

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM ) NOTICE OF PUBLIC HEARING  
23.16.1702, 23.16.1705, 23.16.1712 ) ON PROPOSED AMENDMENT  
and 23.16.1714, concerning sports pool )  
card interval payouts, authorized sports )  
pools, design and conduct of sports tab )  
game payouts, and sports tab game )  
prizes )

TO: All Concerned Persons

1. On February 1, 2012, at 9:30 a.m., the Montana Department of Justice will hold a public hearing in the conference room at the Gambling Control Division, 2550 Prospect Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on January 26, 2012, to advise the department of the nature of the accommodation that you need. Please contact Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; telephone (406) 444-1971; fax (406) 444-9157; Montana Relay Service 711; or e-mail rask@mt.gov.

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

23.16.1702 SPORTS POOL CARD (1) through (3)(g) remain the same.  
(h) predetermined intervals, as provided in ARM 23.16.1705(3), that for  
which a pay-out prize will be made awarded, if any and the amount of each pay-out;  
(i) through (5) remain the same.

AUTH: 23-5-115, 23-5-512, MCA  
IMP: 23-5-502, 23-5-503, 23-5-512, MCA

RATIONALE AND JUSTIFICATION: This proposed rule amendment is necessary to make reference to the requirements for interval sports pool prize awards contained in the proposed amendments to ARM 23.16.1705 under this notice. This amendment is also reasonable and necessary because it adds the qualifying term "predetermined" to "intervals" which may be identified in the design of a sports pool. This will make clear that any sports event intervals upon which prizes will be awarded must be identified prior to the sale of any sports pool chances. Additionally, because the term "predetermined interval" is used in ARM 23.16.1714

relating to interval prize awards for sports tab games, this amendment will make consistent the terminology used in both rules, and avoid possible confusion.

23.16.1705 AUTHORIZED SPORTS POOLS (1) through (3) remain the same.

(a) A "traditional sports pool" involving a single sports event with two competitors that is conducted on a sports pool card containing a master square with 25, 50, or 100 spaces. Each space is randomly assigned a unique pair of numbers from the vertical and horizontal axis of the master square.

(i) A winner is determined by matching the numbers assigned to a space with the only or last digit of the score of each competitor in the sports event at ~~predetermined intervals during the event or~~ at the end of the event.

(ii) Winners may also be determined by the score at predetermined intervals during the event as long there is also a winner and prize awarded based upon the score at the end of the event. If any prize is awarded for a score attained at a predetermined interval, the value of any such prize may not exceed the value of the prize awarded for the score attained at the end of the event.

(b) through (g) remain the same.

AUTH: 23-5-115, 23-5-512, MCA

IMP: 23-5-502, 23-5-503, 23-5-512, MCA

RATIONALE AND JUSTIFICATION: This amendment explicitly requires that every sports pool design be based upon the entire sports event. A sports pool based upon the outcome of a sports event is an authorized gambling activity. 23-5-501, MCA. By rule, the department defines a "sports event" as an athletic game, race, or contest in which a winner is determined by score or placement. ARM 23.16.1701. In certain types of sports pools, the department by rule allows prizes to be awarded based upon event interval scores or placements. ARM 23.16.1705. However, because a sports pool, including the price-per-chance and prize limits established by the Legislature, is based on the outcome of a sports event, the department has long determined that a sports pool that awards prizes based upon event intervals must also award a prize based upon the final outcome of the sport event. For example, a sports pool may be designed to pay prizes based upon scores attained at the conclusion of every quarter of a football game. However, it may not be designed to award a prize based solely upon the scores attained at half-time. This is because no sports event winner is determined based only upon the first half of a football game.

On December 12, 2011, the Montana Eighth Judicial District Court (Cause No. ADV-11-091) determined that ARM 23.16.1705 authorizes interval payouts alone in a sports pool, and the department's interpretation that a sports pool must be based on the event outcome (i.e., the final score) was in error. The court reasoned that the requirement for a final score prize award was not expressly required by law or the department's own administrative rule. This proposed rule amendment is reasonable and necessary, therefore, to explicitly require that every sports pool design be based upon the entire sports event. The amendment is intended to make clear that if a prize is awarded based upon the scores achieved at a predetermined

interval (a score or event occurring between the start and finish of the sports event), then a prize must also be awarded based upon the event's final score.

