax withholding. (7-1-93)

d. Any ticket not passing all the validation checks is void and ineligible for any prize and shall not be paid. However, the Director may, solely at the Director's option, replace an invalid ticket with an unplayed ticket (or ticket of equivalent sales price from any other current game). In the event a defective ticket is purchased, the only responsibility or liability of the State Lottery shall be the replacement of the defective ticket with another unplayed ticket (or ticket of equivalent sale price from any other current game). (7-1-93)

e. All prizes shall be paid within a reasonable time after they are awarded and after the claims are verified by the Director. For each prize requiring annual payments, all payments after the first payment shall be made on the anniversary date of the first payment in accordance with the type of prize awarded. The Director may, at any time, delay any payment in order to review a change of circumstances relative to the prize awarded, the payee, the claim, or any other matter that may have come to his or her attention. All delayed payments will be brought up to date immediately upon the Director's confirmation and continue to be paid on each original anniversary date thereafter. (7-1-93)

11. Ticket Validation Requirements. Besides meeting all of the other requirements in these Rules or as may be printed on the back of each instant game ticket, the following validation requirements will apply with regard to instant game tickets: (7-1-93)

- a.** To be a valid instant game ticket, all of the following requirements must be met: (7-1-93)
 - i.** The ticket must have been issued by the Director in an authorized manner. (7-1-93)
 - ii.** The ticket must not be altered, unreadable, or tampered with in any manner. (7-1-93)
 - iii.** The ticket must not be counterfeit in whole or in part. (7-1-93)
 - iv.** The ticket must not be stolen nor appear on any list of omitted tickets on file with the State Lottery. (7-1-93)
 - v.** The ticket must be complete and not blank or partially blank, miscut, misregistered, defective, or printed or produced in error. (7-1-93)
 - vi.** Under the opaque covered play area, the ticket must have play symbols and the correct corresponding captions, exactly one pack-ticket number, exactly one agent verification code, and exactly one (1) validation number as required by each approved set of game rules. They must be present in their entirety, legible, right-side up, and not reversed in any manner. (7-1-93)
 - vii.** The validation number of an apparent winning ticket shall appear on the State Lottery's official list of validation numbers of winning tickets; and a ticket with that validation number shall not have been previously paid. (7-1-93)
 - viii.** The ticket must pass all additional confidential validation requirements established by the Director. (7-1-93)
- b.** Any ticket not passing all the validation checks in this part is void and ineligible for any prize and shall not be paid. However, the Director may, solely at the Director's option, replace an invalid ticket with an unplayed ticket (or tickets of equivalent sales price) from any other current Lottery game. In the event a defective ticket is purchased, the only responsibility or liability of the Lottery shall be the replacement of the defective ticket with another unplayed ticket (or ticket of equivalent sales price from any other current Lottery game). (7-1-93)
- c.** The Director may authorize reconstruction of an alleged winning ticket which was not received and/or cannot be located by the State Lottery. Provided, the person requesting reconstruction submits to the State Lottery sufficient evidence to enable reconstruction and that they have submitted a claim for the prize, if any, for that ticket. If the reconstructed ticket is a winning ticket and meets the validation requirements contained in Subsection 032.11.a. of this section and specific validation requirements contained in the rules for its specific game, the Director may authorize payment of the prize. Provided, the ticket shall not be validated nor the prize paid prior to the one hundred eighty-first (181) day following the official end of that instant game. A ticket(s) validated pursuant to this subsection shall not entitle the claimant entry into the grand prize drawing, if any, for that or any subsequent instant game. (7-1-93)

12. Prize Rights Unassignable. No right of any person to a prize drawn shall be assignable, except that payment of any prize drawn may be paid to the estate of a deceased prize winner, and except that any person pursuant to an appropriate judicial order may be paid the prize to which the winner is entitled. The Director shall be discharged of all liability upon payment of a prize pursuant to this rule. (7-1-93)

13. Payment Of Prizes To Persons Under Eighteen Years Of Age. In the event a person entitled to a prize for any winning ticket is under the age of eighteen (18) years, the Director may direct payment of the prize by delivery, to an adult member of the minor's family or a guardian of the minor, of a check or draft payable to the adult member of the minor's family or the minor's guardian. The person so named as custodian shall have the same duties and powers as a person designated as a custodian in accordance with Idaho law and, for purposes of this section, the

term “adult member of a minor’s family” and “guardian of a minor” shall have the same meaning as in the Idaho Gifts to Minors Law. The Director shall be discharged of all liability upon payment of a prize to a minor pursuant to this rule. (7-1-93)

14. Prizes Payable After Death Or Disability Of Owner. (7-1-93)

a. All prizes or a portion thereof which remain unpaid at the time of the prize winner’s death shall be payable to the duly qualified Personal Representative of his/her estate, once the Director is satisfied that such payment is lawful and proper. The Director may rely wholly on the presentment of certified copies of a court’s appointment of a Personal Representative or any other evidence of a person entitled to the payment of any prize winnings when due. (7-1-93)

b. The payment to the estate of the deceased owner of any prize winnings by the State Lottery shall absolve the State Lottery and its representatives of any further liability for payment of said prize winnings. The State Lottery need not look to the payment of the prize winnings beyond the payee thereof. The Director reserves the right to petition any court of competent jurisdiction to request a determination for the payments of any prize winnings which are or may become due the estate of a deceased owner or an owner under a disability because of, but not limited to, under age, mental deficiency, physical or mental incapacity. If the legatee(s) or heir(s) of a deceased owner entitled to prize winnings obtains an order from a court of competent jurisdiction directing payments due and to become due from the State Lottery to be paid directly to said legatee(s) or heir(s) or otherwise directing the State Lottery to make payments to another in the event of an owner’s disability or otherwise, the State Lottery shall pay the prize winnings accordingly. (7-1-93)

