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MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 15

OF MONTANA

The Montana Administrative Register (MAR), a twice-monthly publication, has three sections. The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted. The rule section indicates that the proposed rule action is adopted and lists any changes made since the proposed stage. The interpretation section contains the attorney general's opinions and state declaratory rulings. Special notices and tables are inserted at the back of each register.

TABLE OF CONTENTS

Page Number

NOTICE SECTION

AGRICULTURE, Department of, Title 4

4-14-51 Notice of Proposed Adoption - Notice to Sellers of Financial Risk. No Public Hearing Contemplated. 1370-1371

4-14-52 Notice of Proposed Adoption - Grading Standards for Cultivated Buckwheat. No Public Hearing Contemplated. 1372-1373

4-14-53 Notice of Proposed Amendment - Grain Fee Schedule. No Public Hearing Contemplated. 1374-1376

COMMERCE, Department of, Title 8

8-35-5 (Board of Occupational Therapists) Notice of Proposed Adoption - Treatment and Therapeutic Devices. No Public Hearing Contemplated. 1377-1378

8-97-36 (Board of Investments) Notice of Public Hearing on Proposed Amendment - Definitions Related to General Requirements for All Investments in Mortgages and Loans - Requirements for All Residential, Commercial, Multi-family, Federally Guaranteed Loans - Economic Development Linked Deposit Programs. 1379-1380

8-101-7 (Coal Board) Notice of Proposed Adoption - Implementation of the Montana Environmental Policy Act. No Public Hearing Contemplated. 1381-1382

Page Number

EDUCATION, Department of, Title 10

10-3-147 (Board of Public Education) Notice of
Public Hearing - Accreditation Standards -
Procedures 1383-1384

FAMILY SERVICES, Department of, Title 11

11-32 Notice of Proposed Amendment - Day Care
Rates. No Public Hearing Contemplated. 1385-1387

FISH, WILDLIFE AND PARKS, Department of, Title 12

12-2-190 Notice of Proposed Amendment - Montana
State Golden Year's Pass. No Public Hearing
Contemplated. 1388-1389

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

16-2-385 Notice of Public Hearing on Proposed
Amendment - Leaking Petroleum Storage Tank
Compensation Program 1390-1396

16-2-386 Notice of Public Hearing on Proposed
Adoption - Process for Department Review and
Issuing, Denial or Waiver of Certification under
Section 401 of Clean Water Act. 1397-1402

TRANSPORTATION, Department of, Title 18

18-66 Notice of Public Hearing on Proposed
Amendment - Qualifications and Training for Motor
Carrier Services Personnel as Peace Officers. 1403-1406

JUSTICE, Department of, Title 23

23-5-13 Notice of Public Hearing on Proposed
Adoption, Amendment and Repeal of Rules Regulating
Public Gambling. 1407-1443

REVENUE, Department of, Title 42

42-2-484 Notice of Proposed Amendment -
Determination of Tax Rate for Class 15 Property.
No Public Hearing Contemplated. 1444-1445

SECRETARY OF STATE, Title 44

44-2-66 Notice of Proposed Amendment - Rule
Reviewers for the Montana Administrative Register.
No Public Hearing Contemplated. 1446

Page Number

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

46-2-672	Notice of Public Hearing on Proposed Amendment - Unemployed Parent.	1447-1449
46-2-673	Notice of Public Hearing on Proposed Amendment - Low Income Energy Assistance Program.	1450-1462
46-2-674	Notice of Public Hearing on Proposed Adoption and Repeal - Developmental Disabilities Commitment Process - Certification of Professional Persons.	1463-1472
46-2-675	Notice of Public Hearing on Proposed Adoption - Developmental Disabilities Entry Procedures.	1473-1484

RULE SECTION

COMMERCE, Department of, Title 8

AMD	(Board of Optometrists) Examinations.	1485
AMD NEW	(Weights and Measures) Scale Pit Clearance, Fees - Weighing Device License Transfer - Inspection of Packages - Accessibility to Stock Scales.	1486

EDUCATION, Department of, Title 10

AMD	(Board of Public Education) Class 3 Administrative Certificate.	1487
AMD	(Board of Public Education) Request to Suspend or Revoke Teacher or Specialist Certificate.	1488

FAMILY SERVICES, Department of, Title 11

AMD	Foster Care Support Services.	1489-1490
-----	-------------------------------	-----------

FISH, WILDLIFE AND PARKS, Department of, Title 12

EMERG AMD	Listing Freshwater Mussels as Nongame Species in Need of Management.	1491
--------------	--	------

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

AMD	Establishing Public Water Supply Requirements for Turbidity - Notification Process if System Fails to Comply.	1492-1503
-----	---	-----------

Page Number

JUSTICE, Department of, Title 23

NEW	Temporary Rules - Sports Pools, Sports Tab Games - License Application Processing Fee.	1504-1509
-----	--	-----------

INTERPRETATION SECTION

Opinions of the Attorney General.

16	Cities and Towns - Creation of New Rural Fire District from Consolidation of Two Existing Existing Rural Fire Districts - Taxation and Revenue - Whether Consolidated Rural Fire District Formed after Tax Year 1986 is Subject to Mill Levy Limitations.	1510-1513
----	---	-----------

SPECIAL NOTICE AND TABLE SECTION

Functions of the Administrative Code Committee.	1514
How to Use ARM and MAR.	1515
Accumulative Table.	1516-1523

BEFORE THE DEPARTMENT OF AGRICULTURE

STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED
adoption of a New Rule relating	)	ADOPTION OF A NEW RULE
to a notice to sellers of	)	PERTAINING TO A NOTICE TO
financial risk	)	SELLERS OF FINANCIAL RISK

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 14, 1991, the Department of Agriculture proposes to adopt a new rule relating to a notice to sellers of financial risk.

2. The new rule as proposed will read as follows:

RULE I NOTICE TO SELLERS OF FINANCIAL RISK (1) Section 80-4-422 MCA provides that: "title to all agricultural commodities sold by credit sale contract is in the purchaser as of the time the contract is executed unless the contract provides otherwise."

(2) All credit sale contracts which do not provide that title remains with the seller until time of payment shall have the following warning on the face of the contract and in boldface type:

- "NOTICE: FINANCIAL RISK STATEMENT:

IN THE EVENT OF FINANCIAL INSOLVENCY, AMOUNTS OWING AFTER SURETY BOND PAYMENT, MAY RESULT IN AN UNSECURED OBLIGATION. THE SELLER IS HEREBY ADVISED OF THE FINANCIAL RISK INVOLVED WITH THIS TYPE OF CONTRACT."

AUTH: 80-4-403 MCA, and
SB19, 1991 Montana
Legislative Session

IMP: 80-4-422 MCA, and
SB19, 1991 Montana
Legislative Session

REASON: The reason for the proposed rule arises under senate bill 19, 1991 montana legislative session, which becomes effective July 1, 1991. That bill directs the department of agriculture, to require by rule, that the above stated notice be placed on all credit sales contracts.

3. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to Roy Bjornson, Administrator, Department of Agriculture, Capitol Station, Helena, Montana, 59620-0201, no later than September 12, 1991.

4. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to Roy Bjornson, Administrator, Department of Agriculture, Capitol Station, Helena, Montana, 59620-0201, no later than September 12, 1991.

5. If the Department receives request for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register and mailed to all interested persons.


EVERETT M. SNORTLAND, DIRECTOR
DEPARTMENT OF AGRICULTURE

BEFORE THE DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PROPOSED
adoption of a New Rule)	ADOPTION OF A NEW RULE
establishing grading standards))	PERTAINING TO CULTIVATED
for cultivated buckwheat)	BUCKWHEAT

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 14, 1991, the Department of Agriculture proposes to adopt a new rule relating to the grading standards for cultivated buckwheat.

2. The proposed new rule will read as follows:

RULE 1 STANDARDS FOR GRADING CULTIVATED BUCKWHEAT

(1) Cultivated buckwheat submitted to the Montana state grain laboratory will be graded according to the procedures and standards set out in the Montana Grain Inspection Handbook, Book 1, Chapter 2, Cultivated Buckwheat.

(2) Chapter 2 of the Handbook generally describes the standards and process which will be used to grade cultivated buckwheat considering such factors as odor, moisture, dockage, and other factors affecting grade.

(3) Chapter 2 of the Handbook may be viewed at, and a copy obtained from the Montana State Grain Laboratory, P.O. Box 1397, Great Falls, MT 59403-1397.

AUTH: 80-4-704, MCA

IMP: 80-4-704, 705, MCA

REASON: This rule is being adopted to establish grading standards for the Montana State Grain Laboratory to use in providing a grading service for cultivated buckwheat to Montana producers, and thereby facilitating the promotion and sale of this Montana specialty crop to foreign buyers.

3. Interested persons may present their data, views, or arguments either orally or in writing to Allen Williams, Unit Manager, Montana Department of Agriculture, P.O. Box 1397, Great Falls, MT 59403-1397, no later than September 12, 1991.

4. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Allen Williams, Unit Manager, Department of Agriculture, P.O. Box 1397, Great Falls, MT 59403-1397, no later than September 12, 1991.

5. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from any association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register and mailed to all interested persons.


EVERETT M. SNORTLAND, DIRECTOR
DEPARTMENT OF AGRICULTURE

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of existing rule) OF ARM 4.12.1012 GRAIN FEE
pertaining to the grain fee) SCHEDULE
schedule

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 14, 1991 the Department of Agriculture proposes to amend ARM 4.12.1012 relating to the grain fee schedule.

2. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

4.12.1012 GRAIN FEE SCHEDULE (1) The department has adopted a revised schedule of fees to be charged by the State Grain Laboratory at Great Falls, Montana.

(2) SCHEDULE OF FEES AND CHARGES
EFFECTIVE DATE: ~~July-17~~ 1991. September 27, 1991.

(a) thru (c) remain the same

(d) HOLIDAYS: New Years Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day and ~~Heritage Day--(floating)~~ Martin Luther King, Jr. day.

(e) thru (j) remain the same.

OFFICIAL SERVICES FOR USGSA

OFFICIAL SERVICES UNDER THE UNITED STATES GRAIN STANDARDS ACT
Includes FGIS supervision fees.

(k) Official Lot Inspection bulk, boxcar, hopper car or truck/trailer, (all grains), per request, sampling and grade only: -----20.00

LEVEL ONE SERVICE OFFICIAL SAMPLING: When the State Grain Laboratory furnishes the Sampling crew.....\$20.00

LEVEL TWO SERVICE OFFICIAL SAMPLING: When the State Grain Laboratory furnishes a licensed sampler to write identification tickets, supervise elevator employees while sampling and seal samples for delivery to the State Grain Laboratory.....\$15.00

Submitted Sample Inspection, per sample, grade only 7.00
Submitted Sample Inspection With Sprout Damaged Kernels, Sprout Damage Automatically Shown with Grade, except if applicant requests sprout not be shown, per sample..... 9.50

Ineffectual Factor, factor only determination (per factor) 2.50
Sampling only - all lots, bulk, boxcar or truck/trailer, per request, (all grains) 8.00
Protein Tests, NIR per sample 4.50
Protein Test, Kjeldahl method (malting barley) per sample 7.00
Moisture Tests - (oven), per sample 4.00
*Malting Barley Analysis, per request 4.00
Copies of Certificates 2.50
Mailing of Samples - postage only charged
Stowage Examination Per Unit (in excess of one hour, hourly rate applies) 7.00

Re-inspection based on file sample (original grade sustained) - regular fee assessed 7.00
Re-inspection based on file sample (original grade changed) - no fee will be assessed.

Official Lot Re-inspection (original grade sustained) - all regular fees assessed.
Official Lot Re-inspection (original grade changed) - mileage, travel time applies when applicable and sampling only fee assessed. No grade fee assessed.
Protein Retest - (original protein test sustained) - regular protein fee assessed. Protein Retest - (original protein test changed) - differences of more than 0.3% - no fee will be assessed.

(1) thru (4) remain the same

Auth: 80-4-721 MCA

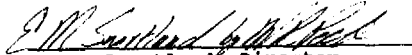
Imp: 80-4-721 MCA

REASON: The Department is amending the existing rule at the request of the Montana Grain Elevator Association to make fees commensurate with the actual cost of providing service as required by State Statute.

3. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to Allen Williams, Unit Manager, Department of Agriculture, P.O. Box 1397, Great Falls, MT 59403-1397, no later than September 12, 1991.

4. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to Allen Williams, Unit Manager, Department of Agriculture, P.O. Box 1397, Great Falls, MT 59403-1397, no later than September 12, 1991.

5. If the Department receives request for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register and mailed to all interested persons.


E. M. Snortland, Director
Department of Agriculture

BEFORE THE BOARD OF OCCUPATIONAL THERAPISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED ADOPTION
adoption of new rules pertain-) OF NEW RULES PERTAINING TO
ing to treatment and thera-) THE PRACTICE OF OCCUPATIONAL
peutic devices) THERAPY

TO: All Interested Persons:

1. On September 10, 1991, at 8:30 a.m., a public hearing will be held in the conference room of the Professional and Occupational Licensing Bureau, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana, to consider the proposed adoption of rules pertaining to treatment and therapeutic devices in the practice of occupational therapy.

2. The proposed new rules will read as follows:

"I. TREATMENT (1) The Board defines the following terms related to treatment of patients as follows:

(a) "Brushing" means an objective technique of treatment to facilitate sensory nerve endings in the recruitment of muscle fibers and designed to stimulate volitional movements.

(b) "Oral motor conditions" means pre-feeding skills and techniques that are designed to provide the patient with the ability to feed himself or herself and to acquire the functions of safe eating.

(c) "Purposeful activity" means the application of those theories underlying the meaning and dynamics of life. These include, but are not specifically limited to the following:

(i) self-care;

(ii) work;

(iii) play and leisure skills;

(iv) performance of selected tasks and activities; or

(v) adaptation and application of purposeful activity as a therapeutic function."

Auth: Sec. 37-24-201; IMP, Sec. 37-24-103. This rule is advisory only but may be a correct interpretation of the statute.

REASON: The Board proposes this rule to implement amendments contained in Senate Bill 54, contained in Chapter Law No. 35.

"II. THERAPEUTIC DEVICES (1) Section 37-24-103, MCA defines the practice of occupational therapy, in part, as "the use of therapeutic devices limited to the elbow, forearm, and hand that the board approves consistent with the basic education requirements for professional licensure under this chapter." The board interprets this language to mean that it may approve therapeutic devices, including commercial and electrical appliances, that facilitate motor function in preparation for purposeful activity.

(2) Basic education requirements are considered to be:

(a) anatomy, kinesiology, physiology and neurosciences;

- (b) human development and behavioral sciences;
- (c) sociology, psychology;
- (d) disease processes and traumatic injuries;
- (e) philosophical and theoretical bases of occupational therapy and their practical application."

Auth: Sec. 37-24-201; IMP, Sec. 37-24-103

REASON: The board proposes this rule to flesh out the terms of Senate Bill 54, codified in Chapter Laws No. 35, which provides the board with the authority to approve certain techniques that are consistent with occupational therapists' education.

3. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Occupational Therapists, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than September 12, 1991.

4. Robert P. Verdon, attorney, will preside over and conduct the hearing.

BOARD OF OCCUPATIONAL THERAPISTS
DEBRA AMMONDSON, CHAIRMAN

BY: 

ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 5, 1991.

BEFORE THE BOARD OF INVESTMENTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to definitions related to general requirements for all investments in mortgages and loans; and rules pertaining to requirements for all residential, commercial, multi-family, federally guaranteed loans and economic development linked deposit programs

) NOTICE OF PUBLIC HEARING
) ON 8.97.1301 DEFINITIONS;
) 8.97.1403 CONVENTIONAL LOAN
) PROGRAM - GENERAL REQUIRE-
) MENTS; 8.97.1405 CONVENTION-
) AL LOAN PROGRAM - OFFERING
) CHECKLIST; 8.97.1407 FHA AND
) VA LOAN PROGRAMS - OFFERING
) CHECKLIST; 8.97.1408
) FEDERALLY GUARANTEED LOAN
) PROGRAMS - GENERAL REQUIRE-
) MENTS; 8.97.1410 COMMERCIAL
) AND MULTI-FAMILY LOAN
) PROGRAMS - GENERAL REQUIRE-
) MENTS; 8.97.1411 COMMERCIAL
) AND MULTI-FAMILY LOAN
) PROGRAMS - TERMS AND LOAN
) LIMITS; AND 8.97.1412
) COMMERCIAL AND MULTI-FAMILY
) LOAN PROGRAMS - OFFERING
) CHECKLIST

TO: All Interested Persons:

1. The notice of proposed agency action and public hearing published in the Montana Administrative Register on May 30, 1991, at page 772, is amended as follows because a number of individuals and organizations have requested another opportunity to share their written data, views or arguments with the Board. In response to the public interest that has been demonstrated over the proposed rules, the Board has decided to schedule another hearing on the proposed rules and to reopen the rule making record to the date set forth below in order to receive additional comments.

2. On September 13, 1991, at 1:00, p.m., a public hearing will be held in the conference room of the Board of Investments, 555 Fuller Avenue, Helena, Montana to consider the amendment of the above-stated rules.

3. The language of the proposed amendments to the rules designated above is the same as the original notice for those same rules as found on page 772 of the 1991 Montana Administrative Register, issue number 10.

4. The amendments are proposed for the same reasons as set forth in the original notice as found on page 772 of the 1991 Montana Administrative Register, issue number 10.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dave Lewis, Executive Director, Board of Investments, 555 Fuller Avenue, Capitol Station, Helena, Montana 59620-0125, no later than September 20, 1991.

6. Mona Jamison, attorney, has been designated to preside over and conduct the hearing.

7. The authority of the Board to amend the rules is based on sections 17-5-1503, 17-5-1521, 17-6-201 and 17-6-324, MCA, and the proposed rule amendments implement sections 17-5-1503, 17-5-1504, 17-5-1521, 17-6-201, 17-6-211, 17-6-302 and 17-6-324, MCA. The specific authority of the Board to propose the rule amendments and the specific sections which are implemented are cited in the Montana Administrative Register, May 30, 1991, on page 722, issue number 10.

BOARD OF INVESTMENTS
WARREN VAUGHAN, CHAIRMAN

BY: 

ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 5, 1991.

BEFORE THE COAL BOARD
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED ADOPTION
adoption of new rules for the) OF NEW RULE I INCORPORATION
implementation of the Montana) BY REFERENCE OF RULES FOR
Environmental Policy Act) IMPLEMENTING MEPA AND NEW
) RULE II CATEGORICAL
) EXCLUSIONS FROM ENVIRON-
) MENTAL REVIEW PROCESS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 14, 1991, the Coal Board proposes to adopt the above-stated rules. The proposed new rules will read as follows:

"I INCORPORATION BY REFERENCE OF RULES FOR IMPLEMENTING MEPA (1) The board hereby adopts and incorporates by reference the department's rules for implementing Title 75, chapter 1, MCA, the Montana Environmental Policy Act (MEPA) as set forth in ARM 8.2.302 through 8.2.401."

Auth: Sec. 90-6-205, MCA; IMP, Sec. 75-1-201, 75-1-202, MCA

"II CATEGORICAL EXCLUSIONS FROM ENVIRONMENTAL REVIEW PROCESS (1) As authorized by ARM 8.2.304(5), the board categorically excludes the following projects from MEPA requirements and will not normally prepare either an environmental assessment or an environmental impact statement in considering applications for grants or loans to finance these projects.

(a) projects that will be partially funded by, or for which the applicant must obtain a permit from, a state or federal agency which, by reason of its funding or permitting function, has primary responsibility to consider the environmental impacts of the project under MEPA or the National Environmental Policy Act;

(b) projects primarily involving the acquisition of capital equipment;

(c) projects primarily involving planning studies or scientific research and analysis; or

(d) projects primarily involving the provision of human services.

(2) If information available to the board suggests that a proposed project in one of the categories described in subsection (1)(b) through (1)(d) may significantly affect the quality of the human environment, the board may, in its discretion, require an applicant to provide additional information relevant to environmental concerns and the board will prepare an environmental assessment or environmental impact statement as may be appropriate."

Auth: Sec. 90-6-205, MCA; IMP, Sec. 75-1-201, MCA

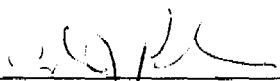
REASON: It is reasonably necessary to adopt the proposed rules in order to establish the procedure by which the coal board will carry out its responsibility under the Montana Environmental Policy Act (sections 75-1-101 et seq., MCA) to consider the potential impacts on the human environment of projects proposed for Coal Board funding.

3. Interested persons may present their data, views or arguments concerning the proposed adoption in writing to the Montana Coal Board, Local Government Assistance Division, Department of Commerce, Capitol Station, Helena, Montana 59620, no later than September 12, 1991.

4. If a person who is directly affected by the proposed adoption wishes to present his data, views, or arguments orally or in writing at a public hearing he must make written request for a hearing and submit the request along with any comments he has to the Montana Coal Board, Local Government Assistance Division, Department of Commerce, Capitol Station, Helena, Montana 59620, no later than September 12, 1991.

5. If the Board receives requests for a public hearing on the proposed adoption from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed adoption, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

COAL BOARD
G.C. (JERRY) FEDA, CHAIRMAN

BY: 
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 5, 1991.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
amendment of	)	PROPOSED AMENDMENT OF ARM
Accreditation Standards:	)	10.55.601, ACCREDITATION
Procedures	)	STANDARDS: PROCEDURES

TO: All Interested Persons

1. On September 18, 1991, from 7:30 a.m. to 12:00 p.m. or as soon thereafter as it may be heard, a public hearing will be held in the Social and Rehabilitation Services Building Auditorium, 111 Sanders Street, Capitol Complex, Helena, Montana, in the matter of the proposed amendment to ARM 10.55.601, Accreditation Standards: Procedures.

2. The rule as proposed to be amended provides as follows:
10.55.601 ACCREDITATION STANDARDS: PROCEDURES (1) through (4) remain the same.

(5) Effective on January 1, 1992, schools unable, for financial reasons, to meet the requirements of 10.55.712 (2) (a); 10.55.904 (4)(h); 10.55.709 (2); 10.55.902 (5)(j); 10.55.903 (2)(i); 10.55.710 (2), may file a notice of deferral with the office of public instruction.

(a) The notice of deferral must be filed on a form provided by the office of public instruction and approved by the board of public education.

(b) The notice of deferral must contain the following information:

- (i) the standard(s) to be deferred;
- (ii) a statement as to why the standard(s) cannot be met and the efforts made by the school to meet the standard(s);
- (iii) the school's plan to meet the standard(s) in the future;
- (iv) a breakdown of the specific costs associated with the standard(s) to be deferred and the assumptions used to derive these costs.

(c) The notice of deferral must be signed by the chairman of the school board and in districts with superintendents, the superintendent.

(d) Upon the initial filing of a notice of deferral, the standard(s) will be deferred for two school years commencing the July 1 after the filing of the notice. If a school files a subsequent notice of deferral on a standard(s) already subject to a deferral, the office of public instruction will review the notice and recommend to the board of public education whether an additional two-year deferral should be granted.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

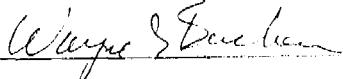
(6) The board is proposing the amendments to this rule because a large number of school districts have reported that they will not be able to meet the costs of implementing some of the accreditation standards that will be going into effect in subsequent years. Adoption of this rule will allow schools to defer implementation of some of the more costly standards for two years.

(7) Interested parties may submit their data, views or arguments either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Bill Thomas, Chairperson of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than September 21, 1991.

(8) Bill Thomas, Chairperson, and Wayne Buchanan, Executive Secretary to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, have been designated to preside over and conduct the hearings.



BILL THOMAS, CHAIRPERSON
BOARD OF PUBLIC EDUCATION

BY: 

Certified to the Secretary of State, August 5, 1991.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF PROPOSED
of Rule 11.5.1002 pertaining) AMENDMENT OF RULE 11.5.1002
pertaining to day care rates) PERTAINING TO DAY CARE
RATES
NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On September 26, 1991, the Department of Family Services proposes to amend ARM 11.5.1002. This rule pertains to daily and hourly payment rates paid to providers for the care of children pursuant to day care programs administered by the department, including but not limited to JOBS, Title IV-A, and child protective services day care benefits.

2. The rule as proposed to be amended reads as follows:

11.5.1002 DAY CARE RATES (1) Full day care services (six or more hours per day/night) are paid at a rate of ~~\$8.50 (\$9.50 FY'91)~~ \$11.25 per day/night per child in care in family day care homes. The maximum rate for group day care homes is ~~\$9.00 (\$10.00 FY'91)~~ \$11.25 per child per day/night of care. The maximum rate for centers is ~~\$9.50 (\$10.50 FY'91)~~ \$12.00 per child per day/night of care. These rates do not apply to payment for children defined as infants under ARM 11.14.102. Day care for infants in family and group day care homes is paid at a rate of \$12.00 per day. Day care for infants in day care centers is paid at a rate of \$13.00 per day. However, day care for special need or exceptional children in day care centers is paid at a rate of \$12.15 a day. These rate increases shall be paid beginning July 1, 1989.

(2) Part-time care (less than six hours per day) is paid at a rate of ~~95¢ (\$1.05 FY'91)~~ \$1.50 per hour per child in family day care homes, \$1.00 (\$1.10 FY'91) \$1.50 per hour per child in group day care homes, and \$1.05 (\$1.15 FY'91) \$2.00 per hour per child in all centers up to a maximum of a full day or night care rate.

(3) Extra meals are paid at a rate of \$1.00 per child per meal, upon the written approval of the department.

(4) ~~Special child or exceptional child day care is paid at a rate determined by the day care facility, parent of the child, and the social worker up to a maximum of \$11.50 (\$12.50 FY'91) per day or per night care, and upon approval by the department paid at a rate of \$12.00 per day or part-time care at \$1.75 per hour in group and family day care homes. When special child or exceptional child day care is provided in day care centers, such care is paid at a rate of \$12.15 per day or at a part-time rate of \$2.00 per hour. Part-time care may be provided at a rate of up to a maximum of \$1.30 (\$1.40 FY'91) per hour per child, up to a maximum of a full day or night care special rate of \$11.50 (\$12.50 FY'91) and subject to the same requirements as applied~~

to the daily rate. The \$2.00 per hour maximum part-time hourly rate for centers applies to the part-time care of exceptional and special needs children. However, part-time care for special needs or exceptional children in family or group day care homes is paid at a different rate. Part-time care for special needs or exceptional children in group and family day care homes is paid at a rate of \$1.75 per hour.

(5) Day care operators will be allowed to claim a day's care only when actually provided to the child, unless the child is enrolled in the center.

(6) The rates set forth in this rule are the maximum rates payable. The rate charged by the day care provider for children whose day care is paid for by the department cannot exceed the rate charged to private paying parents for the same service.

AUTH: Sec. 52-2-704, MCA. IMP: Sec. 52-2-713, MCA.

3. The maximum daily rates for day care provided by the department are calculated according to market rate studies. The new rates in the proposed amendment have been set according to the most recent study, which was completed in 1990. The department finds it necessary to pay competitive rates to guarantee adequate day care facilities for children eligible for day care benefits. By paying competitive rates the department also intends to fulfill, in part, its role in encouraging the development and maintenance of day care facilities.

4. Interested parties may submit their data, views or arguments to the proposed amendment in writing to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than September 13, 1991.

5. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments, to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than September 13, 1991.

6. If the Department of Family Services receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

-1387-

DEPARTMENT OF FAMILY SERVICES



Tom Olsen, Director

Certified to the Secretary of State, August 5, 1991.

15-8/15/91

MAR Notice No. 11-32

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the)	NOTICE OF PROPOSED AMENDMENT
amendment of ARM)	OF ARM 12.8.301
12.8.301(2)(b) pertaining to)	
Montana State Golden Year's)	NO PUBLIC HEARING
Pass)	CONTEMPLATED

To: All Interested Persons

1. On September 26, 1991, the Department of Fish, Wildlife and Parks proposes to amend ARM 12.8.301 pertaining to the Montana State Golden Year's Pass.

2. The rule as proposed to be amended provides as follows:

12.8.301. MONTANA STATE GOLDEN YEAR'S PASS (1)
through (2)(a) remains the same.

~~(b) Any Montana resident, as defined in 87-2-102, MCA, 65 years of age or older may purchase such a pass for each motor vehicle of which he is the legal or registered owner.~~

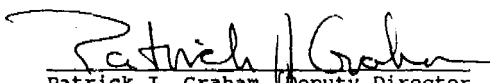
AUTH: Secs. 23-1-106, 87-1-303 MCA IMP: Sec. 23-1-105

3. Rationale and reason for repeal: In 1989, the legislature repealed the statutory authority for issuance of the Golden Year's Pass. Ch. 368, L. 1989. Therefore, the rule subject to this amendment is no longer authorized by any statute, and is of no further force and effect.

4. Interested parties may submit their data, views or arguments, either orally or in writing, to Eileen Shore, Legal Counsel, Department of Fish, Wildlife and Parks, 1420 East Sixth, Helena, Montana 59620, no later than September 12, 1991.

5. If a person who is directly affected by the proposed amendment wishes to express his or her data, views and arguments orally or in writing at a public hearing, he or she must make written request for a hearing and submit this request along with any written comments he or she has to Eileen Shore, Legal Counsel, Department of Fish, Wildlife and Parks, 1420 East Sixth, Helena, Montana 59620, no later than September 12, 1991.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from any association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register and mailed to all interested person.


Patrick J. Graham, Deputy Director
Montana Department of Fish,
Wildlife and Parks

Certified to the Secretary of State August 5, 1991.

BEFORE THE PETROLEUM TANK RELEASE COMPENSATION BOARD OF
THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING
rules 16.47.101, 16.47.311-312,) FOR PROPOSED AMENDMENT OF
16.47.314, 16.47.316, 16.47.321,) RULES AND ADOPTION OF
16.47.323-324, 16.47.333-334,) NEW RULES I & II
16.47.342 and 16.47.351, and new)
rules I and II relating to leaking)
petroleum storage tank compensation) program

(Petroleum Tank Release
Compensation Program)

To: All Interested Persons

1. On October 7, 1991, at 9 a.m., the Petroleum Tank Release Compensation Board will hold a public hearing in the conference room at 1740 N. Montana Ave., Helena, Montana, to consider the amendment of the above-captioned rule.

