Retailer Rules
Arkansas Lottery Commission

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BY

Preface: The purpose of these rules is to proscribe the procedures for licensing and administering the statewide network of lottery retailers. These rules are issued pursuant to the authority vested in the ALC under Ark. Code Ann. §§ 23-115-601 et seq., and 23-115-207, and the Arkansas Administrative Procedures Act, §§ 25-15-201, et seq.

Section 1. Definitions.

1.1 "Act" means the Arkansas Scholarship Lottery Act (Act 606 of 2009).

1.2 "ALC" means the Arkansas Lottery Commission as created by the Act.

1.3 "Applicant" means any person applying for a contract with the ALC for the purpose of selling lottery games to the public.

1.4 "Application" means the forms, documents or other information that the ALC requires an applicant to submit to the ALC in order to apply for or maintain a retailer contract.

1.5 "Compensation" means money or anything of value received or to be received as a claim for services, whether in the form of a retainer, fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, or any other form of recompense or any combination thereof.

1.6 "Director" means the director of the ALC.

1.7 "Game" means any individual or particular type of lottery authorized by the ALC pursuant to the Act including without limitation instant tickets and online game tickets.

1.8 "Immediate Family" means the father, mother, sister, brother, husband, wife, child, grandmother, grandfather, grandchild, father-in-law, mother-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law, stepchild, grandmother-in-law, grandfather-in-law, step grandchild, or any individual acting as parent or guardian.

1.9 "Instant Game" means a game in which a ticket is purchased and upon removal of a latex covering or other covering on the front of the ticket or the opening of the sealed ticket, the ticket bearer determines his or her winnings, if any, which are payable upon presentation to a retailer or to the ALC for payment.

1.10 "Instant Ticket" means a printed card or slip purchased for participation in an instant game.

1.11 "License" means an authorization granted by the ALC to a person to sell lottery games, including without limitation the execution of a contract between the ALC and the person relating to obligations and terms for operating as a retailer.

1.12 "Lottery Proceeds" includes without limitation:

(a) Unsold instant tickets received by a retailer;

(b) Cash proceeds of the sale of any lottery products;

(c) Net of allowable sales ALCs; and

(d) Credit for lottery prizes paid to winners by retailers.

1.13 "Online Game" means a lottery game in which a player pays a fee to a retailer and selects or requests a randomly generated (Quick Pick) combination of digits, numbers, or symbols, the type and amount of play, and the drawing date, and receives a computer-generated ticket with those selections printed on it.

1.14 "Online Terminal" means the electronic computer terminal through which a retailer enters manually or by play slip the combination of digits, numbers, or symbols selected by a player or by random number generator (Quick Pick).

1.15 "Online Ticket" means a computer-generated ticket issued by a retailer to a player as a receipt for the combination of digits, numbers, or symbols a player has selected by him or herself or through a Quick Pick.

1.16 "Person" means any individual, combination of individuals, corporation, partnership, unincorporated association, or other legal entity.

1.17 "Preliminary background check" means a completed Arkansas State Police check.

1.18 "Prize" means any award, financial or otherwise, awarded by the ALC.

1.19 "Retailer" means a person who is licensed by the ALC to sell lottery games.

1.20 "Responsible Person" means an individual who has the authority to enter into a contract with the ALC on behalf of themselves or any applicant.

1.21 "Share" means any intangible evidence of participation in a lottery.

1.22 "Ticket" means any tangible evidence issued by a lottery to prove participation in a lottery.

Section 2. General Policies.

2.1 Application. These rules shall apply to the administration of the statewide network of lottery retailers as licensed and regulated by the ALC. In any decision made under these rules, the ALC shall take into account the particularly sensitive nature of the state lottery and shall act to promote and ensure security, honesty, fairness, and integrity in the operation and administration of the lottery and the objectives of raising net lottery proceeds for the benefit of educational programs and purposes.

2.2 Administrative Hearings. All administrative hearings held under these rules shall be held in accordance with the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

2.3 Authority of Director. The Director may:

(a) Contract with retailers for the sale of lottery games and shares;

(b) Establish a communication or line fee, if determined to be a necessary business expense;

(c) Investigate and conduct hearings pursuant to a retailer dispute;

(d) Establish procedures for the collection of and penalties of retailer accounts;

(e) Set fidelity fund and surety bond amounts for retailers; and

(f) Take any other action necessary to carry out and implement the Arkansas Scholarship Act, § 23-15-101 et seq., and any other rule, procedure, directive or order promulgated or issued by the ALC.