15. Governing Law. In purchasing a ticket, the customer agrees to comply with, and abide by, the Idaho law, and all rules and regulations and final decisions of the State Lottery, and all procedures and instructions established by the State Lottery or the Director for the conduct of the game. (7-1-93)

16. Discharge Of All Liability Upon Payment. The State of Idaho, its agents, officers, employees, and representatives, the State Lottery, its Director, agents, officers, employees and representatives, shall be discharged of all liability upon payment of a prize or any one (1) installment thereof to the holder of any winning lottery ticket or in accordance with the information set forth on the claim form supplied by the Director. If there is a conflict between the information on a winning lottery ticket and the information on the claim form, the State Lottery may rely on the claim form after the ticket for which it has been filed has been validated as a winning ticket and, in so doing, it will be relieved of all responsibility and liability in the payment of a prize in accordance with the information set forth therein. The State Lottery’s decisions and judgments in respect to the determination of a winning ticket or of any other dispute arising from payment or awarding of prizes shall be final and binding upon all participants in the State Lottery unless otherwise provided by law or these rules. In the event a question arises relative to the winning ticket, a claim form, the payment, or the awarding of any prize, the State Lottery may deposit the prize winnings into an escrow fund until it determines the controversy and reaches a decision, or it may petition a court of competent jurisdiction for instructions and a resolution of the controversy. (7-1-93)

17. Unclaimed Prize Money. Any prize not claimed within the specified period shall be forfeited and thereafter placed into the State Lottery Account. (7-1-93)

18. Disclosure. The State Lottery may use the names, addresses, and photographs of winners in any State Lottery promotional campaign. The address used shall not contain the street or house number of the winner without the winner’s consent. (7-1-93)

19. Confidentiality Of Tickets. No retailer or its employees or agents shall attempt to ascertain the numbers or symbols appearing in the designated areas under the removable latex or similar secure coverings or otherwise attempt to identify winning tickets. (7-1-93)

20. Official End Of Game. (7-1-93)

a. The official end of an instant game shall be announced by the state lottery. Prizes may be claimed up to one hundred eighty (180) days after the official end of the game. In the event the final day of the claim period falls on a weekend or an official state holiday, the claim period will be extended to the end of the next business day. A

player may submit a winning ticket claim for prize payment up to one hundred eighty (180) days after the official end of the game. Depending on the prize amount, the ticket should be submitted to the location specified in Rule Subsection 032.10, "Payment of Prizes." To participate in one of the State Lottery's special drawings, if any, a player must redeem a ticket which qualifies for entry into that special drawing within the time limits specified by the Director. (7-1-93)

b. A retailer must return to the State Lottery unsold lottery tickets for each game within ninety (90) days of the official end of that game in order to receive credit from the State Lottery as provided for in retailer's contract. The State Lottery has no obligation to grant credit for tickets returned after the time limit specified by the Director. (4-18-89)

033. RULES FOR STATE LOTTERY'S TELEVISION GAME SHOW.

01. Purpose. The rules contained herein set forth the general guidelines for the conduct of a State Lottery television game show. These rules are being adopted by the Commission for prospective application. (7-1-93)

02. Player Entry. (7-1-93)

a. A player who purchases and claims an instant ticket with the correct and approved number of symbols for eligibility to the television game show on it, each with the correct caption below it, automatically becomes eligible for entry to the television game show. (7-1-93)

b. The player shall follow the directions for submitting the winning ticket to the State Lottery contained on the back of the ticket, including providing all identification materials required. (7-1-93)

c. A winning television game show ticket can only be redeemed at the Boise lottery office, either in person or by mail (registered mail recommended). (7-1-93)

d. Upon validation of a winning ticket, the player shall receive any prize provided by the particular game rules. Arrangements for participation in the television game show may be made by the State Lottery staff. (7-1-93)

e. After a player has claimed his or her prize, a State Lottery representative will contact the player to schedule the player's appearance on the game show. The Director will determine the total number of players per show and on which game show a player will appear. (7-1-93)

f. From the total number of players scheduled to appear on a show, a number of contestants will be selected at random to participate in the television game. The remaining players will make up the game show audience. (7-1-93)

03. Appointment Of A Proxy. (7-1-93)

a. Upon approval of the Director, a player may select a proxy to appear on the player's behalf at the game show. (7-1-93)

b. If a player is unable or fails to show at the scheduled date and time for appearance on the game show, the Director reserves the right to appoint a proxy to appear on the show on behalf of the player. (7-1-93)

c. If a player appears at the location for the game show under the influence of intoxicants, or is a player the Director deems inappropriate, the Director reserves the right to appoint a proxy to appear on the show on behalf of the player. (7-1-93)

d. A proxy shall not be entitled to any prizes won by the proxy on behalf of a player. (7-1-93)

04. Description Of Game. The television game show format will be determined by the Director and

approved by the Commission and is played through the use of an approved game mechanism. (7-1-93)

