

Minnesota State Lottery

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendments to Rules Governing Lottery Retailers and Lottery Prize Payments, Minnesota Rules, chapters 7856 and 7857.

INTRODUCTION

The Minnesota State Lottery (hereinafter referred to as the "MSL") conducts a variety of lottery games in which players can win prizes. Lottery tickets are sold to players by retailers that are under contract with the MSL. In order to maintain the integrity of the MSL and to ensure that money received by retailers from the sale of lottery tickets is paid to the MSL, retailers must abide by certain procedures and requirements. Further, to ensure the integrity of the MSL and the prizes which are paid out, when a player claims a prize from a lottery ticket, the MSL has adopted certain procedures that must be followed to determine if the lottery ticket is valid and that the person who holds the ticket is entitled to a prize. The Director of the MSL has adopted general rules which are applicable to all lottery retailers (Minnesota Rules, Chapter 7856), and has adopted rules governing the manner in which a person must claim a prize in order to be entitled to it (Minnesota Rules, Chapter 7857).

The proposed rule amendments clarify existing procedures relating to lottery retailers and payment of prizes, repeals an obsolete provision relating to payment of prizes, corrects errors in the rules relating to lottery retailers, and eliminates the provision that lottery retailers must maintain a separate account for lottery proceeds.

The rules relating to lottery retailers are to be clarified to recognize existing practices in three areas. Rule 7856.4010, subpart 6 and Rule 7856.7040 are to be amended to clarify that lottery retailers may return loose tickets that are not in sequential order to the MSL. Rule 7856.4010, subpart 16 is to be amended to clarify that lottery retailers may accept check or debit cards for payment of lottery tickets. Rule 7856.7030 is to be repealed eliminating the requirement that lottery retailers file reports relating to lottery transactions with the MSL.

The rules relating to lottery retailers are clarified to correct an erroneous provision. Rule 7856.6010, subpart 2, paragraph N. is corrected to refer to the correct statute.

Rule 7856.7010 is being amended to remove the requirement that lottery retailers deposit money from the sale of lottery tickets in a separate account so long as the money is deposited into an account in a bank which the MSL will have access through electronic funds transfer (EFT).

The rules relating to payment of lottery prizes are to be clarified to recognize existing practices in three areas. Rule 7857.4000 is to be amended to clarify that the MSL not lottery retailers will verify information on a claim form submitted by a player. Rule 7857.4040 is to be amended to clarify that prizes may be paid by cash in addition to prizes being paid by a check, draft or free ticket. Rule 7857.5000 is to be amended to permit two or more persons to share a lottery prize.

Rule 7857.4010, subpart 2 is to be amended to provide that for certain prizes over a specified amount as set forth in the game procedures for that game must be claimed at MSL headquarters, rather than all prizes over \$30,000. Rule 7857.4041, subpart 2 which allowed certain previous prize winners to receive the present value of their prize if they notify the MSL by December 31, 2000 is to be repealed since it is obsolete.

A Request for Comments relating to amendment to rules regarding the subjects described above was published in the State Register on January 31, 2005 (29 S.R. 899).

This Statement of Need and Reasonableness will be made available for public review on July 26, 2005.

ALTERNATIVE FORMAT

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or cassette tape. To make a request, contact Dale McDonnell, at the Minnesota State Lottery, 2645 Long Lake Road, Roseville, Minnesota 55113, phone - 651-635-8213, fax - 651-297-7496, email - dalem@mnlottery.com. TTY users may call the Lottery at (651) 635-8268.

STATUTORY AUTHORITY

The MSL's statutory authority to adopt the rules is set forth in Minnesota Statutes, section 349A.05, which provides: "The director [of the lottery] may adopt rules under chapter 14 governing the following elements of the lottery:...(6) account for and deposit of lottery revenues by lottery retailers;...(8) payment of prizes; (9) procedures needed to ensure the integrity and security of the lottery; and (10) other rules the director considers necessary for the efficient operation and administration of the lottery". Under this statute, the MSL has the necessary statutory authority to adopt the proposed rule amendments.