2. The rules, as proposed to be amended, appear as follows (new material is underlined; material to be deleted is interlined):

16.47.101 ORGANIZATION OF BOARD (1)-(3) Remain the same.

(4) Functions. The functions of the board are to provide a financial assurance mechanism, ~~as required under the Superfund Amendments and Reauthorization Act of 1986 (42 U.S. Code Sec. 6991),~~ to assure the cleanup of petroleum products which leak from storage tanks, and to reimburse the owners or operators of eligible tanks for their expenditures in cleaning up such leaks and compensating persons who live or own property near such leaking tanks for any bodily injury or property damage they may sustain as a result of the leaks. Most of the tanks covered under the major tank or "603" (from House Bill 603, 1989 legislature) program are subject to federal financial responsibility requirements (42 U.S. Code section 6991), and the U.S. environmental protection agency has recognized the board's major tank program as an approved financial assurance mechanism. The board's minor tank or "973" (from House Bill 973, 1991 legislature) program covers certain classes of tanks not subject to federal financial responsibility requirements. The board operates in close conjunction with the solid and hazardous waste bureau of the department of health and environmental sciences.

(5) Remains the same.

(6) The mailing address of the executive director is as follows:

Executive Director
Petroleum Tank Release Compensation Board

Cogswell Building 1740 N. Montana Ave.
Helena, MT 59620

(7) Remains the same.

AUTH: 2-4-201, MCA; IMP: 2-4-201, MCA

16.47.311 DEFINITIONS (1) As used in this chapter:

(a)-(c) Remain the same.

(d) "De minimis" means that amount of a hazardous substance mixed with a petroleum product which does not alter the detectability, effectiveness of corrective action, or toxicity of the petroleum product to any significant degree.

(d)-(e) Remain the same but are renumbered (e)-(f).

(g) "Site" means a complex of tanks under the same ownership.

(f) Remains the same but is renumbered (h).

(2) Remains the same.

AUTH: 75-11-318, MCA; IMP: 75-11-302 through 75-11-318, MCA

16.47.312 FUEL STORED FOR NONCOMMERCIAL PURPOSES IN ON FARM OR RESIDENTIAL (1) A farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes is ~~not~~ eligible under the "973" program.

(2)-(3) Remain the same.

AUTH: 75-11-318, MCA; IMP: 75-11-308(2), MCA

16.47.314 RELEASE DISCOVERED ON OR AFTER APRIL 13, 1989 CONSTRUED (1) A tank owner or operator may be eligible under the 603 program for reimbursement for eligible costs caused by resulting from an accidental release from a petroleum storage tank if the release was discovered on or after April 13, 1989, even though the tank was out of service on the date of discovery or is presently out of service.

(2) A tank owner or operator may be eligible under the 973 program for reimbursement of eligible expenditures made after May 9, 1991 if the release was discovered on or after April 13, 1989, even though the tank was out of service on the date of discovery or is presently out of service.

AUTH: 75-11-318, MCA; IMP: 75-11-308, MCA

16.47.316 CRITERIA FOR DECISION -- COSTS ACTUALLY, NECESSARILY, AND REASONABLY INCURRED (1) Remains the same.

(2) "Actually incurred" means, in the case of corrective action expenditures, that one entity--the owner, the operator, the insurer of either, or a contractor hired by any of them--has made a payment or that a contractor has expended time and materials and that only that entity is receiving reimbursement from the board. Time and labor contributed by the owner or operator or by an unpaid volunteer is not an expenditure actually incurred, but the labor of an a subordinate employee or a contractor reflected by checks and treated by the recipient as income is actually incurred. The board will also require proof of payment from an owner or operator or an insurer, or proof of work completed from a contractor.

EXAMPLES: (a) A contractor is employed to remove several cubic yards of contaminated soil. His invoice for backhoe use and operator labor, marked paid, document actually incurred costs. However, a neighbor who removes contaminated soil along the boundary line with his own labor and rented equipment does not generate actually incurred costs unless he invoices the tank operator for the backhoe rental and his time and the operator pays the neighbor on that invoice.

(b) The owner is a corporation and the chief executive officer of the corporation is paid a salary. This chief executive officer documents the number of hours he or she spent dealing with consultants and contractors on a cleanup and claims that portion of the salary as an expenditure actually incurred. This expenditure is not eligible for reimbursement because it was not actually incurred by a subordinate employee.

(3) "Necessarily incurred" means, in the case of correction corrective action expenditures, that the work was either contemplated in the approved plan, or if of an emergency response nature, was clearly necessary to avoid much greater damages in a very short time. In the case of third party damages, expenditures are necessarily incurred if the damages are a direct and proximate consequence of the release.

EXAMPLES: (a) A site remediation plan approved by the department and the board is silent on whether a leaking tank should be removed. The plan discusses soil removal and landfarming at another approved site. If the contaminated soil is underneath the tank, removal of the tank is necessary to carry out the plan, but if the contamination is beside the tank, removal is not a necessary expenditure. If the tank was removed first and contaminated soil is then found beneath it, the tank removal is not a necessarily incurred expenditure.

(b) An owner of property with no petroleum storage tanks discovers petroleum vapors in the basement of the house. The property is residential but is adjacent to a retail service station that uses monthly vapor monitoring as a release detection method and is in compliance using this method. However, the department orders the station owner to conduct a precision tank tightness test to discover whether or not the service station is contributing to the adjacent vapor problem. The expense of a precision tank tightness test would be necessarily incurred in this situation if the release is coming from a tank at the station.

(c) A retail service station owner discovers fuel shortages in fuel inventory records. The station owner hires someone to conduct a precision tank tightness test. The tightness test indicates tank failure. The top of the tank is uncovered and a loose fitting is discovered and tightened. These expenses would not be necessarily incurred in this situation because they are incurred pursuant to the department's regulatory requirements for general operations and not as part of a corrective action plan.

(4) Remains the same.

AUTH: 75-11-318, MCA; IMP: 75-11-309, MCA

16.47.321 ELIGIBLE PERSONS: COMPLIANCE; SUBSTANTIAL VIOLATIONS (1) The Act requires the operation and management of a tank to have been in compliance with applicable state and federal statutes and rules, other than for the release which led to the application for reimbursement, at the time of the release and after its detection. The board will normally consider compliance with the following requirements essential to eligibility:

(a)-(d) Remain the same.

(e) notifying the department of tank installations as found in ARM 16.45.901 and 16.45.902, unless timely notification has been waived by the department.

(i) Any other regulatory requirements must be met if an inspection by the department or any other agency having jurisdiction has called the operator's attention to it, but the above-described requirements must be met whether or not an inspector has called them to an operator's attention. The board will consider whether an operator has made a good faith effort to comply with the requirements of the department; noncompliance which is neither knowing nor negligent may be waived in such cases if the effect of such noncompliance does not increase eligible costs.

(2) The Act states that an owner or operator who has been convicted of a substantial violation of state or federal law or rule that relates to the installation, operation, or management of petroleum storage tanks is ineligible to seek reimbursement for any costs he incurs following a release. The board will consider a conviction to include any criminal sentence, including a fine. The length of time following such conviction that the defendant remains ineligible to consider the fund a financial assurance mechanism may be limited by Art. II, Sec. 28 of the Montana Constitution and by section 46-18-801, MCA.

AUTH: 75-11-318, MCA; IMP: 75-11-308(1)(e) and (2)(f), MCA

16.47.323 VOLUNTARY REGISTRATION (1) An owner or operator may register his tank(s) with the board for the purposes of expediting future applications for reimbursement and for procuring a certificate statement of registration.

(2) A person may apply for such registration on form 1, which must contain the following information:

(a)-(d) Remain the same.

(e) declarations that, to the best of the declarant's knowledge,

(i) Remains the same.

(ii) each tank listed was not releasing petroleum products on or before April 12, 1989, and

(iii) that neither the owner nor the operator is ineligible to be reimbursed under the applicable program.

(3) Remains the same.

(4) The board will not investigate applications for registration or the declarations therein. If the information on the application would, if true, establish potential eligibility for reimbursement, the board will issue a certificate statement to that effect to the applicant.

AUTH: 75-11-318, MCA; IMP: 75-11-318, MCA

16.47.324 PRE-APPLICATION PROCEDURE: NOTICE OF RELEASE

(1) When a person notifies the department of a release from a petroleum tank, the board will:

(a)-(b) Remain the same.

(c) mail to parties potentially eligible for reimbursement ~~blank assents to audit (form no. 2), to be executed by any persons who contract with the responsible party to carry out any portion of the approved corrective action plan forms 1 through 5 as applicable.~~

(2) Remains the same.

AUTH: 75-11-318, MCA; IMP: 75-11-309, MCA

16.47.333 DESIGNATION OF REPRESENTATIVE (1) An owner or operator may designate its insurer, contractor, or any other party as its representative to receive reimbursement for expenditures made for eligible costs as determined by the board. The owner or operator must accept responsibility for paying a contractor any amount not recognized by the board as eligible costs.

(2) Remains the same.

AUTH: 75-11-318, MCA; IMP: 75-11-307(3), MCA

16.47.334 APPLICATION PROCEDURE -- REIMBURSEMENT AFTER EXPENDITURE

(1) Upon completion of any aspect of an approved corrective action plan, the responsible party may apply to the board for reimbursement of expenditures on form 3 or 3-S, together with the following attachments:

(a) Remains the same.

(b) Attachment B -- a copy of each contract made pursuant to the corrective action plan, together with the contractor's invoice, ~~and assent to audit (form 2), and backup documentation, as necessary, to verify charges on the invoice;~~

(c)-(d) Remain the same.

(2)-(3) Remain the same.

AUTH: 75-11-318, MCA; IMP: 75-11-309, MCA

16.47.336 REVIEW AND DETERMINATION

(1) The board's staff shall review ~~receive~~ all applications for reimbursement. The staff will determine if the application is complete, then forward it to the department for its review. Following ~~following~~ the department review, ~~The,~~ the staff will promptly advise the applicant of any incompleteness or deficiency which appears on the application. Further review will be suspended pending the submission of ~~such further~~ additional information as the applicant, acknowledging an incomplete or deficient application, agrees to furnish. An applicant who believes any request for additional information by the staff is not authorized by

the Act or these rules may request the board to process and consider his application, and the board shall proceed.

(2)-(6) Remain the same.

AUTH: 75-11-318, MCA; IMP: 75-11-309(2) and (3), MCA

16.47.342 REVIEW OF CORRECTIVE ACTION PLAN: WHEN BOARD APPROVAL REQUIRED (1) Remains the same.

(2) The board ~~interprets the legislature's intent to be that the board may~~ review upon its own motion, or the applicant's request, department decisions on cleanup or corrective action plans. If the responsible party does not request the board to review a corrective action plan, and if all comments submitted by board staff to the department have been accepted by the department, then the department-approved plan will be presumed as approved by the board without further formal action by the board. However, this presumptive approval may be reconsidered by a motion to reconsider adopted by the board.

(3) Remains the same.

AUTH: 75-11-318; IMP: 75-11-318, MCA

16.47.351 FORMS (1) The board has adopted the following forms:

(a)-(b) Remain the same.

(c) Form 3, "Application for Reimbursement (603 program);"

(d) Form 3-S, "Application for Reimbursement (973 program);"

(d)-(e) Remain the same but are renumbered (e)-(f).

AUTH: 2-4-201, MCA; IMP: 75-11-302 through 75-11-318, MCA

RULE I MAJOR TANK PROGRAM AND MINOR TANK PROGRAM

(1) The board has two reimbursement programs: one for major tanks, which are all covered tanks not clearly eligible under the 973 program, and the other for certain minor tanks. The 603 program covers liability up to \$1,000,000 with a potential co-payment amount of \$17,500 (half the first \$35,000). The 973 program covers farm, ranch, and residential tanks not exceeding 1,100 gallons, used to store petroleum products for noncommercial purposes, and tanks used to store heating oil for consumptive use on the premises. This program covers liability up to \$500,000 with a potential co-payment amount of \$5,000 (half the first \$10,000).

(2) The board will presume that a petroleum storage tank or group of tanks on a single site which could be eligible under either program is eligible under the 603 program. A person who seeks reimbursement under the 973 program must prove that no leaking tank at the site is eligible under the 603 program. The two programs may not be combined to reimburse costs or damages incurred from a release at any site.

AUTH: 75-11-318, MCA; IMP: 75-11-307, MCA

RULE II HEATING OIL STORED FOR CONSUMPTIVE USE ON THE PREMISES (1) A tank used to store heating oil for consumptive use on the premises where stored is eligible under the 973

program.

(2) The board considers consumptive use on the premises to include space heating and any other use which burns or otherwise consumes the heating oil.

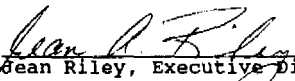
AUTH: 75-11-318, MCA; IMP: 75-11-307, MCA

3. The two new rules and the amendments to 16.47.101 (organization), 16.47.312 (non-commercial farm or residential storage), 16.47.314 (releases after 4-13-89), and 16.47.351 (forms), are being proposed to implement House Bill 973, enacted as chapter 763 of the Laws of 1991. The amendments to 16.47.311 (definitions), 16.47.321 (eligible persons), 16.47.333 (designation of representative), and 16.47.336 (review and determination) are being proposed to implement House Bill 485, enacted as chapter 389 of the Laws of 1991. The amendments to 16.47.316 (criteria for decision), 16.47.323 (voluntary registration), 16.47.324 (pre-application procedure), 16.47.334 (application procedure), and 16.47.342 (review of corrective action plan) are based upon the board's biennial review of its existing rules. The revisions to 16.47.316, the criteria for decision rule, in the areas of actually incurred and necessarily incurred expenditures, should be of the greatest interest to the public. The "actually incurred" rule would be revised to put owners of small corporations on the same footing with sole proprietors and partners. The "necessarily incurred" rule would be changed to give an example, in the tank tightness testing area, of when an expenditure is required as a routine regulatory expense as opposed to a compensable part of cleanup action. The issue of when an expenditure is "reasonably incurred" is the subject of an ongoing investigation by the board staff. Any changes in policy in this area would be the subject of a separate rule-making docket at a later date.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Jean Riley, Executive Director, Petroleum Tank Release Compensation Board, 1740 N. Montana Ave., Helena, Montana 59620, no later than October 7, 1991.

5. Howard Wheatley, Chairman of the Board, and Roger Tippy, Board Counsel, will respectively preside over and conduct the hearing.

PETROLEUM TANK RELEASE
COMPENSATION BOARD
Howard Wheatley, Chairman

By: 
Jean Riley, Executive Director

Certified to the Secretary of State August 5, 1991.

BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the adoption of) NOTICE OF PUBLIC HEARING
new rules I through VII relating) FOR PROPOSED ADOPTION OF
to 401 Certification) NEW RULES I THROUGH VII

(Water Quality Bureau)

To: All Interested Persons

1. On October 4, 1991, at 9:00 a.m., the Board will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of the above-captioned rules which describe a process for department review and issuing, denial or waiver of certification under section 401 of federal Clean Water Act to the appropriate federal agency of and activity that requires a federal license or permit and which may result in discharge in state waters.

2. The proposed rules do not replace or modify any section currently found in the Administrative Rules of Montana.

3. The rules, as proposed, appear as follows:

RULE I PURPOSE AND POLICY (1) The purpose of this subchapter is to establish procedures and criteria concerning applications for state water quality certifications submitted to the department pursuant to section 401 of the federal Clean Water Act, 33 U.S.C. section 1341, as amended.

(2) It is the policy of the board that the department shall ensure that any activity that requires a federal license or permit and that may result in a discharge to state waters shall fulfill the requirements of ARM Title 16, chapter 20 and thereby also fulfill the requirements of 33 U.S.C. sections 1311-1313, 1316, and 1317.

AUTH: 75-5-401, MCA; IMP: 75-5-402, 75-5-403, MCA

RULE II DEFINITIONS In this subchapter the following terms have the meanings indicated below and are supplemental to the definitions in 75-5-103, MCA:

(1) "Applicant" means a person who applies for a license or permit issued by an agency of the federal government to conduct an activity that may result in discharge into state waters.

(2) "Licensing or permitting agency" means an agency of the federal government to which application is made for a license or permit to conduct an activity which may result in a discharge into state waters.

(3) "Regional administrator" means the administrator of Region VIII of the U.S. environmental protection agency.

(4) "Discharge" means the injection, deposit, dumping,

spilling, leaking, placing, or failure to remove, of any pollutant so that it or any constituent of the pollutant may enter into state waters.

AUTH: 75-5-401, MCA; IMP: 75-5-402, 75-5-403, MCA

RULE III APPLICATION FOR CERTIFICATION (1) A person may not conduct or commence construction for any activity requiring state water quality certification under 33 U.S.C. section 1341, as amended, unless the department has issued certification, conditionally issued certification, or waived certification under this subchapter.

(2) The applicant, the licensing or permitting agency, or the regional administrator (under 40 CFR 121.13) shall submit to the department a complete description of the activity for which certification is sought, including:

(a) the name and address of the applicant;
(b) a description of the facility or activity and of any discharge which may result from the facility or activity, including but not limited to:

(i) the volume of the discharge;
(ii) the biological, chemical, physical, and radiological characteristics of the discharge;
(iii) a description of the existing environment at the site of the discharge;

(iv) the size of the area affected;
(v) the location or locations at which the discharge may enter state waters; and

(vi) any environmental impact assessment, information, maps, and photographs which have been provided to the licensing or permitting agency;

(c) a description of the function and operation of equipment, facilities, activities, or practices to minimize or to treat wastes or other effluents which may be discharged, including the degree of treatment expected to be attained;

(d) the date or dates on which the activity is proposed to begin and end, if known, and the date or dates on which the discharge will take place; and

(e) a description of the methods being used or proposed to monitor the quality and characteristics of the discharge and the operation of equipment, facilities, or activities employed in the treatment or control of pollutants.

(3) The department may exempt an applicant from the information requirements of subsection (2)(b), (c), and (e), if the applicant's federal permit application is to the United States army corps of engineers under section 404 of the federal Clean Water Act, 33 U.S.C. 1344, as amended, and the federal permit application provides the information required under these subsections.

(4) The department shall review the application for completeness within 30 days of receipt of the application. If the application is not complete, the department shall notify the applicant of any additional materials reasonably necessary for review of the application.

(5) The applicant shall submit in timely fashion, at

any time during the review process, any new information or modifications of the facility or activity which are pertinent to the department's certification responsibilities.

(6) An application is deemed complete if:

(a) the department has not made a determination within 30 days after receipt of the application or, subsequent to receipt of the initial application, within 30 days of receipt of materials submitted by the applicant that supplement the application; or

(b) the department notifies the applicant that the application is complete.

AUTH: 75-5-401, MCA; IMP: 75-5-402, 75-5-403, MCA

RULE IV DEPARTMENT CERTIFICATION OPTIONS (1) Upon completing its review of an application, the department shall:

(a) Deny certification for any activity which the department finds will result in a discharge that will violate any effluent limitation or water quality standard stated in or developed pursuant to ARM Title 16, chapter 20;

(b) Issue certification for any activity which the department finds will not result in a discharge that will violate any effluent limitation or water quality standard stated in or developed pursuant to ARM Title 16, chapter 20;

(c) Issue conditional certification for any activity that with the conditions imposed will not result in a discharge that will violate any effluent limitation or water quality standard stated in or developed pursuant to ARM Title 16, chapter 20; or

(d) Waive certification if the department finds that the activity will:

(i) cause minimal or no impacts to the quality of state waters; or

(ii) require an application for a Montana point discharge elimination system permit under ARM Title 16, chapter 20, subchapter 13, a Montana groundwater pollution control system permit under ARM Title 16, chapter 20, subchapter 10, or a short-term exemption under ARM 16.20.633(3)(a).

AUTH: 75-5-401, MCA; IMP: 75-5-402, 75-5-403, MCA

RULE V TENTATIVE DETERMINATION BY THE DEPARTMENT

(1) The department shall, within 30 days of receipt of a completed application, notify the applicant, the federal permitting or licensing agency, and the regional administrator of its tentative determination to either issue, issue conditionally, or deny certification. If the department does not notify the applicant of a tentative determination within 30 days after the application is determined to be complete, the department is deemed to have waived certification.

(2) The department's tentative determination must be in writing and shall explain the reasons for denying, issuing, or conditionally issuing certification.

(3) Notification of the department's tentative determination must include:

(a) the name and address of the applicant; and

(b) a statement that the department has either:

(i) examined the complete application, specifically identifying the number or code affixed to the application, and based its determination upon an evaluation of the information contained in the application that is relevant to water quality; or

(ii) examined the application and other information furnished by the applicant sufficient to permit the department to reach its decision.

(4) If a tentative issue of certification or conditional certification is made, the notification must also contain:

(i) a statement that there is reasonable assurance the facility's or activity's construction and operation will not result in a violation of effluent limits or water quality standards; and

(ii) a statement of conditions which the department deems necessary for allowing the discharge, including necessary monitoring requirements. Necessary monitoring requirements include, but are not limited to:

(A) at least 7 days prior to the beginning of the discharge, the applicant shall notify the department of intent to commence the discharge;

(B) within 7 days after the completion of the discharge, the applicant shall notify the department of the completion; and

(C) the applicant shall allow the department reasonable entry and access to the discharge site in order to inspect the discharge for compliance with the certification requirements applicable to the facility or activity.

(5) If the department denies certification, the notification of tentative determination must include a statement explaining why the activity or permit will result in discharge of pollutants to state waters and detailing the effluent limits or water quality standards that will be violated.

(6) Where a notice is issued by the department under RULE VI, the notification of tentative determination must include a statement that, unless a written request for a hearing is filed with the department within 15 days after publication of public notice, the department's decision will become final without public hearing.

(7) The notification may also include other information as the department determines to be appropriate.

AUTH: 75-5-401, MCA; IMP: 75-5-402, 75-5-403, MCA

RULE VI PUBLIC NOTICE AND FINAL DETERMINATION BY THE DEPARTMENT

(1) Except as provided in subsection (5), the department shall provide public notice of the department's tentative determination. The department shall mail the notice to any person on request. In addition, the department shall publish a legal notice once weekly for two consecutive weeks in a newspaper of general circulation that is circulated in the county in which the activity is proposed. The department may include additional notice which may involve:

(a) posting in the post office and public places of the municipality nearest the premises of the proposed activity;

(b) posting near the entrance to the applicant's premises and in nearby places; or

(c) any other notice that the department considers necessary.

(2) Notice under subsection (1) of this rule shall contain the information required under RULE V(3).

(3) If there is significant public interest in a proposed action under this rule, the department shall set a public hearing, which must be scheduled not less than 30 days after the hearing has been given public notice pursuant to subsection (1).

(4) The deadline for written comment is 30 days from the date of issuance of the public notice or, if a public hearing is conducted pursuant to subsection (3), 14 days after the date of the hearing.

(5) A project applicant who has filed an application for a permit with the United States army corps of engineers under 33 U.S.C. section 1344, as amended, to place dredged or fill material in navigable waters meets the requirements of this section if the application is given public notice by the United States army corps of engineers and the public notice contains a statement referencing the department's certification responsibility under section 401 of the federal Clean Water Act, 33 U.S.C. section 1341, as amended.

(6) The department shall make its final decision within 30 days after the close of the comment period, as determined pursuant to subsection (4) or, if the project requires public notice under 33 U.S.C. section 1344, as amended, within 30 days after the close of the comment period set by the United States army corps of engineers.

AUTH: 75-5-401, MCA; IMP: 75-5-402, 75-5-403, MCA

RULE VII. APPEAL TO THE BOARD (1) Within 30 days after the date of final action by the department under RULE VI, the applicant or any person or entity whose substantial interests are adversely affected by the action may appeal the Department's action to the board. The appeal must be in writing and set forth the positions of the appealing party, the basis for the appeal, and the alleged errors of fact or law that were made by the department.

(a) Upon filing of an appeal under this subsection, the board shall appoint a hearing examiner.

(b) A hearing conducted under this section must be conducted pursuant to the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA.

(2) The board's review is limited to the issue of whether the department has properly interpreted and applied the effluent limits and water quality standards stated in or developed pursuant to ARM Title 16, chapter 20, to the discharge from the facility or activity for which the department's certification decision is under appeal.

(3) If a decision of the department made under RULE VI

undergoes review by the board under this section, the department shall notify the licensing or permitting agency that certification is denied for the period in which the department's decision is under review by the board.

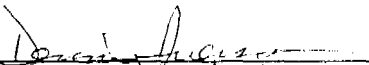
(4) The final decision of the board is judicially reviewable as provided under the Montana Administrative Procedure Act, Title 2, chapter 4, part 7, MCA.

AUTH: 75-5-401, MCA; IMP: 75-5-402, 75-5-403, MCA

4. The board is proposing these rules in response to the decision of the district court of the First Judicial District in Highline Sportsmen v. Board of Health and Environmental Sciences, in which the court commented extensively on the lack of any orderly procedure by which 401 certifications are performed and suggested the need for such procedure.

5. Interested persons may submit their data, views, or arguments concerning the proposed rules, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Yoli Fitzsimmons, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than October 4, 1991.

6. David W. Simpson, Chairman of the Board, has been designated to preside over and conduct the hearing.


DENNIS IVERSON, Director

Certified to the Secretary of State August 5, 1991.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF PUBLIC HEARING
of Rules 18.8.509, 18.8.510A,	)	ON PROPOSED AMENDMENT OF
18.8.510B, 18.8.511A, 18.8.514 and	)	RULES 18.8.509, 18.8.510A,
18.8.515 regarding overdimensional	)	18.8.510B,
vehicles and 18.8.1401 regarding	)	18.8.511A, 18.8.514,
qualifications and training for	)	and 18.8.515 REGARDING
motor carrier services division	)	OVERDIMENSIONAL LOADS
personnel as peace officers.	)	AND 18.8.1401 REGARDING
	)	PEACE OFFICERS.

TO: All Interested Persons

1. On September 17, 1991 at 10:00 a.m., a public hearing will be held in the auditorium of the Department of Transportation at 2701 Prospect Avenue, Helena, Montana, to consider the rules listed above.

2. The rules as proposed to be amended provide as follows:

18.8.509 GENERAL PERMIT RESTRICTIONS

(1) and (1)(a) will remain the same.

(b) Travel is not allowed from 3 p.m. Friday to sunrise on Saturday and from 12 noon on Sunday to sunrise on Monday for vehicles or loads exceeding 9 feet in width, or 95 feet in length without overhang, or 75 feet in length with overhang, or 14 feet 6 inches in height on highways indicated on M.C.S. G-V-W- Form 32 permit or "red route restrictions" map, which is available from the Motor Carrier Services Gross Vehicle Weight Division, Box 4639, Helena, MT 59604, (406) 444-6130.

(1)(c) through (4) will remain the same.

(5) No verbal permit shall be issued by telephone or otherwise. A written permit is required. The original term permit must be carried in the assigned vehicle. The motor carrier services division administrator may, under certain circumstances, grant verbal authorization for movement under a single trip overdimensional and/or overweight permit.

(6) through (11) will remain the same.

AUTH: Sec. 61-10-155 MCA. IMP.: Sec. 61-10-101 through 61-10-148 MCA.

REASON: The hours of travel are proposed to be changed to allow industry access to regions in the state on weekends. Studies show peak traffic volumes are actually Friday and Sunday afternoons.

Sub-section (5) is proposed to be amended because House Bill 83 granted use of telephonic permits.

18.8.510A REGULATIONS AND EQUIPMENT FOR FLAG VEHICLES

(1) through (3) shall remain the same.

(4) Flashing amber lights, visible front and rear, a minimum of 5 inches in diameter, 50 candlepower, 60 to 90 flashes per minute, shall be mounted at each end of a "wide load" sign on the roof of the flag vehicle. A revolving or strobe light may be substituted for flashing lights. Lights shall be flashing at all times when piloting an oversize load.

(5) will remain the same.

AUTH: Sec. 61-10-155 MCA. IMP.: Sec. 61-10-101 through 61-10-148 MCA.

REASON: The proposed amendment is made for regional uniformity with the other western states.

18.8.510B REGULATIONS AND EQUIPMENT FOR VEHICLES OR LOADS EXCEEDING 10 FEET WIDE

(1) A sign with the words "OVERSIZE LOAD" ~~or similar wording~~ shall be mounted at any visible height on the front and rear of the load. Letters shall not be less than 8 inches in height. The letters shall be dark in color on a light colored background.

(2) On the power unit, flashing amber lights, a minimum of 5 inches in diameter, 50 candlepower, 60 to 90 flashes per minute, shall be mounted at each end of the wide load sign. ~~On the power unit, a~~ A revolving light or strobe light may be substituted for flashing lights. Lights shall be flashing at all times when moving an oversize vehicle or load.

(3) and (4) will remain the same.

AUTH: Sec. 61-10-155 MCA. IMP.: Sec. 61-10-121 and 61-10-122 MCA.

REASON: The proposed amendments are made for regional uniformity with the other western states.

18.8.511A WHEN FLAG VEHICLES ARE REQUIRED

(1) through (3) will remain the same.

(4) A vehicle or load over 10 feet wide must be preceded and followed by a flag vehicle front and rear when it is not equipped with flashing amber lights and "oversize wide load" signs.

(5) A flag vehicle is required at the rear when the vehicle or load exceeds 105 ~~100~~ feet in length on primary or secondary highways.

(6) will remain the same.

AUTH: Sec. 61-10-155 MCA. IMP.: Sec. 61-10-101 through 61-10-148 MCA.

REASON: The proposed amendments are made for regional uniformity with the other western states.

18.8.514 LENGTH

(1) A term length permit may be issued to a single powered vehicle, including load, up to and including 55 50 feet in length for continuous travel provided full length and width of vehicle and load is lighted.

(2) A single trip overdimensional permit may be issued to a single vehicle including its load in excess of 55 50 feet with the following restrictions:

(a) Travel during daylight hours only, 7 days a week.

(b) No travel holidays or holiday weekends.

