

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PROPOSED
ARM 23.16.117, 23.16.403,)	AMENDMENT
23.16.509, 23.16.1802, 23.16.1811,)	
23.16.1823, 23.16.1826, 23.16.1827,)	NO PUBLIC HEARING
23.16.1907A, and 23.16.1924)	CONTEMPLATED
pertaining to gambling licenses and)	
video gambling machines)	

TO: All Concerned Persons

1. On February 12, 2024, the Department of Justice proposes to amend the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Justice no later than 5:00 p.m. on January 26, 2024, to advise us of the nature of the accommodation that you need. Please contact Jason Johnson, Gambling Control Administrator, Department of Justice, 615 South 27th Street, Suite A, Billings, Montana, 59101; (406) 896-4300; or e-mail jason.johnson@mt.gov.

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

23.16.117 TRANSFER OF INTEREST TO NEW OWNER (1) through (5) remain the same.

(6) A certificate, stock, or other evidence of ownership may ~~not be registered in~~ obtained for the licensee's records but not executed until the date the gambling license has been issued by the department.

(7) through (9)(a)(ii) remain the same.

(iii) personal history statement (Form 10), as that form is described in ARM 23.16.102(3)(b), for the person designated to act in the capacity of a receiver, trustee, or attorney in fact;

(iv) through (10) remain the same.

AUTH: 23-5-112, 23-5-115, MCA

IMP: 23-5-115, 23-5-118, 23-5-176, MCA

REASON: These documents are required at closing, but the licensee needs to be able to obtain them prior to approval. This new wording also makes clear that ownership transfer execution is not allowed prior to department approval. The rule earmark was removed per the Secretary of State's rulemaking guidelines.

23.16.403 PROCESSING OF CARD DEALER LICENSE APPLICATION RENEWAL, OR REPLACEMENT (1) remains the same.

(2) A card dealer license will expire if the department does not receive the application and supporting documents to renew the license by the expiration date.

(3) and (4) remain the same.

AUTH: 23-5-115, MCA

IMP: 23-5-308, MCA

REASON: When this rule was created, there was a typographical error where the word "license" was omitted from the sentence. This change corrects that omission.

23.16.509 TEMPORARY GAMBLING AUTHORITY (1) The department may grant an applicant for a gambling operator license the temporary authority to operate gambling when:

(a) and (b) remain the same.

(c) ~~within the 12-month period prior to submission of the application,~~ the premises to be licensed had been licensed and operated as a gambling establishment, or licensed for the on-premises consumption of alcoholic beverages, and the premises were not altered from the last approved floor plan;

(d) through (3) remain the same.

(4) Temporary gambling authority terminates whenever:

(a) the department, pursuant to ARM 23.16.203(4), has notified the applicant of the department's intent to deny the operator license; or

(b) and (5) remain the same.

AUTH: 23-5-115, MCA

IMP: 23-5-115, 23-5-176, MCA

REASON: This change will help align the gambling rules with the alcohol rules and the requirements for temporary authority. The Department of Revenue removed the reference to "12-months" from its rules; therefore, the Department of Justice is removing that reference as well. The rule earmark was removed per the Secretary of State's rulemaking guidelines.

23.16.1802 DEFINITIONS (1) through (7) remain the same.

(8) "Entertainment display" means a separate visual display to represent the outcome of a video line game and must be displayed as a video line game. This display should be considered for entertainment purposes only as the game outcome must be solely derived from the corresponding video line game.

(8) through (31) remain the same, but are renumbered (9) through (32).

AUTH: 23-5-115, 23-5-602, 23-5-621, MCA

IMP: 23-5-111, 23-5-112, 23-5-115, 23-5-151, 23-5-602, 23-5-603, 23-5-607, 23-5-608, 23-5-610, 23-5-611, 23-5-612, 23-5-621, 23-5-637, MCA

REASON: This definition is necessary to define entertainment displays.