05. Playing Rules. (7-1-93)

a. The television game show rules will be determined by the Director. In general, the game is played by five (5) contestants for a certain number of play rounds. The first round starts with the first contestant drawn from the audience; the second round starts with the second player drawn; and so forth. (7-1-93)

b. During each play round, each of the contestants has an opportunity to play the game. Each contestant plays a game round within a period of time determined by the Director. (7-1-93)

c. After the completion of all play rounds, the contestant with the most money in his/her bank earns the right to play for the grand prize. If two (2) or more contestants end with the same amount of money as the most money won after all play rounds, these contestants play a tie breaker round. (7-1-93)

06. Grand Prize Round. (7-1-93)

a. The contestant who has accumulated the most money shall be given the opportunity to win an additional amount of prize money. The Director shall determine the actual game show mechanism to be used to provide the contestant the opportunity to win the grand prize. (7-1-93)

b. Regardless of the choices and the outcome of those choices made during the grand prize round, the contestant shall receive the money accumulated in his/her bank prior to the grand prize round. (7-1-93)

07. Audience Participation. (7-1-93)

a. The players in the audience shall divide equally an amount that is identical to the total of all the money in the contestants' banks. Any money won in the grand prize round is not added to the contestants' banks for the purpose of calculating the audience prizes. Notwithstanding the total value of the money in the contestants' banks, each player in the audience is guaranteed to receive a prize. Any cash prize amount awarded to players in the audience shall be rounded up to the nearest five dollars (\$5). (7-1-93)

b. Each of the game contestants is guaranteed to win at least the same amount of money as each member of the player audience. (7-1-93)

08. Prize Reserve. Funding for the television game show prizes will come from a prize reserve established for this purpose. The following moneys shall be credited to this reserve: (7-1-93)

a. One percent (1%) of instant ticket sales; (7-1-93)

b. The prize share of interest income and other nonticket distributable income; (7-1-93)

c. Three percent (3%) of Lotto sales up to a weekly amount of fifty thousand dollars (\$50,000). (7-1-93)

09. Television Game Show Home Play. To be eligible for entry into the State Lottery's "Home Play" drawing an entrant must: (7-1-93)

a. Be eligible to win a prize pursuant to the statutes and rules governing the operation of the Idaho State Lottery. (7-1-93)

b. Collect five (5) valid non-winning instant game tickets. A valid non-winning ticket is a ticket which meets all the requirements of these rules but which does not otherwise qualify for any other prize established by the State Lottery's administrative rules. (7-1-93)

c. Complete the back of at least one (1) of the five (5) ticket with the entrant's name, address, and telephone number. An entry containing more than one (1) name shall be disqualified. (7-1-93)

- d.** Place the five (5) tickets in a plain white envelope no larger than four and one-eighth by nine and one-half inches (4-1/8" x 9-1/2"). An envelope which contains extraneous material, or which has had the exterior altered for the apparent sole purpose of making the envelope more prominent, shall be disqualified. (7-1-93)
- e.** Mail the envelope with proper postage to the P.O. Box designated by the Director. (7-1-93)
- f.** There is no limit to the number of entries a person may submit, but each entry must be submitted in a separate envelope and both the entry and the entrant of each must meet the qualifications set forth above. (7-1-93)
- g.** Entries must be received by 5:00 p.m. on the day before the preliminary drawing to be eligible to participate in that week's drawing. The Director shall establish the date of the preliminary drawing. Entries received after the deadline shall be entitled to participation in the next home play drawing. The Director reserves the right to place an entry which was entitled to, but which was not entered into a drawing, into a subsequent preliminary drawing. (7-1-93)
- h.** A non-conforming entry or an entry which contains one (1) or more stolen tickets shall be disqualified by the Director. (7-1-93)
- i.** The State Lottery shall not be responsible for any other material, including winning tickets, mailed or delivered to the home play drawing. All mail becomes the property of the Idaho State Lottery and shall not be returned. All entries not drawn shall be destroyed without being opened on the day of the preliminary drawing. (7-1-93)
- j.** The Director shall establish and approve the procedures for the selection of entrants into the weekly drawing. The drawing shall be open to the public and be witnessed by an independent certified public accountant. (7-1-93)
- k.** The Director shall determine the number of entries drawn each week who shall become home play contestants. Each Home Play contestant shall be matched with an on-air contestant. (7-1-93)
- l.** The Director shall determine the number of entries drawn each week who shall become players on a future Money Game television show. (7-1-93)
- m.** The odds of being drawn as a home play contestant or future Television Game Show player are dependent on the number of entries received by the State Lottery each week. (7-1-93)
- n.** Notwithstanding the requirements of this rule, the Director reserves the right to waive minor informalities. The determination of what constitutes an informality shall reside solely with the Director. (7-1-93)

034. ON-LINE COMPUTER GAMES.

01. On-Line Games-Authorized-Director's Authority. The Commission hereby authorizes the Director to select and operate on-line games which meet the criteria set forth in these rules. (7-1-93)

