



ADMINISTRATIVE RULES OF MONTANA

23.16.3501 DEPARTMENT APPROVAL OF PROMOTIONAL GAMES OF CHANCE, DEVICES, OR ENTERPRISES

- (1) The department may approve devices, machines, instruments, apparatuses, contrivances, schemes, activities, or enterprises used in, or associated with, promotional games of chance authorized by Title 23, chapter 5, MCA. Any promotional game of chance offered or displayed in public without conforming to the requirements of this rule is prohibited.
- (2) A bona fide promotional game of chance utilizes or involves any scheme, device, or enterprise, by whatever name known, for the disposal or distribution of property among persons who have not paid or are not expected to pay any valuable consideration or who have not purchased or are not expected to purchase any goods or services for a chance to obtain the property, a portion of it, or a share in it, and which is not manufactured or intended for purposes of gambling.
 - (a) As used in this rule, valuable consideration means a payment or promise of payment of anything of value, a token, object or article exchangeable for money or property, credit or promise directly or indirectly or contemplating transfer of money or property or interest therein, deposits or any other thing of pecuniary value as a condition of entering a promotional game of chance, or winning a prize from the game. Valuable consideration does not mean, for example, registering to participate or to qualify to participate in the promotional game of chance without purchasing goods or services; personally attending places or events without payment of an admission price or fee; or purchasing postage for purposes of mailing.
 - (b) Payouts for bona fide promotional games of chance, offered by a gambling licensee and/or an on-premises consumption alcoholic beverage licensee, are subject to the maximum payout limitation for any single element of the authorized gambling enterprise simulated. Payouts for bona fide promotional games of chance offered by any person or entity that are not a gambling or alcoholic beverage licensee, are not limited by the payout limits for the authorized gambling enterprise simulated.
- (3) Any devices, machines, instruments, apparatuses, contrivances, schemes, activities or enterprises that simulate the following games, variations of the following games, or in any manner incorporate aspects of the following games are prohibited and shall not be approved by the department:
 - (a) banking card games, such as blackjack, twenty-one, jacks or better, baccarat, or chemin de fer;
 - (b) dice games, known as craps, hazard, or chuck-a-luck;
 - (c) sports betting other than horse racing, sports pools as authorized by law, or as provided in (9); or
 - (d) table games, such as roulette or faro.

- (4) Except as provided in (9) and (11) of this rule, all schemes, activities or enterprises that are not prohibited by (3) of this rule and that are used in bona fide promotional games of chance do not require approval by the department before such activities or enterprises are played, displayed, operated, or conducted in public so long as the game is conducted in compliance with these rules.
- (5) All schemes, activities or enterprises shall be conducted in a manner that does not allow the winner to be unfairly predetermined or the game to be manipulated or rigged. The person or business conducting the promotion shall not arbitrarily remove, disqualify, disallow or reject any entry or fail to award prizes offered or print, publish or circulate literature or advertising material used in connection with such promotional game of chance that is false, deceptive or misleading.
- (6) Gambling operators conducting promotional schemes, commonly called by such names as "coupon(s)" or "5 for 5", "5 for 10", or "10 for 5", in which an establishment pays for video gambling machine play to customers who purchase additional play on the machine shall post a clearly readable sign on a wall in the operator's establishment in full view of patrons playing video gambling machines. The sign shall include the following language:

This establishment requests that if you accept one of our promotions or promotional coupons for video gambling machine play that you play the machine for [time limit established by location] minutes.

Any customer or patron of this establishment may print a valid ticket voucher and cash-out any valid ticket voucher at any time during machine play. Mont. Code Ann. ; 23-5-608 .

If a customer or patron of this establishment chooses to cash-out their free or credit play in less than [time limit established by location] minutes, the establishment will cash-out their valid ticket voucher in full but reserves the right to refuse this promotional offer for future play.

- (a) An operator who does not suggest, impose, recommend, or state a time limit is exempt from the foregoing sign requirement.
- (7) All devices, machines, instruments, apparatuses, or contrivances not prohibited by (3) of this rule and which are used in bona fide promotional games of chance as provided in statute shall be approved by the department before such device is played or displayed in public. Persons submitting such proposed devices, machines, instruments, apparatuses, or contrivances for approval shall comply with the following:
 - (a) The applicant must submit a promotional device application to the department that shall include:
 - (i) a complete physical description, the printed circuit board schematics, and the wiring diagrams of the proposed device;
 - (ii) a complete description of the method of operation of the device and promotional scheme, activity, or enterprise in which the device is intended to be used;
 - (iii) marketing, promotion, or sale literature denoting that the new proposed device is for promotional purposes only; and
 - (iv) proof by a preponderance of the evidence that the proposed device was manufactured for purposes other than gambling. In determining whether a device meets the requirements of this rule, the department may review such factors as initial and resulting design of the device, its prior and intended use, the device's inability to

accumulate credits, and the source of the device and component parts. The proposed device shall not be manufactured from already existing or modified gambling devices.