Section 3. Application.

3.1 General. Retailers must meet the statutory and regulatory requirements for licensing, the security and integrity standards of the ALC and promote the best interest of the Arkansas Scholarship Lottery.

3.2 Application. A person interested in obtaining a license must submit an application to the ALC on a form supplied for that purpose by the ALC. The retail sales application shall be designed to solicit sufficient relevant information from an applicant to permit the ALC to evaluate the applicant and the sales location as required by the Act and regulations for issuance of a license by the ALC.

3.3 Application Fee. An applicant for a retailer license shall be charged the following fees:

(a) Initial Application Fee – $100;

(b) Change of Ownership Fee -- $100;

(c) Additional Store Location Fee -- $25.00;

(d) Change of Location Fee -- $25.00;

(e) Change of Responsible Person Fee -- $50.00;

(f) Renewal Fee -- $50.00.

3.4 Disclosure. The Director may require any degree or type of disclosure necessary of the applicant or any other person in order to assure the security and integrity of the lottery including the source of funds, financing, and business income used for the purchase and operation of the applicant's business, the name and address of the owner or owners of the sales location, a copy of all agreements whereby the applicant is entitled to possession of the sales location and the names and addresses of owners, officers, directors or trustees who oversee or direct the operation of the business. If the parent company, general partner, limited partner, joint venturer, stockholder, member or manager of a limited liability company is itself a corporation, trust, association, subsidiary, partnership, joint venture or limited liability company, then the Director may require that the applicant provide disclosure for such entity as if such entity were a responsible person itself. An applicant must disclose to the ALC all information required by the Director.

3.5 Qualifications/Criteria.

A. In making a determination regarding a licensing application, the Director shall consider the following, including without limitation:

1. The applicant's financial responsibility;

2. Security of the applicant's place of business or activity;

3. Accessibility to the public including compliance with the Americans with Disabilities Act;

4. The applicant's integrity; and

5. The applicant's reputation.

B. The applicant for a retailer license shall be current in filing all applicable tax returns to the State of Arkansas and in payment of all taxes, interest,

and penalties owed to the State of Arkansas, excluding items under formal appeal under applicable statutes. Information regarding the applicant's tax filing status will be supplied to the ALC by the Department of Finance and Administration.

C. The Director shall not select as a retailer any person who:

1. Has been convicted of a criminal offense related to the security or integrity of a lottery in this or any other jurisdiction;

2. Has been convicted of:

   a. any illegal gambling activity, false statements, false swearing, or perjury in this or any other jurisdiction; or

   b. any crime punishable by more than one (1) year of imprisonment or a fine of more than one thousand dollars ($1,000) or both. This subdivision shall not apply if the person's civil rights have been restored and at least five (5) years have elapsed from the date of the completion of the sentence without a subsequent conviction of such a crime.

3. Has been found to have violated the Act or any rule, policy, or procedure of the ALC unless at least ten (10) years has passed since the violation or the ALC finds the violation both minor and unintentional in nature;

4. Is a vendor or an employee or agent of a vendor doing business with the ALC;

5. Is a member of the immediate family of a member of the ALC or the Arkansas Scholarship Lottery;

6. Has made a statement of material fact to the ALC knowing the statement to be false;

7. Is engaged exclusively in the business of selling tickets or shares;

8. Is under 18 years of age; or

9. Is a corporation or other form of business that is not authorized to do business in Arkansas.

3.6 Prohibitions. An applicant shall not provide a gift or compensation to the Director, an ALC member or ALC employee, or the immediate family member of the Director, ALC member or ALC employee.

3.7 Background Check. An applicant for a retailer license is subject to a background check including a credit check and a criminal history check conducted by the Arkansas State Police and the Federal Bureau of Investigation. Issuance of a retailer license is dependent on passing the required background checks. The applicant shall sign a consent to the release of information for all checks.

3.8 Waiver. In submitting an application, the applicant expressly waives any claim against the State of Arkansas, its agents, officers, employees, and representatives, and the ALC, its Director, agents, officers, employees, and representatives for damages that may result. Each applicant also accepts any risk of adverse public notice, embarrassment, criticism, damages, or claims which may result from any disclosure or publication by a third party of any public information on file with the ALC.

Section 4. Retailer License.