23.16.1811 IDENTIFICATION DECAL REQUIRED ON ALL VIDEO GAMBLING MACHINES (1) Upon request from a licensed video gambling machine manufacturer ~~or its designated representative, distributor, route operator, or operator of a gambling establishment~~, the department will issue identification decals to be placed upon ~~new~~ approved video gambling machines prior to their distribution or sale.

(2) through (5) remain the same.

AUTH: 23-5-621, MCA

IMP: 23-5-621, 23-5-637, MCA

REASON: The Gambling Control Division is updating the rule to allow any licensed entity, including a distributor, route operator, manufacturer, or operator of a gambling establishment, to submit identification decal requests. "Approved" ensures the video gambling machine being permitted is compliant with state laws and rules prior to being made available for play. The division believes this process would not constitute a transfer of approval (which is disallowed in ARM 23.16.1901).

23.16.1823 VIDEO GAMBLING PERMITS – ELIGIBILITY, APPLICATION, RENEWAL, PRORATION (1) and (2) remain the same.

(3) An eligible gambling operator or machine owner must submit a completed video gambling machine permit application (Form 8) for each machine to be permitted. The application to permit a video gambling machine may also be submitted electronically and paid with an electronic check or credit card on a state-sponsored internet site. An application is not complete unless:

(a) through (8) remain the same.

(9) The department shall authorize reduced permitting fees if the location is licensed during the first quarter of the fiscal year and the video gambling machines have already been permitted at the current location by the selling entity. The reduced fee is set at \$25 per video gambling machine per 23-5-612, MCA.

AUTH: 23-5-115, 23-5-621, MCA

IMP: 23-5-213, 23-5-602, 23-5-611, 23-5-612, 23-5-621, 23-5-629, MCA

REASON: The existing rule only references paper applications and does not account for online submissions. Section (3) is reworded, and (9) is added. Section (9) allows for a discount because these video gambling machines were already permitted in the new fiscal year. The permit fee referenced in (9) has been in effect since 2013 due to a statutory amendment to 23-5-612, MCA, that year. The fee is now being added to the rule so that the rule reflects all permitting fee requirements. There is no new fiscal impact because the statutory fee has been in effect for ten years. Therefore, the requirements of 2-4-302(1)(c), MCA, do not apply.

23.16.1826 QUARTERLY REPORTING REQUIREMENTS (1) End of quarter and service mechanical and electronic meter readings are used for tax calculation purposes and must be taken at the same time. Mechanical meters must

be reported exactly as displayed on the machine and not from an audit ticket.

Machine owner quarterly reporting requirements are as follows:

~~(a) For each machine not utilizing an approved automated accounting and reporting system, the machine owner or his designated representative must file with the department a quarterly tax report signed by the machine owner or his designated representative. The forms prescribed and supplied by the department require readings from the mechanical and electronic meters as required by the act. The report will be used by the department to verify payment of all taxes and the winning percentage of the machine as required by the act. The following requirements apply:~~

~~(i) The report must be delivered to the Gambling Control Division, 615 South 27th Street, Suite A, Billings, Montana 59101, or bear a United States postal service postmark not later than midnight of the 15th of the month following the quarters ending March 31, June 30, September 30, and December 31.~~

~~(ii) The mechanical and electronic meter readings must be taken at the same time and recorded for the report within seven days of the close of the operator's last day of business in the reporting quarter. The readings must be supported by the original printed accounting ticket.~~

~~(iii) The report is due on each machine after it has been permitted.~~

~~(b)~~(a) For each machine utilizing an approved automated accounting and reporting system, the machine owner or a designated representative shall transmit files to the department, in a format prescribed by the department, with the following information:

~~(i) for tier I systems, all electronic meter readings and all events set out in ARM 23.16.2105 for each day the machine is in operation, and the last set of meter readings received before the end of the quarter (meter readings received no more than seven days before the end of the quarter) will be used as quarter end readings for purpose of calculating a tax advisory to be sent to machine owners;~~