02. Definitions. (7-1-93)

a. "On-line Game." A lottery game in which a player selects a combination of numbers or symbols, the type of game and amount of play, and the drawing date(s) by use of a computer. In return for paying the appropriate fee, the player receives a computer-generated ticket with the player's selection printed on it. The State Lottery or its designee will conduct a drawing to determine the winning combination in accordance with the rules of the specific game being played. Each ticket bearer whose valid ticket includes a winning combination shall be entitled to a prize if claim is submitted within the specified time period. (7-1-93)

b. "On-line Retailer." A person or business authorized by the State Lottery to sell on-line tickets. (7-1-93)

c. “On-line Terminal (OLT).” The computer hardware by which an on-line retailer or player enters the combination selected by the player and by which on-line tickets are generated and claims are validated. (7-1-93)

d. “On-line Ticket.” A computer-generated ticket issued by an on-line terminal to a player as a receipt for the combination a player has selected. That ticket shall be the only acceptable evidence of the combination of numbers or symbols selected. (7-1-93)

e. “Drawing.” The procedure determined by the Director by which the State Lottery selects the winning combination in accordance with the rules of the game. Drawings are open to the public, and are required to be witnessed by an independent certified public accountant. Furthermore, the equipment used in any drawing must be inspected by the independent certified public accountant and the Director of Security or his designee both before and after the drawing. All drawings and inspections are required to be recorded on both video and audio tape. (7-1-93)

f. “Winning Combination.” One or more numbers or symbols randomly selected by the State Lottery or it’s designee in a public drawing. (7-1-93)

g. “Validation.” The process of determining whether an on-line ticket presented for payment is a winning ticket. (7-1-93)

h. “Ticket Bearer.” The person who has signed the on-line ticket or who has possession of an unsigned ticket. (7-1-93)

03. Distribution Of Tickets. (7-1-93)

a. Tickets will be sold by retailers selected by the Director. (7-1-93)

b. The Director is authorized to arrange for the distribution of OLTs, PATs, ticket stock, and supplies to certificated retailers. (7-1-93)

04. Sale Of Tickets. (7-1-93)

a. No person other than a retailer under a contract for the sale of tickets with the State Lottery may sell on-line lottery tickets except that nothing in this section shall be construed to prevent a person who may lawfully purchase tickets from making a gift of lottery tickets to another. (7-1-93)

b. Tickets may not be sold at a location other than the address listed on the Retailer’s contract with the State Lottery. (7-1-93)

c. Nothing in this section shall be construed to prohibit the Director from designating certain of its agents and employees to sell lottery tickets directly to the public. (7-1-93)

05. On-Line Games Criteria. (7-1-93)

a. The base price of an on-line ticket shall not be less than fifty cents (\$.50), except to the extent of discounts authorized by the Commission. (7-1-93)

b. The price for a ticket in any particular on-line game will be set out in the game rules adopted by the Commission for that game. No person may sell a ticket at a price other than that established in accordance with these rules. On the average, the total of all prizes available to be won in an on-line game shall not be less than forty-five percent (45%) of the on-line game’s projected revenue. (7-1-93)

c. The manner and frequency of drawings may vary with the type of on-line game. (7-1-93)

d. The times, locations, and drawing procedures shall be determined by the Director. (7-1-93)

e. A ticket bearer entitled to a prize shall submit the winning ticket as specified by the Director. The winning ticket must be validated by the State Lottery or an on-line retailer through use of the validation number and

any other means as specified by the Director. (7-1-93)

06. Payment Of Prizes. (7-1-93)

a. To claim an on-line game prize of less than six hundred dollars (\$600) the claimant may present the winning on-line ticket to any on-line retailer, or to the Boise lottery office: (7-1-93)

i. If the claim is presented to an on-line retailer, the on-line retailer shall validate the claim and, if determined to be a winning ticket, make payment of the amount due the claimant. If the on-line retailer cannot validate the claim, the claimant may obtain and complete a claim form and submit it with the disputed ticket to the State Lottery by mail or in person. Upon determination that the ticket is a winning ticket, the State Lottery shall present or mail a check to the claimant in payment of the amount due. If the ticket is determined to be a non winning ticket, the claim shall be denied and the claimant shall be promptly notified. Non winning tickets will not be returned to the claimant. (7-1-93)

ii. If the claim is presented to the Boise lottery office, the claimant may be required to complete a claim form regardless of the prize amount and submit it with the winning ticket, either by mail or in person. Upon determination that the ticket is a winning ticket, the State Lottery shall present or mail a check to the claimant in payment of the amount due, less any withholding required by the Internal Revenue Code. If the ticket is determined to be a non winning ticket, the claim shall be denied and the claimant shall be promptly notified. Non winning tickets will not be returned to the claimant. (7-1-93)

b. To claim an on-line prize of six hundred dollars (\$600) or more, the claimant shall obtain and complete a claim form and submit it with the winning ticket to the Boise lottery office in Boise by mail or in person. Prizes of six hundred dollars (\$600) or more can only be paid from the Boise lottery office. Upon determination that the ticket is a winning ticket, the State Lottery shall present or mail a check to the claimant in payment of the amount due, less any withholding required by the Internal Revenue Code. The amount due shall be calculated according to the rules adopted for the particular on-line game. If the ticket is determined to be a non-winning ticket, the claim shall be denied and the claimant shall be promptly notified. Non winning tickets will not be returned to the claimant. (7-1-93)

c. All prizes must be claimed within one hundred eighty (180) days from the drawing in which the prize was won. In the event the final day of the one hundred eighty (180) day period falls on a Sunday or a state holiday, the claim period will be extended to the end of the next business day. Any prize not claimed within the specified period shall be forfeited and thereafter placed into the State Lottery account. (7-1-93)