- (b) Concurrent with the submission of the application pursuant to (7)(a), the applicant shall submit a prototype of the proposed device to the department for final physical inspection;
 - (c) The individual or entity submitting the game for review shall be responsible for transportation of the proposed device to and from the department's offices;
 - (d) The proposed device shall not be manufactured with an input mechanism or related components. For purposes of this rule only, an input mechanism is defined as an electrical, mechanical or electro-mechanical device, instrument, apparatus, contrivance, or part used or intended for use with money, token, credit, deposit, check, or any other thing of monetary value that by activation puts the device into the play mode. Examples of devices used as input mechanisms are: coin or token acceptors, bill acceptors, magnetic card readers, buttons or switches (local, wire remote, radio remote, etc.). Examples of related components include coin or token head, coin or token chute, and coin or token return;
 - (e) The proposed device must free play. For purposes of this rule only, free play means one game after another can be played without any intervention by player or operator;
 - (f) The proposed device shall be labeled "No Purchase Required" which is printed in a clearly legible typeface and which is displayed in a prominent manner that is immediately obvious to the casual observer.
 - (g) The manufacturer shall attach to the proposed device a manufacturer identification tag that includes the manufacturer name, the date the proposed device was manufactured, and a unique serial and model number;
 - (h) Thirty days from or after the date the department renders final approval of the proposed device, the applicant shall submit to the department 25 color photographic prints (5" x 7") of the front view of the authorized proposed device.
- (8) No department approval is required for ticket or card devices described under 23-5-112, MCA, and promotional wheel devices as defined herein, so long as such devices are bona fide promotional games of chance; and the ticket or card devices described under 23-5-112, MCA, comply with (7)(f) of this rule; and promotional wheel devices comply with (7)(e), (f), and (g) of this rule. For the purposes of this rule, a promotional wheel device is defined as one or more vertically constructed circular frames or disks, displaying various symbols, such as numbers or pre-identified sectors, that is freely spun for the random selection of a symbol as determined by a permanently stationary mark for selecting the particular symbol when the wheel stops spinning.
- (9) The department may, on a case-by-case basis, approve schemes, activities or enterprises that simulate the sport guessing game defined under this subsection as "pick-the-winners." "Pick-the-winners" is a bona fide promotional game of chance where participants choose one team to win a sports event from a predesignated number of sports events during a particular week, and where the participant who chooses the most winning teams wins a predesignated prize. In the event of a tie, there must be one additional tie-breaker contest for the participants to pick the winning team and guess the score of the contest. The tied participant who picks the winning team and whose guess is closest to the final score of the tie breaker contest shall be declared the winner. "Pick-the-winners" games using any form of written advertisements, promotional or informational material, or entry or application forms shall comply with (7)(f) of this rule. For purposes of this subsection, a

"predesignated prize" shall not exceed the value of \$100 and shall be either cash or tangible merchandise. "Pick-the-winners" games shall be conducted in compliance with these rules.

- (10) Upon completion by the department of its investigation of a proposed device, activity, or enterprise for use in a promotional game of chance, the department shall notify the person submitting the device or enterprise in writing of the department's decision. If the person then desires a hearing, he or she must submit a written request to the department within 20 days. From that point forward, all proceedings shall be conducted in accordance with the Montana Administrative Procedure Act and the Attorney General's Model Rules of Procedure.
- (11) Nothing in this rule is intended to approve or authorize promotional games of chance conducted via wire, satellite or telephone communication or similar remote electronic forum. Approval from the department is required for all such proposed activities.
- (12) For any violation of 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.

Authorizing statute(s): 23-5-115, MCA

Implementing statute(s): 23-5-112, 23-5-115, 23-5-152, MCA

History: NEW, 1993 MAR p. 2786, Eff. 11/25/93; NEW, 1994 MAR p. 2834, Eff. 10/28/94; AMD, 1997 MAR p. 404, Eff. 2/25/97; AMD, 2002 MAR p. 2441, Eff. 9/13/02; AMD, 2003 MAR p. 1282, Eff. 6/27/03; AMD, 2014 MAR p. 1505, Eff. 7/11/14; AMD, 2019 MAR p. 302, Eff. 3/16/19; AMD, 2022 MAR p. 48, Eff. 1/15/22.