~~(ii) for tier II systems;~~

~~(A) all electronic meter readings for each week or two-week period for which the machine is approved to report;~~

~~(B) and within electronic and mechanical meter readings up to 14 days prior to the end of the quarter but not later than seven days after the last day of each quarter, all electronic and mechanical meter readings, along with an indication that it is the last reading to be reported in the quarter may be designated as the quarter end meter readings; and~~

~~(iii)(C) for tier II systems, before- and after-service electronic and mechanical meter readings must be submitted in a format prescribed by the department, if meters are reset or malfunction.~~

~~(c)~~(b) For machines utilizing an approved automated accounting and reporting system, after the final set of meter readings for the quarter is received, the department will electronically transmit a machine income and tax advisory estimate by machine and location to the machine owner. Upon receipt of the machine income and tax advisory, the owner must contact the department within seven days in order to dispute the machine income and tax advisory estimate.

~~(d)~~(c) The machine owner will have until midnight of the 15th day of the month following the quarters ending March 31, June 30, September 30, and

December 31 to confirm and pay any tax due by electronic check or credit/debit card using a state-sponsored internet site.

(d) For each machine permitted during a reporting quarter not utilizing an approved automated accounting and reporting system, the machine owner or a designated representative must file with the department a quarterly tax report signed by the machine owner or a designated representative. The forms prescribed and supplied by the department require readings from the mechanical and electronic meters as required by the act. The report will be used by the department to verify payment of all taxes for the machine as required by the act. The following requirements apply:

(i) Forms 6 and 6a make up quarterly video gambling machine tax report. Forms 6 and 6a are incorporated by reference and are available from any Gambling Control Division office location or on the department's web site, www.dojmt.gov/gaming.

(ii) The report must be delivered to Gambling Control Division, 615 South 27th Street, Suite A, Billings, Montana 59101, or bear a United States postal service postmark not later than midnight of the 15th of the month following the quarters ending March 31, June 30, September 30, and December 31.

(iii) The mechanical and electronic meter readings must be recorded for the report within seven days of the close of the operator's last day of business in the reporting quarter. The readings must be supported by the original printed accounting ticket.

(2) remains the same.

~~(3) Form 6 is a quarterly video gambling machine tax report; Form 6 is incorporated by reference and is available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424, or on the department's web site www.dojmt.gov/gaming.~~

~~(4)~~(3) For the purposes of this rule the term theft includes the physical break-in or entry into the video gambling machine, or manipulation of the machine by external means, resulting in the accumulation of credits available for redemption without the insertion of money. If the gross income reported for a machine has been reduced to reflect a loss resulting from a theft from the machine, the machine owner or his a designated representative shall submit the following information together with the quarterly report:

(a) through (d) remain the same.

~~(5)~~(4) If the machine owner or his a designated representative fails to file the quarterly tax report or remit the required gross machine income tax when due, the following penalties will be assessed:

(a) through (d) remain the same.

(6) remains the same, but is renumbered (5).

AUTH: 23-5-115, 23-5-621, MCA

IMP: 23-5-136, 23-5-610, 23-5-621, 23-5-637, MCA

REASON: The changes made to ARM 23.16.1826 update the rule to organize the three methods of reporting video gambling machine meters and the current reporting technology for video gambling machines.

23.16.1827 RECORD KEEPING REQUIREMENTS (1) Machine operation records must be maintained and made available for inspection by the department upon request. The records must be maintained by the machine owner. The records must provide all necessary information the department may require to ensure operation of machines in compliance with the law. Mechanical meters must be recorded exactly as displayed on the machine and not from an audit ticket.

(2) remains the same.

(3) Machine owners using tier I accounting and reporting systems must maintain the following records:

(a) ~~a correct lifetime audit ticket as provided for by department rules, which must include progressive accounting data if applicable. The lifetime audit ticket must be printed for each machine at least once every 7 days; and~~

(b) the exact copy of all printed ticket vouchers and audit tickets, i.e., the duplicate audit tape(s) created at the time each audit or payout ticket is printed.