07. Drawings And End Of Sales Prior To Drawings. (7-1-93)

a. Drawings shall be conducted in a location and at days and times designated by the Director. (7-1-93)

b. For each type of on-line game, the Director shall establish a time prior to the drawing for the end of sales. (7-1-93)

c. The Director shall designate a Drawing Manager who shall oversee each drawing. The Drawing Manager shall attest whether the drawing was conducted in accordance with proper drawing procedures at the end of each drawing. (7-1-93)

d. The Director shall designate the type of equipment to be used and shall establish procedures to randomly select the winning combination for each type of on-line game. Drawing procedures shall include provisions for the substitution of backup drawing equipment in the event the primary drawing equipment malfunctions or fails for any reason. (7-1-93)

e. The equipment used to determine the winning combination shall not be electronically or otherwise connected to the central computer or to any tapes, discs, files, etc., generated or produced by the central computer. The equipment shall be tested prior to and after each drawing to assure proper operation and lack of tampering or fraud. Drawings shall not be held until all preinspection checks are completed. No prizes shall be paid until after all

post-inspection checks have been completed. (7-1-93)

f. All drawings shall be broadcast live on television provided the facilities for such broadcasts are available and operational and can be done at a reasonable cost. (7-1-93)

g. The Director shall establish procedures governing the conduct of drawings for each type of on-line game. The procedures shall include provisions for deviations which include but are not limited to: (7-1-93)

i. Malfunction of the drawing equipment before determination of the winning combination; (7-1-93)

ii. Video and/or audio malfunctions during the drawing; (7-1-93)

iii. Fouled drawing; (7-1-93)

iv. Delayed drawing; and (7-1-93)

v. Other equipment, facility and/or personnel difficulties. (7-1-93)

h. In the event a deviation occurs, the drawing will be completed under the supervision of the State Lottery or it's designee. The drawing shall be videotaped for later broadcast, if broadcast time is available. The winning combination will be provided to the television network for dissemination to the public. (7-1-93)

i. If, during any live-broadcasted drawing for a game, a mechanical failure or operator error causes an interruption in the selection of all numbers or symbols, a "foul" shall be called by the State Lottery Drawing Manager or the State Lottery's designee. Any number drawn prior to a "foul" being called will stand and be deemed official after passing inspection and certification by the Drawing Manager or the State Lottery's designee. (7-1-93)

j. The Director shall delay payment of all prizes if any evidence exists or there are grounds for suspicion that tampering or fraud has occurred. Payment shall be made after an investigation is completed and the drawing approved by the Drawing Manager or the State Lottery's designee. If the drawing is not approved, it shall be void and another drawing will be conducted to determine the actual winner. (7-1-93)

08. Validation Requirements. (7-1-93)

a. To be a valid winning on-line ticket, all of the following conditions must be met: (7-1-93)

i. All printing on the ticket shall be present in its entirety, be legible, and correspond, using the computer validation file, to the combination and the date printed on the ticket. (7-1-93)

ii. The ticket shall be intact. (7-1-93)

iii. The ticket shall not be mutilated, altered, or tampered with in any manner. (7-1-93)

iv. The ticket shall not be counterfeit or an exact duplicate of another winning ticket. (7-1-93)

v. The ticket must have been issued by an authorized on-line retailer or dispensed by a player-activated terminal in an authorized manner. (7-1-93)

vi. The ticket must not have been stolen or cancelled. (7-1-93)

vii. The ticket must not have been previously paid. (7-1-93)

viii. The ticket shall pass all other confidential security checks of the State Lottery. (7-1-93)

b. Any ticket failing any of the validation requirements listed above is invalid and ineligible for a prize. The final decision on whether a prize is paid will be made by the Director. (7-1-93)

c. In the event of a dispute between the Director and a claimant as to whether a ticket is a winning ticket, and if the Director determines that the ticket is not valid and a prize is not paid, the Director may replace the disputed ticket with a ticket of equivalent sales price for a future drawing of the same type of game. This shall be the sole and exclusive remedy of the claimant. (7-1-93)

d. In the event a defective on-line ticket is purchased, the only responsibility or liability of the State Lottery or the on-line retailer shall be the replacement of the defective on-line ticket with another on-line ticket of equivalent value for a future drawing of the same type of game. (7-1-93)

09. Retailer Duties. The following duties shall be performed by retailers with an on-line terminal (OLT): (7-1-93)

a. Pay costs associated with providing a telephone line connection that must be located within approximately five (5) feet of where the terminal is to be located as specified by the State Lottery. Payment of the telephone line connection is nonrefundable after installation except in the event the State Lottery denies, through no fault of retailer, the installation of the on-line terminal. (7-1-93)

b. Pay the State Lottery for the local monthly telephone charges per OLT as specified by the State Lottery. The State Lottery will pay for the mileage charges between the retailer's location and the State Lottery's central site. (7-1-93)

c. Hold funds generated from the sale of on-line tickets in trust for the State Lottery. At a time specified by the State Lottery, retailer shall pay these funds to the State Lottery plus the monthly communications charge specified above in Subsection 034.09.b., less: (7-1-93)

i. Prizes paid; and (7-1-93)

ii. Any credit(s); and (7-1-93)

iii. The retailer discount. (7-1-93)

d. Locate the OLT within the retailer's premises at a point-of-sale location approved by the State Lottery. The retailer shall not move an OLT unless the retailer follows the procedures established by the Director, including reimbursing the State Lottery for any telephone or radio charges associated with the change of OLT location if the retailer requested the change. (7-1-93)

e. Provide dedicated AC power to within approximately five (5) feet of where the terminal is to be located. Dedicated AC power means that there is no other equipment on the line that is to be utilized for the on-line terminal. The retailer is responsible for all costs associated with providing this dedicated AC power. A schematic of outlet requirements will be provided to the retailer's electrical contractor. (7-1-93)