REGULATORY ANALYSIS

Minnesota Statutes, section 14.131, sets out seven factors for a regulatory analysis that must be included in the Statement of Need and Reasonableness. Paragraphs (1) through (7) below quote these factors and then give the MSL's response.

1. A description of the classes of persons who probably will be affected by the proposed rule amendment, including classes that will bear the costs of the proposed rule amendment and classes that will benefit from the proposed rule amendment.

The class of persons that will probably be affected by the proposed rules are current and future lottery retailers authorized to sell lottery tickets, and future lottery winners. Future lottery winners, and current and future lottery retailers will benefit from the adoption of these rule amendments.

2. The probable costs to the MSL and to any other agency of the implementation and enforcement of the proposed rule amendment and any anticipated effect on state revenues.

The probable cost to the MSL to implement and enforce these rule amendments will be negligible. There are no anticipated costs to any other agency to implement or enforce these rule amendments. The rule amendments will not have an impact on state revenues.

3. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule amendment.

There are no less costly methods or less intrusive methods to achieve the purposes of these rule amendments.

4. A description of any alternative methods for achieving the purpose of the proposed rule amendment that were seriously considered by the MSL and the reasons why they were rejected in favor of the proposed rule amendment.

There were no alternative methods seriously considered to achieve the purposes of these rule amendments.

5. The probable costs of complying with the proposed rule amendment, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.

There will be no significant costs imposed to comply with these rule amendments.

6. The probable costs or consequences of not adopting the proposed rule amendment, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.

The probable costs or consequences of not adopting the proposed rule amendment would continue the requirement that lottery retailers maintain a separate account for deposit of proceeds from the sale of lottery tickets and would continue the cost that a retailer must expend to maintain that separate account.

7. An assessment of any differences between the proposed rule amendment and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.

There are no existing federal regulations relating to lottery retailers or the payment of lottery prizes.

PERFORMANCE-BASED RULES

The MSL's performance goals are to maintain its contributions to the state, maintain its market share of the state's gaming industry, and to continue to operate a network of retail outlets that provides convenient access to lottery products for all players. The MSL meets its performance standards through merchandising, advertising and promotion of its lottery games, and through the introduction of new and attractive lottery products. The performance measures of the MSL are to maximize the contributions to the state within the statutory guidelines. To maintain existing revenue projections, the MSL must anticipate, develop and foster consumer's preference in spending discretionary entertainment dollars.

The MSL considered these performance-based standards in developing these rule amendments. The rules attempt to maintain or increase the MSL's efficiency that maximizes the contributions it makes to the state. These rules maintain the MSL's integrity that is crucial for consumers to accept and play lottery games.

ADDITIONAL NOTICE

The MSL will provide the following additional notice:

1. Mailing the notice of the proposed rule amendments to the following trade organizations that represent a majority of lottery retailers in Minnesota:
 - a. Minnesota Grocers Association
 - b. Minnesota Petroleum Marketers Association
 - c. Minnesota Retailer Merchants Association
 - d. National Association of Convenience Stores
 - e. Minnesota Service Station Association
 - f. Minnesota Licensed Beverage Association
2. Placing notice a summary rulemaking notice in the MSL's July newsletter, the "*Link*", which is distributed to all current lottery retailers.
3. Placing a summary of the notice of rulemaking on the MSL's web page at www.mnlottery.com.

This Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved on June 21, 2005 by Administrative Law Judge George A. Beck.

The MSL's Notice Plan also includes giving notice required by statute. The MSL will mail the rules and Notice of Intent to Adopt to everyone who has registered to be on the MSL's rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a. The MSL will also give notice to the Legislature per Minnesota Statutes, section 14.116. The notice and proposed rules will be published in the *State Register* on August 1, 2005.

CONSULTATION WITH FINANCE ON LOCAL GOVERNMENT IMPACT

Minnesota Statutes, section 14.131 requires an agency to consult with the Commissioner of Finance to help evaluate the fiscal impact and fiscal benefits of the proposed rules on units of local government.