4.1 Non-transferability of license. A retailer license is not transferable and shall not be sold, given or assigned to any person. In the event of the proven incapacity, death, receivership, bankruptcy or assignment for benefit of creditors of any retailer, upon approval of the Director, the license may be transferred to a court appointed or court confirmed guardian, executor or administrator, receiver, trustee, or assignee for the benefit of creditors, who may continue to operate the activity under the license, subject to the provisions of these rules.

(a) The person to whom a license is transferred hereunder must be otherwise qualified to hold a license.

(b) The license following transfer shall be void upon that person ceasing to hold such a court appointed or court confirmed position.

(c) The Director may condition the transfer of any license under this section upon the posting of a bond or cash in lieu of a bond in such terms and conditions as the Director may require.

4.2 License Term and Renewal. A retailer's license remains in full force and effect until the termination date indicated upon the license, but in no case more than two (2) years from the date of the issuance of the license. The Director may implement a program to issue licenses biennially, if in his or her discretion, it provides more efficient customer service to retailers and cost savings in the administration of the program. To request renewal of a retailer license, every licensed retailer shall file a renewal application and shall pay a renewal fee as set forth in Section 3.3 of these rules. A license shall not be issued or renewed until the retailer contract is signed.

4.3 Inspection. A license grants the ALC the irrevocable authority to inspect the location where games may be sold or any other location under the control of the

retailer where the Director may have good cause to believe ALC materials and/or games are stored or kept.

4.4 Retailer Loss Coverage. A retailer shall be assessed an annual fee of up to one hundred dollars ($100) per sales location to be deposited into the ALC's fidelity fund. A retailer is required to obtain and maintain a surety bond listing the ALC as principal in an amount determined by the Director for each sales location, using an insurance company acceptable to the ALC. The Director may also allow a retailer to deposit and maintain with the ALC securities that are interest bearing or accruing. The securities shall be held in trust in the name of the commission. Securities eligible are limited to:

(A) Certificates of deposit in an amount fully insured by the Federal Deposit Insurance Corporation issued by solvent banks or savings associations organized and existing under the laws of this state or under the laws of the United States;

(B) United States Government bonds, notes, and bills for which the full faith and credit of the United States Government is pledged for the payment of principal and interest; or

(C) Federal agency securities by an agency or instrumentality of the United States Government.

4.5 Change in Application Information. A license is valid only for the information contained in the application. Any change to the information submitted in the application including change of business name, change of location, change of ownership, or change of status of background check may make the license invalid.

4.6 Provisional License. A provisional license temporarily authorizes a lottery retailer to conduct the sale of tickets pending processing of the general license or application renewal.

A. The Director may issue a provisional license to an applicant for a license after receipt of a person's fully completed lottery retailer's application, the authorization of a complete personal background check, and completion of a preliminary background check. The provisional license shall expire at the time of issuance of the license or forty-five (45) days from the date the provisional license is issued, whichever occurs first. The provisional license may be extended by the Director for one (1) additional forty-five (45) day period of time.

B. If the ownership of an existing lottery retailer location changes, the Director may issue a provisional license to the new owner. The provisional license shall expire seven (7) working days from the date of issuance if the

Director has not received the new owner's fully completed lottery retailer's application and authorization of a complete personal background check. If the required materials have been timely received by the Director and a preliminary background check has been completed, the provisional license shall expire at the time of issuance of the general license or forty-five (45) days from the date the provisional license is issued, whichever occurs first.

C. EFT Transfers: If the Lottery enters into a temporary retailer contract with the applicant, the contract will require the applicant to pay the amount due the ALC from the sale of lottery tickets or shares by electronic funds transfer (EFT). In most instances, amounts due the ALC will be collected via EFT at the end of the fourth day after the close of the ALC business week. The applicant must establish an account for deposit of money from the sale of lottery games and shares with a financial institution that has the capability of making EFT draws.

D. Termination: At the Director's sole discretion, the Director may immediately terminate a temporary retailer contract if the Director determines that continuing to contract with the applicant is not in the best interest of the Lottery including, but not limited to, when:

1. The applicant provided false or misleading material information or the applicant made a material omission in the application for a retailer contract;

2. The applicant is arrested or convicted of felony during the term of the temporary retailer contract;

3. An EFT payment is rejected for non-sufficient funds (NSF), or the applicant fails to provide timely information to the ALC regarding any change of the applicant's EFT bank account;

4. Any other reason contained in the contract or these rules that provides a basis for termination of a retailer contract; or

5. When the Director concludes that continuing to contract with the applicant may pose a threat to the fairness, honesty, integrity, or security of the ALC and its games.

