

Negotiated Rulemaking is Closed.

Notice of Intent to Promulgate Rulemaking (Negotiated Rulemaking) was published in the August 1, 2012 Administrative Bulletin and also displayed on the Lottery website. Other than two informational pieces in the Idaho Statesman dated August 6 and 8, which reiterated how to submit comments, the Lottery received no comments and no expressed interest from the public concerning this rulemaking. The Lottery has proceeded to formal rulemaking on September 5, 2012 and the Notice of Rulemaking (Proposed Rule) will be published in the October 3 Administrative Bulletin.

IDAPA 52 – IDAHO STATE LOTTERY COMMISSION

52.01.03 - RULES GOVERNING OPERATIONS OF THE IDAHO STATE LOTTERY

DOCKET NO. 52-0103-1201

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Section 67-7408(1)(e), Idaho Code.

METHOD OF PARTICIPATION: Persons wishing to participate in the negotiated rulemaking must do the following:

Interested members of the public who wish to participate must submit any written comments, questions, recommendations, or ideas to Jeffrey R. Anderson, Executive Director, Idaho State Lottery, 1199 Shoreline Lane, Suite 100, P. O. Box 6537, Boise, Idaho 83707-6537, or via email at janderson@lottery.idaho.gov. Responses must be received by August 10, 2012.

Should a reasonable number of persons respond to this notice, negotiated meetings will be scheduled and all scheduled meetings shall be posted and made accessible on the agency website at the address listed below.

Upon conclusion of the negotiated rulemaking, any unresolved issues, all key issues considered, and conclusions reached during the negotiated rulemaking will be addressed in a written summary and made available on the agency website.

Failure of interested persons to respond to this notice of intent or the lack of a sufficient number of responses to this notice of intent may result in the discontinuation of further informal proceedings. In either event the agency shall have sole discretion in determining the feasibility of scheduling and conducting informal negotiated rulemaking and may proceed directly to formal rulemaking if proceeding with negotiated rulemaking is deemed infeasible.

DESCRIPTIVE SUMMARY: The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principle issues involved:

The Lottery offers the purchase of tickets in the marketplace via ticket vending machines (PATs – Player Activated Terminals). Players can purchase draw game tickets (like Powerball) and instant scratch game tickets from the Player Activated Terminals using cash. Electronic payments now account for 55% of all consumer purchases, up from 43% in 1999. The Player Activated Terminals could also provide the convenience and benefit to the customer to choose to purchase tickets using a PIN-protected debit card. However, in order to provide this electronic convenience, and remain fiscally responsible, the Lottery must charge a minimal cost recovery fee to

those customers who choose to take advantage of this convenience to purchase Lottery tickets using this vending machine. This is a user fee for those customers who choose not to use cash. In order to encourage responsible play, the Lottery will limit electronic transactions to fifty dollars (\$50.00) in these Player Activated Terminals.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING COPIES: For assistance on technical questions concerning this negotiated rulemaking or to obtain a copy of the preliminary draft of the text of the proposed rule, contact Jeffrey R. Anderson, Executive Director, (208) 334-2600. An electronic copy of the preliminary draft of the proposed rule text is also available on the agency website listed below.

Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 10, 2012.

DATED this 11th day of July 2012.

Jeffrey R. Anderson, Executive Director
Idaho State Lottery
1199 Shoreline Lane, Suite 100
P. O. Box 6537
Boise, ID 83707-6537
Phone: (208) 334-2600
Fax: (208) 334-2610
www.idaholottery.com



Proposed/Temporary Administrative Rules Form

Section 1 (To be Completed by Agency)