(c) ~~Travel is not allowed from No travel after 3 p.m. on Friday until sunrise on Saturday and from 12 noon on Sunday to sunrise on Monday~~ on the highways designated on the "red route restrictions" map.

(3) through (6) will remain the same.

~~(7) No overdimensional permit may be issued for a combination of vehicles in excess of 95 feet except as provided in subsections (8), (9), and (10).~~

~~(8) A trip overdimensional permit in excess of 95 feet may be issued for a vehicle combination used exclusively for hauling heavy equipment (non-reducible loads) or to return unladen is vehicle combination is not reducible.~~

~~(9) A vehicle combination with a non-divisible length load which exceeds 95 feet may be issued a single trip overdimensional permit.~~

~~(10) A vehicle combination with a divisible length which does not exceed 100 feet may be issued a single trip overdimensional permit for travel only on interstate highways and within a 2-mile radius of an interchange on the interstate system on other highways only in order to obtain necessary services or to load or unload at a terminal.~~

(11) will remain the same and be re-numbered as (7).

AUTH: Sec. 61-10-155 MCA. IMP.: Sec. 61-10-121 through 61-10-148 MCA.

REASON: The hours of travel are proposed to be changed to allow industry access to regions in the state on weekends. Studies show peak traffic volumes are actually Friday and Sunday afternoons.

The 52nd Montana Legislature enacted Senate Bill 178 and increased the single unit length five feet. The proposed amendment to (2) would make a similar adjustment for single trip or term overdimensional permits.

Sections (7) through (10) are proposed to be deleted because they restrict the authority already granted in 61-10-121 MCA.

18.8.515 REGULATIONS FOR MOVEMENT OF A LONG LOAD

(1) and (a) will remain the same.

(b) A long load with a combined length, including towing vehicle, over 105 100 feet requires a flag vehicle at the rear of the combination and a "long load" sign displayed at the rear of the load when traveling on a two-lane highway. The power vehicle must maintain a minimum speed of 25 m.p.h. at all times.

- (c) will remain the same.
- (2) through (3)(c) will remain the same.

AUTH: Sec. 61-10-155 MCA. IMP.: Sec. 61-10-121 and 61-10-122 MCA.

REASON: This proposed amendment would adjust the term permit length for uniformity with the other western states.

18.8.1401 QUALIFICATIONS AND TRAINING FOR MOTOR CARRIER SERVICES DIVISION G-V-W PERSONNEL AS PEACE OFFICERS

(1) Each employee is subject to an extensive background investigation, including credit check.

(2) ~~Each employee shall, unless he or she has previous acceptable law enforcement training, successfully complete and graduate from the basic Montana law enforcement academy training course. In addition, each~~ Each employee shall successfully complete any other Montana law enforcement academy courses required by the motor carrier services G-V-W division.

(3) In addition, each employee must successfully complete the M.C.S. G-V-W division's training program. ~~The maximum allowable time to complete the training program is 90 calendar days.~~

- (4) through (6) will be the same.

AUTH: Sec. 61-12-202 MCA. IMP.: Sec. 61-12-201 and 61-12-202 MCA.

REASON: The title of the division was changed by Senate Bill 164 from Gross Vehicle Weight Division to Motor Carrier Services Division.

The division now provides a shorter training course, which is more intense in the areas applicable to our functions and laws.

Also, the on-the-job training program has been restructured and the 90-day allowable completion time is no longer applicable.

3. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to David A. Galt, Acting Administrator, Motor Carrier Services Division, Box 4639, Helena, MT 59624, no later than September 17, 1991.

4. Betsy E. Brandborg, Assistant Attorney General, has been designated to preside over and conduct the hearing.

DEPARTMENT OF TRANSPORTATION

By: 

John Rothwell, Director

Certified to the Secretary of State August 5, 1991.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption,	)	NOTICE OF PUBLIC
amendment, and repeal of rules	)	HEARING ON THE
regulating public gambling	)	PROPOSED ADOPTION,
	)	AMENDMENT, AND REPEAL
	)	OF RULES REGULATING
	)	PUBLIC GAMBLING

TO: All Interested Persons.

1. On September 5, 1991, at 9:00 a.m., a public hearing will be held in the auditorium of the Scott Hart Building, 303 North Roberts, in Helena, Montana, to consider the adoption, amendment, and repeal of rules regulating gambling.

2. The proposed new rules implement provisions concerning random selection processes for raffles; electronic live bingo and keno equipment; display of illegal gambling devices; leasing of gambling licenses; casino nights; fantasy sports leagues; public disclosure of information; premises approval; card room contractor licenses; transfer of ownership interest; importation of illegal gambling devices; combination wagers in live keno games; sports tab games; authorized sports pools; and operator license application processing fees. The rules proposed to be amended pertain to video gambling machine and live bingo and keno record keeping and reporting; licensure procedures; card games and tournaments; video gambling machine specifications and permit proration; and sports pools. The rules proposed to be repealed pertain to provisional operator licenses; expenses allowed in calculating live keno or bingo taxable net income; and the definition of a raffle.

3. The proposed new and amended rules provide as follows:

23.16.101. DEFINITIONS As used throughout this subchapter, the following definitions apply:

(1) and (2) remain the same.

(3) "Dealer" means a person who:

(a) deals playing cards in a card game of panguingue or poker; and

(b) may accept wagers and dispense winnings in a card game of panguingue or poker.

(4) and (5) remain the same.

~~(6) "Licensed" means that a person has been granted a dealer, operator, manufacturer/distributor, or manufacturer of illegal gambling devices license by the department.~~

~~(7)(6)~~ "Manufacturer/distributor" means a person who:

(a) assembles from raw materials or subparts a completed piece of equipment or pieces of equipment of any kind, except for electronic live bingo or keno equipment, for use as a gambling device; or

(b) purchases or obtains from another person equipment of any kind for use in gambling activities and sells, leases, or otherwise furnishes this equipment to another person.

(7) "Manufacturer of electronic live bingo or keno equipment" means a person who assembles a completed or uncompleted piece of electronic equipment intended for use in the game of live bingo or keno.

(8) remains the same.

(9) "Manufacturer of sports tab cards" means a person who manufactures sports tab cards for use in conducting sports tab games.

(10) "Noninstitutional lender" means a person who loans money to an applicant other than a state or federally regulated banking or financial institution.

(9) and (10) are renumbered (11) and (12).

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-112, MCA

23.16.102 APPLICATION FOR GAMBLING LICENSE - LICENSE FEE

(1) Every person working as a dealer, operator, card room contractor, manufacturer/distributor, manufacturer of electronic live bingo or keno equipment, manufacturer of sports tab cards, or manufacturer of gambling devices not legal in Montana as defined by Title 23, chapter 5, MCA, and by these rules must have a valid license issued by the department.

(2) remains the same.

(3) The application must contain:

(a) a document authorizing the disclosure examination and release of information for use in assessing a gambling license application (form 1), dealer license application (form 2), or nonprofit organization gambling license application (form 3), which must be signed and dated by the applicant whose signatures must be attested to before a notary public for the state of Montana; (Forms 1, 2 and 3 are incorporated by reference and available from the department upon request.)

(b) one or more personal history statements (form 10), as required in the application;

++(c) Any any first year license or processing fee required by Title 23, chapter 5, MCA, must accompany each application; and

++(d) Applicants for specific types of gambling licenses issued by the department must comply with any special requirements contained additional information, statements, or documentation required in the rules applicable to those licenses.

(4) Forms 1 through 3 and 10 are incorporated by reference and available from the department upon request.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-115, MCA

23.16.103 INVESTIGATION OF APPLICANTS, FINGERPRINTS MAY BE REQUIRED -- DISCLOSURE FROM NONINSTITUTIONAL LENDER (1) and (2) remain the same.

(3) The department may require a noninstitutional lender to complete a document (form 13) authorizing examination and release of information to assess the suitability of an applicant's funding source as required in 23-5-176, MCA. The document must be signed and dated by the lender and attested to by a notary public. (Form 13 is incorporated by reference and

available upon request from the department.)

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-115, MCA

23.16.107 GROUNDS FOR DENIAL OF GAMBLING LICENSE, PERMIT OR AUTHORIZATION

(1) through (1)(b) remain the same.

(c) ~~been convicted of committing, conspiring, or attempting to commit any felony, gambling-related misdemeanor, or other crime which is contrary to the declared policy of the state of Montana with regard to gambling within 5 years of the date of application; or~~

(d) ~~been placed and remains in actual or constructive custody of any federal, state, or local law enforcement authority or court for any on probation or parole or under deferred prosecution for committing a felony, gambling-related misdemeanor, or other crime which is contrary to the declared policy of the state of Montana with regard to gambling; or~~

(e) remains the same.

(f) ~~been convicted of committing, conspiring, or attempting to commit theft or embezzlement against a gambling licensee or gambling enterprise; or~~

(g) ~~been convicted in any jurisdiction or any offense involving or relating to gambling; or~~

(h) through (j) are renumbered (f) through (h).

(i) if the applicant or licensee is a corporation, failed to remain in good standing with the office of the Montana secretary of state; or

(k) and (l) are renumbered (j) and (k).

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-115, 23-5-176, MCA

RULE I DEFINITIONS Unless the context requires otherwise, the following definitions apply to [rules II through VI]:

(1) "Licensed gambling operation" means a business for which a gambling operator, card room contractor, manufacturer-distributor, manufacturer of gambling devices not legal in Montana, or manufacturer of electronic live bingo or keno license was obtained under Title 23, chapter 5.

(2) "Licensee" means a licensed gambling operator, card room contractor, manufacturer-distributor, manufacturer of devices not legal in Montana, or manufacturer of electronic live bingo or keno equipment.

(3) "Owner of an interest" means a person who shares in the profits, losses, or liabilities of a licensed gambling operation.

(4) "Security interest" means an interest that is reserved or created by an agreement that secures payment or performance of an obligation.

(5) "Stranger to the license" means a person who does not own an interest in the licensed gambling operation.

(6) "Transfer" means to sell, assign, lease, or otherwise convey.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-176, MCA; Sec. 8, Ch. 647, L.1991

RULE II TRANSFER OF INTEREST AMONG LICENSEES (1) Except as provided in subsection (5), an owner of an interest in a licensed gambling operation may not transfer any portion of his interest to another owner or group of owners of an interest in the same gambling license operation without submitting an amended gambling license application to the department and obtaining department approval.

(2) The department may conduct an investigation to determine whether the proposed transfer meets the licensure requirements in 23-5-176, MCA, and department rules.

(3) Within 60 days after receiving the completed amended application, the department shall approve the proposed transfer by issuing an amended gambling license or notify the parties involved of the denial of the license or other appropriate action.

(4) If the transfer is approved, the department may not charge a transferee any additional gambling license or permit fees.

(5) The provisions of this rule do not apply to the transfer of a security interest in a licensed gambling operation.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-176, MCA; Sec. 8, Ch. 647, L.1991

RULE III TRANSFER OF INTEREST TO A STRANGER TO THE LICENSE

(1) Except as provided in subsection (7), an owner of an interest in a licensed gambling operation may not transfer an interest in the operation to a stranger to the license until a new gambling license application reflecting the proposed transfer is submitted to the department and the department approves the transfer.

(2) The gambling license application must include:

(a) application processing and first-year license fees, if required; and

(b) a copy of the proposed agreement to transfer the interest.

(3) The department shall conduct an investigation to determine whether the proposed transfer meets the licensure requirements in 23-5-176, MCA, and department rules.

(4) Within 90 days after receiving the completed application, the department shall approve the proposed transfer by issuing a gambling license or notify the applicant of the denial of the license or other appropriate action.

(5) After the gambling license has been issued, the department shall issue the appropriate gambling permits to the licensee upon submission of completed applications and payment of permit fees.

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

(7) The provisions of this rule do not apply to the:

(a) transfer of a security interest in a licensed gambling operation; or

(b) transfer of less than 5% interest in a publicly-

traded corporation.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-176, MCA; Sec. 8, Ch. 647, L.1991

RULE IV ESCROW REQUIRED (1) Money or any other thing of value constituting consideration for transferring an interest in a licensed gambling operation may not be paid, received, or used until the provisions of [rule II or rule III] have been met. However, the funds may be placed in escrow pending compliance with these provisions.

(2) Except as provided in [rule VI], a loan, pledge, or similar transaction between the parties to the proposed transfer or with other parties associated with the transfer may be deemed a violation of this rule.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-176, MCA; Sec. 8, Ch. 647, L.1991

RULE V PARTICIPATION IN OPERATIONS (1) Except as provided in subsection (2), a person who proposes to acquire an interest in a licensed gambling operation may not take part as an employee, manager, or otherwise in the conduct of the gambling operations or operation of the establishment in which the gambling operations are conducted until the transfer has been approved by the department as provided for in [rule II or III].

(2) If a person has been employed by the licensed gambling operation for more than 6 consecutive months before submitting to the department the application required in [rule II] or [rule III], the employee may continue to be employed pending department action.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-176, MCA; Sec. 8, Ch. 647, L.1991

RULE VI LOANS TO LICENSEES (1) For the purposes of this rule, "noninstitutional source" means a person other than a state or federally regulated banking or financial institution.

(2) If a gambling licensee acquires a loan from a noninstitutional source for use in conducting his licensed gambling operation or a noninstitutional source acquires a security interest in a licensed gambling operation, the department shall approve the loan or acquisition before any funds from the loan may be received or expended by the licensee or the acquisition of the security interest is finalized.

(3) A licensee shall notify the department in writing within 30 days after signing an agreement to acquire a loan from a noninstitutional source or to transfer a security interest to a noninstitutional source. The notice, which is to be signed under oath, must include:

(a) the names and addresses of all parties to the loan or transfer;

(b) the amount and source of the loan funds or amount and source of the funds used to acquire the security interest;

(c) the nature and amount of the security provided for the loan or security interest;

(d) the purpose of the loan or transfer of the security interest; and

(e) a copy of the loan agreement or, in the case of a transfer of a security interest, a copy of the agreement to transfer the security interest or uniform commercial code document filed with the secretary of state to record the transfer.

(4) The department may disapprove the loan or transfer of the security interest if it determines that the loan or transfer involves an unsuitable source of funding.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-176, MCA; Sec. 8, Ch. 647, L.1991

RULE VII LEASING OF LICENSE PROHIBITED (1) A gambling license or permit is a privilege personal to the gambling licensee and may not be leased, assigned, or transferred to another person.

(2) The department's examination to determine the existence of a lease or other similar arrangement includes, but is not limited to, the following factors:

(a) the nature of various employment relationships (e.g., "lessee"/"lessor", "lessee"/gambling-related employees, "lessor"/gambling-related employees);

(b) responsibility for liabilities (e.g., payment of taxes, insurance, rent; liability for injury, violations of law);

(c) methods and amounts of reimbursement (e.g., to "lessor", to "lessee");

(d) eventual transfer of business; and

(e) any other evidence indicating the existence of a lease or other method of conveyance.

(3) This rule does not prohibit a licensed operator from entering into an agreement with a licensed card room contractor to operate one or more live card game tables on the operator's premises.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-110, MCA; Sec. 34, Ch. 647, L.1991

RULE VIII PUBLIC DISCLOSURE OF INFORMATION (1) Except as provided in subsection (2) and the Criminal Justice Information Act (Title 44, chapter 5, MCA), the department shall release information in its possession upon a case-by-case evaluation of whether the individual right to privacy clearly exceeds the merits of public disclosure.

(2) With regard to information obtained in the application or tax reporting processes, the department shall release information in conformance with 23-5-115, MCA, and [section 4, ch. 647, L. 1991].

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-115, MCA; Sec. 4, Ch. 647, L.1991

23.16.108 RECOURSE IN CASES OF DENIAL OR NON-RENEWAL OF GAMBLING LICENSE - HEARING, JUDICIAL REVIEW (1) Upon completion by the department of its investigation of an

applicant's qualifications for licensure, the department shall notify the applicant in writing of its intended action. If the applicant then desires a hearing, ~~he must submit~~ a written request ~~for a hearing must be submitted~~ to the department within 20 days. ~~An applicant's request for hearing must state whether he waives or invokes the confidentiality requirements of section 23-5-115(6), MCA.~~

(2) Upon receipt by the department of a written request for hearing, all proceedings involving the denial or non-renewal of a gambling license shall be conducted in accordance with the Montana Administrative Procedure Act and the attorney general's Model Rules of Procedure. The applicant shall notify the appointed hearing officer whether the applicant waives or invokes the confidentiality requirements of 23-5-115, MCA.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-115, MCA

23.16.401 APPLICATION FOR DEALER LICENSE (1) through (3) remain the same.

(4) An The application for a dealer license is incorporated in these rules by reference as Form 4 and can may be obtained from inspected at the office of the department gambling control division.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-308, MCA

23.16.402 DEALER LICENSE (1) remains the same.

(2) Every dealer license expires annually on the licensee's birthday, and in no case less than 12 months from the date of issuance. All applicants for renewal of card dealer licenses shall have a period of thirty (30) days following their birthdays within which to renew their licenses.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-308, MCA

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

(2) An application to renew a dealer license must be received by the department prior to the expiration date of the license. An application not postmarked by the date of expiration will result in expiration of the dealer license and will require the expired license.

(3) If the holder of an expired license submits an application to renew his license within 30 days after the expiration date, he may renew the license at the renewal license rate. If the renewal application is not received within 30 days, the holder shall reapply for a new original license in the manner required by these rules.

(3) is renumbered (4).

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-308, MCA

23.16.406 TEMPORARY DEALER LICENSE (1) remains the same.

(2) Every A temporary dealer license expires annually on the licensee's birthday, and in no case less than 12 months from the date of issuance is valid for no more than 90 days.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-308, MCA

23.16.407 CONFISCATION OF TEMPORARY DEALER LICENSE (1) A temporary dealer license may be immediately confiscated by authorized representatives of the department when if the department has issued a temporary cease and desist order and any of the following conditions can be demonstrated:

(1) (a) through (2) remain the same.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-308, MCA

23.16.501 DEFINITIONS As used throughout this subchapter, the following definitions apply:

(1) and (2) remain the same.

~~(3) "Provisional operator license" means a license issued provisionally by the department to make available to the public for play a gambling device or gambling enterprise.~~

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-176, 23-5-177, MCA

23.16.502 APPLICATION FOR OPERATOR LICENSE (1) All applicants for operator licenses issued by the department must shall submit the following information on Form 5, which is incorporated by reference and available from the department upon request:

(a) remains the same.

(b) the applicant's most recent financial statements with the application form. The statements must reflect the business operation for which the application is being submitted and include a balance sheet, income statement, and a statement of the amount and source of funding. The department may accept current statements submitted to state and or federal income tax agencies as part of the most recent tax returns are acceptable, if they reflect the business operation for which the application is being submitted. If the business is prospective or has recently begun operating, the applicant shall submit a beginning balance sheet and a statement of the amount and source of funding for the business.

(c) remains the same.

(d) the following ownership/management information, as applicable:

(i) through (iv) remain the same.

(v) if the applicant is a nonprofit corporation or association, the information must be submitted on the applicable managing body, i.e., board of directors or person responsible for conducting the gambling activity (e.g., gambling manager, steering committee); or

(vi) through (2) remain the same.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-176, 23-5-177, MCA

RULE IX APPLICATION PROCESSING FEE (1) An applicant submitting an application for a gambling operator license on or after July 1, 1991 shall pay a license application processing fee in the following amount:

(a) \$50 if the applicant is a nonprofit organization;

(b) \$400 if the applicant is a sole proprietorship;

(c) \$500 if the applicant is a partnership or subchapter S corporation; and

(d) \$1,000 if the applicant is a corporation other than a subchapter S corporation.

(2) The applicant shall submit the fee required under subsection (1) in the form of a check or money order at the time the operator license application is submitted to the department.

(3) Based on the actual cost incurred by the department in determining whether the applicant qualifies for licensure, the department shall refund any overpayment of the fee or collect an amount sufficient to reimburse the department for any underpayment of actual costs.

(4) If an applicant withdraws the application after the department has begun processing the application, the department shall refund any amount not expended as of the date of withdrawal.

AUTH: Sec 23-5-115, MCA.

IMP: Sec. 23-5-177, MCA.

RULE X PREMISES SHARING INTERNAL ENTRANCE (1) Except as provided in [section 7, ch. 647, L. 1991], the department may not approve a premises for issuance of an operator's license if the premises:

(a) shares a common internal wall with another premises for which an operator's license has been issued; and

(b) the wall contains an internal entrance through which public access is allowed.

(2) If an internal entrance contained in a common wall is intended for nonpublic use only, the following conditions must be met to prohibit public access through the entrance:

(a) The entrance must be clearly identified as an entrance for nonpublic use only.

(b) The entrance must lead into an area in which the public does not normally have access, such as a storage area, an area located behind a bar or cashier booth, or a food service, preparation, or distribution area.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 7, Ch. 647, L. 1991

23.16.508 CHANGES IN OWNERSHIP REPORTING MANAGERS, OFFICERS, AND DIRECTORS (1) ~~With the exception of subsection (2) a new application for licensure must be submitted with each change in ownership.~~

~~(2) With regard to publicly traded corporations, changes are subject to the limitations contained in these rules.~~

~~(3) All new Any change in management employees, officers, and or directors listed on a licensee's gambling license application must be reported to the department within 30 days of the date of change.~~

~~(4) (2) As defined in ARM 23.16.502, all new owners, New management employees, officers, and directors are subject to the same background information requirements specified previously in this subsection shall submit a personal history statement (form 10) and the appropriate document authorizing the examination and release of information (form 1, 2, or 3).~~

~~(3) Applications are subject to A license denial is~~

subject to revocation if the changes in ownership management employees, officers, or directors result in the applicant's licensee's failure to meet the statutory qualifications for licensure.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-176, MCA

RULE XI CARD ROOM CONTRACTOR LICENSE (1) A person may obtain a card room contractor license by submitting to the department a card room contractor license application (form 9), which is incorporated by reference and available upon request from the department.

(2) The application must include:

(a) full identification of the applicant, including legal name, address, phone number, and social security number or federal identification number;

(b) forms 1 and 10 as described in ARM 23.16.102;

(c) financial statements for the applicant's business as described in ARM 23.16.502;

(d) a \$150 license fee; and

(e) a copy of each proposed agreement to be entered into with a licensed operator to provide gambling on the operator's premises.

(2) If a card room contractor alters an existing agreement or enters into additional agreements after obtaining a license, he shall submit a copy of each agreement to the department within 10 days after altering or signing the agreement.

(3) A card room contractor license expires at midnight on June 30 and must be renewed annually by completing a form provided by the department.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 9, Ch. 647, L.1991

RULE XII NOTIFICATION OF AGREEMENT TERMINATION (1) If an agreement between a licensed operator and licensed card room contractor is terminated, the operator shall notify the department in writing within 30 days after termination of the agreement.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 9, Ch. 647, L.1991

23.16.1101 CARD GAME TOURNAMENTS (1) remains the same.

(2) ~~Card game tournaments involving gambling activity where the house does not collect a rake or other fee will be allowed with prior written notice to and approval by the department. A If a licensed operator must with a permit for operating at least one live card game table on his premises wishes to conduct a card game tournament using more tables than the number for which he has permits, the operator shall submit a request to conduct an application to the department for a card game tournament involving gambling activity to the department permit. Form 14, the card game tournament permit application, is incorporated by reference and available from the department upon request. The request application must specify include:~~

~~(a) the licensed operator's name;~~

~~(b) the operator license number;~~

~~(c) location of the card game tournament; and;~~

- (d) type of game to be played;
- (e) number of tables to be used during the tournament;
- (f) date of the tournament;
- (g) amount of entry fee;
- (h) amount of cash prizes;
- (i) \$10 processing fee; and
- (j) copy of the tournament rules, which must identify the

face value of the chips to be used and provide an estimate of the total number of hands to be played to be eligible to win a prize. (3) A request to conduct a card game tournament must specify the number of tournament tables as well as the location and date(s) of the tournament. A request to conduct a The card game tournament application must be received by the department at least 10 days prior to the event and be accompanied by a \$10 processing fee before the start of the tournament allowing sufficient time for processing.

(4) A copy of the tournament rules must be provided to tournament participants and posted as provided for in [section 37, ch. 647, L. 1991].

(3)(5)(a) * In a card game tournament involving card games other than panguingue or poker, a licensed dealer is not required to personally conduct card the games tournaments. However, in the case of card game tournaments, at least one licensed dealer a designated person must be present on the premises to oversee the conduct of the games and settle disputes.

(b) In a card game tournament involving poker or panguingue, each card game must be conducted by a licensed dealer as required in 23-5-309, MCA. In addition, a designated person, who may be one of the licensed dealers, must be present on the premises to oversee the conduct of the games and settle disputes.

(4)(6) The only consideration that may be paid by a tournament participant is:

- (a) an entry fee; and
- (b) a fee paid to reenter the tournament after being eliminated from competition, if permitted to do so under tournament rules.

(7) Winners are determined by points or chips accumulated during the course of a game. Prizes cannot exceed \$300 per hand and must may be awarded following each game or at the end of the tournament. Games or prizes cannot be combined so as to increase the ultimate prize awarded. All tournament rules must be posted and clearly visible to all players.

(5)(8) In the case of card game tournaments, the games must A tournament may not be conducted for no more than 72 5 consecutive hours and there must be at least one licensed card table on the premises days. Card games may be conducted between the hours of 2 a.m. and 8 a.m. each day unless the hours for operating a live card game table have been extended by a city or county ordinance. An operator may conduct up to 12 card game tournaments per year.

(6)(9) The department's letter of approval An operator's card game tournament permit must be posted and clearly visible

to the public. ~~Each approval~~ The permit is specific to an operator, ~~and location, and for no more than a 72 hour period.~~ Publicly played card

(10) ~~Card game tournaments involving gambling activity~~ must comply with the requirements of Title 23, chapter 5, MCA, and the rules of the department.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 37, Ch. 647, L.1991

23.16.1201 DEFINITIONS As used throughout this subchapter, the following definitions apply:

(1) through (5) remain the same.

(6) ~~"Cap card" means a blank card placed on the bottom of the deck~~ "Card room contractor" means a person licensed by the department to operate one or more live card game tables on an operator's premises.

(7) remains the same.

(8) ~~"Cutting card" means a blank card inserted by a player at the point where the player wishes the dealer to make a cut.~~

(9) through (20) are renumbered (8) through (19).

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-311, MCA

23.16.1202 TYPES OF CARD GAMES AUTHORIZED (1) and (2) remain the same.

(3) The department may approve other proposed variations of card games authorized by Title 23, chapter 5, MCA. Banking games are not considered variations of authorized card games that are eligible for department approval. Persons submitting card games for approval must provide the following information to the department:

(3)(a) through (4) remain the same.

(5) Upon completion by the department of its investigation of a proposed card game variation, the department shall notify in writing the person submitting the card game variation of its intended action. If the person then desires a hearing, he or she must submit a written request to the department within ~~30~~ 20 days. From that point onward, all proceedings shall be conducted in accordance with the Montana Administrative Procedure Act and the attorney general's Model Rules of Procedure.

(6) remains the same.

(7) ~~Each licensed operator may establish rules of conduct for the card players on its premises.~~

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-311, MCA

23.16.1206 POKER CARDS - PHYSICAL CHARACTERISTICS (1) and (2) remain the same.

(3) A blank card, commonly known as a cap card or cutting card, must be available and used by the dealer to indicate the location for a player's cut or to obstruct a player's view of the bottom card in the deck.

(4) ~~(4)~~ No operator, card room contractor, or dealer may use cards that are taped, defaced, bent, crimped, or deformed in any manner.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-311, MCA; Sec. 9,

Ch. 647, L.1991

23.16.1209 POKER CHIPS - VALUE AND PHYSICAL CHARACTERISTICS

(1) Each poker chip used must be either clearly and permanently impressed, engraved, or imprinted on one side with a specific value of the chip or colored so as to clearly denote the value of the chip. At the operator's or card room contractor's discretion, the other side of the chip may have the operator's or card room contractor's name represented by a related design, symbol, abbreviation, or other identification which would differentiate the operator's or card room contractor's chips from those being used by every other operator or card room contractor.

(2) Each denomination of poker chip must have a different primary color from the other denominations of chips. Each operator or card room contractor may, at its his discretion, utilize contrasting secondary colors for any inlays on each denomination of poker chip.

(3) and (4) remain the same.

(5) The operator or card room contractor must redeem on demand its his own ships chips for cash at the value for which they were sold.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-311, MCA; Sec. 9, Ch. 647, L.1991

23.16.1211 PERSONS NOT TO BRING THEIR OWN CARDS OR POKER CHIPS (1) No person may bring to the card table or introduce into a poker game any playing card or cards or any poker chip or chips other than those obtained from the operator or card room contractor.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 9, Ch. 647, L.1991

23.16.1216 PLAYER RESTRICTIONS (1) through (4) remain the same.

(5) A player may only obtain additional chips from the house and may not pass chips to another player or otherwise exchange them.

(5) is renumbered (6).

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-311, MCA

23.16.1218 SPECIAL POLICIES (1) Each operator or card room contractor may establish rules of conduct for the players and spectators on its licensed the operator's premise as long as the operator's rules do not conflict with state law.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 9, Ch. 647, L.1991

23.16.1224 DEALER RESTRICTIONS (1) In authorized card games using licensed dealers, licensed dealers shall have no financial interest, directly or indirectly, in the outcome of any game which they deal. This rule does not prevent licensed operators or card room contractors who are licensed dealers from also dealing their own games.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 9, Ch. 647, L.1991

23.16.1225 HOUSE PLAYERS (1) The operator, card room contractor, or dealer must identify house players upon request.

(2) House players may be used by the operator or card room contractor only for the purpose of starting and/or maintaining sufficient number of players in the card game.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 9, Ch. 647, L.1991

23.16.1228 DECKS - SHUFFLE AND CUT OF THE CARDS (1) The operator or card room contractor must have two separate decks of cards available at each table. The color of the backs of the cards of the two decks must be a different predominant color. Any player may request that the dealer change decks. If such a request is made, the dealer must switch the use of decks at the end of that hand.