4.7 Promotional License.

A. The Director may issue a promotional license for a marketing promotion for a period not exceeding ninety (90) days for the sale of lottery games.

B. The Director may establish financial and criminal history or other criteria

for the issuance of a promotional license based on the duration of the promotion and the variety and quantity of tickets to be sold by the applicant.

C. The Director may waive any license fees or charges in issuing a promotional license and may establish procedures to streamline payments by promotional retailers to the lottery.

D. Any retailer issued a promotional license must apply for and be issued a provisional/general license in order to continue to sell lottery tickets after the expiration of his/her promotional license.

4.8 Chain Retailers. The ALC may treat more than one (1) retail location with identical owners as one (1) chain retailer. Each retail location shall be issued a separate retailer number or numbers and a unique "Retailer License". The Director may issue one (1) billing statement for all retail locations or separate billing statements for each retail location. If the chain retailer wishes to add a new retail location, the chain retailer will not be required to undergo a new background investigation.

Section 5. Retailer Compensation.

5.1 A retailer shall receive commissions as compensation from the ALC as follows:

(a) Base Instant and Online Games commission: Five percent (5%) of each one dollar ($1.00) sold;

(b) Cashing commission: One percent (1%) of each one dollar ($1.00) redeemed, up to the cashing limit of five hundred dollars ($500.00);

(c) Selling commission: One percent (1%) of a prize amount of ten thousand dollars ($10,000) or more on each ticket validated and paid to a player. The selling commission shall not exceed fifty thousand dollars ($50,000);

(d) Other commissions: Up to ten percent (10%) on special games, as designated by the Director.

Section 6. Retailer Duties and Responsibilities.

6.1 This section contains duties to be performed by the retailer in addition to any duties and responsibilities that may be described in the retailer contract. The duties herein are not meant to be exclusive. Other duties and requirements for retailers may be contained elsewhere in these rules or in the Act.

6.2 Notices. The retailer must notify the ALC if the following occurs:

(a) Within fifteen (15) days of a material change in the qualifications of an applicant;

(b) Immediately for loss, theft, or destruction of any lottery property including but not limited to instant tickets, ticket dispensers or play terminals;

(c) Within thirty (30) days prior to a change of ownership or responsible person;

(d) Within thirty (30) days prior to a change of sales location;

(e) Within ten (10) days prior if the type of business undergoes a substantial change;

(f) Within thirty (30) days prior to a change of business structure. A change of business structure shall mean the change from one form of business organization to another, such as from sole proprietorship to partnership or corporation.

(g) Within fifteen (15) days prior to a change of bank account information;

(h) Within thirty (30) days prior to a cancellation of retailer's surety bond; or

(i) Immediately upon receiving damaged or misprinted lottery tickets.

6.3 **Games**. The retailer must perform the following duties as a condition of their license:

(a) Stock Equipment: Keep all lottery equipment on the retailer's premises stocked with a variety of tickets, play slips, computer-generated tickets, and any other ALC product required to be sold.

(b) Perform Minor Maintenance: Replace ribbons, ticket stock, and clear paper jams as may be required for any of the equipment provided by the ALC for the sale of lottery games.

(c) Maintain Paper Stock: Install and use only approved lottery paper stock which has been specifically assigned for the retailer when selling lottery games.

(d) Sell Games: Sell all lottery games offered by the ALC during the retailer's normal business hours.

(e) Display: Retailer must display and maintain all point of sale material as well as any advertising material as requested by the ALC within the sales

location.

(f) Redeemed tickets: As directed by the ALC, deface all tickets redeemed for a prize.

6.4 Prizes.

A. A retailer shall immediately pay a valid winning ticket upon presentment up to the required amount of five hundred dollars ($500.00). A payment may be made in cash or by check or money order, at the discretion of the retailer. Payments are subject to the same NSF policies as payments to the ALC. In the event of exceptional circumstances, a retailer may delay payment of a cash slip for a period of time not to exceed twenty-four (24) hours from the time the player initially submits the cash slip to the retailer for payment. "Exceptional circumstances" means rare and unforeseen circumstances beyond the reasonable control of the retailer.