Agency Name: Idaho State Lottery		STARS Agency Code: 440	Fax Number: (208) 344-2610	Date: 7/11/12
Contact Person: Jeffrey R. Anderson	Title: Executive Director	Phone: (208) 334-2600	Email: janderson@lottery.idaho.gov	
Bernice Myles, Office of the Attorney General	Paralegal	(208) 334-4520	bernice.myles@ag.idaho.gov	
Person Authorizing Rule: Jeffrey R. Anderson	Title: Executive Director	Phone: (208) 334-2600	Email: janderson@lottery.idaho.gov	
Statutory Authority for the rule making (Idaho Code, Federal Statute or Regulation): Section 67-7408(1)(e), Idaho Code				
Title, Chapter, and Possible Docket (IDAPA) Number: IDAPA 52.01.03 – Rules Governing Operations of the Idaho State Lottery; Docket No. 52-0103-1201				
This rule is: <input checked="" type="checkbox"/> Proposed Temporary			Effective Date:	
<p>If this is a temporary rule:</p> <p><input type="checkbox"/> Necessary to protect the public health, safety, or welfare; or</p> <p><input type="checkbox"/> Compliance with deadlines in amendments to governing law or federal programs; or</p> <p><input type="checkbox"/> Conferring a benefit.</p> <p>Please explain:</p>				
If this is a temporary rule which imposes a fee or charge, provide justification as described in Idaho Code 67-5226(2): N/A				
<p>Agency has determined according to Idaho Code 67-5220(1):</p> <p><input checked="" type="checkbox"/> This rule is to be negotiated <input type="checkbox"/> Negotiation of this rule is not feasible</p>				
<p>If rule is negotiated:</p> <p>Agency certifies that the rule <input type="checkbox"/> has been or <input checked="" type="checkbox"/> will be negotiated with interested persons as outlined in Idaho Code 67-5220(3). <i>(indicate which)</i></p>				
<p>If rule negotiation is not feasible, the agency has determined: N/A</p> <p><input type="checkbox"/> Rule is temporary; or <input type="checkbox"/> Lack of identifiable representatives of affected interests; or</p> <p><input type="checkbox"/> Rule is simple in nature; or <input type="checkbox"/> Affected interests are not likely to reach consensus; or</p> <p><input type="checkbox"/> Other.</p> <p>Please explain:</p>				

Provide a fiscal impact statement for all programs affected. Be sure to reflect both positive and negative impacts and to include all fund sources including both the General Fund and dedicated funds: The Lottery anticipates no fiscal impact, either positive or negative. The cost recovery (convenience) fee will offset the charge incurred by the Lottery from the electronic payment provider for processing the transaction. The Lottery anticipates a nominal fee (plus or minus fifty cents (\$.50)), and an audit of actual fees incurred at each fiscal year end will determine whether an adjustment to the convenience fee, either up or down, is necessary.

Provide a short explanation of the need for this rule: The Lottery offers the purchase of tickets in the marketplace via ticket vending machines (PATs – Player Activated Terminals). Players can purchase draw game tickets (like Powerball) and instant scratch game tickets from the Player Activated Terminals using cash. Electronic payments now account for 55% of all consumer purchases, up from 43% in 1999. The Player Activated Terminals could also provide the convenience and benefit to the customer to choose to purchase tickets using a PIN-protected debit card. However, in order to provide this electronic convenience, and remain fiscally responsible, the Lottery must charge a minimal cost recovery fee to those customers who choose to take advantage of this convenience to purchase Lottery tickets using this vending machine. This is a user fee for those customers who choose not to use cash.

In order to encourage responsible play, the Lottery will limit electronic transactions to fifty dollars (\$50.00) in these Player Activated Terminals.

Provide a short summary of the changes this rule makes: Addition to IDAPA 52.01.03, Rules Governing Operations of the Idaho State Lottery, to provide for collection of a cost-recovery (convenience) fee from Lottery customers who choose to take advantage of the convenience of purchasing tickets via electronic transaction from Lottery ticket vending machines (Player Activated Terminals) using their PIN-protected debit card. Nonetheless, the player always has the option of using cash to purchase tickets from the PATs, and at most PAT locations, to purchase tickets from a clerk at the counter instead of using a debit card at the PAT.

Provide a list of those persons or interest group(s) affected by this rule: Only Idaho State Lottery customers who choose the convenience.