f. Sell all lottery games, including but not limited to instant game tickets offered by the State Lottery. Retailer agrees to continue the sale of instant tickets from all cash registers or other points of purchase. (7-1-93)

g. Conduct the sale of on-line tickets during all hours and days that the retailer's business is open and the on-line system is functioning. Retailer shall post the hours that redemption of winning tickets takes place if these hours are different from the retailer's normal business hours. Retailer shall monitor supply levels and give timely notice when any item is in short supply. (7-1-93)

h. Post winning numbers prominently where tickets are sold as soon as possible following the drawing. (7-1-93)

i. Provide secure storage for OLT supplies and a secure area for the OLT. (7-1-93)

j. Exercise due diligence in the operation of the OLT and immediately notify the State Lottery and the central computer facility of any telephone line, radio, or OLT malfunction, such as the issuance of invalid on-line lottery ticket(s); inability to sell or redeem an on-line ticket; and non-issuance of an on-line ticket. The retailer shall

not perform mechanical or electrical maintenance on the OLT. (7-1-93)

k. Replace ribbons and on-line or instant ticket stock and clear paper jams as required for the OLT per the instructions provided by the State Lottery. (7-1-93)

l. Pay, without reimbursement, all electricity charges in connection with the operation of OLT. (7-1-93)

10. Payment Of Prizes By On-Line Retailers. (7-1-93)

a. An on-line retailer shall pay to the ticket bearer on-line games prizes of less than six hundred dollars (\$600) for any validated claims presented to that on-line retailer. These prizes shall be paid during all normal business hours of that on-line retailer, unless redemption hours different from normal business hours have been posted as per Rule Subsection 034.09, provided, the on-line system is operational and claims can be validated. (7-1-93)

b. An on-line retailer may pay prizes in cash or by business check, certified check, or money order, or any combination thereof. An on-line retailer that pays a prize with a check which is dishonored may be subject to suspension or termination of its contract. (7-1-93)

11. Retailer Compensation. The compensation paid to on-line State Lottery retailers shall be as follows: (7-1-93)

a. A discount of five percent (5%) shall be applied to on-line tickets sold from a clerk-activated terminal (CAT); (7-1-93)

b. A discount of five percent (5%) shall be applied to on-line tickets sold from a player-activated terminal (PAT); (7-1-93)

c. The Director may pay lottery game retailers an additional one percent (1%) incentive bonus based on attainment of sales volume or other objectives specified by the Director for each lottery game. (7-1-93)

12. Retailer Settlement. (7-1-93)

a. On-line retailers specified by the Director shall establish an account for deposit of monies derived from on-line games with a financial institution that has the capability of electronic funds transfer (EFT). (7-1-93)

b. The amount deposited shall be sufficient to cover monies due the State Lottery. The State Lottery will withdraw by EFT the amount due the State Lottery on the day specified by the Director. In the event the day specified for withdrawal falls on a state holiday, withdrawal will be accomplished on the next following business day. (7-1-93)

13. Prizes Rights Unassignable. No right of any person to a prize drawn shall be assignable, except that payment of any prize drawn may be paid to the estate of a deceased prize winner, and except that any person pursuant to an appropriate judicial order may be paid the prize to which the winner is entitled. The Director shall be discharged of all liability upon payment of a prize pursuant to this rule. (7-1-93)

14. Payment Of Prizes To Persons Under Eighteen Years Of Age. In the event a person entitled to a prize for any winning ticket is under the age of eighteen (18) years, the Director may direct payment of the prize by delivery to an adult member of the minor's family or a guardian of the minor a check or draft payable to the adult member of the minor's family or to the minor's guardian. The person so named as custodian shall have the same duties and powers as a person designated as a custodian in accordance with Idaho Law and for purposes of this section the term "adult member of a minor's family" and "guardian of a minor" shall have the same meaning as in the Idaho Gifts to Minors Law. The Director shall be discharged of all liability upon payment of a prize to a minor pursuant to this rule. (7-1-93)

15. Prizes Payable After Death Or Disability Of Owner. (7-1-93)

a. All prizes or a portion thereof which remain unpaid at the time of the prize winner's death shall be payable to the duly qualified Personal Representative of his/her estate, once the Director is satisfied that such payment is lawful and proper. The Director may rely wholly on the presentment of a certified copy of a court's appointment of a Personal Representative or any other evidence of a person entitled to the payment of any prize winnings when due. (7-1-93)

b. The payment to the estate of the deceased owner of any prize winnings by the State Lottery shall absolve the State Lottery and its representatives of any further liability for payment of said prize winnings. The State Lottery need not look to the payment of the prize winnings beyond the payee thereof. The Director reserves the right to petition any court of competent jurisdiction to request a determination for the payment of any prize winnings which are or may become due the estate of a deceased owner or an owner under a disability because of, but not limited to, under age, mental deficiency, physical or mental incapacity. If the legatee(s) or heir(s) of a deceased owner entitled to prize winnings obtains an order from a court of competent jurisdiction directing payments when and to become due from the State Lottery to be paid directly to said legatee(s) or heir(s) or otherwise directs the State Lottery to make payments to another in the event of an owner's disability or otherwise, the State Lottery shall pay the prize winnings accordingly. (7-1-93)