The MSL informed its executive budget officer at the Department of Finance, Kristi Schroedl, on June 8, 2005 of the proposed rules. Ms. Schroedl, on behalf of the Commissioner of Finance, sent a memo to the MSL on July 8, 2005 stating that the MSL had “adequately described the impact of the proposed rules on local units of government and correctly determined that the proposed changes do not have any impact on local units of government.”

LIST OF WITNESSES

If these rules go to a public hearing, the MSL anticipates having the following witnesses testify in support of the need for and reasonableness of the rules:

1. Clint Harris, Executive Director, Minnesota State Lottery
2. Dale L. McDonnell, Assistant Director & General Counsel, Minnesota State Lottery
3. Joe Pahl, Chief Financial Officer, Minnesota State Lottery
4. Mitch Kapaun, Receipts and Disbursements, Minnesota State Lottery
5. Carolyn Ross, Contracts & Purchasing Manager, Minnesota State Lottery
6. Jenny Canfield, Games Control Manager, Minnesota State Lottery

RULE-BY-RULE ANALYSIS

Rule 7856.4010, Subpart 6 and Rule 7856.7040

Rule 7856.7040 provides that all lottery tickets delivered and accepted by a lottery retailer from the MSL are considered to be purchased by the retailer, unless returned to the MSL within the time specified by the MSL and that the retailer is responsible for lost, stolen, missing or loose tickets not returned to the MSL in sequential order. Rule 7856.4010, subpart 6, also provides that the retailer’s contract with the MSL must provide that the lottery retailer is responsible for lost, stolen, missing, or loose tickets not returned to the MSL in sequential order.

Lottery tickets are delivered to retailers on a consignment basis. Retailers are charged for tickets after they have sold a complete pack of tickets for that game. When the MSL decides to close a particular game, it provides notice to the retailer and the retailer is given an opportunity to return any unsold lottery tickets. Under current rules, the MSL may charge the retailer for the value of any tickets not returned and for loose tickets not returned in sequential order, less the appropriate retailer commission on those tickets.

This rule is to be amended to recognize existing practice by providing that a retailer is not responsible for loose lottery tickets returned to the MSL in non-sequential order. The rule was originally adopted since it was believed that it would be difficult to account for loose tickets that were not in sequential order. Utilizing today's technology, it is not difficult to account for loose tickets that are not in sequential order, so to accept the return of lottery tickets in this manner does not adversely affect the MSL's efficient operation.

This rule amendment is necessary to permit lottery retailers to return for a credit all unsold lottery tickets whether or not the tickets are loose and whether or not the tickets are in sequential order. This rule amendment is reasonable since lottery tickets are delivered to a retailer on a consignment basis and as such the retailer should only be charged for tickets that have been sold. It is reasonable to provide the retailer with credit for any unsold tickets that are returned to the MSL, regardless of whether they are in sequential order.

Rule 7856.4010, Subpart 16

This rule currently provides that lottery retailers shall agree in their contract with the MSL that they will only sell lottery tickets for cash. The rule defines "cash" as "coin, currency, money orders, and checks." The Administrative Law Judge and the Director of the MSL found and concluded in 1990 when the original rule was adopted that it was reasonable to define cash as provided in this rule since the common law definition of cash is "money in hand", either in currency, coin or other legal tender or in bonds, bills or checks. This rule is proposed to be amended to clarify and to recognize existing practice that check cards or debit cards are also a permitted form of payment for lottery tickets.

This rule amendment is necessary to permit players to utilize the current common form of checks, namely a check or debit card. The rule is reasonable since banks treat the use of a check or debit card in the same manner as they treat checks, namely when payment is demanded, the person's checking account is debited by the amount of the charge on the check or debit card. Further, the rule amendment is reasonable to the extent that it has been found to be reasonable to treat checks as the same as cash. In this manner, check or debit cards should be treated the same as cash since under bank definitions, check or debit cards are the same as checks.