Section 2 (To be Completed by DFM)

DFM Analyst Comments:

DFM Analyst Fiscal Impact Review:

DFM Analyst Signature & Date:

Recommend:

Yes No

Gov Special Assistant Signature & Date:

Recommend:

Yes No

DFM Administrator Action:

- Approved
- Authorized to Advance Rulemaking Process, DFM to review draft rule prior to publication (See Section 3)
- Not Approved

DFM Administrator Signature & Date:

Section 3 (To Be Completed By DFM if Required)

DFM Analyst Signature & Date:

Recommend:

Yes No

DFM Administrator Signature & Date:

Approved:

Yes No

**IDAPA 52
TITLE 01
CHAPTER 03**

52.01.03 - RULES GOVERNING OPERATIONS OF THE IDAHO STATE LOTTERY

100. GENERAL PROVISIONS (RULE 100).

01. Purpose. These rules are established by the Commission to define and regulate the operation and administration of the Lottery and the Commission. (3-26-08)

02. Lottery Commission. The Commission is charged with the authority and duty to regulate Lottery activities in the state of Idaho, consistent with the Idaho Constitution and the enabling legislation. The headquarters of the Commission and of the Lottery is in Boise. (3-26-08)

03. Powers and Duties of the Commission. (3-26-08)

a. Rule Promulgation. The Commission promulgates rules and conditions under which the statewide Lottery will be conducted. Subjects covered in such rules include but need not be limited to: (3-26-08)

i. The types of Lottery games to be conducted; (3-26-08)

ii. The prices of tickets in the Lottery; (3-26-08)

iii. In general the numbers and sizes of prize disbursements, the manner and frequency of prize drawings, and the manner in which payment will be made to holders of winning tickets; (3-26-08)

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; (3-26-08)

v. The manner in which Lottery sales revenues are to be collected; (3-26-08)

vi. The amount of compensation to be paid to retailers; (3-26-08)

vii. Other areas relating to the efficient and economical operation and administration of a statewide Lottery consonant with the public interest. (3-26-08)

b. Delegation to Director. In addition to those duties assigned to the Director in the Act, the Commission may, insofar as is consistent with the Idaho Constitution and the Act, delegate the performance of executive or administrative functions to the Director. (3-26-08)

04. Time and Place of Meetings. (3-26-08)

a. Regular meetings of the Commission must be held at least quarterly; the date, time, and place will be set by the Commission and, if possible, with at least two (2) weeks' advance notice. The Commission may 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. (3-26-08)

b. Additional meetings 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. (3-26-08)

05. Open Meeting Law. All meetings of the Commission shall be held in accordance with Idaho's Open Meeting Law, Sections 67-2340, et seq., Idaho Code, and in accordance with Section 67-7442, Idaho Code. All meetings of the Commission are open to the public, except when executive session is allowed for part of the meeting under the Open Meeting Law. (3-26-08)

06. Director. The Director is responsible for the operation of the Lottery and for managing the affairs of the Commission. A Deputy Director designated by the Director may act for the Director in the absence of the Director. If there is a vacancy in the office of Director, the Commission will designate the Deputy Director as Interim Director until the vacancy can be filled. (3-26-08)

07. Powers and Duties of the Director. (3-26-08)

a. The Director has the authority to implement and execute procedures that he may deem appropriate for the efficient administration of the Lottery. The Director may also recommend rules governing the establishment, administration, and operation of the Lottery to the Commission for its approval; (3-26-08)

b. The Director is authorized to employ sufficient staff as may be required to carry out the functions of the Commission and the Lottery; (3-26-08)

c. The Director may contract with retailers for the sale of Lottery games and must suspend or terminate any contract in accordance with the provisions of the Act and the rules of the Commission; (3-26-08)

d. The Director must continuously study and investigate all matters pertinent to the efficient operation of the Lottery; and (3-26-08)

e. The Director must maintain full and complete records of the operation of the Lottery. The Director must report on at least a monthly basis to the Commission and to the governor on the status of the Lottery. (3-26-08)

f. The duties and responsibilities of the Director that are not otherwise specified in Idaho law or the rules adopted by the Commission may be maintained as a policy of the Commission for the purpose of establishing a working relationship between the Director and the Commission. (3-26-08)