(2) remains the same.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 9, Ch. 647, L.1991

23.16.1232 OPERATION OF THE GAMES (1) remains the same.

(2) The operator or card room contractor may set a minimum buy-in for each game. The operator or card room contractor must announce the length of time a player may leave the game and still be considered part of the same playing session.

(3) through (7) remain the same.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 9, Ch. 647, L.1991

23.16.1237 BETTING (1) through (4) remain the same.

(5) A side pot or other wager on the outcome of a hand is prohibited unless an "all in" bet is made as provided for in subsection (4).

(6) In stud poker without a blind, the highest or lowest up card may be designated to initiate action if a house rule is posted to identify which method will be used.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-311, MCA

23.16.1240 POSTING OF RULES (1) through (1)(i) remain the same.

(j) No side ~~bets pots~~ (except in cases of all-in bets).

(k) No credit, ~~no passing chips.~~

(l) No passing chips.

(m) No checks.

(1) through (n) are renumbered (n) through (p).

(2) When the operator or card room contractor chooses to make a general house rule, that house rule shall be posted on the premises where it can be clearly seen by players in the card game to which it applies.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-311, MCA; Sec. 9, Ch. 647, L.1991

RULE XIII APPROVED VARIATIONS OF KENO (1) Approved variations of keno are:

(a) a straight ticket in which a player picks from one to ten numbers and wagers that the numbers will be duplicated entirely or in part from the group of numbers drawn.

(b) a split ticket consisting of two or more straight

tickets written on a single keno card. Each group on a split ticket is treated as if it were a single straight ticket.

(c) a way ticket in which a player selects three or more equal groups of numbers which when taken at least two groups at a time comprise several straight ticket combinations.

(d) a combination way ticket in which a player simultaneously combines any or all of the variations described in subsections (a), (b) and (c).

(e) a king ticket in which a single number, commonly known as a king number, is matched with each group of numbers selected. The king number is treated as any circled number group as used in way and combination way tickets.

(2) A group of numbers resulting from combining smaller groups for way, combination way, or king tickets may not exceed a total of 10 numbers.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-412, MCA

RULE XIV METHODS OF IDENTIFICATION (1) A player shall clearly identify and separate on his inside keno card as defined in ARM 23.16.2401 any group of numbers selected for a split, way combination way, or king ticket by drawing a:

(a) line between or circle around each group for a split ticket; or

(b) circle around each group for a way, combination way, or king ticket.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-412, MCA

RULE XV RECORDING REQUIREMENTS -- BET LIMITS (1) A keno caller shall record in the margin (sideline) of an outside keno card as defined in ARM 23.16.2401 each wager made by a player, other than for a straight ticket, by using a standard fractional format that identifies the number of wagers by group size (e.g., 2/4 for two wagers each placed on a different group of four numbers). Only the wagers recorded in the margin (sideline) may be winners. The total amount wagered by the player must be written on the front of the outside keno card.

(2) No more than 50¢ may be wagered on each group of numbers on a keno card, and no more than \$100 may be awarded as a prize for each winning group of numbers.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-412, MCA

23.16.1701 DEFINITIONS As used throughout this subchapter, the following definitions apply:

(1) "Authorized agent" means a person, designated by a licensed manufacturer, who is employed by the manufacturer or has entered into an agreement with the manufacturer for the purpose of selling sports tabs on the manufacturer's behalf.

(2) "Chance" means an opportunity to participate in a sports pool.

(3) "Competitor" means:

(a) a team in a sports event in which teams compete; or

(b) an individual in a sports event in which individuals compete.

(4) "Manufacturer" means a manufacturer of sports tab

cards as defined in ARM 23.16.101.

~~(1)~~ (5) "Master square" means that portion of the sports pool card used in a traditional, series, or multiple way sports pool that is divided into spaces representing the chances purchased by the participants and containing the name or initials of the participant in the sports pool.

(6) "Series of sports events" means two or more sports events involving the same sport that are conducted at the same level (e.g., collegiate, professional).

~~(2)~~ (7) "Space" means one of the smaller squares into which the master square is divided, which represents ~~an opportunity to participate a chance in a traditional, series, or multiple way sports pool, and which contains the name or initials of the participant in a sports pool who has purchased that space.~~

(8) "Sponsor" means a person conducting a sports tab game.

~~(3)~~ (9) "Sports event" means ~~a an athletic game, race, or athletic contest wherein the contestants involving two or more competitors who are natural persons or animals, and upon which a sports pool is based in which the winner is determined by a score or placement.~~

~~(4)~~ (10) "Sports pool" means a gambling activity based on a sports event or series of sports events that is conducted on using a sports pool card with a master square which is subdivided into spaces, for which consideration, in money, is paid by the participant for the a chance to win money or other item of value.

(11) "Sports pool card" means a board, chart, or table used to conduct a sports pool and record the information required in ARM 23.16.1702.

(12) "Sports tab" means a ticket as defined in 23-5-501, MCA.

(13) "Sports tab card" means the card to which the 100 sports tabs are randomly attached by the manufacturer.

(14) "Sports tab game" means a gambling enterprise as defined in 23-5-501, MCA.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-501, MCA

RULE XVI DESIGN AND CONDUCT OF SPORTS TAB GAME (1) A sports tab game may be conducted only in conjunction with a single sports event with two competitors. A sponsor may conduct more than one sports tab game for each event.

(2) A winner or winners of a sports tab game are determined by matching the appropriate numbers on a participant's sports tab with the only or last digit of the competitors' score at the end of the sports event, and if designated before the event by the sponsor, at intervals during the sports event.

(3) Before the sale of any sports tabs in a sports tab game, the sponsor shall describe the game by prominently displaying the following information on the sports tab card or on a board to which the card is attached:

(a) name of the competitors in the sports event;

(b) date of the sports event;

(c) notification of which competitor's score corresponds

to the first and second numbers on the sports tab;

- (d) name of the sponsor;
 - (e) cost of a sports tab;
 - (f) total dollar value of all prizes to be awarded to winners;
 - (g) total amount to be retained by the sponsor;
 - (h) dollar amount or type and value of merchandise to be awarded to each winner;
 - (i) intervals during the sports event for which prizes are to be awarded, if any; and
 - (j) name of the competitors and the date of the sports event that will be substituted for the original sports event if it is cancelled.
- (4) After sale of the sports tabs begins, the sponsor:
- (a) may not cancel the sports tab game or alter the game in any manner; and
 - (b) shall award all prizes at the end of the sports event in accordance with the description required under subsection (3), regardless of whether all tabs on the sports tab card are sold to participants before the start of the sports event.
- AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-501, 23-5-503, MCA

RULE XVII. PURCHASE AND SALE OF SPORTS TABS BY SPONSOR (1)

A sponsor may purchase a sports tab card only from a licensed manufacturer or the manufacturer's authorized agent. The sports tab card must contain a sports tab decal as provided for in [rule XXI].

(2) A sponsor may sell sports tabs only on a premises licensed to sell alcoholic beverages for consumption on the premises.

(3) The total cost of each sports tab on the same sports tab card must be identical and may not exceed \$5. A participant shall pay cash for the sports tab at the time the tab is selected.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-502, 23-5-503, MCA

RULE XVIII. PRIZES (1)

For the purposes of this rule, "cost of the sports tabs" means an amount that is equal to the amount paid by a participant for a single sports tab multiplied by 100.

(2) If a prize is awarded for scores attained at a predetermined interval during a sports event, the value of the prize awarded at the interval may not exceed the value of the prize awarded for the score at the end of the event.

(3) Except as provided in subsection (6), a sponsor shall pay to the winners of a sports tab game at least 90% of the cost of the sports tabs. The sponsor may retain up to 10% of the cost of the sports tabs.

(4) The total value of all prizes awarded in a sports pool may not exceed \$500. Prizes must be in cash or merchandise.

(5) If merchandise is awarded, the purchase price paid for the merchandise is considered to be the value of the prize. Except as provided in subsection (6), if the value of the merchandise is less than 90% of the cost of the sports tabs the

difference must be awarded to the winners in cash.

(6) A sponsor who is a nonprofit organization may retain up to 50% of the cost of the sports tabs if the organization meets the requirements of 23-5-503, MCA.

(7) All prizes must be available for distribution to winners immediately at the end of the sports event.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-503, MCA

RULE XIX SPONSOR RECORDKEEPING REQUIREMENTS (1) After a winning sports tab is submitted to the sponsor and a prize is awarded, the sponsor shall cancel the tab, by whatever means chosen, and attach the cancelled tab to the sports tab card or board. A sports tab that was not sold to a participant must remain attached to the sports tab card.

(2) The sponsor shall retain a sports tab card or board to which the card is attached for at least 1 year after the date of the sports event.

(3) If merchandise is awarded as a prize, the sponsor shall retain proof of the purchase price of the merchandise for 1 year after the date of the sports event.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-503, MCA

RULE XX MANUFACTURER LICENSE (1) Before conducting business in this state, a manufacturer shall obtain a sports tab card manufacturer license from the department. An applicant for a license shall submit to the department:

(a) a sports tab card manufacturer license application (form 21), which is incorporated by reference and available upon request from the department;

(b) forms 1 and 10 as described in ARM 23.16.102;

(c) financial statements for the applicant's business as described in ARM 23.16.502; and

(d) a check or money order for \$2,000 made payable to the state treasurer, which includes payment for the:

(i) \$1,000 annual license fee; and

(ii) \$1,000 processing fee to cover the actual cost of processing the license.

(2) Based on the actual cost incurred by the department in determining whether the applicant qualifies for licensure, the department shall refund any overpayment of the processing fee provided for in subsection (1)(d)(ii) or collect an amount sufficient to reimburse the department for any underpayment of actual costs. If an applicant withdraws the application after the department has begun processing the application, the department shall refund any amount not expended as of the date of withdrawal.

AUTH: 23-5-115, MCA

IMP: 23-5-115, MCA

RULE XXI SALE OF SPORTS TAB CARDS BY MANUFACTURER -- COLLECTION OF TAX (1) A sports tab card used in conducting a sports tab game may be sold only by a licensed manufacturer or by the manufacturer's authorized agent.

(2) Before a sports tab card may be sold to a sponsor, the manufacturer shall:

(a) remove any concealed numbers from the sports tab card other than those concealed by the 100 sports tabs;

(b) affix or print a permanent, unduplicated serial number on the card; and

(c) affix a sports tab decal provided by the department in a conspicuous location on the front of the card. Once affixed, the decal may not be tampered with by any person.

(3) The manufacturer may obtain sports tab decals by submitting a request to the department on a form provided by the department. The completed form must list the names of the manufacturer's authorized agents. Upon receipt of the form, the department shall issue decals to the manufacturer at no cost.

(4) If a sports tab card is sold to a sponsor who is a licensed gambling operator, the manufacturer or authorized agent shall collect at the time of sale a tax of \$1 for each card sold. The tax may not be collected from a sponsor who is not a licensed gambling operator.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-502, MCA

RULE XXII REMITTAL OF TAX TO DEPARTMENT (1) Within 15 days following the end of each fiscal year quarter, the manufacturer shall submit to the department a report on a form provided by the department and the tax proceeds collected by the manufacturer and his authorized agent under [rule XXI].

(2) Failure to file the form and remit the required tax will result in assessment of the following penalties:

(a) 0-30 days late = 10% of tax due;

(b) 31-60 days late = 25% of tax due;

(c) 61-90 days late = 50% of tax due; and

(d) 91 days or more late = 100% of tax due.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-502, MCA

RULE XXIII MANUFACTURER RECORDKEEPING REQUIREMENTS -- DECAL INVENTORIES (1) A manufacturer shall maintain records documenting the total number of sports tab cards sold, number sold to licensed gambling operators by operator, and number of sports tab decals in his possession.

(2) A manufacturer may not transfer a sports tab decal to any person. If a manufacturer wishes to reduce his decal inventory, he may return the decals to the department. If a manufacturer ceases to sell sports tab cards, he shall file, within 15 days following the date upon which he terminated sales, a report on a form provided by the department, remit any tax due, and return unused decals.

(3) A manufacturer shall return any sports tab decals to the department upon request of the department.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-502, MCA

RULE XXIV USE OF SPORTS TABS RESTRICTED (1) A sports tab may be used only in conducting a sports tab game as described in statute and rule. A sports tab used for any other purpose is an illegal gambling device.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-501, 23-5-503, MCA.

RULE XXV. AUTHORIZED SPORTS POOLS (1) Authorized sports pools described in this rule are identified by a title to distinguish one pool type from another. The controlling factor as to the legality of a sports pool is not the pool's title but the method and manner in which the pool is conducted.

(2) The conduct of an authorized sports pool is subject to the provisions of 23-5-501 through 23-5-503, MCA, and department rules.

(3) The following sports pools are authorized under 23-5-501 through 23-5-503, MCA:

(a) a "traditional sports pool" involving a single sports event with two competitors that is conducted on a sports pool card containing a master square with 25, 50, or 100 spaces. Each space is randomly assigned a unique pair of numbers from the vertical and horizontal axis of the master square. A winner is determined by matching the numbers assigned to a space with the only or last digit of the score of each competitor in the sports event at predetermined intervals during the event or at the end of the event.

(b) a "series sports pool" conducted on a master square in conjunction with a series of sports events. The pair of numbers assigned to each space on the master square remains the same for each sports event in the series. The competitors in each sports event in the series may be individual teams or a combination of teams (e.g., a group of teams designated as home teams versus a group of teams designated as away teams). Spaces must be sold for all events in the series of sports events and may not be sold for individual events. Winners for each sports event in the series are determined:

(i) in the same manner as in a traditional sports pool; or

(ii) in the same manner as in a traditional sports pool for the first sports event in the series. For the second and subsequent events, winners are determined by combining the scores generated by each competitor in the previous events.

(c) a "multiple way sports pool" conducted on a master square with multiple sets of numbers randomly assigned to the horizontal and the vertical axis representing certain intervals of a single sports event or individual sports events in a series of events. Winners are determined in the same manner as in a traditional sports pool.

(d) a "selected point sports pool" in which the winner is the participant whose assigned competitor is the first to attain a final score that matches a predetermined number (e.g. 28, 39). If in a given week none of the competitor's score match the predetermined number, the prize is carried over to the next and subsequent weeks until a match occurs. However, the pool must be designed to ensure that a prize does not exceed the value of \$500. The number of participants in a selected point sports pool is limited to the number of competitors in an established league. Competitors are randomly assigned to the participants and may be assigned for a single week or the duration of the pool.

(e) a "blackout sports pool" in which the winner is the participant who holds the randomly assigned competitor that

first accumulates scores on succeeding weeks whose only or final digit corresponds to all of the numbers zero through nine. A variation of this pool tallies only those scores in which the competitor is the winner of a sports event. The number of participants is limited to the number of competitors in an established league.

(f) a "weekly sweepstakes sports pool" in which a different competitor or competitors are randomly assigned to participants for each week. The winner is determined by the most or least points scored by the competitor or competitors assigned to a participant or by the most games won by the competitors assigned to a participant. The number of participants is limited to the number of competitors in a league or to the maximum combination of competitors in a league.

(g) a "multiple competitor sports pool" in which three or more competitors simultaneously compete in a sports event or series of sports events as individuals, not as a team, such as in a car race or golf tournament. Competitors are randomly assigned to participants, and a pool winner is determined by the score or place that the competitor attains in the sports event or series of sports events.

AUTH: Sec. 44, Ch. 647, L.1991 IMP: Sec. 44, Ch. 647, L.1991

RULE XXVI PROCEDURES FOR APPROVING VARIATIONS OF AUTHORIZED POOLS (1) A variation of an authorized sports pool may not be conducted unless approved by the department.

(2) A person requesting approval from the department for conducting a variation of an authorized sports pool shall submit the following information to the department:

(a) a detailed description of the operation of the pool, which verifies that:

(i) there would be at least one winner from among the participants in the sports pool;

(ii) each participant would have an equal chance to win; and

(iii) competitors would be randomly assigned to each participant.

(b) a description of the method of choosing a winner; and

(c) an illustration or sample of the card used to conduct the pool.

(3) The department may request additional information, including a demonstration of the sports pool variation submitted for approval.

(4) After reviewing the proposed sports pool variation, the department shall notify in writing the person submitting the variation of its intended action. If the person desires a hearing he shall submit a written request to the department within 20 days. Upon receipt of the request, all proceedings must be conducted according to the Montana Administrative Procedure Act and the attorney general's Model Rules of Procedure.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 44, Ch. 647, L.1991

23.16.1702 SPORTS POOL CARD (1) A traditional, series.

or multiple way sports pool must be conducted on a sports pool card containing a master square.

(a) The master square of the card must be divided into spaces arranged in horizontal rows and vertical columns.

~~(a) There may be no more than one sports event per master square.~~

(b) The numbers for each horizontal row and vertical column must be randomly assigned after ~~all spaces have been sold and the person conducting the pool closes the pool to additional sale of spaces~~ but prior to the beginning of the sports event ~~or the first event in a series of sport events. Any unsold spaces at the time the numbers are assigned are considered purchased by the person conducting the sports pool and must be marked in a manner indicating that they may not be sold to another person.~~

(c) Each space must be represented by a number from both the horizontal row and vertical column.

(d) Each competitor in the sports event must be assigned to either the horizontal or vertical axis of the master square before the beginning of each sports event.

(2) A sports pool card used to conduct an authorized sports pool must be of adequate size to be easily read by participants and observers.

~~(2)(3)~~ The sports pool card shall, in advance of any sale of any space chance, clearly indicate:

(a) rules for conducting the sports pool;

(b) the name of the sports event or series of events covered by the card;

(c) name of the competitors in the sports event or series of events, if known;

(d) date of the sports event or dates of the series of sports events;

~~(b)(e)~~ the total number of ~~spaces that must be sold in order to fill in all the spaces~~ chances available in the pool;

~~(e)(f)~~ the cost to the participant for each chance to participate in the sports pool;

~~(d)(g)~~ the total amount to be paid to each winner;

~~(e)(h)~~ the intervals that a pay-out will be made and the amount of each pay-out;

~~(f)(i)~~ the name of the person conducting the sports pool;

(j) name or initials of participants who have purchased chances in the pool;

(g)(k) the amount or value of each individual prize and the total value of all prizes; and

(l) name of the competitors and the date of a sports event that will be substituted for the original sports event if it is cancelled.

~~(3)(4)~~ After each prize is awarded, the names of the winners of each prize must be prominently displayed on each card.

~~(4)(5) After the A sports pool card is prominently and visibly displayed for the sale of a chance to play, it must not be removed from the premises retained by the person conducting the sports pool until all prizes are awarded or for 30 days~~

after the event or last event in a series of events, whichever occurs first. AUTH: Sec. 23-5-115, MCA; Sec. 23-5-503, MCA

23.16.1703 SALE OF SPACES CHANCES (1) The total cost of a chance to participate in a sports pool shall not exceed five dollars (\$5) per chance \$5 per sports event and must be paid in full and in cash at the time the space chance is selected.

(2) If the actual number of sports events conducted as part of a series of events is less than the number of events for which chances were sold, the sponsor shall refund to each participant the money paid for chances on those events that were not conducted.

(2) If, at the time of the event, all spaces on the sports pool card are not sold, the persons who have paid for a chance to participate shall be entitled to a full refund or must be allowed to transfer the space to another sports pool currently advertised on the same premise where they purchased the space on the uncompleted sports pool. If a participant cannot be located for a refund or transfer of the space to another sports pool card prior to the event, the full purchase price of the spaces purchased shall be retained by the premise for refund to the participant.

(3) The sports pool shall not be conducted if any space remains unsold at the time the sports event is commenced.

(4) The sports event must not be changed to another sports event in order to allow the sale of all available chances. After sale of the chances begins, the person conducting the sports pool:

(a) may not cancel the sports pool or alter it in any manner; and

(b) shall award all prizes at the end of the sports event or series of events in accordance with the information displayed under ARM 23.16.1702.

(4) In an authorized sports pool in which a competitor is randomly assigned to each participant purchasing a chance in the pool, a participant may not sell, trade, or otherwise transfer his competitor to another person.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-503, MCA

23.16.1704 DETERMINATION OF WINNERS -- PRIZES (1) There must be at least one winner from among the participants in a sports pool. A winner or winners are determined by the score or place attained by one or more competitors in the sports event upon which the sports pool is conducted.

(2) The prizes awarded to the winner or winners of a sports pool may be cash or merchandise but must not exceed a total value of \$500 per sports event.

(a) remains the same.

(b) Subject to subsection (2)(4), if the value of the merchandise prize is less than the amount of money paid by all participants for the chance to participate, the person conducting the sports pool shall award the balance to the winner(s).

(3) All prizes must be available for distribution to

winners immediately at the end of the sports event or at the end of each sports event in a series of events.

~~(2)-(4)~~ (4) A nonprofit organization may retain up to 50 percent of the value of a sports pool if the amount retained is used to support charitable activities, scholarships or educational grants, or community service activities. ~~however, the The nonprofit organization must maintain and open to inspection upon reasonable demand records to verify that the use of the retained portion of the sports pool is used to support charitable activities.~~

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-503, MCA

RULE XXVII DISPLAY OF ILLEGAL GAMBLING DEVICES (1) If an illegal gambling device as defined in 23-5-112, MCA, is displayed in a public place other than a museum, it must be:

(a) displayed in a manner so that it is not accessible for public use; and

(b) rendered permanently inoperable for purposes of conducting a gambling activity in the following manner:

(i) If the device is a punchboard, pull tab, or similar device, it must have all punches removed or be permanently sealed to prevent a person from selecting, punching, or breaking open a ticket, board, or card.

(ii) If the device is a roulette wheel, craps table, slot machine, or other similar illegal gambling device, all moveable parts must be welded or otherwise rendered permanently inoperable, or the entire device must be enclosed in a permanently sealed case.

(2) A licensed gambling operator shall notify the department in writing before displaying an illegal gambling device on his premises.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-152, MCA

23.16.1803 APPLICATION FOR PERMIT, FEE AND PERMIT REQUIREMENTS

(1) An application to permit an electronic video gambling machine must be submitted to the gambling control division of the department of justice upon forms prescribed by the department. Form 5 g is a video gambling machine permit application; Form 5 g is incorporated by reference and is available upon request from the department at 2687 Airport Road, Helena, MT 59620. The application is not complete unless it is dated and signed by the applicant, and contains all information and statements required by the department.

(2) and (3) remain the same.

AUTH: 23-5-115, MCA

IMP: 23-5-611, MCA

23.16.1808 LICENSES ISSUED UNDER TEMPORARY AUTHORITY (1) When temporary authority to operate an establishment licensed for on-premises consumption of alcoholic beverages is granted by the department of revenue, liquor division, pursuant to 16-4-404(6), MCA, the gambling control division may issue a ~~conditional~~ an operator license to the recorded holder of "temporary authority" if that holder:

(a) and (b) remain the same.

~~(2) When the liquor division issues a "final agency decision" in the transfer of the alcohol beverage license all permits issued under these provisions will be final.~~

~~(3)(2) In the event of an adverse decision by the liquor division or temporary authority lapses with no proof supplied the gambling control division, the gambling control division permits shall operator license must be revoked.~~

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-177, MCA

~~23.16.1823 EXPIRATION --- RENEWAL PRORATION OF PERMIT FEE -~~
~~- RENEWAL (1) All permits commence on July 1, and expire at midnight on June 30. The department shall prorate the permit fee for a video gambling machine on a quarterly basis according to the following schedule:~~

Effective Dates For Permit

Amount of Fee

July 1 through June 30

\$200

October 1 through June 30

\$150

January 1 through June 30

\$100

April 1 through June 30

\$50

~~(2) When applying for a video gambling machine permit, a licensed gambling operator shall indicate on the permit application the calendar quarters that he intends to operate the machine.~~

~~(3)(3) An application for renewing a new permit must be submitted to the gambling control division of the department upon forms prescribed by the department, the permit fee paid, a new permit issued, and a new the permit decal affixed to the machine before a previously permitted machine may be operated after midnight on June 30.~~

~~(3) is renumbered (4).~~

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-612, MCA

~~23.16.1826 QUARTERLY REPORTING REQUIREMENTS~~ Operator quarterly reporting requirements are as follows:

~~(1) and (1)(a) remain the same.~~

~~(b) the mechanical and electronic meter readings must be taken at the same time and recorded for the report within 7 days of the close of the operator's last day of business in the reporting quarter; The readings must be supported by the original printed accounting ticket.~~

~~(1)(c) through (2)(c) remain the same.~~

~~(2)(d) is renumbered (3).~~

~~(4) If the gross income reported for a machine has been reduced to reflect a loss resulting from a theft from the machine, the operator or his designated representative shall submit the following information together with the quarterly report:~~

~~(a) documentation from a law enforcement agency verifying that the theft was reported;~~

~~(b) a letter or other document signed by the operator's business insurance agent indicating the amount paid or to be paid, if any, by the insurer to cover the loss resulting from the theft; and~~

~~(c) the last cash-access accounting ticket generated~~

before the theft occurred and the first cash-access accounting ticket generated after the theft occurred. The tickets will be used by the department to calculate the maximum amount that may be deducted for a loss resulting from a theft.

~~(3)~~ (5) Failure for late filing and payment of the required machine income tax will result in the following penalty schedule being applied:

- (a) 0 - 30 days late = 10% of tax due;
 - (b) ~~30~~ 31 - 60 days late = 25% of tax due;
 - (c) 61 - 90 days late = 50% of tax due;
 - (d) 91 days or more = 100% of tax due.
- (4) is renumbered (6).

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-610, MCA

23.16.1827 RECORD RETENTION REQUIREMENTS (1) ~~Record requirements are as follows:~~

(a) Machine operation records must be maintained and made available for inspection by the department upon request. The records must provide all necessary information the department may require to ensure operation of machines in compliance with the law.

(2) The records must include:

(a) the a correct accounting ticket as provided for by department rules, which must include progressive accounting data if applicable and corresponding licensee records containing the performance synopsis of the machine. The ticket must be printed for each machine at least once every 7 days.

(b) the exact copy of the printed ticket vouchers;
and

(c) ~~in the event a permitted machine qualifies as a used video gambling machine which does not produce the ticket copies, records and books necessary to provide the performance synopsis of the machine. The information shall be obtained the readings from the electronic and mechanical meters required by department rules, and must be recorded meters each time the cash area of a machine is accessed; and~~

(d) documentation of the cash count by machine each time the cash area is accessed and a count is taken.

(2)(d) through (2)(f) are renumbered (3) through (5).

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-115, MCA

23.16.1901 GENERAL SPECIFICATIONS OF VIDEO GAMBLING MACHINES (1) through (1)(c) remain the same.

(d) offer only those games defined as video gambling in Title 23, chapter 5, MCA, and operate in the following manner:

~~(i) the number of cards must be generated by use of a random number generator and frozen prior to the start of each game;~~

(ii) through (xi) are renumbered (i) through (x).

~~(xi)~~ (xi) the machine must issue by activation of an external key switch, an accounting ticket containing a performance synopsis of the machine and progressive accounting data if applicable. The printing of all totals from the electronic meters shall occur automatically each time access

occurs to either the logic compartment or any compartment where cash is collected. Whenever electronic meters are reset, each machine must produce a full accounting ticket both before and after each resetting. The tickets must be in the format prescribed by the department and contain:

(A) through (G) remain the same.

~~(xiii)~~ (xii) the machine and any peripheral electronic device must have an identification tag permanently affixed to the machine by the manufacturer. The tag must be on the right-hand side, upper left corner of the machine or peripheral electronic device or in another location approved by the department and must include the following information:

(A) through (D) remain the same.

(xiv) and (xv) are renumbered (xiii) and (xiv).

~~(xvi)~~ (xv) each machine and peripheral electronic device must pass a static test that is determined by the department; and

~~(xvii) the owner of a gambling machine that is capable of producing an audit ticket, must produce, in each machine owned an audit ticket at least every seven days; and~~

(xviii) is renumbered (xvi).

(2) and (3) remain the same.

AUTH: Sec. 23-5-621, MCA

IMP: Sec. 23-5-621, MCA

23.16.1911 SOFTWARE INFORMATION TO BE PROVIDED TO THE DEPARTMENT (1) A licensee licensed manufacturer/distributor may be required to provide information to the department necessary to ensure ~~the machine's software~~ a machine is in compliance with the act and these rules. The information may be provided directly by the licensee, the distributor or the manufacturer of the machine. The information shall include, but not be limited to:

(a) through (i) remain the same.

~~(j) tabulated results of 5 separate simulations, of exactly 200,000 games each, using the game program, in the following format;~~

~~(i) keno/bingo - the number of times each number is picked;~~

~~(ii) poker - the number of winning hands with the first five cards dealt;~~

~~(k) written description of the algorithm used for the simulations in subsection (i)-(j);~~

(l) through (o) are renumbered (j) through (m).

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-631, MCA

23.16.1916 MANUFACTURERS/DISTRIBUTORS AND PRODUCERS OF ASSOCIATED EQUIPMENT OF VIDEO GAMBLING MACHINES LICENSE (1) ~~The department may issue to an applicant for a manufacturers/distributors license or an applicant for a producer of associated equipment license for video gambling machines a conditional license pending the results of the investigation into their suitability for licensure. A conditional license will be revoked upon a determination that the applicant does not qualify for licensure. Upon a final determination that the an~~

applicant ~~does qualify~~ qualifies for licensure, the division ~~will shall~~ shall issue ~~final approval and remove the a~~ final approval and remove the a ~~manufacturer/distributor license from conditional status. This~~ license from conditional status. This The license fee is nonrefundable once the division has begun processing the license.

(2) and (3) remain the same.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-625, MCA

RULE XXVIII IMPORTATION OF ILLEGAL GAMBLING DEVICES (1)

Before a manufacturer licensed under 23-5-152, MCA, may import an illegal gambling device into the state, he must notify the department in writing of the proposed shipment and receive written authorization from the department.

(2) The notice required in subsection (1) must provide the following information:

(a) manufacturer, model number, and serial number of each device;

(b) current location of devices;

(c) total number of devices in shipment;

(d) date of shipment and expected date of delivery;

(e) name of carrier; and

(f) destination of devices.