Additionally, the proposed amendment requires that the value of the prize that is awarded based upon the final score or placement may not be less than the value of any prize awarded for an interval score or placement. This amendment will prevent the award of a nominal prize for the final score, which would circumvent the requirement that a sports pool to be based upon the outcome of a sports event, and it will become consistent with the same interval prize award restrictions for sports tab games under ARM 23.16.1714.

23.16.1712 DESIGN AND CONDUCT OF SPORTS TAB GAME

(1) remains the same.

(2) A winner or winners of a sports tab game are determined by matching the appropriate numbers on a participant's sports tab with the only or last digit of the competitors' score at the end of the sports event, and if designated before the event by the sponsor, at intervals during the sports event, as provided in ARM 23.16.1714.

(3) through (3)(h) remain the same.

(i) predetermined intervals, as provided in ARM 23.16.1714, during the sports event for which prizes are to be awarded, if any; and

(j) through (5) remain the same.

AUTH: 23-5-115, MCA

IMP: 23-5-501, 23-5-502, 23-5-503, MCA

RATIONALE AND JUSTIFICATION: This proposed amendment adds the qualifying term "predetermined" to "intervals" of a sports tab game. This is necessary because it will make clear that any sports event interval upon which prizes will be awarded must be identified prior to the sale of any tabs in a sports tab game. Additionally, because the term "predetermined interval" is used in ARM 23.16.1714 relating to interval prize awards for sports tab games, this amendment will make the terminology consistent in both rules, and avoid possible confusion. This proposed rule amendment is also reasonable and necessary to make reference to the requirements for interval sports tab game prize awards contained in ARM 23.16.1714.

23.16.1714 PRIZES (1) remains the same.

(2) Winners may be determined by the score at predetermined intervals during the event as long there is also a winner and prize awarded based upon the score attained at the end of the event. If a any prize is awarded for ~~scores~~ a score attained at a predetermined interval during a sports event, the value of the any such prize ~~awarded at the interval~~ may not exceed the value of the prize awarded for the score at the end of the event.

(3) through (7) remain the same.

AUTH: 23-5-115, MCA

IMP: 23-5-502, 23-5-503, MCA

RATIONALE AND JUSTIFICATION: This proposed rule amendment is reasonable and necessary to explicitly require that every sports tab game be based upon the entire sports event. Consistent with the proposed amendment to ARM 23.16.1705 under this notice, this amendment will make clear that if a sports tab game is designed to award a prize based upon the scores achieved at a predetermined interval, a prize must also be awarded based upon the event's final score. The proposed amendment also makes other minor changes to the current language of the rule to make it consistent with the language used in proposed amendment to ARM 23.16.1705, and should avoid possible confusion for anyone who offers a sports tab game.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; fax (406) 444-9157; or e-mail [rask@mt.gov](mailto:rask@mt.gov), and must be received no later than February 9, 2012.

5. An electronic copy of this Notice of Proposed Amendment is available through the Department of Justice's web site at <http://doj.mt.gov/agooffice/administrative-rules/>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices of rules regarding the Crime Control Division, the Central Services Division, the Forensic Sciences Division, the Gambling Control Division, the Highway Patrol Division, the Law Enforcement Academy, the Division of Criminal Investigation, the Legal Services Division, the Consumer Protection Division, the Motor Vehicle Division, the Justice Information Systems Division, or any combination thereof. Such written request may be mailed or delivered to Rick Ask, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; fax (406) 444-9157; or e-mail [rask@mt.gov](mailto:rask@mt.gov), or may be made by completing a request form at any rules hearing held by the department. A copy of the interested persons request form may be printed from the department web site at <http://www.doj.mt.gov/resources/forms/interestedperson.pdf>, and mailed to the rule reviewer.

7. Cregg Coughlin, Assistant Attorney General, Gambling Control Division, has been designated to preside over and conduct the hearing.

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

By: /s/ Steve Bullock  
STEVE BULLOCK  
Attorney General  
Department of Justice

/s/ J. Stuart Segrest  
J. STUART SEGREST  
Rule Reviewer

Certified to the Secretary of State January 3, 2012.