08. Lottery Offices. (3-26-08)

a. The principal office of the Lottery is located at 1199 Shoreline Lane, Suite 100, Boise, Idaho 83702. (3-26-08)

b. The Lottery may also operate other offices and facilities throughout the state as are appropriate to fulfill its responsibilities under law. (3-26-08)

09. Lottery Budgets and Financial Statements. The Director must: (3-26-08)

a. Submit quarterly financial statements to the Commission, the governor, the state treasurer, and the legislature. The quarterly financial statements must be prepared in accordance with generally accepted accounting principles and must include a balance sheet, a statement of operations, a statement of changes in financial position,

and related footnotes. The quarterly financial statements must be provided within forty-five (45) days of the last day of each quarter. (3-26-08)

b. Submit annual financial statements to the Commission, the governor, the state treasurer, and each member of the legislature. The annual financial statements must be prepared in accordance with generally accepted accounting principles and must include a balance sheet, a statement of operations, a statement of changes in financial position, and related footnotes. The annual financial statements must be examined by the state controller or a firm of independent certified public accountants in accordance with generally accepted auditing standards and must be provided within ninety (90) days of the last day of the Lottery's fiscal year. (3-26-08)

10. Contingency Reserve. (3-26-08)

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. (3-26-08)

b. When the Commission approves a contingency reserve, it must determine the amount necessary for a reasonable contingency reserve. (3-26-08)

c. Upon approval of the Commission, money in the contingency reserve may be authorized to be used for specific purposes of the Lottery or to be used to fund general administrative expenses if there is a revenue shortfall. Expenses funded from the contingency reserve cannot be included with other administrative expenses for purposes of determining compliance with current administrative expenditure limitations. (3-26-08)

11. Special Drawings. (3-26-08)

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 Director will determine the nature and number of awards 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. (3-26-08)

b. Notwithstanding the provisions of Paragraph 100.11.a. of this rule, the Director may, at his discretion, award in-lieu equivalent cash awards to the winners of tangible items, in those instances where the Director deems it appropriate. The value of noncash items must be estimated by using either the cost of the item or its fair-market value. (3-26-08)

12. Retail Drawings. The Director and his designee may authorize retailers to conduct drawings using non-winning Lottery tickets in conjunction with a particular Lottery game. Such authorization must be in writing, must specify the type of drawing to be conducted and must set forth the methodology to be used in conducting the drawing. (3-26-08)

13. Retail Ticket Price Discounts. (3-26-08)

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. (3-26-08)

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. (3-26-08)

ii. Coupons that offer a discount on the retail price of Lottery tickets must 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 Lottery offices and retailer locations. (3-26-08)

b. Rules for a promotion conducted by the Lottery using retail ticket discounts must be announced by the Director and made available at the Lottery's offices and retailer locations. (3-26-08)

14. Allocation of Revenues for Prizes. (3-26-08)

a. Purpose: The primary objective of the 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 Lottery may design and conduct games that 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 that 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. (3-26-08)

b. Prize payments: In addition to cash prize payments, money set aside by the Lottery and restricted for the payment of prizes is considered in satisfying the requirement of returning at least forty-five percent (45%) of total revenues to the public in the form of prizes. (3-26-08)

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 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 must report to the Commission on any reallocations made pursuant to Section 100 o these rules. (3-26-08)

15. Ownership of Lottery Tickets. (3-26-08)

a. Except for tickets claimed jointly in accordance with the provisions of Paragraph 100.15.d. of this rule, until a name is printed or placed upon a Lottery ticket in the area designated for "name," the ticket is owned by the bearer of the ticket. When a name is placed on the ticket in the place designated for a name, the person whose name appears in that area is the owner of the ticket and is entitled to any prize attributable to the ticket. (3-26-08)

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 Paragraph 100.15.d. of this rule. (3-26-08)

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 that number is shown on the claim form. (3-26-08)

d. If a ticket is claimed to be owned by two (2) or more people, the following steps will be taken for payment of the prize: (3-26-08)

i. All people claiming ownership must complete and sign a request and release form. (3-26-08)