AUTH: Sec. 23-5-115, MCA

IMP: Sec 23-5-152, MCA

23.16.1924 PROHIBITED MACHINES (1) remains the same.

(2) ~~Any Except as provided in rule XXVIII, a person who~~ Any Except as provided in rule XXVIII, a person who owns or operates a machine described in subsection (1) is in violation of the act, these rules and Title 23, chapter 5, MCA. The civil and criminal penalties provided in those titles shall apply.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-152, MCA

RULE XXIX DEFINITIONS For the purposes of [rules XXX through XXXIV], the following definitions apply:

(1) "Electronic live bingo or keno equipment" means an electronic device or system that uses a microprocessor to generate random numbers during a live bingo or keno game.

(2) "Manufacturer" means a manufacturer of electronic live bingo or keno equipment as defined in ARM 23.16.101.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 11-13, Ch. 647, L.1991

RULE XXX MANUFACTURER LICENSE (1) Before conducting business in this state, a manufacturer shall obtain an electronic live bingo or keno manufacturer license from the department. An applicant for a license shall submit to the department:

(a) an electronic live bingo or keno manufacturer license application (form 17), which is incorporated by reference and available upon request from the department;

(b) forms 1 and 10 as described in ARM 23.16.102;

(c) financial statements for the applicant's business as described in ARM 23.16.502; and

(d) a check or money order for \$2,000 made payable to the state treasurer, which includes payment for the:

(i) \$1,000 annual license fee; and
(ii) \$1,000 processing fee to cover the actual cost of processing the license.

(2) Based on the actual cost incurred by the department in determining whether the applicant qualifies for licensure, the department shall refund any overpayment of the processing fee provided for in subsection (1)(d)(ii) or collect an amount sufficient to reimburse the department for any underpayment of actual costs. If an applicant withdraws the application after the department has begun processing the application, the department shall refund any amount not expended as of the date of withdrawal.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 11, Ch. 647, L.1991

RULE XXXI EQUIPMENT EXAMINATION FEE (1) A manufacturer shall submit to the department a prototype of his electronic live bingo or keno equipment as provided in [section 12, ch. 647, L. 1991]. At the time the equipment is submitted for examination, the manufacturer shall pay a fee of \$2,000.

(2) Based on the actual cost incurred by the department in examining the equipment, the department shall refund any overpayment of the fee or collect an amount sufficient to reimburse the department for any underpayment of actual costs.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 12, Ch. 647, L.1991

RULE XXXII MODIFICATIONS TO APPROVED EQUIPMENT (1) A modification to approved electronic live bingo or keno equipment that alters the operation of the equipment must be submitted to the department for examination and approval before installation.

(2) At the time the modification is submitted to the department, the manufacturer shall pay a fee of \$200 to cover the actual cost of examining the modification. An overpayment or underpayment of the fee will be processed as provided for in [rule XXXI (2)].

(3) Any previously approved equipment subject to a modification must meet the specifications in effect at the time the modification is submitted to the department.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 12, Ch. 647, L.1991

RULE XXXIII EQUIPMENT SPECIFICATIONS (1) Electronic live bingo or keno equipment may offer only those games authorized as live bingo or keno under Title 23, chapter 5, part 4, MCA.

(2) The equipment must:

(a) have at least one locked area containing the electronics and software for the equipment;

(b) allow easy access to the equipment's erasable and programmable read-only memory (i.e., EPROMs);

(c) have an identification tag permanently affixed in a location approved by the department that lists the manufacturer, serial number, model, and date of manufacture;

(d) have no switches, jumpers, wire posts, or other means of manipulation that could affect the operation or outcome of a game;

(e) be equipped with a surge protector that feeds all A.C.

electrical current to the equipment and a backup power supply capable of retaining current game data for 24 hours. An electronically-erasable PROM, lithium battery, or nickel cadmium battery may be used for memory retention. If a nickel cadmium battery is used, it must be in a state of charge during operation of the equipment.

(f) generate game numbers before each game by using a random number generator. After the game numbers are generated and before start of the game, the numbers must be frozen in the order they were generated, and all numbers used for play must be taken in order from the top of the frozen field.

(g) meet the same specifications imposed on video gambling machines under:

- (i) ARM 23.16.1901(1)(d)(xvi);
- (ii) ARM 23.16.1905; and
- (iii) ARM 23.16.1906(1)(a), (d), and (f).

(3) In addition to the requirements provided for in subsections (1) and (2), electronic live bingo equipment must:

(a) use a field of numbers from 1 through 75;

(b) display the numbers picked;

(c) operate in conformance with the standard rules of bingo; and

(d) designate the winning arrangement of numbers before each game begins.

(4) In addition to the requirements provided for in subsection (1) and (2), electronic live keno equipment must:

(a) use a field of numbers from 1 through 80;

(b) display the numbers picked; and

(c) operate in conformance with the standard rules of keno.

(5) The department shall determine what optional features may be allowed. These features must be approved by the department before installation.

(6) At the department's request, the licensed manufacturer shall submit any information required under ARM 23.16.1911 that the department determines is necessary to ensure that the equipment is in compliance with this rule.

AUTH: Sec. 13, Ch. 647, L.1991 IMP: Sec. 13, Ch. 647, L.1991

RULE XXXIV REPORTING AND RECORD KEEPING REQUIREMENTS (1)

Within 15 days following the end of each calendar quarter, a licensed manufacturer shall submit to the department a quarterly activity report (form 18), which is incorporated by reference and available upon request from the department.

(2) The report must list the following information for all electronic live bingo and keno equipment shipped into or within the state by the manufacturer:

(a) model number;

(b) serial number;

(c) destination; and

(d) any other information required by the department.

(3) A licensed manufacturer shall retain for 3 years all records verifying the information reported under this rule.

AUTH: Sec. 23-5-115, MCA

IMP: 23-5-115, MCA

23.16.2402 LIVE KENO AND BINGO RECORD KEEPING (1) A record of live keno and bingo gross proceeds, must be maintained separate and distinct from other sources of operator revenue. Unless designated otherwise the operator of a live keno or bingo game must retain daily accounting records for a period of three years from the due date of the ~~associated net~~ live game income tax return. The records must remain legible and be kept in the state of Montana and accessible by the department from the licensee.

(1)(a) through (2)(c) remain the same.

(d) a record of the total number of keno cards sold, segregated by card price, must also be maintained on a daily basis;

(2)(e) through (3)(f) remain the same.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 23-5-409

23.16.2406 PRIZE AWARDS FOR LIVE KENO AND BINGO GAMES (1) All live keno operators must provide a pay table listing prizes awarded on winning cards. All valid winning keno cards presented to the keno caller before the next game must be paid in full as per the pay table. ~~In no case may the total prize exceed \$100 per keno card. In no case may multiple bets be made on a single keno card.~~

(2) remains the same.

AUTH: 23-5-115, MCA

IMP: 23-5-412, MCA

RULE XXXV AUTHORIZED RANDOM SELECTION PROCESSES (1) The following random selection processes are authorized for use in determining a winner of a raffle as defined in 23-5-112, MCA:

(a) a drawing from a drum or other receptacle containing raffle ticket stubs or other suitable indicators of the ticket purchaser's identity that have been thoroughly mixed before the drawing; and

(b) selection by any other process if:

(i) the process is reasonably assured of being random and is not connected to an event that has its own intrinsic significance (e.g., a sports event, game of chance, contest); and

(ii) the indicator of the raffle ticket purchaser's identity reasonably assures the random selection of a winner.

AUTH: Sec. 23-5-115, MCA

IMP: 23-5-112, MCA

RULE XXXVI DEFINITIONS For the purposes of [rules XXXVII through XXXIX], the following definitions apply:

(1) "Casino night" means a fundraising event as defined in [section 14, ch. 647, L. 1991].

(2) "Imitation money" means script, chips, tokens, or similar items that have an assigned value at a casino night that is greater than the value of the currency for which it is exchanged and that has no other value except for that value assigned at the casino night.

AUTH: Sec. 20, Ch. 647, L. 1991

IMP: Sec. 14, Ch. 647, L. 1991

RULE XXXVII APPLICATION FOR PERMIT (1) A nonprofit organization as defined in 23-15-112, MCA, may apply to the department for a casino night permit by submitting a casino night permit application (form 11), which is incorporated by reference and available upon request from the department.

(2) In addition to the information required in [section 16, ch. 647, L. 1991], the application must include:

(a) a list of the games to be conducted during the casino night;

(b) the name and address of the member of the nonprofit organization responsible for managing the casino night;

(c) the intended use of the proceeds from the casino night;

(d) a \$25 permit fee;

(e) a copy of the rules to be used to conduct the casino night as provided for in [rule XXXVIII]; and

(f) a copy of the organization's charter, certificate of incorporation as a nonprofit organization issued by the Montana secretary of state, or other similar evidence of nonprofit status.

(3) A casino night permit may not be issued unless the application is dated and signed by the applicant and contains the information and attachments required in subsection (2).

(4) An application for a casino night permit must be received by the department before the proposed start of the casino night allowing sufficient time for processing the application.

AUTH: Sec. 20, Ch. 647, L.1991 IMP: Sec. 16, Ch. 647, L.1991

RULE XXXVIII GENERAL REQUIREMENTS (1) A casino night must be conducted in accordance with [sections 15 through 20, chapter 647, L. 1991], department rules, and the following requirements:

(a) The casino night permit issued by the department must be posted and clearly visible to persons participating in the casino night.

(b) Only those types of gambling activities for which the permit was issued may be conducted during the casino night.

(c) The casino night may be conducted only at the location for which the permit was issued and by the nonprofit organization issued the permit.

(d) Before conducting a casino night, the nonprofit organization shall develop rules governing the type of gambling activities to be conducted during the casino night and the manner in which they are to be conducted. The rules must identify the amount of the entry fee, value assigned to the imitation money and amount distributed to each participant, and the method for awarding prizes.

(e) Imitation money may be issued only during the casino night, and the money may not be redeemed by the permittee after the casino night has ended.

(f) No cash, currency, or other form of consideration may be used during the casino night except for imitation money as

provided for in the casino night house rules.

(g) Only merchandise may be awarded as prizes. The value of the merchandise is not restricted to the prize limitations provided for in 23-5-312, 23-5-412, or 23-5-413, MCA.

(h) A prize may not be awarded in connection with the casino night to a person who was not present at the event and personally made the wager or personally obtained the ticket or chance resulting in the award payment.

(i) A person under age 18 may not assist in operating or managing a casino night or participate as a player in any casino night activity, except for a raffle.

(j) The organization issued the permit and the person identified as the manager of the casino night is responsible for ensuring compliance with [sections 14 through 20, chapter 647, L. 1991] and department rules.

AUTH: Sec. 20, Ch. 647, L.1991 IMP: Sec. 15-19, Ch. 647, L.1991

RULE XXXIX REPORTING REQUIREMENTS (1) Within 30 days after a casino night is held, the nonprofit organization shall submit to the department a casino night report (form 12), which is incorporated by reference and available upon request from the department. A nonprofit organization that knowingly fails to file the report within the time required may not receive additional casino night permits.

(2) The report must contain the following information:

(a) total receipts collected from the casino night;

(b) total administrative expenses;

(c) total value of prizes awarded;

(d) total amount used for a civic, charitable, or educational purpose; and

(e) a description of the civic, charitable, or educational purpose for which the proceeds were used, including the name of any entity receiving proceeds.

AUTH: Sec. 20, Ch. 647, L.1991 IMP: Sec. 18, Ch. 647, L.1991

RULE XL DEFINITIONS For the purposes of [rules XL through XLIV], the following definitions apply:

(1) "Administrative fee" means an amount that may be charged a member for payment of expenses directly related to the operation of a fantasy sports league. An administrative fee may not exceed 15% of a member's entrance fee.

(2) "Entrance fee" means the amount charged a member, excluding any administrative fee, for membership in a fantasy sports league.

(3) "Fantasy sports league" means a gambling activity as defined in [section 21, ch. 647, L. 1991]

(4) "Member" means a person or group of persons who own a fictitious team that is a competitor in a fantasy sports league.

(5) "Prize" means anything of value awarded to a winner of a fantasy sports league.

(6) "Transaction fee" means an amount charged a member for trading or purchasing a player after the initial teams in the fantasy sports league are selected. The fee for each

transaction may not exceed the entrance fee.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 21, Ch. 647, L.1991

RULE XLI LEAGUE RULES (1) A copy of the fantasy sports league rules and information must be provided in writing to each member in the league.

(2) The rules must include:

(a) name, address, and telephone number of the person or organization conducting the league;

(b) amount charged for entrance, administrative, and transaction fees;

(c) name of the professional sport and teams on which the league is based;

(d) length of the season that the league is to operate;

(e) size of a member's team roster;

(f) method used to select players;

(g) method for awarding points to a team based on the performance of individual players, teams, or both during a designated period; and

(h) anticipated prizes to be awarded.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 21, Ch. 647, L.1991

RULE XLII PRIZES (1) Prizes awarded to a winner of a fantasy sports league may be cash or merchandise or a combination of both.

(2) If a prize is merchandise, the purchase price paid for the merchandise is considered the value of the prize.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 21, 23, Ch. 647, L.1991

RULE XLIII RECORD KEEPING REQUIREMENTS (1) An organization or individual conducting a fantasy sports league shall retain the following records for 1 year after the league winners are determined:

(a) name and address of each individual who participated as a member in the league;

(b) total amount collected for each of the following fees:

(i) entrance;

(ii) administrative; and

(iii) transaction.

(c) number of interim trades or purchases made by each member;

(d) proof of the purchase price of any merchandise prize awarded; and

(e) a list of the prizes awarded at the conclusion of the league season, including:

(i) the amount of each prize;

(ii) name of the member awarded each prize; and

(iii) total value of the payout of the fantasy league.

(2) Records required under this rule must be presented to the department upon request.

AUTH: Sec. 23-5-115, MCA

IMP: Sec. 21, 23, Ch. 647, L.1991

RULE XLIV RESTRICTIONS (1) A representative of each member of the fantasy sports league must be present to initially

select team players and to trade or purchase interim players.

(2) Players for initial teams must be selected through a random drawing or competitive bidding process.

(3) An entrance fee and any administrative fee must be paid in cash at the time a member joins the league. A transaction fee must be paid in cash at the time the trade or purchase of an interim player is made.

(4) The total value of prizes awarded to all members must equal the total amount collected for entrance, administrative, and transaction fees, minus any payment for administrative expenses.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 21, 23, Ch. 647, L.1991

4. ARM 23.15.506 (incorrectly numbered; should have been numbered 23.16.506), 23.16.2403, and 23.16.2601, found on pages 23-662, 23-828, and 23-845, respectively, are proposed to be repealed.

5. STATEMENTS OF REASONABLE NECESSITY. (a) Card games. Rules XI and XII are necessary to provide procedures for obtaining a card room contractor license and for notifying the Department of agreements between contractors and operators, as provided for in sec. 9, ch. 647, L. 1991. ARM 23.16.1209, .1211, .1218, .1224, .1225, .1228, and .1232 are being amended to include card room contractors in provisions governing card games. The amendments to ARM 26.16.1101 are needed to conform the rule to sec. 37, ch. 647, L. 1991 regarding card game tournaments.

(b) Sports pools/tab games. Rules XVI through XXIV are needed to provide further guidance on conducting sports tab games and to define procedures for the sale of sports tab cards and collection of taxes. Rule XXV describing authorized sports pools is mandated by sec. 44, ch. 647, L. 1991. Rule XXVI is necessary to provide a procedure for approving variations of authorized sports pools required in sec. 44, ch. 647, L. 1991. Amendments to ARM 23.16.1701 through .1704 are necessary to comply with statutory changes and reflect proposed new rules.

(c) Casino nights/fantasy sports leagues. Rules XXXVI through XXXIX pertaining to casino nights are mandated by sec. 20, ch. 647, L. 1991. Rules XL through XLIV are necessary to provide additional guidance on operating fantasy sports leagues as authorized in secs. 21 through 25, ch. 647, L. 1991.

(d) Live keno/bingo. Because 23-5-412, MCA, permits wagering on combinations of numbers in a keno game, as approved by the Department, rules XIII through XV are necessary to describe the approved variations of wagering and to prescribe basic procedures for identifying and recording the wagers. ARM 23.16.2402 and .2406 are being amended to conform the rules to the statutory change pertaining to combination wagers. It is necessary to repeal 23.16.2403 because sec. 40, ch. 647, L. 1991 eliminated the live keno and bingo net income tax. Rules XXIX through XXXII and XXXIV are necessary to provide procedures for obtaining an electronic live bingo and keno equipment manufacturer's license, submitting equipment for approval, and maintaining records. Rule XXXIII describing equipment

specifications is mandated by sec. 13, ch. 647, L. 1991.

(e) Raffles. ARM 23.16.2601 is being repealed to avoid unnecessarily repeating the statutory definition of "raffle". Rule XXXV is being proposed to comply with 23-5-112, MCA, which requires winner to be determined by a random selection process approved by Department rule.

(f) Video gambling machines. Amendments to 23.16.1823 are needed to provide a permit fee proration schedule and procedure in conformance with 23-5-612, MCA. ARM 23.16.1826 is amended to provide a procedure for claiming for income tax purpose a loss due to theft from a machine as provided for in 23-5-610, MCA, and to ensure the integrity of tax collections.

(g) Licensing. Amendments to ARM 23.16.101 and .103 are necessary to allow department access to information on funding from noninstitutional lenders to determine an applicant's suitability for licensure. Amendments to ARM 23.16.107 bring the rule into compliance with 23-5-176, MCA and provide another standard for determining suitability for licensure for corporations. Rules I through V are necessary to provide procedures for notifying the Department of a proposed transfer of an ownership interest in a licensed gambling operation in compliance with sec. 8, ch. 647, L. 1991 and to ensure that the transfer does not result in a licensee's failure to meet statutory qualifications for licensure. Likewise, rule VI is being proposed to ensure that acquiring a loan or transferring a security interest does not jeopardize a licensee's suitability for licensure. Rule VII is being proposed to give a licensee guidance as to what constitutes leasing of a license in violation of 23-5-110, MCA. Rule IX is necessary to set an application processing fee as required in 23-5-177, MCA. Rule X is needed to prohibit public access through an internal entrance in compliance with sec. 7, ch. 647, L. 1991. ARM 23.15.506 (incorrectly numbered; should have been numbered 23.16.506) is being repealed and 23.16.501, .1808, and .1916 are being amended to eliminate the Department's practice of issuing provisional/conditional licenses pending completion of an investigation to determine suitability for licensure. This practice was initially implemented as a means of licensing a large number of existing operators by October 1, 1989 when the statute requiring licensure became effective. Now that these licenses have been issued, the Department believes that statutory intent requires that a new license be issued only after compliance with 23-5-176, MCA, has been determined.

(h) General revisions. The following rules are being amended to more explicitly define procedures and requirements, update provisions to reflect current department practices, and/or eliminate redundancies and incorrect references: ARM 23.16.102, .108, .401 through .403, .406, .407, .502, .508, .1201, .1202, 1206, .1216, .1237, .1240, .1803, .1827, .1901, and .1911.

(i) Miscellaneous changes. Rule VIII gives notice as to the Department's procedures regarding public disclosure of information. Rule XXVII is necessary to ensure that illegal gambling devices are displayed in a public place in compliance

with 23-5-152, MCA. Rule XXVIII and the amendments to ARM 23.16.1924 are needed to inform manufacturers of illegal gambling devices of the importation reporting requirements as required in 23-5-152, MCA.

6. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert J. Robinson, Administrator, Gambling Control Division, 2687 Airport Road, Helena, Montana, 59620, no later than September 12, 1991.

7. Robert J. Robinson, Administrator, Gambling Control Division, has been designated to preside over and conduct the hearing.

By:

Marc Racicot

MARC RACICOT

Attorney General

Certified to the Secretary of State August 5, 1991.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT)	NOTICE OF PROPOSED AMENDMENT
of ARM 42.22.116 relating to)	of ARM 42.22.116 relating to
Determination of Tax Rate for)	Determination of Tax Rate for
Class 15 Property)	Class 15 Property

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 29, 1991, the Department of Revenue proposes to amend ARM 42.22.116 relating to class 15 property.
2. The rule as proposed to be amended provides as follows:

42.22.116 DETERMINATION OF TAX RATE FOR CLASS 15 PROPERTY

(1) and (2) remain the same.

(3) ~~The department of revenue will obtain the taxable value for net and gross proceeds property from its corporation and natural resource division each year.~~ The department of revenue will obtain the taxable value for centrally assessed property from its intercounty property bureau each year.

(4) and (5) remain the same. AUTH: 15-1-201, MCA, IMP: 15-6-145, MCA.

3. ARM 42.22.116 is proposed to be amended because the 1991 legislature passed SB436 which eliminates the requirement to use the taxable value of net and gross proceeds property in the determination of the Airline and Railroad (class 15) tax rate.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to:

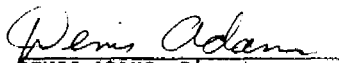
Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than September 20, 1991.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than September 20, 1991.

6. If the agency receives requests for a public hearing on

the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.


DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State August 5, 1991.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
amendment of ARM 1.2.519	)	AMENDMENT OF ARM 1.2.519
regarding rule reviewers for	)	RULE REVIEWERS SIGNATURE
the Montana Administrative	)	REQUIRED ON ALL NOTICES
Register	)	PUBLISHED IN THE MONTANA
	)	ADMINISTRATIVE REGISTER

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On October 1, 1991, the office of the Secretary of State proposes to amend ARM 1.2.519 regarding rule reviewers signature on all notices published in the Montana Administrative Register.

2. The rule as proposed to be amended provides as follows:

1.2.519 BASIC FORMAT INSTRUCTIONS (1) through (1)(k) remain the same.

(1) signatures - Notices and administrative orders must be signed by the head of the department or the chairman of the governing board. The head of the agency or the chairman of the governing board will sign for an agency that is assigned to a department for administrative purposes only. A stamped (facsimile) signature is not acceptable. A letter must be filed with the secretary of state indicating signatory authority in the absence of the above.

(i) The rule reviewer must sign each proposal and adoption notice published in the Montana Administrative Register indicating that he has reviewed and approved the rules as required by 2-4-110, MCA.

(m) remains the same.

AUTH: 2-4-201, MCA

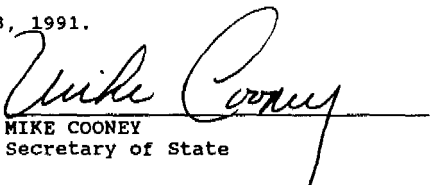
IMP: 2-4-110, MCA

3. The rule is proposed to be amended to require rule reviewers sign all notices published in the Montana Administrative Register as required by HB 15.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to:

Kathy Lubke, Chief
Administrative Rules Bureau
Secretary of State's Office
Room 225, Capitol Building
Helena, MT 59620

no later than September 18, 1991.


MIKE COONEY
Secretary of State

Dated this 5th day of August, 1991.

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
amendment of Rule 46.10.304A	)	THE PROPOSED AMENDMENT OF
pertaining to unemployed	)	RULE 46.10.304A PERTAINING
parent	)	TO UNEMPLOYED PARENT

TO: All Interested Persons

1. On September 5, 1991, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rule 46.10.304A pertaining to unemployed parent.

2. The rule as proposed to be amended provides as follows:

46.10.304A UNEMPLOYED PARENT Subsections (1) through (1)(b) remain the same.

(i) A "quarter of work" means a period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31 in which the ~~applicant received~~ earned income of not less than \$50, primary wage earner (PWE) has:

(A) received earned income of not less than \$50;

(B) participated in WIN prior to July 1, 1990 or JOBS after September 30, 1990;

(C) participated in a community work experience program (CWEP) in another state; or

(D) attended, full-time, an elementary school, a secondary school, or a vocational or technical training course approved by the secretary that is designed to prepare the individual for gainful employment, or in which such PWE participated in a Job Training Partnership Act (JTPA) education or training program.

(I) During an individual's lifetime, he or she may count no more than four quarters of work consisting of such activities toward the required six quarters necessary to be eligible for AFDC as an unemployed parent.

Subsections (1)(b)(ii) through subsections (1)(e)(iii) remain the same.

(2) The parent who is the primary wage earner ~~must be currently registered with the employment security division and be available for work, residing in a JOBS county and claiming the remoteness exemption from the JOBS program, must register and maintain a work application with the local employment office. The primary wage earner residing in a non-JOBS county must register and maintain a work application with the local employment office.~~

Subsections (3) and (4) remain the same.

(a) Both parents in a two-parent household ~~selected for the NETWORK pilot program in Lewis and Clark County may be~~ required to participate or be available to participate in that program a JOBS program in accordance with ARM 46.10.811 unless good cause exists or he or she meets an exemption criteria in accordance with ARM 46.10.805. Failure to comply ~~during the initial five weeks of the program~~ may subject the household to the sanctions in ARM 46.10.310~~839~~.

Subsection (5) remains the same.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-4-231 MCA

3. The Department has selected the option of counting certain educational and vocational activities as quarters of work to determine eligibility for the AFDC-Unemployed Parent program, as allowed by the Family Support Act of 1988. It is hoped that with this option, it will qualify the borderline Primary Wage Earner (PWE) for the Unemployed Parent (UP) program and he or she can then participate in the JOBS program. For example, the PWE qualifies four or five quarters but cannot get the sixth one under the present policy. By participating in the JOBS program, the PWE is more likely to find employment and move on to self-sufficiency.

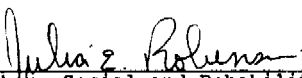
This option also allows the Department to give credit to the PWE for activities related to obtaining employment. It also offers an incentive to take the risk of getting a job knowing that he/she will be able to meet the qualifying requirements for assistance if the need to come back on the program should occur.

These rules are necessary for the department to administer the AFDC-UP program pursuant to the options permitted by federal law as explained above.

In addition, these rules are also necessary to implement changes in work registration and participation requirements for the AFDC-UP program required by the amendment of 45 CFR 233.100(a)(5)(i).

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604-4210, no later than September 12, 1991.

5. The Office of Legal Affairs, Department of Social and Rehabilitation Services has been designated to preside over and conduct the hearing.


Director, Social and Rehabilitation Services

Certified to the Secretary of State August 5, 1991.

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
amendment of Rules	)	THE PROPOSED AMENDMENT OF
46.13.303, 46.13.304,	)	RULES 46.13.303, 46.13.304,
46.13.305 and 46.13.401	)	46.13.305 AND 46.13.401
pertaining to low income	)	PERTAINING TO LOW INCOME
energy assistance program	)	ENERGY ASSISTANCE PROGRAM

TO: All Interested Persons

1. On September 5, 1991, at 10:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rules 46.13.303, 46.13.304, 46.13.305 and 46.13.401 pertaining to low income energy assistance program.

2. The rules as proposed to be amended provide as follows:

46.13.303 TABLES OF GROSS RECEIPTS AND INCOME STANDARDS

(1) The income standards in the table in subsection (2) below are the ~~1990~~ 1991 U.S. government office of management and budget poverty levels for households of different sizes. This table applies to all households, including self-employed households.

(a) Households with annual gross income at or below 125% of the ~~1990~~ 1991 poverty level are financially eligible for low income energy assistance. Households with an annual gross income above 125% of the ~~1990~~ 1991 poverty level are ineligible for low income energy assistance.

(2) Income standards for all households:

Family Size	Poverty Guideline	50 Percent	125 Percent	150 Percent
1 ONE	\$ 6,280 6,620	\$ 3,140 3,310	\$ 7,850 8,275	\$ 9,420 9,930
2 TWO	8,420 8,880	4,210 4,440	10,525 11,100	12,630 13,320
3 THREE	10,560 11,140	5,280 5,570	13,200 13,925	15,840 16,710
4 FOUR	12,700 13,400	6,350 6,700	15,875 16,750	19,050 20,100
5 FIVE	14,840 15,660	7,420 7,830	18,650 19,575	22,260 23,490
6 SIX	16,980 17,920	8,490 8,960	21,225 22,400	25,470 26,880
7	19,120	9,560	23,900	28,680
8	21,260	10,630	26,575	31,890
Additional member add	2,140 2,260	1,070 1,130	2,675 2,825	3,210 3,390

AUTH: Sec. 53-2-201 MCA

IMP: Sec. 53-2-201 MCA

46.13.304 CALCULATING INCOME Subsections (1) through (3)(a) remain the same.

(b) Dependent care deductions shall be subtracted from annual gross income that is between 125% and 150% of the ~~1990~~ 1991 U.S. government office of management and budget poverty level for the particular household size.

Subsections (3)(c) and (4) remain the same.

(a) Medical and dental deductions can only be subtracted from annual gross income that is between 125% and 150% of the ~~1990~~ 1991 U.S. government office of management and budget poverty level for the particular household size. Households meeting the income standards in ARM 46.13.303(2) after this adjustment are eligible for benefits.

Subsections (4)(a)(i) through (4)(a)(x) remain the same.

AUTH: Sec. 53-2-201 MCA

IMP: Sec. 53-2-201 MCA

46.13.305 RESOURCES Subsections (1) through (1)(c) remain the same.

(d) market value of stocks or bonds, and/or other negotiable resources.

~~(e) market value of contract for deed and/or other negotiable resources.~~

Subsection (2) remains the same.

(3) The value of the family home and the proceeds from the sale of the family home shall be excluded as a resource.

AUTH: Sec. 53-2-201 MCA

IMP: Sec. 53-2-201 MCA

46.13.401 BENEFIT AWARD MATRICES Subsections (1) through (1)(i) remain the same.

(2) The benefit award matrices which follow establish the maximum benefit available to an eligible household for a full winter heating season (October thru April). The maximum benefit varies by household income level, (100% if at or below ~~100%~~ 50% of OMB poverty, 75% if between ~~101%~~ 51% - 125% of OMB poverty level) type of primary heating fuel and in certain cases by vendor, the type of dwelling (single family unit, multi-family unit, mobile home), and the number of bedrooms in a shelter or rental unit. Applicants may claim no more bedrooms than household members except that single elderly and handicapped households are entitled to two bedrooms benefit designation if the home contains more than one bedroom. The maximum benefit also varies by local contractor districts to account for climatic differences across the state.