Rule 7856.6010, Subart 2, Paragraph N

Rule 7856.6010, subpart 2, paragraph N provides that a contract to sell lottery tickets may be canceled, suspended or non-renewed by the Director of the MSL if the retailer has sold, bartered, furnished, or given alcoholic beverages to a person under 21 years of age in violation of Minnesota law two or more times within a two-year period. The rule provides a reference to the statute that prohibits sale of alcoholic beverages to minors, but that reference in the rule is to Minnesota Statutes, section 349A.06 which is the statute which authorizes the Director of the MSL to contract with retailers, rather than the reference in the liquor statutes. Minnesota Statutes, section 340A.503, provides that it is illegal to sell alcoholic beverages to minors.

It is therefore necessary to amend this rule to correct the statutory reference to the section in the liquor law which prohibits the sale, bartering, furnishing, or giving of alcoholic beverages to a person under 21 years of age. The rule amendment is reasonable since it is appropriate to provide the correct statutory reference in the rule.

Rule 7856.7010

This rule currently requires all lottery retailers to deposit all money received by them from the sale of lottery tickets in a separate account in a designated bank. Further the rule requires retailers to utilize a bank that will accept electronic funds transfer (EFT) and if that is not possible the retailer may pay the MSL in a manner agreed upon by the retailer and the MSL.

This rule is to be amended to change the requirement in two ways: (1) retailers will no longer be required to deposit proceeds from the sale of lottery tickets in a separate bank account; and (2) the retailer's bank account must provide that the MSL has access to the account through electronic funds transfer.

This rule amendment is necessary so that retailers will not have to set up a separate account for lottery proceeds, but be able to merely deposit lottery proceeds into any of their bank accounts. This rule amendment is reasonable so long as the MSL has access to the account through the EFT process since that is all that is necessary for the MSL to collect money that is due from retailers. Further the rule amendment is reasonable since it does not require retailers to do anything different than they currently are doing. In other words, if a retailer wants to maintain a separate account for its lottery proceeds it may continue to do so. Also, elimination of the option of retailers being able to pay the MSL in a different manner if a bank is unable to accept EFT transactions is reasonable to the extent that all banks today accept EFT transactions.

Rule 7856.7030

This rule requires lottery retailers to file with the MSL reports showing all of the retailer's receipts and transactions from the sale of lottery tickets on a form set by the MSL. The MSL is proposing to repeal this rule.

The repeal of this rule is necessary since all lottery transactions by retailers are recorded on computer terminals provided by the MSL to each retailer. The original rule was necessary to ensure that all reports were uniform. By recording all transactions on the MSL supplied terminal, reports can be produced by the MSL for each retailer on a uniform basis. The repeal is reasonable since manual filing of reports by retailers is no longer needed.

Rule 7857.4000

This rule currently provides that lottery retailers must verify information on a claim form provided by a person claiming a lottery prize and then forward that claim form and the apparent winning ticket to the MSL. This rule is proposed to be amended to provide that the MSL, not a retailer, will verify the information on a claim form, and eliminates the requirement that a retailer must forward a claim form and the apparent winning ticket to the MSL for validation.

In 1999, Rule 7857.4010, subpart 2 was amended to eliminate the option that a person could submit a claim form to a lottery retailer. The amendment to Rule 7857.4000 is necessary since a retailer under Rule 7857.4010, subpart 2 does need to accept a claim form, therefore, it is not necessary for the retailer to verify the information on the claim form or to forward the claim form to the MSL. Further, since the Rule 7857.4010, subpart 2 was modified in 1999 to eliminate the option of a player to submit a claim form to a retailer, it is reasonable to eliminate the requirement that the retailer must verify the information on the claim form and forward it to the MSL.

Rule 7857.4010, Subpart 2

This rule currently provides in part that a person that is claiming a prize of over \$30,000.00 must submit the claim form and the apparent winning ticket in person at MSL's headquarters. This requirement was added in 1999 to insure the integrity of the Lottery and its games since extensive validation and verification procedures are required for larger prizes. The verification procedure includes the verification of the identity of the winner, and the examining and verifying the apparent winning ticket. The verification and validation procedure involves a number of individuals engaged in at least four different Lottery departments which are located in the MSL headquarters. Therefore, this provision was added to maintain the efficient operation of the MSL. In 1999, the prize level set for this requirement was \$30,000.00. The proposed amendment would provide that the prize level set for the requirement of personally presenting

a claim form and the apparent winning ticket at MSL headquarters would be set by individual game procedures for a particular game adopted under Minnesota Statutes, section 349A.04.