B. Within forty-eight (48) hours from the time the player initially submitted the cash slip to the retailer for payment, the retailer must submit to the ALC a written report of the delay of payment and the exceptional circumstances that required the delay.

C. The Director may review claims of exceptional circumstances and whether delayed payment was appropriate under the circumstances. Upon the Director's request, the retailer must provide the Director with evidence supporting a claim of exceptional circumstances. If a retailer fails to comply with a request or fails to adequately support a claim of exceptional circumstances, the Director shall find that the delay was not appropriate and send a written notice to the retailer.

D. If the Director finds that the delay was not appropriate, the retailer's delay of payment shall be considered a failure to perform contract duties or requirements, and the ALC may take appropriate action including termination of the retailer contract. Any appeal of the Director's decision must be conducted pursuant to Section 8.5 of these rules.

6.5 Financial – Lottery Proceeds.

A. Fiduciary Duty.

1. All proceeds from the sale of tickets or shares constitute a trust fund until paid to the ALC either directly or through the ALC's authorized representative.

2. A retailer and officers of a retailer's business have a fiduciary duty to preserve and account for retail lottery proceeds, and retailers are

personally liable for all lottery proceeds.

3. Sales proceeds and unused instant tickets must be delivered to the ALC or its authorized collection representative upon demand.

B. Deposits/Accounts.

1. All retailers are required to place all lottery proceeds due to the ALC in accounts in institutions insured by the Federal Deposit Insurance Corporation not later than the close of the next banking day after the date of their collection by the retailer until the date they are paid to the ALC. At the time of the deposit, lottery proceeds are the property of the ALC.

2. Retailers shall establish a single separate electronic funds transfer account for the purpose of:

a. Receiving moneys from ticket or share sales;

b. Making payments to the ALC; and

c. Receiving payments for the ALC.

3. Unless authorized in writing by the ALC, each retailer shall establish a separate bank account for lottery proceeds that shall be kept separate and apart from all other funds and assets and shall not be commingled with any other funds or assets.

C. Failure to Comply. If the ALC determines that a retailer failed to comply with subsection (B)(1) of this section three (3) times within any consecutive twenty-four (24) month period, the ALC may pursue business closure against the retailer under Section 9 of these rules.

Section 7. Retailer Prohibitions.

7.1 Sale of Tickets of Shares.

A. Tickets and shares shall be sold only by the retailer at the location address stated on the retailer license issued by the ALC.

B. Tickets may not be sold for more or less than the amount set by the ALC.

C. Tickets may not be sold by an individual under eighteen (18) years of age.

D. Tickets may not be sold to any individual under eighteen (18) years of age. Any retailer who knowingly sells a lottery game or permits the

playing of a lottery game to a person under eighteen (18) years of age is guilty of a violation under Arkansas Code Ann. §23-115-901.

E. Tickets or shares may not be sold after commencement of drawing for that particular lottery or after the end date of that game as announced by the Director.

7.2 Prizes. A retailer may not charge a player to either play a lottery game, nor charge any fees or impose any requirements to redeem a valid winning ticket. A retailer must not pay to the winner a prize amount more than the prize established by the game.

7.3 Retailer Conduct. A retailer may not exchange books, lottery tickets or paper ticket stock with any other retailer. A retailer must sell tickets in book, page or numerical order and may not play instant lottery tickets using any other method other than fair chance or any method that is contrary to the principle that every ticket has an equal and random chance of winning.

7.4 Inducements to Play. A retailer shall not induce persons to play lottery games by extending credit or by providing financial assistance, alcohol or any other compensation.

7.5 Trademark. A retailer may not use the logo, trademark, or other advertising materials of the ALC without prior written permission or authorization of the ALC unless the materials have been provided to the Retailer by the ALC.

7.6 False promises. A retailer must not conduct false or misleading advertising, in any form about the ALC or lottery games including, but not limited to, claiming the odds of winning a lottery game are different at the retailer's business than at any other retailer's business.

7.7 Contracting for Goods or Services. A retailer shall not contract with any person other than the ALC for Arkansas Scholarship Lottery products or services except with the written approval of the ALC.

7.8 Gifts. A retailer shall not provide a gift or compensation to the Director, an ALC member or an ALC employee, or the immediate family member of the Director, ALC member or ALC employee.

Section 8. Cancellation, Suspension, Revocation, Denial or Termination.