MAXIMUM BENEFIT AWARD MATRIX FOR

LC DISTRICTS I, II & III

Phillips, Valley, Daniels, Sheridan, Roosevelt, Garfield,
McCone, Richland, Dawson, Prairie, Wibaux, Rosebud,
Treasure, Custer, Fallon, Powder River and Carter Counties

Single Family Units

bedrooms	natural gas	M.D.U. electricity	fuel oil	propane	wood	coal	R.E.A. electricity
	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%
one	\$254 175 181 132	\$623 451 467 308	\$383 297 287 223	\$258 212 244 183	\$180 137 143 103	\$125 127 131 95	\$409 486 320 305
two	\$311 214 233 161	\$761 551 571 413	\$468 362 340 271	\$327 236 268 223	\$332 171 172 129	\$218 159 164 119	\$602 594 453 445
three	\$351 243 264 182	\$865 626 646 470	\$530 412 382 309	\$434 339 330 254	\$384 205 213 154	\$283 190 192 142	\$684 675 613 508
four	\$398 273 298 205	\$968 702 726 526	\$594 461 445 346	\$508 379 330 284	\$331 240 248 180	\$308 221 229 166	\$768 756 625 567

Multi Family Units

bedrooms	natural gas	M.D.U. electricity	fuel oil	propane	wood	coal	R.E.A. electricity
	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%
one	\$224 153 168 114	\$543 392 408 284	\$332 258 240 184	\$242 212 213 159	\$145 119 123 89	\$152 110 114 83	\$439 423 322 317
two	\$270 185 203 140	\$662 480 496 360	\$405 315 304 236	\$348 259 259 194	\$206 149 154 112	\$190 138 143 103	\$524 517 393 386
three	\$308 211 229 158	\$752 545 564 408	\$461 359 346 269	\$402 285 286 221	\$247 173 185 134	\$228 165 171 124	\$608 587 446 440
four	\$344 237 258 178	\$843 610 632 456	\$512 401 381 301	\$440 330 330 247	\$288 209 218 157	\$268 192 198 145	\$682 656 500 493

Mobile Family Units

bedrooms	natural gas	M.D.U. electricity	fuel oil	propane	wood	coal	R.E.A. electricity
	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%
one	\$238 163 172 122	\$529 419 434 315	\$356 276 267 207	\$252 227 227 170	\$128 128 134 96	\$163 118 123 88	\$458 452 344 339
two	\$289 193 212 150	\$708 513 531 394	\$433 337 325 252	\$369 277 277 208	\$230 159 165 120	\$203 147 152 110	\$550 532 430 414
three	\$322 225 245 169	\$804 583 603 437	\$493 383 370 287	\$426 315 315 236	\$284 191 198 143	\$244 177 183 132	\$638 628 472 471
four	\$368 251 276 190	\$901 652 673 489	\$552 429 414 322	\$470 353 353 265	\$328 223 231 167	\$284 208 213 154	\$713 703 535 527

(b) MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT IV

Liberty, Hill and Blaine Counties

Single Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%
one	\$282 176 149 132	\$521 389 428 277	\$498 341 384 258	\$423 346 354 259	\$202 146 151 109	\$146 134 140 101
two	\$308 215 231 161	\$608 451 504 338	\$593 418 444 312	\$528 422 432 317	\$252 182 186 137	\$233 166 174 126
three	\$349 243 262 182	\$704 512 568 384	\$674 473 508 355	\$655 480 484 360	\$302 218 222 164	\$270 202 208 151
four	\$393 274 284 205	\$809 574 632 430	\$755 530 568 396	\$733 537 530 403	\$353 255 264 191	\$326 235 244 176

Multi Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%
one	\$200 153 145 115	\$462 321 323 241	\$433 297 312 223	\$410 301 308 225	\$125 127 131 95	\$103 117 121 85
two	\$246 187 201 140	\$608 382 446 294	\$518 352 382 272	\$501 357 376 275	\$149 158 164 119	\$123 146 153 110
three	\$304 212 228 159	\$680 445 514 334	\$598 412 440 309	\$569 417 422 313	\$263 190 192 143	\$243 175 182 132
four	\$342 239 266 179	\$723 498 600 374	\$652 461 493 346	\$638 467 478 351	\$302 222 230 166	\$283 205 213 154

Mobile Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%
one	\$228 164 126 123	\$331 343 386 257	\$452 317 328 238	\$430 321 328 241	\$182 135 141 102	\$123 125 130 94
two	\$282 200 215 150	\$649 419 482 314	\$531 397 413 290	\$536 393 402 294	\$234 169 174 127	\$216 158 163 117
three	\$328 226 243 170	\$728 476 554 357	\$632 440 430 330	\$600 446 451 335	\$281 203 211 152	\$259 188 196 141
four	\$368 255 274 191	\$822 533 620 400	\$702 493 522 370	\$682 500 511 375	\$328 237 246 178	\$303 219 222 164

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT V

Glacier, Toole, Pondera, Teton,
Chouteau and Cascade Counties

(c)

Single Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal	Great Falls natural gas
	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%
one	\$183 181 148 121	\$425 337 286 253	\$380 324 285 243	\$383 320 265 240	\$123 133 129 100	\$159 123 119 92	\$218 156 163 118
two	\$222 197 168 147	\$590 412 435 309	\$463 395 347 297	\$433 391 323 293	\$215 186 161 125	\$198 154 149 115	\$263 183 198 144
three	\$281 222 188 167	\$656 468 484 351	\$532 450 395 337	\$490 441 367 333	\$288 202 189 150	\$238 184 179 130	\$309 218 224 163
four	\$382 250 212 186	\$718 524 504 393	\$590 504 443 376	\$549 497 411 373	\$361 253 228 175	\$278 215 208 161	\$335 245 241 184

Multi Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal	Great Falls natural gas
	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%
one	\$156 140 118 105	\$413 293 310 220	\$331 285 248 212	\$302 278 230 209	\$159 118 112 87	\$138 107 104 80	\$188 137 141 103
two	\$193 171 146 128	\$508 359 378 269	\$409 344 303 256	\$376 340 281 255	\$182 145 140 109	\$172 134 129 100	\$229 168 173 126
three	\$218 193 166 145	\$572 407 430 305	\$458 391 344 293	\$438 386 320 290	\$224 174 168 130	\$202 160 155 120	\$259 190 194 142
four	\$248 218 184 163	\$642 456 482 342	\$513 438 385 329	\$472 431 358 324	\$262 203 196 152	\$242 187 181 140	\$302 213 219 160

Mobile Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal	Great Falls natural gas
	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%
one	\$186 150 122 112	\$441 313 331 235	\$353 302 265 228	\$328 297 248 223	\$180 124 120 93	\$148 114 111 86	\$200 147 150 110
two	\$208 183 148 137	\$539 393 408 297	\$431 388 323 278	\$401 363 304 272	\$200 165 180 116	\$188 143 138 107	\$246 178 184 134
three	\$243 207 175 155	\$613 535 480 326	\$493 418 381 314	\$468 413 342 310	\$240 188 180 139	\$224 171 168 129	\$272 203 208 152
four	\$283 233 192 174	\$692 497 516 366	\$549 468 413 351	\$510 452 383 347	\$280 217 210 163	\$258 200 194 150	\$312 238 234 171

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT VI

Fergus, Judith Basin, Petroleum, Wheeland,
Golden Valley and Musselshell Counties

(d)

Single Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%
one	\$207 161 145 121	\$469 338 344 253	\$432 309 324 232	\$418 337 313 253	\$186 134 147 100	\$141 123 136 92
two	\$253 197 180 148	\$561 413 421 310	\$522 377 385 293	\$506 412 381 308	\$245 167 184 128	\$228 154 170 116
three	\$286 223 215 167	\$632 469 478 352	\$588 426 449 321	\$572 468 433 351	\$284 202 231 150	\$272 185 204 139
four	\$323 231 243 189	\$714 526 535 394	\$621 480 503 360	\$648 524 485 389	\$343 234 262 175	\$312 216 238 162

Multi Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%
one	\$180 140 135 105	\$398 284 290 221	\$328 269 282 202	\$382 283 221 220	\$121 116 128 87	\$158 107 118 80
two	\$220 172 165 128	\$488 359 368 270	\$458 328 344 246	\$443 359 281 268	\$143 145 160 109	\$182 134 148 101
three	\$246 194 187 145	\$534 406 416 305	\$521 373 381 280	\$502 407 328 305	\$258 174 182 131	\$238 161 172 121
four	\$280 215 210 164	\$621 457 468 343	\$584 418 438 313	\$569 456 423 342	\$289 203 224 152	\$278 188 203 141

Mobile Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%
one	\$193 150 144 113	\$422 314 320 236	\$402 287 301 216	\$382 313 280 235	\$182 124 132 93	\$168 115 126 86
two	\$235 183 177 136	\$522 384 381 288	\$490 350 362 263	\$472 383 284 287	\$228 155 171 116	\$210 143 168 107
three	\$268 207 200 156	\$593 437 444 327	\$557 398 418 298	\$532 435 402 328	\$274 186 205 140	\$253 172 188 129
four	\$300 233 228 175	\$684 499 498 387	\$624 446 468 335	\$601 487 461 365	\$319 217 239 163	\$298 201 221 150

(e) MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT VII

Sweetgrass, Stillwater, Carbon,
Yellowstone and Big Horn Counties

Single Family Units

bedrooms	M.P.C. natural gas	electricity	fuel oil	propane	wood	coal	M.D.U. natural gas
	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%
one	\$122 150 120 113	\$455 315 341 235	\$353 283 265 197	\$322 313 242 235	\$163 124 122 83	\$150 115 113 86	\$224 159 148 119
two	\$210 164 156 136	\$556 365 412 269	\$445 321 322 241	\$384 363 286 267	\$204 156 153 117	\$186 144 141 106	\$273 195 205 146
three	\$238 203 178 156	\$631 436 423 328	\$496 365 367 274	\$442 435 336 326	\$235 167 183 140	\$228 172 169 129	\$300 220 223 165
four	\$368 234 201 175	\$707 490 530 368	\$549 409 413 307	\$501 487 376 365	\$385 218 214 153	\$363 201 197 151	\$348 248 241 186

Multi Family Units

bedrooms	M.P.C. natural gas	electricity	fuel oil	propane	wood	coal	M.D.U. natural gas
	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%
one	\$150 131 113 98	\$368 274 267 206	\$302 229 231 172	\$280 273 210 204	\$143 108 106 81	\$131 100 98 75	\$195 139 146 104
two	\$183 160 137 120	\$463 335 363 251	\$375 279 281 209	\$343 333 252 250	\$172 135 133 102	\$164 125 123 84	\$238 169 178 127
three	\$203 181 155 136	\$549 381 412 265	\$426 317 320 238	\$389 376 282 264	\$213 162 160 122	\$196 150 147 112	\$269 182 203 143
four	\$233 203 175 153	\$615 426 461 320	\$478 356 358 267	\$436 424 327 310	\$248 190 186 145	\$228 173 172 131	\$303 215 227 162

Mobile Family Units

bedrooms	M.P.C. natural gas	electricity	fuel oil	propane	wood	coal	M.D.U. natural gas
	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%
one	\$160 140 120 105	\$423 293 312 220	\$329 245 246 184	\$300 291 225 219	\$152 116 114 87	\$140 107 105 80	\$208 146 156 111
two	\$196 171 142 128	\$512 359 387 269	\$401 296 300 224	\$368 356 276 267	\$180 145 142 109	\$175 134 131 100	\$264 181 191 136
three	\$221 193 168 145	\$587 407 440 305	\$456 338 340 254	\$418 404 312 303	\$222 174 171 130	\$210 160 157 120	\$288 205 216 154
four	\$249 216 182 163	\$658 456 493 342	\$511 390 392 285	\$468 453 360 340	\$265 203 199 158	\$245 187 184 140	\$324 230 243 173

(f) MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT VIII

Lewis & Clark, Jefferson and
Broadwater Counties

Single Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%
one	\$190 167 140 125	\$531 349 301 262	\$400 278 200 209	\$114 395 346 298	\$180 138 143 104	\$124 127 131 96
two	\$243 204 183 153	\$636 427 432 390	\$486 339 366 255	\$628 482 471 362	\$236 173 172 129	\$218 159 163 119
three	\$278 231 203 172	\$723 485 543 364	\$556 386 416 290	\$714 540 536 411	\$283 207 213 155	\$261 191 196 143
four	\$310 259 229 195	\$810 544 608 496	\$623 453 466 324	\$809 614 600 461	\$330 252 246 181	\$305 223 229 167

Multi Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%
one	\$123 145 130 109	\$453 304 340 226	\$348 242 261 182	\$442 344 336 258	\$164 120 123 90	\$158 111 114 83
two	\$212 177 156 133	\$554 372 415 279	\$424 295 318 222	\$542 420 410 315	\$206 150 154 113	\$180 139 143 104
three	\$240 201 180 150	\$628 422 423 317	\$483 336 363 252	\$621 477 466 358	\$246 180 185 135	\$222 166 170 125
four	\$270 226 203 169	\$706 473 528 355	\$544 376 406 282	\$696 534 526 401	\$282 210 215 159	\$266 194 199 146

Mobile Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%
one	\$185 155 139 116	\$484 325 363 244	\$372 259 220 194	\$478 367 359 275	\$125 128 132 96	\$162 119 121 89
two	\$208 180 170 142	\$592 397 444 296	\$454 316 340 237	\$564 449 438 336	\$219 161 165 120	\$202 148 152 111
three	\$236 214 192 161	\$673 451 504 339	\$516 359 382 269	\$664 510 498 362	\$263 193 196 144	\$243 178 182 130
four	\$268 241 216 181	\$753 506 565 379	\$578 402 434 302	\$744 571 558 428	\$302 225 226 169	\$282 207 213 156

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT IX

Meagher, Gallatin and Park Counties

(g)

Single Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%
one	\$200 154 450 116	\$510 324 380 243	\$448 290 312 210	\$462 334 348 250	\$189 128 142 96	\$178 118 131 89
two	\$244 189 283 142	\$634 398 478 287	\$508 311 381 256	\$564 405 425 308	\$232 160 177 120	\$218 148 164 111
three	\$278 214 302 160	\$721 450 540 337	\$572 388 433 291	\$641 464 484 348	\$284 192 213 144	\$262 177 192 133
four	\$311 240 223 180	\$807 503 605 378	\$642 435 483 328	\$718 519 538 389	\$331 224 248 168	\$308 207 228 155

Multi Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%
one	\$124 134 130 101	\$451 282 330 211	\$382 244 323 183	\$402 291 301 218	\$168 111 123 83	\$152 103 114 77
two	\$212 164 159 123	\$550 344 414 258	\$442 297 311 223	\$481 355 368 266	\$208 138 154 104	\$190 128 142 96
three	\$240 186 180 139	\$622 391 420 293	\$502 336 321 253	\$558 403 418 302	\$242 167 185 125	\$228 154 171 118
four	\$270 202 203 157	\$702 438 527 328	\$583 379 422 284	\$625 452 468 339	\$288 195 216 146	\$268 180 198 135

Mobile Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%
one	\$186 144 430 108	\$483 301 382 228	\$382 260 300 195	\$400 311 322 233	\$178 119 132 89	\$160 110 123 82
two	\$222 178 170 132	\$590 369 442 276	\$442 318 354 238	\$504 379 393 284	\$220 149 165 111	\$200 137 152 103
three	\$252 198 193 149	\$670 418 503 314	\$532 361 400 271	\$598 431 442 323	\$264 178 198 134	\$244 165 183 124
four	\$288 223 212 168	\$751 468 563 351	\$602 405 451 303	\$668 483 501 362	\$308 208 231 156	\$284 192 213 144

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT X

Lincoln, Flathead, Lake
and Sanders Counties

Single Family Units

(H)

bedrooms	natural gas	M.P.C. electricity	fuel oil	propane	wood	coal	P.P.L. electricity
	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%
one	\$311 146 466 111	\$563 910 414 232	\$461 276 336 207	\$500 825 443 244	\$300 122 450 92	\$186 113 438 85	\$306 263 200 212
two	\$258 181 494 135	\$475 378 508 284	\$349 337 413 253	\$721 367 541 298	\$250 153 488 115	\$231 141 473 106	\$488 346 306 280
three	\$282 204 519 153	\$462 430 626 322	\$626 383 469 287	\$419 451 615 338	\$200 183 226 136	\$222 169 208 127	\$584 393 446 295
four	\$328 230 546 172	\$458 481 644 361	\$700 429 526 322	\$948 505 688 379	\$350 214 263 161	\$223 186 243 149	\$621 441 468 330

Multi Family Units

bedrooms	natural gas	M.P.C. electricity	fuel oil	propane	wood	coal	P.P.L. electricity
	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%
one	\$184 129 138 96	\$480 269 380 202	\$382 240 304 180	\$514 263 385 212	\$174 106 131 80	\$161 96 120 74	\$342 248 280 185
two	\$228 157 146 116	\$542 329 440 247	\$478 293 358 220	\$622 345 421 259	\$218 133 143 100	\$201 123 131 92	\$494 301 244 226
three	\$254 178 181 133	\$662 374 500 280	\$544 333 408 250	\$713 393 535 294	\$281 160 166 120	\$241 147 181 110	\$482 342 262 257
four	\$286 200 214 150	\$742 419 660 314	\$608 373 457 280	\$798 440 646 330	\$306 166 228 140	\$281 172 211 129	\$540 393 406 287

Mobile Family Units

bedrooms	natural gas	M.P.C. electricity	fuel oil	propane	wood	coal	P.P.L. electricity
	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%
one	\$186 137 142 103	\$513 288 385 216	\$419 257 314 193	\$549 302 413 227	\$166 114 140 85	\$123 105 128 79	\$321 263 228 196
two	\$240 168 140 126	\$622 352 421 264	\$511 313 343 235	\$621 359 603 277	\$223 142 124 107	\$215 131 141 96	\$453 322 240 241
three	\$223 180 204 142	\$713 400 536 300	\$581 356 436 287	\$762 420 523 315	\$229 171 200 128	\$258 157 183 118	\$515 366 286 274
four	\$268 214 228 160	\$798 448 660 336	\$651 399 488 296	\$864 470 646 353	\$238 166 244 149	\$300 164 266 158	\$572 410 433 307

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT XI

Mineral, Missoula and Ravalli Counties

Single Family Units

bedrooms	fuel				wood				coal			
	natural gas	electricity	oil	propane	wood	wood	wood	wood	coal	coal	coal	coal
	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%
one	\$204 150 154 112	\$424 314 256 235	\$408 242 302 181	\$444 352 264 204	\$404 124 149 93	\$404 124 149 93	\$404 124 149 93	\$404 124 149 93	\$128 114 132 86	\$128 114 132 86	\$128 114 132 86	\$128 114 132 86
two	\$246 183 185 137	\$580 363 435 288	\$408 295 314 221	\$508 431 441 323	\$238 153 170 118	\$238 153 170 118	\$238 153 170 118	\$238 153 170 118	\$220 143 165 107	\$220 143 165 107	\$220 143 165 107	\$220 143 165 107
three	\$278 207 209 155	\$669 436 404 327	\$582 335 425 251	\$669 409 601 367	\$268 181 218 139	\$268 181 218 139	\$268 181 218 139	\$268 181 218 139	\$264 172 198 129	\$264 172 198 129	\$264 172 198 129	\$264 172 198 129
four	\$313 233 235 175	\$738 495 553 365	\$635 378 426 282	\$748 549 561 411	\$334 217 250 163	\$334 217 250 163	\$334 217 250 163	\$334 217 250 163	\$308 200 221 150	\$308 200 221 150	\$308 200 221 150	\$308 200 221 150

Multi Family Units

bedrooms	fuel				wood				coal			
	natural gas	electricity	oil	propane	wood	wood	wood	wood	coal	coal	coal	coal
	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%
one	\$125 130 131 98	\$413 273 320 205	\$358 210 262 159	\$410 307 314 230	\$186 108 124 81	\$186 108 124 81	\$186 108 124 81	\$186 108 124 81	\$153 100 115 75	\$153 100 115 75	\$153 100 115 75	\$153 100 115 75
two	\$214 158 161 119	\$504 334 328 250	\$404 256 325 192	\$513 375 384 281	\$202 135 156 101	\$202 135 156 101	\$202 135 156 101	\$202 135 156 101	\$181 124 144 83	\$181 124 144 83	\$181 124 144 83	\$181 124 144 83
three	\$242 180 182 135	\$573 379 430 284	\$483 292 330 219	\$581 429 436 319	\$248 162 182 121	\$248 162 182 121	\$248 162 182 121	\$248 162 182 121	\$220 162 172 112	\$220 162 172 112	\$220 162 172 112	\$220 162 172 112
four	\$273 203 204 152	\$642 425 481 316	\$559 327 418 245	\$641 477 488 358	\$260 186 214 142	\$260 186 214 142	\$260 186 214 142	\$260 186 214 142	\$264 174 201 131	\$264 174 201 131	\$264 174 201 131	\$264 174 201 131

Mobile Family Units

bedrooms	fuel				wood				coal			
	natural gas	electricity	oil	propane	wood	wood	wood	wood	coal	coal	coal	coal
	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%
one	\$182 139 140 104	\$441 292 331 219	\$380 225 285 169	\$448 328 336 249	\$172 115 133 86	\$172 115 133 86	\$172 115 133 86	\$172 115 133 86	\$184 106 123 80	\$184 106 123 80	\$184 106 123 80	\$184 106 123 80
two	\$259 170 172 128	\$530 357 404 287	\$464 274 344 208	\$547 400 410 300	\$222 141 146 108	\$222 141 146 108	\$222 141 146 108	\$222 141 146 108	\$205 133 154 100	\$205 133 154 100	\$205 133 154 100	\$205 133 154 100
three	\$290 183 184 144	\$613 405 450 304	\$532 312 365 234	\$621 455 468 341	\$268 173 200 130	\$268 173 200 130	\$268 173 200 130	\$268 173 200 130	\$248 160 184 120	\$248 160 184 120	\$248 160 184 120	\$248 160 184 120
four	\$321 217 219 162	\$688 454 515 340	\$561 349 443 262	\$698 510 523 382	\$310 202 223 151	\$310 202 223 151	\$310 202 223 151	\$310 202 223 151	\$282 186 215 140	\$282 186 215 140	\$282 186 215 140	\$282 186 215 140

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT VII

Powell, Granite, Deer Lodge, Silver Bow,
Beaverhead and Madison Counties

0

Single Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%
one	\$238 181 322 138	\$411 380 458 285	\$483 322 343 242	\$581 453 421 347	\$228 150 142 113	\$208 138 154 104
two	\$288 222 218 165	\$742 484 560 348	\$589 383 442 295	\$688 565 514 424	\$279 186 208 141	\$252 175 188 130
three	\$328 251 244 188	\$849 528 632 398	\$620 447 503 335	\$729 643 584 452	\$328 225 261 188	\$309 208 223 158
four	\$368 282 225 212	\$953 591 743 413	\$751 501 563 375	\$823 720 654 540	\$380 283 263 197	\$360 243 220 182

Multi Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%
one	\$205 158 154 118	\$523 331 388 248	\$421 280 315 210	\$488 403 368 302	\$184 131 146 98	\$178 121 134 90
two	\$259 193 188 145	\$650 404 482 303	\$513 342 388 295	\$588 492 442 369	\$243 163 182 122	\$224 151 166 113
three	\$283 218 212 164	\$729 459 554 344	\$583 389 432 291	\$678 559 508 419	\$301 198 218 147	\$289 181 201 138
four	\$319 245 238 184	\$822 514 620 388	\$653 435 488 327	\$759 626 569 470	\$348 228 268 171	\$334 211 238 158

Mobile Family Units

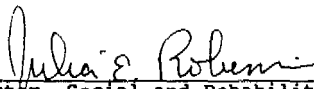
bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%
one	\$219 159 164 128	\$568 353 428 285	\$450 300 332 225	\$522 430 381 323	\$202 140 158 105	\$184 129 144 97
two	\$268 206 201 155	\$698 432 524 324	\$548 385 411 274	\$628 526 428 394	\$259 175 194 131	\$239 161 178 121
three	\$303 233 222 175	\$790 481 592 368	\$623 415 462 312	\$725 598 543 448	\$314 208 233 157	\$282 183 215 145
four	\$344 262 265 197	\$884 550 683 412	\$698 466 524 349	\$843 689 608 502	\$363 244 272 183	\$338 228 261 158

AUTH: Sec. 53-2-201 MCA
IMP: Sec. 53-2-201 MCA

2. These changes are being made, in part, to ensure that state policy coincides with the U.S. Office of Management and Budget (OMB) poverty standards and to ensure that benefit award matrices are within the current LIEAP budget. The changes to the resource rule, ARM 46.13.305, clarify the Department's long standing policy of excluding the value of the family home and the proceeds of the sale of the family home and will also ensure that applicants who sell their family home under a contract for deed are treated the same as those who sell their family home for a lump sum. The changes to the benefit award matrices rule, ARM 46.13.401(2), incorporate updated poverty guidelines. The benefit award matrices reflect a possible 29 percent reduction in Montana's 1991/92 LIEAP Block Grant funding by the federal government. Because of this funding reduction, the rule is being changed to ensure that households whose incomes are below the 50% poverty level receive adequate assistance with their heating bills. It will increase the average benefit paid to households whose incomes are at or below 50% of the poverty standard.

3. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604-4210, no later than September 12, 1991.

4. The Office of Legal Affairs, Department of Social and Rehabilitation Services has been designated to preside over and conduct the hearing.



Director, Social and Rehabilitation Services

Certified to the Secretary of State August 5, 1991.

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
adoption of Rules I through	)	THE PROPOSED ADOPTION OF
XII pertaining to develop-	)	RULES I THROUGH XII
mental disabilities	)	PERTAINING TO DEVELOP-
commitment process and the	)	MENTAL DISABILITIES
certification of profes-	)	COMMITMENT PROCESS AND THE
sional persons and the	)	CERTIFICATION OF PROFES-
repeal of Rules 46.8.701	)	SIONAL PERSONS AND THE
through 46.8.704 pertaining	)	REPEAL OF RULES 46.8.701
to the certification of	)	THROUGH 46.8.704 PERTAINING
professional persons	)	TO THE CERTIFICATION OF
	)	PROFESSIONAL PERSONS

TO: All Interested Persons

1. On September 5, 1991 at 1:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed adoption of Rules I through XII pertaining to developmental disabilities commitment process and the certification of professional persons and the repeal of Rules 46.8.701 through 46.8.704 pertaining to the certification of professional persons.

2. The rules as proposed to be adopted provide as follows:

RULE I. RESIDENTIAL FACILITY SCREENING: PURPOSE

(1) These rules govern the screening of persons being considered for commitment into residential facilities. The rules provide the procedures and criteria for determining whether a person with developmental disabilities is so severe in condition as to warrant a recommendation to the district court for the person's commitment to a facility.

AUTH: Sec. 53-20-133

IMP: Sec. 53-20-102, 53-20-106, 53-20-112, 53-20-116, 53-20-121, 53-20-125, 53-20-127 through 53-20-129 and 53-20-133 MCA

RULE II. RESIDENTIAL FACILITY SCREENING: DEFINITIONS

(1) "Accredited program" means a program recognized and accredited by either the accreditation council on services for people with developmental disabilities (ACDD) or by the commission on accreditation of rehabilitation facilities (CARF) for academic and professional preparation programs.

(2) "Applicant" means a person seeking certification as a professional person.

(3) "Certification committee" means, as provided in [Rule IX], the committee with delegated authority to certify developmental disabilities professional persons.

(4) "Community-based facilities" or "community-based services" means those services and facilities which are available for the evaluation, treatment, and habilitation of persons with developmental disabilities in a community setting, including but not limited to outpatient facilities, special education services, group homes, foster homes, day-care facilities, sheltered workshops, and other community-based services and facilities.

(5) "Court" means a district court of the state of Montana.

(6) "Developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded persons if the disability originated before the person attained age 18, has continued or can be expected to continue indefinitely, and constitutes a substantial handicap for the person.

(7) "Professional person" means a person meeting the definition of professional person provided in 53-20-102 MCA and certified by the professional persons certification committee as provided in [Rules VIII through XII].

(8) "DCHS" means the Department of corrections and human services".

(9) "Habilitation" means the process by which a person with a developmental disability is assisted to acquire and maintain those life skills which enable the person to cope more effectively with the demands of the environment and to improve physical, mental, and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

(10) "Individual treatment planning team (ITP)" means the interdisciplinary team of persons involved in and responsible for the habilitation of a person committed to a residential facility. The committed person is a member of the team.

(11) "Professional person" means a person who is a licensed psychologist or psychiatrist, or a person with a master's degree in psychology who:

(a) has training and experience in psychometric testing and evaluation;

(b) has experience in the field of developmental disabilities; and

(c) has been certified by the professional persons certification committee, according to section 4 of chapter 381, 52nd legislature.

(12) "Qualified mental retardation professional (QMRP)" means a person who has at least one year of experience working directly with persons with mental retardation or other developmental disabilities and who is:

(a) a licensed physician or osteopath;

(b) a registered nurse; or
(c) a professional program staff person for the residential facility who the department of corrections and human services determines meets the professional requirements necessary for federal certification of the facility.

(13) "Residential facility" means the Montana developmental center or the eastmont human services center.

(14) "Residential facility screening team" means the team provided in [Rule III].

(15) "Seriously developmentally disabled" means a person who:

(a) is developmentally disabled;
(b) is impaired in cognitive functioning; and
(c) has behaviors that pose an imminent risk of serious harm to self or others, or self-help deficits so severe as to require total care or near total care and because of those behaviors or deficits, cannot safely and effectively be habilitated in community-based services.

(16) "SRS" means the department of social and rehabilitation services.

AUTH: Sec. 53-20-133

IMP: Sec. 53-20-102, 53-20-106, 53-20-112, 53-20-116, 53-20-121, 53-20-125, 53-20-127 through 53-20-129 and 53-20-133 MCA

RULE III. RESIDENTIAL FACILITY SCREENING: ADMINISTRATION AND COMPOSITION OF SCREENING TEAM (1) The residential facility screening team is a standing committee administratively assigned to the department of social and rehabilitation services.