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. (3-26-08)

iii. The 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). (3-26-08)

iv. Multiple winners of a Lottery prize will be paid only through the Boise Lottery office. Lottery retailers will not be required to pay more than one (1) winner of a single prize. (3-26-08)

16. Claims. (3-26-08)

a. **Liability.** By submitting a claim, the player agrees that the state, the Commission, the Lottery and all officials, officers, and employees of each are discharged from all further liability upon payment of the prize. (3-26-08)

b. **Publicity.** By submitting a claim, the player also agrees that the Lottery may use the prize winner's name and photograph for publicity purposes. (3-26-08)

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 are payable in accordance with the Lottery's rules. If a claim is not made for the prize within the applicable period, the prize money will 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. (3-26-08)

d. **Invalid tickets.** 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. (3-26-08)

e. **Ticket 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 considered the owner of the ticket after signing it. Payment of any prize may be made to a person in possession of an unsigned ticket or to the person whose signature appears on the ticket. All liability of the state, the Commission, the Lottery, the Director, and Lottery employees terminates upon payment. (3-26-08)

f. **Time of prize payment.** All prizes will be paid within a reasonable time after a claim is verified by the Lottery and a winner is determined. The date of the first installment payment of any prize to be paid in installment payments is the date the claim is validated and processed, unless a different date is specified for a particular game in these rules or in the specific game rules. Later installment payments will 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 Lottery may, at any time, delay any prize payment in order to review a change in circumstances concerning the prize awarded, the payee, or the claim. (3-26-08)

g. **Prizes payable for winner's life.** 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 is deemed to be twenty (20) years. (3-26-08)

17. Prizes Payable After Death of Winner. All prizes, and portions of prizes, that remain unpaid at the time of the prize winner's death will be payable to the personal representative of the prize winner's estate once satisfactory evidence of the personal representative's appointment has been provided, and the Director is satisfied that payment to the personal representative is lawful and proper. The Director may rely on a certified copy of a court order appointing a personal representative (or similar person responsible for the prize winner's estate, whether

denominated an administrator, executor, executrix, or other representative of the prize winner's estate) or may petition the court to determine the proper payee. Payment to the personal representative of the estate of the deceased owner of any prize winnings will absolve the Director and the Lottery's employees of any further liability for payment of prize winnings. (3-26-08)

18. Disability of Prize Winner. The Lottery may petition any court of competent jurisdiction for a determination of the rightful payee for the payment of any prize winnings that are or may become due to a person under a disability including, but not limited to, minority, mental deficiency, or physical or mental incapacity. (3-26-08)

19. Stolen or Lost Tickets. The Lottery has no responsibility for paying prizes attributable to stolen or lost tickets. (3-26-08)

20. Effect of Game Rules. In purchasing a ticket the player agrees to comply with Title 67, Chapter 74, Idaho Code, these rules, the specific game rules, Lottery instructions and procedures, and the final decisions of the Lottery. The 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 will be final and binding upon all participants in the Lottery. If a dispute between the Lottery and a player occurs as to whether a ticket is a winning ticket and the prize is not paid, the Lottery may, solely at the Director's option, replace the ticket with an unplayed ticket of an equivalent price from any game or refund the price of the ticket. This will be the sole and exclusive remedy of the player. (3-26-08)

21. Disputed Prizes. If there is a dispute, or it appears that there may a dispute concerning payment or ownership of any prize or any other legal issue involving the prize, the Lottery may refrain from making payment of the prize pending a final determination by the Lottery or by a court of competent jurisdiction as to the proper payment of the prize. (3-26-08)

22. Sale of Lottery Tickets. Lottery tickets may be sold for cash, check, money order, credit card, electronic funds transfer, or debit card. (5-8-09)

23. Convenience Fee. The Lottery may collect a cost recovery fee, set by the Commission, from Lottery customers choosing to purchase lottery tickets with the convenience of using debit card electronic transactions administered by the Lottery through the use of a third party payment processor. ()