8.1 Generally. If upon approval of the ALC, the Director or his or her designee determines that cancellation, denial, revocation, suspension, or rejection of renewal of a retailer license is in the best interest of the Arkansas Scholarship Lottery, the public welfare, or the State of Arkansas, the Director or his or her designee may cancel, suspend, revoke, or terminate, after notice and a right to a

hearing, a retailer license issued hereunder.

8.2 **Temporary Suspension.** The retailer license may be temporarily suspended by the Director or his or her designee without commission approval or prior notice pending a hearing.

8.3 **Reasons.** A retailer license may be suspended, revoked, or terminated by the Director or his or her designee for any one (1) or more of the following reasons:

(a) Commission of a violation of the Act or a rule of the ALC;

(b) Failure to accurately or timely account for tickets, lottery games, revenues, or prizes as required by the ALC;

(c) Commission of any fraud, deceit, or misrepresentation;

(d) Insufficient sales;

(e) Conduct prejudicial to public confidence in a lottery;

(f) The retailer's filing for or being placed in bankruptcy or receivership;

(g) Any material change as determined in the sole discretion of the ALC in any matter considered by the ALC in executing the license with the retailer;

(h) The closure of the retailer's business; or

(i) Failure to meet any of the objective criteria established by the ALC.

8.4 **Removal of ALC Material.** If a retailer fails to meet any of the objective criteria established by the ALC, the Director or his or her designee may remove instant tickets, online ticket stock, and any and all property of the ALC from the retail location.

8.5 **Administrative Hearing.** Any retailer or applicant aggrieved ("Aggrieved Party") by an administrative decision by the Director may appeal that decision.

A. Time for Filing: The aggrieved party must file a notice of appeal within twenty (20) days of the decision by sending a notice of appeal to both the Director and the ALC Staff Attorney at the ALC Main Office.

B. The Director, or a Hearing Officer designated by him or her, shall have the exclusive authority to decide all appeals.

C. After submittal of a timely appeal and prior to issuance of a written

decision, the aggrieved party shall be afforded an opportunity to discuss with the Director the issues giving rise to the appeal.

D. If the appeal is not resolved by mutual agreement, the Director or Hearing Officer shall issue a written decision within thirty (30) calendar days after the appeal was filed. The decision shall include a statement of the Director's or Hearing Officer's decision, with supporting rationale. If the Director or Hearing Officer fails to issue a decision within this time limit, the aggrieved party may proceed as if the Director or Hearing Officer had issued an adverse decision.

E. The Director or Hearing Officer shall furnish a copy of the decision to the aggrieved party by certified mail, return receipt requested, or by any other method that provides written evidence of delivery, such as hand delivery by courier, express mail or overnight express courier.

F. In lieu of a written decision, the Director may, in his or her sole discretion, within thirty (30) calendar days after the appeal is filed, give written notice to the aggrieved party that the protest shall be resolved by a hearing conducted by the Director or Hearing Officer. Notwithstanding the foregoing, the Commission may at any time on its own motion direct that a appeal be resolved by a hearing conducted by the Director or Hearing Officer.

G. All hearings conducted under this section shall be conducted by the Director or by a Hearing Officer designated by the Director. The decision as to whether the Director or a Hearing Officer will conduct the hearing shall be in the sole discretion of the Director. The Hearing Officer's actions, decisions, and orders shall be deemed to be on behalf of the Director and effective as though taken by the Director, subject to the appeals procedures as hereinafter provided.

H. If the Director determines under Subsection F. that a hearing will be used to resolve an appeal, the hearing shall be held within thirty (30) calendar days following the Director's determination. A notice which will set forth the time, date, and location of the hearing will be sent to the party or parties at least seven (7) calendar days before the date set for such hearing.

I. In connection with the hearing, the Director or Hearing Officer may:

1. Conduct the hearing in an informal manner without formal rules of evidence or procedure;

2. Require each party to state, either orally or in writing, its position concerning the factual and legal issues involved in the hearing;

3. Require each party to produce for examination those relevant witnesses and documents under its control;

4. Rule on motions and other procedural items pending before him or her, including without limitation the methods, scope and extent of discovery available to the parties;

5. Regulate the course of the hearing and conduct of the participants, including the imposition of reasonable time limits;

6. Establish time limits for submission of motions or memoranda;

7. Take official notice of any material fact not appearing in evidence in the record, if the fact is among the traditional matters of which judicial notice can be taken;

8. Administer oaths or affirmations;

9. Issue subpoenas; and

10. Join any necessary parties to the hearing.

J. The hearing shall be conducted before a court reporter. The aggrieved party shall procure, at his or her own cost and own initiative, the court reporting services (including the preparation of the transcript) for such hearing. The original transcript of any such proceedings shall be submitted to the Director or Hearing Officer as soon as the transcript is available, and in no event later than five (5) calendar days following the conclusion of the hearing, and shall be made a part of the record.