(4) through (6) remain the same.

(7) For any violation of the record keeping requirements found in this rule, the department may:

(a) act by means of temporary cease and desist orders under 23-5-136(1)(a), MCA; or

(b) impose civil penalties under 23-5-136(1)(b), MCA.

AUTH: 23-5-115, 23-5-621, 23-5-637, MCA

IMP: 23-5-115, 23-5-136, 23-5-610, 23-5-621, 23-5-628, 23-5-637, MCA

REASON: Since mechanical meters cannot be manipulated, these are the meter readings that should be used for record keeping purposes. The meter reading should not be obtained from an audit ticket. The change to (3)(a) removes outdated language regarding the printing of audit tickets every seven days. Most video gaming machines use automated systems. This change aligns with how businesses operate in today's market. The statutory earmarks were removed per the Secretary of State's rulemaking guidelines.

23.16.1907A SOFTWARE SPECIFICATIONS FOR VIDEO LINE GAMES

(1) Each video line game title must meet the following specifications for approval for use within the state of Montana. To be approved, the game must:

(a) using a random number generator, draw and display ~~a minimum of three numbers or symbols in a line; on at least three reels.~~ Video line game outcomes cannot be determined by the results of past horse races;

(b) through (f) remain the same.

(2) If an entertainment display is used, the conforming line game must:

(a) always be clearly displayed to the player;

(b) be a minimum of three inches by three inches in size;

(c) be clearly labeled as the conforming game; and

(d) appear on the same screen as the entertainment display.

(3) The entertainment display must:

(a) meet the requirements in (1)(b) through (e);

- (b) be clearly labeled as the entertainment display; and
- (c) not intentionally mislead a player.
- (2) remains the same, but is renumbered (4).

AUTH: 23-5-115, 23-5-602, 23-6-603, 23-5-621, MCA

IMP: 23-5-602, 23-5-603, 23-5-607, 23-5-608, 23-5-611, 23-5-621, MCA

REASON: The language added in (1)(a) further prohibits other video line game variations like historical horse racing. Sections (2) and (3) were added to clarify the use of entertainment displays.

23.16.1924 PROHIBITED MACHINES (1) Any machine which, in substance, simulates the game of video poker, keno, bingo, or video line games, without conforming to the requirements of the act or these rules and is placed in service for play by the public is prohibited. Entertainment displays are allowed as provided in ARM 23.16.1907A.

- (2) remains the same.

AUTH: 23-5-115, 23-5-602, 23-5-605, MCA

IMP: 23-5-152, 23-5-602, 23-5-603, 23-5-605, 23-5-606, 23-5-607, 23-5-608, 23-5-609, 23-5-611, 23-5-613, MCA

REASON: Section 23-5-621, MCA requires the Gambling Control Division to provide specifications for video line video gambling machines including a description of the images and minimum area of a screen that depicts a video line game. There are manufacturers that would like to offer consumers video gambling machines that use entertainment displays. Therefore, clarity needs to be given to what is allowed. The proposed language was created to allow entertainment displays but keeps consumer protections in mind.

4. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Jason Johnson, Gambling Control Administrator, Department of Justice, 615 South 27th Street, Suite A, Billings, Montana, 59101; (406) 896-4300; or e-mail jason.johnson@mt.gov, and must be received no later than 5:00 p.m., February 9, 2024.

5. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Jason Johnson at the above address no later than 5:00 p.m., February 9, 2024.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held

at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 130 licensed gambling operators (persons) based on fiscal year 2024 first quarter reporting which indicates there are currently 1,296 active gambling operators in Montana.

7. 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 that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 4 or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sosmt.gov/ARM/Register>.

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

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ DAVID ORTLEY

David Ortley
Deputy Attorney General
Rule Reviewer

/s/ AUSTIN KNUDSEN

Austin Knudsen
Attorney General
Department of Justice

Certified to the Secretary of State January 2, 2024.