16. Discharge Of State Lottery Upon Payment. The State of Idaho, its agents, officers, employees and representatives, the State Lottery, its Director, agents, officers, employees and representatives shall be discharged of all liability upon payment of a prize or any one installment thereof to the holder of any winning lottery ticket or in accordance with the information set forth on the claim form supplied by the Director. If there is a conflict between the information on a winning lottery ticket and the information on the claim form, the State Lottery may rely on the claim form after the ticket for which it has been filed has been validated as a winning ticket and, in so doing, it will be relieved of all responsibility and liability in the payment of a prize in accordance with the information set forth therein. The State Lottery's decisions and judgments in respect to the determination of a winning ticket or of any other dispute arising from payment or awarding of prizes shall be final and binding upon all participants in the State Lottery unless otherwise provided by law or these rules. In the event a question arises relative to the winning ticket, a claim form, the payment, or the awarding of any prize, the State Lottery may deposit the prize winnings into an escrow fund until it determines the controversy and reaches a decision, or it may petition a court of competent jurisdiction for instructions and a resolution of the controversy. (7-1-93)

17. Discharge. The State Lottery may use the names, addresses, and photographs of winners in any State Lottery promotional campaign. The address used shall not contain the street or house number of the winner without the consent of the winner. (4-18-89)

035. BREAKOPEN INSTANT TICKET GAMES.

The Commission hereby authorizes the Director to select and operate breakopen instant ticket games which meet the criteria set forth in these rules. (7-1-93)

01. Definitions. (7-1-93)

a. "Breakopen Instant Ticket" means a single folded or banded ticket or a card, the face of which is initially covered or otherwise hidden from view to conceal numbers and/or symbols, a few of which numbers or symbols have been designated in advance and at random as prize winners when, for the opportunity to obtain each such folded or banded ticket or card, view the numbers or symbols thereon and possibly obtain a prize, a person pays an established price to a breakopen instant ticket retailer. (7-1-93)

b. "Authorized Dispensing Device" means any machine, or mechanism designed for use of vending or dispensing of breakopen instant tickets. Such device may include mechanical, electrical, electro-mechanical or other devices approved by the Director of the Lottery pursuant to Rule Section 028. (7-1-93)

c. "Breakopen Instant Ticket Retailer" means any person who has been approved, certified and contracted with by the Lottery to sell breakopen instant tickets. (7-1-93)

d. "Breakopen Instant Ticket Vendor" means any person who produces and provides breakopen instant tickets to the Lottery. (7-1-93)

e. “Distributor” means any person who purchases or otherwise obtains authorized dispensing devices for use in breakopen instant ticket games from any person and sells or otherwise furnishes such device to another person for the resale of or the display or operation of that device. (7-1-93)

i. As used in these rules, the term “distributor” shall include a person who services and repairs authorized dispensing devices, so long as the person performing such servicing or repairs is approved by the distributor or distributor’s representative, and makes no addition to, or modification or alteration of, the authorized device. (7-1-93)

ii. A manufacturer who sells or otherwise furnishes such authorized device not manufactured by him to any other person for resale or for display or operation of that authorized device is also a “distributor”. (7-1-93)

f. “Distributor’s Representative” means any natural person who represents a distributor in any of their activities in connection with the sale or furnishing of authorized dispensing device for use in breakopen instant ticket activities. (7-1-93)

g. “Manufacturer” means any person who assembles from raw materials or subparts a completed authorized dispensing device or pieces of the authorized device for use in breakopen instant ticket activities and who sells or otherwise furnishes the same to any distributor or retail outlet. (7-1-93)

h. “Manufacturer’s representative” means any person who represents a manufacturer in any one of the manufacturer’s activities in connection with the sale or furnishing of authorized dispensing device for use in breakopen instant ticket activities. (7-1-93)

i. “Flare” means a vendor provided informational sign which, as a minimum, displays the prize structure, the serial number of the sleeve in play, the odds of winning a prize and the price of the ticket. (7-1-93)

j. “Box” means a group of breakopen instant tickets with the same unique serial number. (7-1-93)

k. “Sleeve” is a portion of a box; and is the smallest unit offered. (7-1-93)

l. “Breakopen Instant Ticket Game” means a group of breakopen instant ticket boxes with the same thematic design and prize structure. (7-1-93)

02. Breakopen Instant Ticket Special Inspection. The Director or authorized representative shall have the authority to select any breakopen instant ticket sleeve and examine the quality and/or integrity of the breakopen instant ticket sleeve in any manner, including pulling all chances remaining thereon: Provided, that if the sleeve so inspected is thereby altered by such inspection in any manner and no defect, alteration, deceptive condition, or other violation is discovered, then the owner shall be reimbursed by the Lottery at the owner’s cost for the sleeve or portion thereof, and the sleeve shall become the property of the Lottery. Provided further, that for each sleeve inspected which is found to be defective in any area related to a vendor’s quality control deficiency, a fee may be assessed by the Director against the vendor of the breakopen instant ticket. (7-1-93)

03. Breakopen Instant Ticket Operation. (7-1-93)

a. No person under the age of eighteen (18) years of age shall be allowed to play or sell any breakopen instant tickets. It shall be the responsibility of the retailer to determine that no unauthorized person is allowed to play or sell breakopen instant tickets. (7-1-93)

b. No retailer shall permit the display or operation of any breakopen instant ticket which may have in any manner been marked, defaced, tampered with or otherwise placed in a condition, or operated in a manner, which may deceive the public or which affects the chances of winning or losing upon the taking of any chance thereon. (7-1-93)

c. All records, reports, receipts and any unsold tickets relating to a breakopen instant ticket sleeve must be retained on the retailer premises at least ninety (90) days after the sleeve is removed from play and must be

made available on demand to representatives of the Idaho Lottery. (7-1-93)