K. Any party may appear and be represented with or without counsel at the hearing.

L. If a Hearing Officer conducts the hearing, he or she shall make a written recommendation containing the Hearing Officer's ruling, in the form of a proposed decision, to the Director, within thirty (30) calendar days after receiving an original transcript of the hearing. If a proposed decision is received by the Director, he or she must render a decision in writing and deliver the decision to the parties within thirty (30) calendar days after receiving the proposed decision from the Hearing Officer.

1. If the Director receives a recommendation in a proposed decision from a Hearing Officer, he or she may:

   a. Accept, modify, or reject the Hearing Officer's

recommendation in whole or in part;

b. Return the matter to the Hearing Officer with instruction;

c. Make any other appropriate disposition; or

d. Issue a "no action" response.

2. If the Director issues a "no action" response, then the determination in the proposed decision of the Hearing Officer will be deemed to be accepted by the Director.

M. If the Director conducts the hearing, he or she must render a decision in writing and deliver the decision to the petitioner within thirty (30) calendar days after receiving an original transcript of the hearing.

N. The Director's decision and any proposed decision made by a Hearing Officer shall be sent to the aggrieved party by certified mail, return receipt requested, or any other method by which a written business record of delivery is kept, such as hand delivery by courier, express mail or overnight express courier.

O. An aggrieved party may appeal a decision of the Director or Hearing Officer to the Commission. Any appeal from a decision of the Director or Hearing Officer must be filed with the Chair of the Commission at the ALC headquarters within five (5) business days after the receipt of such decision to be considered timely.

P. Notice of any appeal shall also be filed with Director and the Staff Attorney of the ALC by delivery by hand or courier to the headquarters of the ALC.

Q. An appeal must be in writing and shall contain the following:

1. Copy of the decision of the Director or Hearing Officer; and

2. The basis for the precise factual or legal error in the decision of the Director or Hearing Officer from which the appeal is taken.

R. The Commission may review the record without a hearing or oral argument and issue a written decision on behalf of the ALC. The Commissioners, pursuant to the power granted to them in Arkansas Code Ann. §23-115-205, may authorize its Legal Committee to hear and dispose of administrative appeals from the Director as the Committee deems appropriate, including, but not limited to, designating one of its members to consider an act on an appeal on behalf of the Commission. Therefore, references herein to "Commissioners" or "Commission" shall be

read to take this delegation of authority into account.

S. The Commission may in its sole discretion:

1. Conduct its own review or investigation;

2. Conduct a de novo review in whole or in part; or

3. Allow oral argument, in the manner and under procedures that the Commission deems appropriate under the circumstances.

T. A copy of the Commission's written decision will be sent to the aggrieved party by certified mail, return receipt requested, or any other method by which a written business record of delivery is kept, such as hand delivery by courier, express mail or overnight express courier. The original written decision shall be retained by the ALC. The written decision of the Commission will be final, and no further appeal to the ALC will be allowed.

U. Any adverse final decision of the Commission issued under this section shall be subject to judicial review pursuant to Ark. Code Ann. § 23-115-209 by any person or entity who was a party to the appeal.

V. These rules provide the exclusive procedure for a retailer or applicant appealing an administrative decision of the Director.

Section 9. Business Closure.

9.1 Authority—Notice.

A. Arkansas Code § 23-115-607 authorizes the Director to close the business of a retailer if the retailer fails to comply with § 23-115-605 (b) and Section 6.5 of these Rules three (3) times within any consecutive twenty-four (24) month period.

B. The Director shall give notice to the retailer that the third delinquency in complying with Section 6.5 may result in the closure of the business. The notice shall be in writing and delivered to the retailer by either U.S. Postal Service or hand delivery.

C. If the Director determines that the business will be closed, the Director shall notify the retailer by certified mail or hand delivery that the business will be closed within five (5) business days from the date of receipt of the notice.