(2) The residential facility screening team includes:

(a) a department of corrections and human services (DCHS) staff person or designee appointed by the director of DCHS;

(b) a department of social and rehabilitation services (SRS)/developmental disabilities division (DDD) staff person or designee, appointed by the director of SRS;

(c) a provider of adult developmental disabilities services appointed jointly by the directors of DCHS and SRS; and

(d) a consumer-interests representative appointed jointly by the directors of DCHS and SRS.

(3) The representative from the department of social and rehabilitation services will serve as chairperson of the team.

(4) The staff for the residential facility screening team is as follows:

(a) a QMRP, or professional person if determined necessary by the residential facility screening team, from the Montana developmental center (MDC) for review of recommitment of all residents of MDC;

(b) a QMRP, or professional person if determined necessary by the residential facility screening team, from eastmont

human services center (EHSC) for review of recommitment of residents of EHSC; and

(c) contracted professional persons who will serve specified geographical areas for review of individuals residing in communities.

AUTH: Sec. 53-20-133 MCA

IMP: Sec. 53-20-133 MCA

RULE IV RESIDENTIAL FACILITY SCREENING: RESPONSIBILITIES OF PROFESSIONAL PERSONS AND QMRP'S (1) The professional person assigned by the residential facility screening team to review an individual being considered for commitment or recommitment is responsible for:

(a) gathering and analyzing information about the person;

(b) conducting psychological testing and assessment as needed;

(c) compiling information and writing reports for the residential facility screening team;

(d) providing an oral report to the team to assist in the team's recommendation regarding commitment; and

(e) presenting testimony to the court as required.

(2) The QMRP or professional person at the residential facilities will:

(a) when a recommitment is uncontested, base their reports on individual treatment plan (ITP) information; or

(b) when emergency admissions are being considered for commitment, provide any available relevant information to the residential facility screening team.

(3) The professional person or QMRP may participate in the discussion of the residential facility screening team, but will not be a voting member in determining consensus regarding the commitment or recommitment of an individual.

(4) The QMRP may not present testimony on behalf of the screening team at a district court commitment hearing.

AUTH: Sec. 53-20-133

IMP: Sec. 53-20-112, 53-20-116, 53-20-128, 53-20-129 and 53-20-133 MCA

RULE V RESIDENTIAL FACILITY SCREENING: RESPONSIBILITIES OF THE SCREENING TEAM (1) The function of the residential facility screening team is to:

(a) review information about individuals for whom commitment or recommitment to a residential facility is sought; and

(b) to provide a determination regarding any commitment or recommitment. If commitment or recommitment is recommended, the team will provide that recommendation to the court along with the information considered in making the determination.

(2) The residential facility screening team will initiate a review upon notification that a petition has been filed in court for commitment or recommitment of an individual into a residential facility.

(3) The residential facility screening team will publish, maintain and disseminate the following information:

(a) a list of the current members of the team;
(b) the name and mailing address of a contact person for the committee;

(c) a handbook describing the operating procedures for the team and guidelines the team will use in making its decisions, and how non-consensus will be handled;

(d) identification or development of standardized forms to be used for the two main categories of commitment:

(i) commitment or contested recommitment; and
(ii) uncontested recommitment;
(e) specific timelines for response to a court after notification of the filing of a petition.

(4) In addition to giving notice of its determination to the court, notice of a team determination will be mailed or delivered by the screening team to the individual who is being considered for commitment, the parents or guardian, the responsible person, next of kin, if known, the attorney for the individual, if any, and the attorney for the parents or guardian, if any.

AUTH: Sec. 53-20-133

IMP: Sec. 53-20-125, 53-20-127 through 53-20-129 and 53-20-133 MCA

RULE VI RESIDENTIAL FACILITY SCREENING: DETERMINATION OF SCREENING TEAM

(1) The residential facility screening team as provided in 53-20-133, MCA determines whether the individual is seriously developmentally disabled and therefore may be considered for commitment or recommitment to a residential facility.

(2) The residential facility screening is conducted as follows:

(a) when a petition is made to the district court requesting a commitment or recommitment to a residential facility, the district court refers the case to the residential facility screening team for a determination;

(b) the residential facility screening team completes the assessment process to determine whether the individual meets the definition of seriously developmentally disabled;

(i) if the residential facility screening team determines that the individual meets the definition of seriously developmentally disabled and therefore determines that commitment or recommitment to a residential facility is appropriate, the team recommends to the court that the individual be committed; or

(ii) if the team does not find that the individual meets the definition of seriously developmentally disabled, the person may not be committed by the court.

(c) the team will report its determination to the court.

(3) The residential facility screening team, in making a determination, reviews the following:

(a) a comprehensive psychological evaluation that includes adaptive and maladaptive behavior;

(b) diagnosis;

(c) social history;

(d) current status/situation;

(e) comprehensive medical history and information that must include medications history;

(f) current and recommended treatment plan;

(g) narrative of current problems and attempted solutions;

(h) ancillary service reports available or obtained as needed;

(i) contact names for involved parties;

(j) legal status; and

(k) medicaid eligibility status.

(4) The information to be reviewed by the residential facility screening team may be obtained from a case manager, family members, an advocate, or others.

(5) A decision by the residential facility screening team to recommend commitment or recommitment must be by consensus. If the team does not reach consensus, the team cannot recommend commitment or recommitment.

(6) The screening process will only be initiated when a notice of a properly filed petition has been sent to the residential facility screening team within the required time.

(7) If an individual has been placed by an emergency admission into a residential facility and a petition is not filed within the required timelines, the individual may be returned to the county of origin, in accordance with the residential facility's procedures. If, under these circumstances, the party who brought the individual to the institution does not come to get the person within 48 hours, institution staff may return the individual to the county of origin, in accordance with the residential facility's procedures.

AUTH: Sec. 53-20-133

IMP: Sec. 53-20-125, 53-20-127 through 53-20-129 and 53-20-133 MCA

RULE VII. RESIDENTIAL FACILITY SCREENING: APPEAL OF SCREENING TEAM DETERMINATION OR RECOMMENDATION

(1) If the residential facility screening team determines that the individual is not seriously developmentally disabled and therefore a commitment or recommitment is not appropriate, the determination will be communicated to the district court and the individual. The individual or a person representing the interests of the individual may request a fair hearing as pro-

vided in ARM 46.2.201 et seq., from the department of social and rehabilitation services, within thirty days of the determination that the individual is not seriously developmentally disabled.

(2) If the residential facility screening team recommends commitment or recommitment, the recommendation goes to the district court, and the parties can request a hearing from the court, as provided in 53-20-125, MCA.

AUTH: Sec. 53-20-133

IMP: Sec. 53-20-125, 53-20-127 through 53-20-129 and 53-20-133 MCA

RULE VIII. RESIDENTIAL FACILITY SCREENING: CERTIFICATION OF PROFESSIONAL PERSONS (1) Professional persons are certified for the following purposes:

(a) to recommend, when requested by a party to a commitment proceeding to the district court or by the district court, the most appropriate habilitation plan or treatment plan for an individual for whom commitment or recommitment is being sought;

(b) to evaluate at the request of the residential facility screening team as provided in [Rules IV and VI], an individual being considered for commitment or recommitment, by gathering information, conducting psychological testing and assessment, compiling information, writing reports to the residential facility screening team, providing a report to the team to assist in the team's recommendation regarding commitment, and presenting testimony on behalf of the screening team to the court as required.

AUTH: 53-20-106 and 53-20-133 MCA

IMP: 53-20-106 MCA

RULE IX. RESIDENTIAL FACILITY SCREENING: THE CERTIFICATION COMMITTEE (1) Professional persons are certified by the professional person certification committee.

(2) The purposes of the certification committee are to:

(a) review all applications of persons requesting certification as professional persons;

(b) certify professional persons in accordance with these rules; and

(c) perform other duties set forth by these rules or assigned to the certification committee by the directors of SRS and DCHS.

(3) The certification committee functions as the certification committee for professional persons under Title 53, Chapter 20, MCA relating to persons with developmental disabilities and under Title 53, Chapter 21, MCA relating to persons with mental illness. The rules relating to certification of professional persons for mental health purposes are at ARM 20.14.501 et seq.

(4) The professional person certification committee includes the following members:

(a) a person appointed by the governor;
(b) two persons appointed by the director of SRS, who are familiar with the roles and responsibilities of developmental disabilities professional persons; and

(c) two persons appointed by the director of DCMS.

(5) Members of the certification committee shall serve at the convenience of the appointing authority.

(6) The person appointed by the governor will serve as chairperson of the committee. Meetings of the certification committee shall be called by the chairperson. The certification committee will meet as needed, but no fewer than four times per year, to review applicants.

AUTH: 53-20-106 and 53-20-133 MCA

IMP: 53-20-106 MCA

RULE X RESIDENTIAL FACILITY SCREENING: CERTIFICATION PROCEDURES FOR PROFESSIONAL PERSONS

(1) The certification procedures for a professional person are the following:

(a) submission of application forms by the applicant;

(b) a review by the certification committee, within ninety days of receipt of all required application materials, to determine the qualifications of the applicant for certification;

(c) an issuance or denial of certification or provisional certification of the application by the certification committee;

(i) the certification committee may issue provisional certification that limits the specific services, the conditions under which the professional person can provide services, or the time period such certification shall be effective, or any combination thereof;

(d) notification to the applicant within 30 days of the committee's determination.

(2) Certification will expire three years from the date of certification.

(3) The certification committee may revoke certification for cause by notifying the certified professional person in writing of the reasons for revocation at least 10 days prior to the effective date of revocation.

(4) The certification committee will establish and implement procedures to assure timely and efficient review of applicants.

(5) Certification of any person previously certified as a developmental disabilities professional person automatically expires 90 days after the adoption of this rule.

AUTH: 53-20-106 and 53-20-133 MCA

IMP: 53-20-106 MCA

RULE XI RESIDENTIAL FACILITY SCREENING: QUALIFICATIONS OF PROFESSIONAL PERSONS (1) A professional person

must:

- (a) be:
 - (i) a physician who is licensed by the state of Montana and is board certified to practice psychiatry;
 - (ii) a psychologist licensed by the state of Montana;
- or
- (iii) a person with a master's degree in psychology from an accredited program;
- (b) have training and experience in psychometric testing and evaluation; and
- (c) document any direct experience involving persons with developmental disabilities, which experience may include:
 - (i) evaluation;
 - (ii) planning;
 - (iii) testing;
 - (iv) treatment; and
 - (v) consultation.
- (2) Applicants will be required to supply transcripts and other appropriate records that document relevant training and experience.
- (3) The certification committee retains the right to determine the appropriateness of any experience for certification purposes.

AUTH: 53-20-106 and 53-20-133 MCA
IMP: 53-20-106 MCA

RULE XII RESIDENTIAL FACILITY SCREENING: RIGHT TO APPEAL CERTIFICATION COMMITTEE DECISIONS (1) Any action of the certification committee concerning certification denial or revocation may be appealed to the department of social and rehabilitation services.

(a) The notice of appeal shall be directed to the director of the department of social and rehabilitation services.

(b) The appeal shall be in writing setting forth the nature of the grievance and arguments supporting the grievance and actions desired. The appealing party may also present oral argument.

(c) The appealing party shall be notified in writing ten days prior to the hearing. The written notice shall contain the date, time and location of the hearing.

(2) All findings of the department director or designee will be binding on the certification committee.

(3) If any party to the appeal is dissatisfied with the written decision of the director, the person may appeal to the appropriate district court.

AUTH: 53-20-106 and 53-20-133 MCA
IMP: 53-20-106 MCA

3. The Rules 46.8.701 through 46.8.704 as proposed to be repealed are on pages 46-607 through 46-611 of the administrative Rules of Montana.

4. These rules are necessary for the following reasons:

(a) to establish a new administrative process as part of the commitment of seriously developmentally disabled individuals to residential facilities that ensures that admissions and commitments are limited to the circumstances provided in 53-20-101 et seq.;

(b) to implement the new definition of seriously developmentally disabled to match the changed mission of the residential facilities;

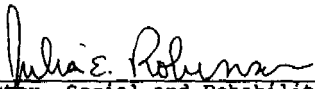
(c) to specify the membership, terms, and responsibilities of the residential facility screening team that will make recommendations to the court regarding each commitment petition;

(d) to specify standards and procedures whereby the residential facility screening team will make decisions regarding commitments and recommitment; and

(e) to repeal previous rules pertaining to the certification of professional persons and to specify new qualifications and procedures for certification in order to reflect the changes in definition and function for these persons.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604-4210, no later than September 12, 1991.

6. The Office of Legal Affairs, Department of Social and Rehabilitation Services has been designated to preside over and conduct the hearing.



Director, Social and Rehabilitation Services

Certified to the Secretary of State August 5, 1991.

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
adoption of Rules I through	)	THE PROPOSED ADOPTION OF
XIII pertaining to	)	RULES I THROUGH XIII
developmental disabilities	)	PERTAINING TO DEVELOPMENTAL
entry procedures	)	DISABILITIES ENTRY
	)	PROCEDURES

TO: All Interested Persons

1. On September 5, 1991, at 3:00 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed adoption of Rules I through XIII pertaining to developmental disabilities entry procedures.

2. The rules as proposed to be adopted provide as follows:

RULE I PLACEMENT DETERMINATIONS: PURPOSE (1) These rules govern the screening and placement of persons with developmental disabilities into adult services and children's group home services funded by the developmental disabilities division of the department of social and rehabilitation services.

AUTH: Sec. 53-2-201 and 53-20-204 MCA
IMP: Sec. 53-20-203 and 53-20-209 MCA

RULE II PLACEMENT DETERMINATIONS: DEFINITIONS For the purposes of these rules, the following definitions apply:

(1) "Adult community home services" means those facilities licensed in accordance with section 53-20-301, et seq., MCA providing age appropriate residential and habilitation services for two to eight persons with developmental disabilities who are 16 years or older.

(2) "Adult habilitation services" means the provision in non-residential settings of services to persons with developmental disabilities who are 16 years or older. These services include basic life skills, pre-vocational skills, work activities skills, sheltered employment skills, and other skills which are prerequisite or integral to vocational activities and which facilitate movement of persons to increasingly higher levels of independence.

(3) "Adult intensive community home services" means those facilities licensed in accordance with section 53-20-301, et seq., MCA providing habilitation and intensive residential training services for two to eight persons with developmental disabilities who have intensive needs and who are 16 years of age or older.

(4) "Appeal process" means the process provided in [Rule XIII] for pursuing further administrative review of a decision made by a local or the central screening committee.

(5) "Area manager" means a person employed by the developmental disabilities division in one of several field-based supervisory positions.

(6) "Casemanager" means a person who has the responsibility to coordinate an individual's case, compiling referrals for services, chairing individual habilitation team planning meetings, locating needed support services, and otherwise making arrangements to meet an individual's ongoing needs.

(7) "Central screening committee" means the committee provided in [Rule VII] that reviews all referrals of persons with developmental disabilities for placement into developmental disability adult services or children's group home services funded by the department.

(8) "Children's community home services" means those facilities licensed in accordance with sections 53-20-301, et seq., MCA providing age appropriate residential and habilitation services for two to five persons with developmental disabilities who are between the ages of 5 and 22.

(9) "DD division" means the developmental disabilities division of the department of social and rehabilitation services, which contracts with service agencies to provide community-based services to persons with developmental disabilities who reside or work in services funded by the department.

(10) "Habilitation" means assistance to a person that enables the person to acquire and maintain skills for effectively coping with his or her physical, mental and social needs.

(11) "Independent living services" means those services that provide residential training on a regular basis to persons with developmental disabilities who reside in unstructured and unsupervised settings and who require minimal supervision with periodic contact for oversight and training in areas of advanced personal skills, home-related skills and community life skills.

(12) "Individual habilitation planning team" means an interdisciplinary team composed of those persons specified in ARM 46.8.105 that identifies and evaluates an individual's needs, develops an individual habilitation plan to meet those needs, periodically reviews the progress of the plan and revises the plan accordingly.

(13) "Local" refers to the area of counties that is the responsibility of a local screening committee.

(14) "Person with developmental disabilities" means a person who has a developmental disability as defined in section 53-20-202(3), MCA.

(15) "Referral" means a set of standardized forms relating to a person with developmental disabilities and describing services being sought for the person. The referral includes as provided in [RULE III], a social history, a psychological evaluation, documentation of eligibility for services funded

through the developmental disabilities division, and information as to medical condition, skills, behaviors requiring intervention, and any support service needs.

(16) "Screening" means the process for selection for placement of persons with developmental disabilities into developmental disability adult services or children's group home services funded by the department.

(17) "Senior adult community home services" means those facilities licensed in accordance with section 53-20-301, et seq., MCA providing age appropriate residential and habilitation services to two to eight older persons with development disabilities.

(18) "Senior day services" means the provision of services to older persons with developmental disabilities in non-residential settings. These services include age appropriate group activities, maintenance of self-help and social skills and training in leisure activities.

(19) "Service provider" means any entity furnishing services to persons with developmental disabilities under a contractual agreement with the department of social and rehabilitation services through the developmental disabilities division.

(20) "Supported employment services" or "vocational placement services" means those services providing assistance in locating competitive employment and providing ongoing training and support to a person with developmental disabilities and to their employers in order to maintain employment for the person with developmental disabilities.

(21) "Supported living" means those services providing individualized residential services in the community as well as ongoing support as needed to maintain the placement.

(22) "Training and contract manager" means a person employed by the developmental disabilities division in a field-based position.

(23) "Transitional living services" means those services that provide training and habilitation on a regular basis for persons with developmental disabilities who reside in unstructured living situations and require intermittent supervision and assistance in learning advanced personal skills, home-related skills and community life skills.

(24) "Waiting list" means the list maintained by the DD division, of persons with developmental disabilities who are referred for services funded by the department.

AUTH: Sec. 53-2-201 and 53-20-204 MCA
IMP: Sec. 53-20-203 and 53-20-209 MCA

RULE III PLACEMENT DETERMINATIONS: REFERRAL PROCESS

(1) The referral for an individual for whom placement is being sought is compiled by the case manager and is submitted to the DD division.

(a) For referral of a local person to a local service, referral information is submitted to the area office of the DD division.

(b) Referrals of a person to other areas or the state as a whole are sent to the central office of the DD division.

(2) The required referral information is the following:

(a) the department of family services 431 form, documenting the determination that a person is developmentally disabled. The 431 form is not signed by DD division staff until there is adequate documentation of the individual's developmental disability and need for services;

(b) the inventory for client and agency planning (ICAP) and the ICAP supplemental form, current to within the last year;

(c) a psychological report documenting a diagnosis of developmental disabilities within the definition at 53-20-202, MCA;

(d) a social history current to within the last year that includes the following information:

(i) information regarding the present functioning level of the individual, noting the areas in which the individual does well and the areas in which the individual needs assistance and further training;

(ii) recommendations for services needed, with any special considerations noted (e.g., medical services, peer group considerations, need for communication devices, recreational interests, etc.);

(iii) impact on the individual if services are not received;

(iv) family history, present family involvement/support or involvement of other persons important in the individual's life;

(v) current medical status and history;

(vi) special education and related services provided to the individual, including all residential placements outside the family home;

(vii) other agencies involved, current and past, with the phone number and name of a contact person for each agency;

(viii) description of behavior problems;

(ix) any environmental, cultural, or other factors important to assisting the individual in a placement;

(x) special financial arrangements or hardships that a service provider would need to be aware of in order to assist the individual;

(xi) vocational interests and employment history;

(xii) any alternatives available in the person's home community, if that is the person's preferred place to live, and the status of attempts to secure those alternative services or supports;

(xiii) sources of income and benefits and the amounts of those; and

(xiv) guardianship information.

(e) an individual service record (ISR) which must be completed by staff in the DD division office in order to enter the name on a waiting list;

(f) current individual habilitation plan (IHP) or individual treatment plan (ITP), if applicable;

(g) a copy of the most recent deceleration program or any that has been conducted in the last three years; and

(h) other information the referring team chooses to include.

(3) Family members and other involved parties are encouraged to include any written comments they have on the person's situation and his/her need for placement.

(4) Referrals must be updated annually by the case manager on a form that notes the sections that have changed. They may be updated more often than annually if circumstances and needs change before the annual referral update is due.

AUTH: Sec. 53-2-201 and 53-20-204 MCA

IMP: Sec. 53-20-203 and 53-20-209 MCA

RULE IV. PLACEMENT DETERMINATIONS: SCREENING PROCEDURES

(1) Screening for a specific opening is conducted by a local screening committee. The local screening committee, as provided in [Rule V], determines who is to be offered the opening.

(2) Individuals to be considered for placement in a specific opening are selected as follows:

(a) the local screening committee, as provided in [Rule V], chooses from local referrals those individuals who appear to be most appropriate for the placement and therefore should be considered for placement; and

(b) the central screening committee, as provided in [Rule V], chooses from outside the local area those persons who appear to be most appropriate for the placement and therefore should be considered for placement.

(3) Before a person is considered for a placement, a DD division staff person must determine the following:

(a) whether the person has been determined to have a developmental disability;

(b) whether the person is being referred for the service that the placement is available in; and

(c) whether the referral contains all the required materials.

(4) Local screening committee decisions concerning placement must be by consensus. If there is no consensus, the matter is considered to be under appeal and a decision is made by hearing as provided for in [Rule XIII].

(5) The DD division will give the following notices:

(a) notice to a referring party when the referral does not contain all required components or when there is inadequate documentation that the individual has a developmental disability.

(b) notice to an individual who is being referred to a local screening committee, that the individual is being considered for placement in a specific opening;

(c) notice to an individual considered for placement in a specific opening as to whether the individual is being offered the placement or not.

(6) Confidential information will be protected and may only be released for other than administrative purposes if consented to by the affected person or if provided for by legal authority.

(7) Only the screening committee members may be present at and participate in the decision-making concerning selection unless all referred individuals have waived their rights to confidentiality.

AUTH: Sec. 53-2-201 and 53-20-204 MCA
IMP: Sec. 53-20-203 and 53-20-209 MCA

RULE V. PLACEMENT DETERMINATIONS: CRITERIA (1) The selection of persons to be considered for placement is based on each person's level of need.

(a) A screening committee must consider for referral or placement any person with physically limiting conditions, if the person's level of need is comparable to other persons being considered and if the service would be appropriate for the person after reasonable modifications or accommodations were made.

(b) Factors to be considered in the determination of level of need include but are not limited to the following factors:

- (i) whether the individual's health and safety are threatened;
- (ii) whether the individual is at risk of losing skills if not placed;
- (iii) whether the individual is at risk of losing opportunities and choices if not placed;
- (iv) whether the individual is at risk of losing independence if not placed;
- (v) what the individual's skill levels are in such areas as motor ability, self-help skills, communication, maladaptive behaviors, or other areas;
- (vi) what services, if any, the person is receiving, and whether those are meeting the person's needs;
- (vii) how far away the person's family is, if they are in contact with the person;
- (viii) how long the person has been on the waiting list;
- (ix) what support services the person needs;
- (x) whether the individual has been inappropriately placed in an institution;
- (xi) whether the individual lives in the natural home and needs services;
- (xii) whether the individual is in a service that is inappropriate;
- (xiii) whether the individual is at risk of abuse or neglect;
- (xiv) whether the individual has no alternatives and faces possible institutionalization if not placed; and
- (xv) other considerations relevant to a person's condition and needs.

(2) The choice of an individual to whom a placement is to be offered is based on the available services being appropriate for the person chosen.

(a) Factors to be considered in the determination of the appropriateness of the service for an individual being considered for placement include but are not limited to the following:

(i) whether the individual requires more supervision than the service can provide;

(ii) whether the available staffing ratio offers enough supervision to manage any maladaptive behaviors the person currently exhibits;

(iii) whether the person's medical needs can be met;

(iv) whether any necessary ancillary services such as mental health services, occupational therapy and physical therapy are available;

(v) whether the physical site meets the person's needs;

(vi) whether modifications can be made to accommodate the person's needs; and

(vii) other considerations relevant to the available placement.

AUTH: Sec. 53-2-201 and 53-20-204 MCA

IMP: Sec. 53-20-203 and 53-20-209 MCA

RULE VI. PLACEMENT DETERMINATIONS: LOCAL SCREENING COMMITTEES

(1) Local screening committees consist of the following voting members:

(a) a training and contract manager from the DD division;

(b) service provider representatives from each DD division-funded service in the community. If a corporation provides more than one program of service, each program of the corporation can send a representative, as long as only one is named as the designated agency voting member; and

(c) a representative from the case management agency. If more than one representative participates, the agency should have one consensus opinion or a designated agency voting member.

(2) Other persons who participate to assist with coordination of service, but who are not voting members, may include:

(a) a representative from the vocational rehabilitation division of SRS, when a screening is for a placement into supported employment funded with monies under Title VI part C of the federal Rehabilitation Act of 1973, as amended;

(b) a local school representative when a school-age child is being considered; or

(c) a mental health agency representative when a screening involves individuals with dual diagnoses or other mental health needs.

(3) The chairperson of the committee is the training and contract manager from the DD division.

AUTH: Sec. 53-2-201 and 53-20-204 MCA
IMP: Sec. 53-20-203 and 53-20-209 MCA

RULE VII. PLACEMENT DETERMINATIONS: CENTRAL SCREENING COMMITTEES

(1) The central screening committee members include:

- (a) the services coordinator from the DD division;
 - (b) a representative from the case management agency;
- and
- (c) a service provider representative from a DDD-funded service.

(2) Other persons who participate to assist with coordination of service, but who are not voting members, may include:

- (a) a representative from the vocational rehabilitation division of SRS, when a screening involves a placement into supported employment funded with monies under Title VI part C of the federal Rehabilitation Act of 1973, as amended;
- (b) a representative from a local school, when the screening involves school-age children; and
- (c) mental health agency representatives when screenings involve individuals with dual diagnoses or with other mental health needs.

(3) The chairperson of the committee is the services coordinator from the DD division.

(4) Decisions are by consensus of the voting members.

(5) Family members, advocates, and others are encouraged to send written information regarding any individual they represent.

AUTH: Sec. 53-2-201 and 53-20-204 MCA
IMP: Sec. 53-20-203 and 53-20-209 MCA

RULE VIII. PLACEMENT DETERMINATIONS: SUPPORTED LIVING SCREENING

(1) Supported living depends on support services and assistance rather than on existing facilities, so factors relating to availability of supports must be considered when making a decision regarding supported living services.

(2) Supported living services are screened using the procedures and criteria in [Rules III through VII] except as otherwise provided in this rule.

(3) Screening committee determinations regarding supported living consider three criteria in addition to the standard factors:

- (a) whether needed supports as listed in the referral are available in the community;
- (b) whether there are resources available to fund the supports listed in the referral that do not already exist in the community; and
- (c) whether there are legal or medical obstacles to placement at the time of the referral.

AUTH: Sec. 53-2-201 and 53-20-204 MCA

IMP: Sec. 53-20-203 and 53-20-209 MCA

RULE IX. PLACEMENT DETERMINATIONS: SUPPORTED EMPLOYMENT SCREENING

(1) Supported employment services are based on a job match. Available job placements can vary and some candidates for a service may not match an available job placement.

(2) Supported employment services are screened using the criteria and procedures in [Rules III and IV] except as otherwise provided in this rule.

(3) Supported employment screenings include the following steps:

(a) a supported employment referral packet is compiled including components required by the vocational rehabilitation division of SRS, when funding under Title VI part C of the Rehabilitation Act of 1973, as amended, is to be used;

(b) the screening committee uses a need category form specific to supported employment, to reach consensus on recommendations regarding each referral;

(c) the local screening committee determines which referrals go into a pool of names on the waiting list for supported employment;

(d) if federal title VI-C funds are to be accessed for the service, the referrals are passed to the vocational rehabilitation single point of access case managers' coalition (SPA) for review;

(e) the service provider makes a job match from the pool of names when a placement becomes available; and

(f) the local screening committee reviews the selection decision.

AUTH: Sec. 53-2-201 and 53-20-204 MCA

IMP: Sec. 53-20-203 and 53-20-209 MCA

RULE X. PLACEMENT DETERMINATIONS: SERVICE EXCHANGE

(1) Individuals who are recipients of developmental disability services may exchange service placements.

(2) Service exchanges may only occur as follows:

(a) both individuals want to make the change;

(b) both IHP teams reach consensus that the move is in the best interests of the individuals;

(c) the local screening committee reviews the list of service exchange referrals supplied by the services coordinator and makes sure all names on it are considered. If there are more than two people interested, the local screening committee makes the selection decision regarding the service exchange, considering the same factors used in standard screenings when there are openings; and

(d) there is an agreement in writing between the IHP teams and the providers involved, allowing the individuals to return to their previous placements if either of them requests a return within 30 calendar days. That time period may be lengthened if both IHP teams agree.

(2) Service exchanges can involve the same or different towns, and the same or different services.

AUTH: Sec. 53-2-201 and 53-20-204 MCA
IMP: Sec. 53-20-203 and 53-20-209 MCA

RULE XI PLACEMENT DETERMINATIONS: TRIAL PLACEMENT

(1) A placement may be made on a trial basis in the following situations:

(a) An individual's current opening may be held open for thirty days at the request of the individual or others while the individual tries the new placement before making a final decision to take the new placement, as long as:

(i) the current IHP team and the receiving provider agree, in writing, that a trial placement is needed; and

(ii) agreement is reached prior to the move.

(b) When there is uncertainty as to the ability of a service to meet an individual's needs, an individual's current service can be held open for a period of time, as long as:

(i) the individual's IHP team and the receiving service provider send a written request to the field services and planning bureau chief of the DD division including:

(a) documentation of consensus of the local (receiving) screening committee, the individual's IHP team, and the receiving service provider;

(b) behaviorally defined, measurable criteria for dismissal and for acceptance into the service, that have been established by consensus of the IHP team and the service provider; and

(c) the amount of time permitted for the trial placement has been approved. The trial will generally be up to thirty days, with requests for longer periods to be considered by the DD division administrator on a case by case basis.

AUTH: Sec. 53-2-201 and 53-20-204 MCA
IMP: Sec. 53-20-203 and 53-20-209 MCA

RULE XII PLACEMENT DETERMINATIONS: TEMPORARY SERVICE AUTHORIZATION

(1) Temporary service authorizations are approved when there are short-term, time-limited vacancies in vocational or residential services. Such vacancies arise from extended vacations, extended illness, or delays in start dates and screenings.