This rule is necessary to allow for some flexibility on the part of the MSL to provide that for certain prizes with a value under \$30,000.00, the MSL may still require that a person claim the prize in person at MSL headquarters. This need may arise in circumstances where a valuable merchandise prize is being awarded where there would be a need to verify the claim by MSL staff at headquarters. Also, given changing technology, the MSL may in the future be able to verify certain prizes over \$30,000.00 for a particular game at its regional offices instead of requiring a person to present it at MSL headquarters.

This rule amendment would permit the MSL, through the game procedures for a particular game, to set the prize level at which the person must present a claim at the MSL headquarters, based on the security and integrity requirements for a particular prize. This rule amendment is reasonable since in certain circumstances the MSL may need to verify a claim for a prize that has a value of less than \$30,000.00 at its headquarters and it is not unreasonable due to the process that must be conducted to verify the claim. The fact that the person will be collecting a substantial prize will more than offset any cost or inconvenience caused by this requirement. Further, a person need not travel immediately to Roseville, since a person has one year from the drawing date (for games where the winner is determined by a drawing) or one year from the close of a game (for instant games) to claim their prize. Also, it is not unreasonable to modify this requirement that for certain prizes above \$30,000.00 as set forth in the game procedures for that game, a player need only present the claim form and the apparent winning ticket at a regional office of the MSL.

Rule 7857.4040

This rule currently provides that payment of prizes may be made by check, draft or a free ticket. The rule is proposed to be amended to recognize the existing practice of permitting prizes to be paid by cash, in addition to by check, draft, or a free ticket.

This rule is necessary in order to recognize the common practice to pay small lottery prizes in the form of cash. It is more efficient in many instances for smaller prizes to pay the prize in the form of cash rather than to issue a check or a draft. The rule is reasonable to the extent that it recognizes common practice and in most instances the player would prefer to receive the prize in the form of cash rather than a check or draft.

Rule 7857.4041, Subpart 2

This rule was adopted in 1999 following a change in the United States Internal Revenue Code and regulations adopted by the Internal Revenue Service (IRS). This rule permitted winners of lottery prizes before October 21, 1998 where the prize was to be paid over a definite period of time to elect to receive the payment of the prize in one lump sum, rather than continue to receive installment payments. Under IRS regulations and this rule, the previous prize winner had to make any such election to receive the remaining payments in one lump sum between July 1, 1999 and December 31, 2000. This rule is proposed to be repealed.

This rule is now obsolete since previous prize winners can no longer make any election to receive their remaining prize payments in one lump sum. Since a previous prize winner can no longer make such an election this rule is no longer necessary and it is reasonable to repeal it.

Rule 7857.5000

This rule currently provides in part that if more than one name appears on a back of a winning lottery ticket, one of the persons whose name is on the ticket must be designated to receive payment of the prize. This rule is proposed to be amended to allow, in certain circumstances, for the MSL to pay more than one person for the same prize if more than one person has signed the back of the ticket or the person presenting the ticket agrees to share the prize by executing a prize sharing agreement.

This rule amendment is necessary to recognize current practice of permitting winners of certain prizes to share the prize and allowing the MSL to provide separate prize winning checks to each person sharing the prize. Formerly this was not permitted because of technological concerns relating to the MSL's prize payment system. Currently those technological concerns have been met allowing the MSL's system to make multiple payments relating to the same prize. This rule amendment is reasonable since it permits players who are sharing a prize to each receive separate payment for their share rather than the MSL paying one person and requiring the group to then split the prize among its members. This rule change would apply to certain prizes as designated by the game procedures adopted for that particular game. Typically, only the top prize for a game may be shared in this manner, although if the top prize is under a certain amount (e.g. \$30,000.00) it may not be shared, and if the second prize is a substantial amount (e.g. \$100,000.00) that prize may also be shared.

CONCLUSION

Based on the foregoing, the proposed rules are both needed and reasonable.

Date: July 19, 2005

Clint Harris
Director
Minnesota State Lottery