9.2 Avoiding Closure. A retailer may avoid closure of the business by:

(a) Remitting the delinquent lottery proceeds; or

(b) Entering into a written payment agreement approved by the Director to satisfy the lottery proceeds delinquency.

9.3 Administrative Hearing.

A. A retailer may request an administrative hearing concerning the decision of the Director to close the retailer's business.

B. Within five (5) business days after the delivery or attempted delivery of the notice required by Section 9.1, the retailer may file a written protest, signed by the retailer or his or her authorized agent, with the Director stating the reasons for opposing the closure of the business and requesting an administrative hearing.

C. A retailer may request that an administrative hearing be held:

1. In person;

2. By telephone;

3. Upon written documents furnished by the retailer; or

4. Upon written documents and any evidence to be produced by the Retailer at an administrative hearing:

D. The Director may determine whether an administrative hearing at which testimony is to be presented will be conducted in person or by telephone;

E. A retailer who requests an administrative hearing based upon written documents is not entitled to any other administrative hearing before the rendering of the administrative decision.

F. The administrative hearing shall be conducted by a Hearing Officer appointed by the Director. The Hearing Officer shall set the time and place for a hearing and give the retailer notice of the hearing.

G. At the administrative hearing, the retailer may be represented by an authorized representative and present evidence in support of his or her position.

H. The administrative hearing shall be held within fourteen (14) calendar days of receipt by the Director of the request for hearing.

I. The administrative hearing and determinations made by the Hearing Officer under this subsection 13.C. are subject to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

J. The defense or defenses to the closure of a business under this section are:

1. Written proof that the retailer remitted the delinquent lottery proceeds due; or

2. That the retailer has entered into a written payment agreement, approved by the Director, to satisfy the lottery proceeds delinquency.

K. The decision of the Hearing Officer shall be in writing with copies delivered to the retailer and the Director by the United States Postal Service or by hand delivery.

9.4 Judicial Relief.

A. If the decision of the Hearing Officer under Section 9.3 is to affirm the closure of the business, the decision shall be submitted in writing and delivered by the United States Postal Service or by hand to the retailer.

B. The retailer may seek judicial relief from the decision by filing suit within twenty (20) calendar days of the date of the decision.

C. Jurisdiction for a suit under this section to contest a determination of the Director shall be in Pulaski County Circuit Court, where the matter shall be tried de novo.

1. If the Circuit Court finds that the business closure order was appropriately issued by the Director, the Circuit Court shall issue an injunction against the retailer prohibiting the further operation of the business.

2. If a business subject to an injunction issued by the Circuit Court as provided in this subchapter continues in operation, upon conviction, any person responsible for the decision to operate the business after the issuance of the injunction shall be guilty of a Class A misdemeanor.

D. An appeal may be made from the Circuit Court to the appropriate appellate court, as provided by law.

E. The procedures established by this section are the sole methods for seeking relief from a written decision to close the business of a retailer for failure to comply with § 23-115-605(b) and Section 6.5 of these rules.

F. The decision to close the business of a retailer shall be final either:

1. If the retailer fails to request an administrative hearing under Section 9.3 or fails to seek judicial relief under this section; or

2. Upon the final decision of a circuit court or an appellate court.

G. It is unlawful for a business to continue in operation after a business closure order is issued that is upheld on appeal under this subchapter or not appealed by the retailer under this Section 9.3.

H. Upon conviction, any person responsible for the decision to operate the business in violation of these rules shall be guilty of a Class A misdemeanor.

9.5 Procedure for Closure.

A. If a retailer fails to timely seek administrative or judicial review of a business closure decision or if the business closure decision is affirmed after administrative or judicial review, the Director shall direct the Department of Finance and Administration to affix a written notice to all entrances of the business that:

1. Identifies the business as being subject to a business closure order; and

2. States that the business is prohibited from further operation.

B. The Director may also direct that the business be locked or otherwise secured so that it may not be operated.

9.6 Revocation and Suspension of Business License.

A. The closure of a business under this section shall be grounds for the suspension or revocation of any business license granted under the laws of the State of Arkansas, excluding professional licenses.

B. After the decision to close the retailer's business becomes final, the Director shall contact the appropriate administrative body responsible for granting licenses to operate the business and report the closure of the business.

Section 10. Powers.

All powers not specifically defined in these Rules are reserved to the Director and the ALC under the Act.