04. Breakopen Instant Ticket Price Per Play To Be Posted. No breakopen instant ticket sleeve shall be placed out for public play unless the cost to the player for each ticket is clearly posted on the flare. The price per ticket shall be determined by the Director. (7-1-93)

05. Claiming Of Prizes. Prizes must be redeemed on the same day as purchased at the location where the winning ticket was purchased and it shall be awarded in cash or by check. (7-1-93)

06. Limitation On Breakopen Instant Ticket Dispensing. (7-1-93)

a. No ticket once placed in an authorized dispensing device out for public play shall be removed from the authorized device until the sleeve is permanently removed from public play, except only: (7-1-93)

b. Those tickets actually played by consumers; (7-1-93)

c. Those tickets removed by representatives of the Lottery inspecting the device or sleeve; and (7-1-93)

d. Those tickets temporarily removed during necessary repair or maintenance of the device. Excepting only tickets removed under Subsections 035.06.b. and 035.06.c. of this section, once a ticket has been removed from public play it shall not again be put out for public play. (7-1-93)

07. All Devices Must Comply With Requirements. No retailer shall display or put out for play, and no distributor or manufacturer or their representatives shall sell or otherwise furnish any device for the dispensing of breakopen instant tickets, unless such device is approved for use by the Director of the Lottery, thereby making it an authorized device. (7-1-93)

a. No person shall sell or transfer to another person in this state, or for use within this state, or shall place out for public play any device for the dispensing of breakopen instant tickets not so constructed as to allow a consumer to clearly see each ticket within the device prior to playing the device. (7-1-93)

b. No person shall put out for public play any device for the dispensing of breakopen instant tickets which is not so constructed as to provide for at least one (1) sleeve in play in the device. (7-1-93)

c. No person shall put out for public play any device for the dispensing of breakopen instant tickets which is designed, used, or constructed, in a manner that detracts from the breakopen instant tickets or is deceptive in any way as determined by the Director. (7-1-93)

08. Breakopen Instant Ticket Series Assembly And Packaging. Vendors of breakopen instant ticket games shall manufacture, assemble and package each game sleeve in such a manner that none of the winning tickets, nor the location or approximate location of any of the winning tickets can be determined in advance of opening the tickets in any manner or by any device, including but not limited to any pattern in manufacture, assembly, packaging or markings. All breakopen instant ticket games must be approved and will be distributed and sold exclusively by the Idaho Lottery. The Lottery may adopt quality control standards for the manufacture of breakopen instant ticket games. (7-1-93)

09. Standards For Flares. The flare advertising prizes available from the operation of any sleeve of breakopen instant tickets shall: (7-1-93)

a. Be placed near or upon the upper face, or on the top, of any authorized device used to dispense breakopen instant tickets in a manner clearly visible to the public; and (7-1-93)

b. Clearly set out each of the prizes available and the combination of numbers or symbols which win prizes. (7-1-93)

c. Each flare describing the prizes and winning number or symbols for a sleeve of breakopen instant

tickets in play shall clearly set out the sleeve number assigned to that sleeve by the vendor. The sleeve number will be placed upon the flare by the vendor. (7-1-93)

- d.** The total number of tickets originally in the sleeve will be placed upon the flare by the vendor. (7-1-93)

10. Prize Structure. The Director shall establish a prize structure detailing the estimated number of prizes that are expected to be awarded in each sleeve and the close approximation of the odds of winning such prizes. (7-1-93)

11. Retailers Eligible To Sell Breakopen Tickets. Any person interested in obtaining a contract for a certificate to sell lottery tickets must first file an application on forms provided by the Director. The forms shall include, but are not limited to, an applicant's personal, financial, and criminal history, and an authorization to investigate the applicant's criminal and credit history. (7-1-93)

12. Retailer Application And Fee. All applications to sell breakopen instant tickets must be accompanied by a nonrefundable fee of twenty-five dollars (\$25). If a certificate is awarded to sell only breakopen instant tickets, no additional certificate fee must be paid. (7-1-93)

- 13. Certificate Modification.** (7-1-93)

- a.** Certified instant ticket retailers may apply for a certificate modification to allow for the sale of breakopen instant tickets. A current instant ticket retailer will be required to complete an additional application or application supplements. If a current instant ticket retailer requests that the existing certificate be modified to allow for the sale of breakopen instant tickets, no additional application fee will be charged upon approval. (7-1-93)

- b.** Certified breakopen instant ticket retailers may apply for a certificate modification to allow for the sale of instant tickets. A current breakopen instant ticket retailer will be required to complete an additional application or application supplements. If a current breakopen instant ticket retailer requests that the existing certificate be modified to allow for the sale of instant tickets, an additional certificate fee of one hundred dollars (\$100) will be charged upon approval. (7-1-93)

- 14. Retailer Compensation.** (7-1-93)

- a.** The compensation paid to Lottery retailers shall be five percent (5%) of the retail price of the breakopen instant tickets. (7-1-93)

- b.** The Director may pay lottery game retailers an additional one percent (1%) incentive bonus based on attainment of sales volume or other objectives specified by the Director for each lottery game. (7-1-93)

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