(2) Temporary service authorizations can be implemented for the following purposes:

(a) to allow an individual from the waiting list or an existing program setting to try out services in a different vocational or residential setting;

(b) to allow service agencies the opportunity to complete evaluations or assessment, in order to make objective decisions about individual placements; or

(c) to provide a temporary placement when an individual has no services or is in an inappropriate service.

(3) Requirements for a temporary service authorization are:

(a) an individual or other referring party must send a request for a temporary service authorization to the local screening committee;

(b) the local screening committee must review and approve the option for the individual requesting this authorization, and must approve timelines and any specific conditions for the temporary service authorization. This authorization will not affect screening decisions regarding permanent placements; and

(c) provider staff of the agency with the temporary vacancy must then make a written request to the DD division area manager that includes specific timelines and any other conditions or limitations in the service that the agency can provide on such a temporary basis. The request also should be sent to the individual.

(4) The area manager will review the request and make the final decision regarding the temporary service authorization. Within five working days of receipt of the request, the area manager will respond in writing to either approve or disapprove the request.

(5) If service needs change or needs arise that were not known when the service was first authorized and adversely affect the service delivery to the individual, the individual may be required to vacate the placement.

(6) Because temporary service opportunities occur when there is no permanent placement, there is no right to appeal the termination of this temporary arrangement, and no automatic priority for placement if a long-term opening should occur in the same setting.

AUTH: Sec. 53-2-201 and 53-20-204 MCA

IMP: Sec. 53-20-203 and 53-20-209 MCA

RULE XIII PLACEMENT DETERMINATIONS: APPEALS (1) If either a local screening committee or the central screening committee cannot reach consensus, any screening committee member may appeal to the developmental disabilities screening review board for a determination.

(2) An individual referred for placement or a person representing the interests of the individual who is dissatisfied with a screening decision may appeal to the developmental disabilities screening review board.

(3) An appeal must be sent in writing within ten working days of the screening committee meeting.

(4) The board will review appeal information and make a decision. The board will send notification of that decision to the parties involved in the appeal and to the DD division administrator.

(5) The board consists of three members appointed by the director of the department.

(a) Decisions are based on a majority determination.

(6) The individual whose placement is at issue in an appeal or a person representing the individual after a decision by developmental disabilities review board may appeal an adverse decision as provided for in ARM 46.2.201 et seq.

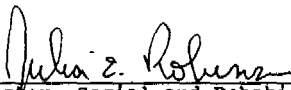
(7) Persons, other than the individual whose placement is at issue in an appeal, may not appeal an adverse decision as provided for in ARM 46.2.201 et seq.

AUTH: Sec. 53-2-201 and 53-20-204 MCA
IMP: Sec. 53-20-203 and 53-20-209 MCA

3. These proposed rules are necessary to standardize the screening procedures and criteria statewide relating to the placement into state funded services of persons with developmental disabilities, and to assure equal treatment to every applicant for services. In addition, the rules will provide procedures and criteria for placement exchanges and temporary placements that will allow for use of these measures only in appropriate circumstances. The rules further provide for a centralized appeal process with impartial decision makers that will be readily accessible and timely.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604-4210, no later than September 12, 1991.

5. The Office of Legal Affairs, Department of Social and Rehabilitation Services has been designated to preside over and conduct the hearing.



Director, Social and Rehabilitation
Services

Certified to the Secretary of State August 5, 1991.

BEFORE THE BOARD OF OPTOMETRISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF
rules pertaining to examina-) ARM 8.36.403 APPLICATION
tions) FOR EXAMINATION AND 8.36.
) 404 EXAMINATIONS

TO: All Interested Persons:

1. On June 13, 1991, the Montana Board of Optometrists of the Department of Commerce published a notice of proposed amendment of the above-stated rules at page 882 of the 1991 Montana Administrative Register, issue number 11.
2. The Board has amended the rules exactly as proposed.
3. No public comments or testimony were received.

BOARD OF OPTOMETRISTS
LARRY BONDERUD, PRESIDENT

BY: 

ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 5, 1991.

BEFORE THE WEIGHTS AND MEASURES BUREAU
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF AMENDMENT OF ARM
of rules pertaining to scale pit	)	8.77.101, 8.77.102 AND
clearance, fees, and voluntary	)	8.77.104 AND ADOPTION OF
registration of servicemen and	)	ARM 8.77.105, 8.77.106,
service agencies and the	)	8.77.203 AND 8.77.303
adoption of rules pertaining to	)	PERTAINING TO REGULATION
weighing device license trans-	)	OF WEIGHTS AND MEASURES
fer, random inspection of)	
packages, liquified petroleum)	
gas and accessibility to stock)	
scales)	

TO: All Interested Persons:

1. On June 13, 1991, the Weights and Measures Bureau published a notice of proposed amendment and adoption of rules pertaining to the regulation of weights and measures, at page 886, 1991 Montana Administrative Register, issue number 11.

2. The new rules will be numbered I (8.77.105), II (8.77.106), III (8.77.203), IV (8.77.303).

2. The Bureau has amended and adopted the rules exactly as proposed.

3. No comments or testimony were received.

WEIGHTS AND MEASURES BUREAU

By: 

ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 5, 1991.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF AMENDMENT OF
of Class 3 Administrative)	ARM 10.57.403, CLASS 3
Certificate)	ADMINISTRATIVE
	CERTIFICATE

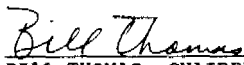
To: All Interested Persons

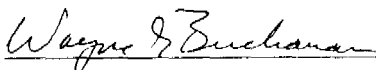
1. On April 25, 1991, the Board of Public Education published a notice of proposed amendment concerning ARM 10.57.403, Class 3 Administrative Certificate on page 491-492 of the 1991 Montana Administrative Register, Issue number 8.

2. The Board has amended the rule as proposed.

3. One comment was received from Eddy McClure, Legislative Council, and that change has been incorporated in this adoption notice.

4. The reason for the change in the rule was amended as follows: The current rule requires an applicant for a Class 3 Administrative Certificate to be eligible for a Class 1 or Class 2 teaching certificate. Montana has a number of K-12 endorsement areas that are either secondary or elementary endorsements in other states. When those individuals apply for certification in Montana they must qualify for the K-12 endorsement to be eligible for the Class 1 or Class 2 teaching certificate. Because their prior endorsement was secondary or elementary, they are required to take additional course work to meet existing program requirements for a K-12 endorsement even though they won't be teaching in that area. This rule change would allow individuals to qualify for the superintendent and secondary principal endorsement on the Class 3 certificate without having to meet the K-12 requirements if they had been eligible for a secondary teaching certificate in Montana or in another state.


BILL THOMAS, CHAIRPERSON
BOARD OF PUBLIC EDUCATION

BY: 

Certified to the Secretary of State August 5, 1991.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF AMENDMENT OF
of Request to Suspend or Revoke)	ARM 10.57.601, REQUEST
a Teacher or Specialist)	TO SUSPEND OR REVOKE A
Certificate: Preliminary)	TEACHER OR SPECIALIST
Action, and of Notice and)	CERTIFICATE:
Opportunity for Hearing Upon)	PRELIMINARY ACTION, AND
Determination that Substantial)	OF ARM 10.57.602,
Reason Exists to Suspend or)	NOTICE AND OPPORTUNITY
Revoke Teacher or Specialist)	FOR HEARING UPON
Certificate)	DETERMINATION THAT
)	SUBSTANTIAL REASON
	EXISTS TO SUSPEND OR
	REVOKE TEACHER OR
	SPECIALIST CERTIFICATE

To: All Interested Persons

1. On February 28, 1991, the Board of Public Education published notice of proposed amendments concerning ARM 10.57.601, and ARM 10.57.602, Request to Suspend or Revoke a Teacher or Specialist Certificate: Preliminary Action and Notice and Opportunity for Hearing Upon Determination that Substantial Reason Exists to Suspend or Revoke Teacher or Specialist Certificate on pages 219-220 of the 1991 Montana Administrative Register, Issue number 4.

2. The Board has amended the rules as proposed.

3. No comments were received.

Bill Thomas

BILL THOMAS, CHAIRPERSON
BOARD OF PUBLIC EDUCATION

BY:

Wayne S. Buchanan

Certified to the Secretary of State August 5, 1991.

TO: All Interested Persons

2. The department has amended the rule as proposed.

COMMENT: The department should not implement rigid time requirements for disbursing annual clothing allowances. Children may arrive in foster care without winter clothes. Children already in care may lose or destroy their clothes. A pressing need for an allowance may therefore occur outside the time periods set for payment.

RESPONSE: The department agrees that payment in increments as authorized under the amendment should not be so rigidly adhered to that exceptions cannot be made. Policy has been drafted allowing for documented exceptions to the incremental payment system authorized by the amendment.

COMMENT: If the authority for incremental payments is implemented so that no additional amounts are available in case of loss or destruction of clothes, some children will do without clothes even though they have not received the allowable maximum for the year.

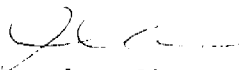
RESPONSE: The department agrees and the exception referred to above will also allow for payment amounts in excess of the incremental amounts, in cases of documented need.

COMMENT: Incremental payments authorized by the rule should occur twice rather than three times each year to reduce the administrative demands involved in processing the allowances.

RESPONSE: The department agrees and plans to implement policy allowing for payment twice yearly.

-1490-

DEPARTMENT OF FAMILY SERVICES



Tom Olsen, Director

Certified to the Secretary of State, August 5, 1991.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the Matter of the)	NOTICE OF ADOPTION OF
adoption of an emergency)	EMERGENCY RULE TO AMEND ARM
rule to list freshwater)	12.5.301 TO ADD MUSSELS TO
mussels as nongame species)	THE LIST OF NONGAME SPECIES
in need of management)	IN NEED OF MANAGEMENT

To: All Interested Persons

1. Montana does not have regulations governing the taking of freshwater mussels. Due to an increased demand for freshwater mussel shells there is an imminent danger of unregulated taking of mussels in Montana. The Montana Department of Fish, Wildlife and Parks has determined that an unregulated harvest poses an imminent potential to affect the viability of freshwater populations in Montana.

Therefore, the Department of Fish, Wildlife and Parks has adopted the following emergency amendment of a rule which as adopted will be mailed to appropriate locations including the delivery to a state wire service and any other news media the agency deems appropriate. The department intends to initiate rulemaking procedures to make the following amendment permanent.

2. ARM 12.5.301 is amended to read as follows:

12.5.301 NONGAME WILDLIFE IN NEED OF MANAGEMENT (1) The following nongame wildlife species are determined by the department to be nongame wildlife in need of management within the meaning of the Nongame and Endangered Species Conservation Act, 87-5-101, MCA et seq. Management regulations for these species will be issued annually by the department.

(a) remains the same

(b) Freshwater mussels - all species of Pelecypoda

AUTH: 87-5-105 MCA IMP: 87-5-105 MCA

3. The rationale for the proposed rules is set forth in the statement of reasons for emergency.

4. Interested persons who are affected may comment in writing to Howard Johnson, Fisheries Division, Montana Department of Fish, Wildlife and Parks, 1420 East Sixth Ave., Helena, Montana 59620.


K.L. Cool, Director

Certified to the Secretary of State August 2, 1991.

BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF
rules 16.20.202 - 205, 16.20.207,)	AMENDMENT OF RULES,
16.20.210-214, 16.20.216 - 217,)	ADOPTION OF
16.20.220, 16.20.224 - 225,)	NEW RULES I-V, AND THE
16.20.242, 16.20.250 - 252,)	REPEAL OF 16.20.227
the repeal of 16.20.227-228, & the)	AND 16.20.228
proposed adoption of new Rules I-V)	
relating to public water supplies)	(Water Quality Bureau)

To: All Interested Persons

1. On May 16, 1991, the board published notice at page 596 of the Montana Administrative Register, Issue No. 9, to consider the amendment of the above-captioned rules, adoption of new rules and repeal of 16.20.227 and 16.20.228. The proposed amendments would establish detailed public water supply requirements for turbidity, volatile organic chemicals, and coliform. The rules also describe a public notification process to be used by public water suppliers if a system fails to comply with these requirements.

2. After consideration of the comments received on the proposed rules, the board has amended the rules as proposed with the following changes:

16.20.202 DEFINITIONS In this subchapter, the following terms have the meanings or interpretations indicated below and must be used in conjunction with and supplemental to those definitions contained in section 75-6-102, MCA.

(1)-(12) Remain the same.

(13) "Disinfectant contact time" ("T" in CT calculations) means the time in minutes that it takes for water to move from the point of disinfectant application or the previous point of disinfectant residual measurement to a point before or at the point where residual disinfectant concentration ("C") is measured.

(a) Remains the same.

(b) Disinfectant contact time in pipelines ~~is~~ must be calculated as "plug flow" by dividing the internal volume of the pipe by the maximum hourly flow rate through that pipe.

(c) Disinfectant contact time within mixing basins and storage reservoirs ~~is~~ must be determined by tracer studies or an equivalent demonstration.

(14) Remains the same.

(15) "Domestic or other non-distribution system plumbing problem" means a ~~microbiological~~ bacteriological contamination problem in a public water supply system with more than one service connection that is limited to the specific service connection from which the contaminated sample was taken.

(16)-(21) Remain the same.

(22) "Groundwater under the direct influence of surface water" means any water beneath the surface of the ground that

the department determines to have:

- (a) significant occurrences of insects or other ~~micro-organisms~~ ~~macroorganisms~~, algae, or large-diameter pathogens such as Giardia lamblia; or
- (b) Remains the same.
- (23)-(49) Remain the same.

16.20.205 MAXIMUM TURBIDITY CONTAMINANT LEVELS

- (1) Remains the same.
- (2) This subsection applies to public water supply systems using surface water or groundwater under the direct influence of surface water after the dates provided in subsection (1) of this rule.
- (a) For public water supply systems using conventional filtration treatment or direct filtration:
 - (i) Remains the same.
 - (ii) The turbidity level of representative samples of a system's effluent from individual filters, measured at a point prior to mixing with effluent from other filters or other sources, must be less than or equal to 0.5 NTU in at least 95 percent of the measurements taken each month, and at no time exceed 5.0 NTU.
- (b)-(e) Remains the same.
- (3) Remains the same.

16.20.207 MAXIMUM MICROBIOLOGICAL CONTAMINANT LEVELS

- (1) A public water supply system may not exceed the following maximum microbiological contaminant levels:
 - (a) For monthly and annual MCL's for microbiological contaminants:
 - (i) a system which collects at least 40 samples per month may have no more than 5.0 percent of the samples collected during a month analyzed as total coliform-positive;
 - (ii) Remains the same.
 - (iii) a system may have no more than 10.0 percent of the samples collected within any consecutive 12-month period analyzed as total coliform-positive;
 - (iv) a system may have no more than 20.0 percent of the samples collected within any 12 month period either analyzed as total coliform-positive or invalidated by the laboratory because of heavy bacterial growth, confluent growth, TNTC non-coliform, or heterotrophic plate counts greater than 500 colony forming units per milliliter (cfu/ml).
 - (b) In addition to the requirements of subsection (1)(a), a fecal coliform-positive repeat sample or E. coli-positive repeat sample, or any total coliform-positive repeat sample following a fecal coliform-positive or E. coli-positive routine sample is prohibited. (For purposes of the public notification requirements in Department Circular ~~90-20~~ PWS-2, (June 1991 edition), this is a violation that may pose an acute risk to health.)
 - (2)-(3) Remains the same.
 - ~~(4) The following are the best technology, treatment techniques, or other means available for achieving compliance~~

~~with the maximum contaminant level for microbiological contaminants in subsection (1) of this section;~~

~~(a) placement and construction of wells in a manner that protects the public water supply system from contamination by coliforms;~~

~~(b) maintenance of a disinfectant residual throughout the distribution system;~~

~~(c) proper maintenance of the distribution system including appropriate pipe replacement and repair procedures, main flushing programs, proper operation and maintenance of storage tanks and reservoirs, and continual maintenance of positive water pressure in all parts of the distribution system;~~

~~(d) disinfection or filtration and disinfection of surface water, or disinfection of groundwater using strong oxidants such as chlorine, chlorine dioxide, or ozone; and~~

~~(e) for systems using groundwater, the development and implementation of a department-approved Wellhead Protection Program under section 1428 of the federal Safe Drinking Water Act, as amended.~~

16.20.210 BACTERIOLOGICAL QUALITY SAMPLES (1)-(4)

Remain the same.

(5) If a routine sample is total coliform-positive:

(a) the supplier of the public water supply system must begin submitting a set of repeat samples within 24 hours after notification of the positive result. A supplier that collects more than one routine sample per month must collect no fewer than three repeat samples for each total coliform-positive sample. A supplier who normally collects one routine sample per month or less must collect no fewer than four repeat samples for each total coliform-positive sample found. The department may extend the 24-hour limit for a specified time period if the supplier has a logistical problem in collecting the repeat samples that is beyond his control. After a system supplier collects a routine sample and before the supplier learns the results of the analysis of that sample, if the supplier collects another routine sample or samples from within five service connections of the initial sample and the sample or samples after analysis is found to contain coliforms, then the system supplier may count the subsequent sample or samples as a repeat sample instead of as a routine sample.

(b) Remains the same.

~~(c)(i) A supplier of a public water supply system with more than one service connection must collect all repeat samples on the same day.~~

~~(ii) A supplier of a public water supply system with a single service connection must collect the required set of repeat samples on each of four consecutive days, or on each of three consecutive days if the system collects more than one routine sample per month, unless the department extends the time period as provided in subsection (5)(a) of this rule. The system supplier must collect all repeat samples on the same day, except that the department may allow a system with a single service connection to collect the required set of repeat~~

samples over a four-day period.

(d) Remains the same.
(e) If a supplier who collects fewer than five routine samples per month has one or more total coliform-positive samples and the department does not invalidate the sample or samples under subsection (6) of this rule, he must collect at least five routine samples during the next month the system provides water to the public. At least one of these routine samples must be collected from the site where the previous month's contaminated sample was taken unless that site was invalidated according to ARM 16.20.210(6)(a)(ii).

(f) Remains the same.
(6) A total coliform-positive sample that is invalidated according to this subsection may not be used to meet the minimum monitoring requirements of this subsection.

(a) Remains the same.
(b) The department may not invalidate a sample based on repeat samples if the repeat samples are all total coliform-negative or if improper sample collection procedures were used suspected.

(c) A laboratory must invalidate a sample unless total coliforms are detected, if the sample:

(i)-(iii) Remains the same.
~~(iv)~~ (d) if the interference described in subsection (c) occurs, the supplier must collect another sample from the same location as the original sample within 24 hours after notification by the laboratory and have it analyzed for the presence of ~~microbiological contaminants~~ total coliforms and HPC. The system supplier must continue to re-sample every within 24 hours of notification and have the samples analyzed until the system shows a valid result. The department may waive the 24-hour time limit on a case-by-case basis.

(7) Remains the same.

16.20.211 CHEMICAL AND RADIOLOGICAL QUALITY SAMPLES

(1) Remains the same.
(2)(a)-(b) Remains the same.
(c) A community water system which either uses unfiltered surface water or unfiltered groundwater under the direct influence of surface water or serves a population of 10,000 or more individuals must monitor for total trihalomethanes if the system adds a disinfectant to the water supply.

(i) The analysis for total trihalomethanes must be performed at quarterly intervals on at least 4 samples for each treatment plant used by the system. At least 25% of the samples must be taken at locations reflecting the maximum residence time of the water in the distribution system. The remaining samples must be taken at representative locations taking into account the number of persons served, the different sources of water and the treatment methods employed. ~~The results of all analyses must be arithmetically averaged to determine compliance with the maximum contaminant level with the exception of those results which are invalidated for technical reasons by the department.~~

(ii) The monitoring frequency may be reduced by the department to a minimum of one sample per quarter taken at a point in the distribution system reflecting the maximum residence time of the water in the system. This reduction in monitoring may be granted only if the data from at least one year of monitoring demonstrates that total trihalomethane concentrations will be consistently below 50% of the maximum contaminant level.

(3)-(7) Remains the same.

16.20.213 VERIFICATION SAMPLES (1) When the results of ~~an inorganic chemical analysis for the contaminants listed in ARM 16.20.203 and 26.20.204(1)(a) through (1)(f) or for total trihalomethanes~~ indicates that the level of any constituent, except nitrate, exceeds the maximum contaminant level, verification samples are required. Verification samples must be taken at the site where the sample that exceeded the MCL was taken. Except for nitrate and nitrite, at least 3 verification samples must be collected within one month of the time the supplier of water receives notification that the first sample exceeded the maximum contaminant level. The arithmetic mean of the 4 samples determines if the maximum contaminant level is exceeded.

(2)-(3) Remains the same.

16.20.217 CONTROL TESTS -- SURFACE SUPPLIES (1) A supplier of water utilizing a water treatment plant for surface water or groundwater under the direct influence of surface water where the plant employs in its operation coagulation, settling, softening, or filtration, shall perform at least daily, unless otherwise specified, the following chemical control tests on the filtered water, list them on a report form approved by the department, and submit the completed form monthly to the department:

(a) Chlorine residual.

(i) Beginning June 29, 1993, or when filtration is installed, whichever is later, the supplier of water must continuously monitor and record the residual disinfectant concentration of the water entering the distribution system. The lowest value must be recorded each day. If there is a failure in the continuous monitoring equipment, grab sampling every four hours may be conducted in lieu of continuous monitoring, but for no more than 5 working days following the failure of the equipment.

(A) Non-transient non-community public water system suppliers may take grab samples at the point of disinfectant application and at the point where the water enters the distribution system in lieu of providing continuous monitoring. This sampling method may be undertaken only as approved by the department and at intervals no less frequent than the system's post-disinfection contact time provided prior to treated water reaching the first customer and no less than once per day.

(B) Transient non-community public water system supplies may take grab samples at the point of application and at the

point where water enters the distribution system as approved by the department but no less than once per day.

- (ii) Remains the same.
- (b)-(f) Remains the same.
- (2) Remains the same.

RULE I (16.20.208) TREATMENT TECHNIQUES--FILTRATION AND DISINFECTION (1)-(3) Remains the same.

- (4)(a)-(d) Remains the same.
- (e) Each public water supply system that provides filtration treatment must provide disinfection treatment as follows:
 - (i)-(ii) Remains the same.
 - (iii) The residual disinfectant concentration in the distribution system, measured as total chlorine, combined chlorine, or chlorine dioxide cannot be less than 0.2 mg/l using the DPD method or 0.1 mg/l using the amperometric titration method in more than 5.0 percent of the samples each month for any two consecutive months that the system serves water to the public. Water in the distribution system with a heterotrophic bacteria concentration less than or equal to 500^{mpn} per milliliter, measured as heterotrophic plate count (HPC), is an acceptable disinfectant residual for purposes of determining compliance with this requirement. The equation in ARM 16.20.225(3)(xv) must be used to calculate compliance with this requirement.
 - (iv) Remains the same.

RULE II (16.20.222) SANITARY SURVEYS (1) Public water supply systems must undergo an initial sanitary survey by June 29, 1994 for community systems and non-transient non-community systems, and by June 29, 1999, for transient non-community water systems. Thereafter, systems must undergo another sanitary survey at least once every three five years, and all other public water supply systems must undergo another sanitary survey at least once every three years. The department must review the results of each sanitary survey to determine whether the existing monitoring frequency is adequate and what additional measures, if any, the system needs to undertake to improve drinking water quality.

- (a) Remains the same.

RULE III (16.20.229) PUBLIC NOTIFICATION FOR COMMUNITY AND NON-COMMUNITY SUPPLIES Remains the same.

RULE IV (16.20.234) VARIANCE AND EXEMPTIONS FROM MAXIMUM CONTAMINANT LEVELS (MCL'S) FOR VOLATILE ORGANIC CHEMICALS (VOC'S) Remains the same.

RULE V (16.20.261) ADOPTION AND INCORPORATION BY REFERENCE Remains the same.

3. The department has thoroughly considered the comments received on the proposed rules. The following is a summary of

the comments received from the public and EPA, and the department's responses:

COMMENT - GENERAL

Flathead County Water and Sewer District #1 - Evergreen requested that the department not adopt regulations more stringent than the federal requirements required to retain primacy. Montana Rural Water Systems Inc. and Seeley Lake Water District made similar comments in regard to the requirements for unfiltered surface water supplies.

RESPONSE:

Federal regulations are promulgated to encompass all water systems of all sizes across the country. They are considered to be the minimum requirements acceptable. It is inevitable that some regulations pertinent to other areas will not meet Montana's needs. The proposed rules are more stringent in areas considered essential to protect the public health given Montana's unique water supply circumstances. Montana is not as stringent as many other states in some areas, particularly for unfiltered surface water supplies.

COMMENT -- 16.20.205 Maximum Turbidity Contaminant Levels

The City of Billings questioned the department's justification for requiring turbidity monitoring and compliance from individual filters and whether a single measurement that exceeds 1.0 nephelometric turbidity unit (NTU) from an individual filter constitutes a maximum contaminant level violation.

RESPONSE:

Through the Comprehensive Performance Evaluation program at Montana filtration plants, the department has conclusive evidence to show drinking water quality can be detrimentally effected by poor performance of a single filter. Further, studies of waterborne disease outbreaks at filtration plants in the United States have shown water from a poorly performing individual filter can be masked by dilution with higher quality water from other filters, yet still cause contamination that results in waterborne disease. The department feels its own studies and the national disease outbreaks justify the need for compliance monitoring and regulation of filter effluent. The rule has been amended to specify that a turbidity of 5.0 NTU from an individual filter is a violation.

COMMENT - 16.20.210 Bacteriological Quality Samples

A school district trustee requested that the Board not adopt the requirement for monthly sampling of all public water supplies.

RESPONSE:

Over 70% of the water systems in Montana are served by shallow wells which do not have disinfection for treatment. Many of these wells do not have records of construction and are in sub-standard condition. Analysis of the water for bacterio-

logical contamination is the only method of determining the biological safety of these sources. A minimum of one sample each month is a more representative assessment of water safety than the previous requirement of one sample every three months. Costs for bacteriological analysis are about \$12.00 each. This is not considered to be a financial hardship given the value of the monitoring results.

COMMENT:

Montana Rural Water Systems Inc. commented at an informational meeting that federal language should be adopted to allow waiver of the requirement for additional routine samples during a month following one in which a routine sample was unsatisfactory. The comment further requested addition of language requiring the department to provide a site visit to any public water system which has had repeated unsatisfactory coliform sample results. The City of Billings requested the department be able to invalidate a sample for improper sampling/collection procedures.

RESPONSE:

Resource limitations faced by the department would not allow all systems across the state to receive the benefit of the site visits necessary to revoke additional sampling requirements. The department also feels the additional samples are necessary to confirm that a water system deficiency has been corrected. Site visits are currently provided to systems having water quality problems that are an acute risk to public health. Sample site selection and proper collection procedures are being addressed through operator training, sanitary surveys, and detailed verbal descriptions of proper collection procedures each time a contaminated sample is reported. The rule allows for invalidation of a sample result if the department determines the contamination was caused by a domestic or non-distribution system plumbing problem. The proposed rule was modified to clarify that a sample cannot be invalidated if sample error is suspected, but not proven.

COMMENT:

EPA and Montana Rural Water Systems requested that language be added to allow a public water system supplier to collect repeat samples on the same day or on consecutive days, and to allow repeat samples to be counted as routine samples.

RESPONSE:

This discretion would accommodate rural system logistical difficulties in getting a sample to a laboratory within a prescribed time period. It will also reduce the number of samples required when a system is already investigating a contamination event. Although the options were intended to be exercised as policy, amendments are made to accommodate these comments.

COMMENT:

Seeley Lake Water District requested the federal language specifying turbidity compliance and additional coliform sampling requirements using whole numbers be retained instead of the proposed use of turbidity measurements to the nearest one-tenth of a unit.

RESPONSE:

Turbidimeters consistently read to the nearest hundredth of a turbidity unit and conventional filtration plant turbidity compliance is established by EPA at 0.5 NTU. Therefore, reporting and compliance determinations based on tenths of a unit are reasonable in terms of analytical accuracy. Compliance determinations are easier for operators to understand and compute at the proposed level.

COMMENT - 16.20.212 Sampling and Reporting Responsibility:

The City of Billings requested an extension of the 10-day time limit for reporting results.

RESPONSE:

Public water supply systems are generally in compliance with the 10-day time limits for chlorine and turbidity reporting. Laboratories performing analyses for public water supplies are required to report by the end of the week in which they perform the analysis. The 10-day requirement is necessary for timely response to violations. Therefore, the time-frame is reasonable.

COMMENT - 16.20.216 Control Tests - General:

The City of Billings requested deletion of the requirement that quarterly turbidimeter calibration checks be reported to the department. The comment further questioned the need for certified operators to perform control tests.

RESPONSE:

The department has found annual turbidimeter checks to be inadequate to assure credibility of turbidity compliance data. Quarterly checks are recommended by EPA and turbidimeter manufacturers. Only one Montana utility employs personnel to perform control testing who are certified to perform chemical analyses by the department's Chemistry Lab Bureau but are not certified operators. Requiring certified personnel is necessary to address the widespread practice of having individuals without a water supply background perform critical control testing for the utility. The utility can request a variance to this rule to document qualifications of other personnel to perform these duties.

COMMENT - 16.20.217 Control Tests - Surface Supplies:

Glacier National Park personnel requested at an informational meeting that certain water supplies with extended disinfection contact time be allowed to sample for chlorine residual manually and not continuously, as proposed.

RESPONSE:

The proposed rule has been amended to allow non-community water systems to monitor the disinfectant residual manually as approved by the department on a case by case basis. Community system water use was considered to be less predictable and controllable than non-community water system use and therefore the continuous monitoring requirement was not amended.

COMMENT - RULE I Chlorine Residual Monitoring:

The City of Billings requested a lower level chlorine residual be allowed in the distribution system of supplies served by surface water.

RESPONSE:

The DPD colorwheel method of chlorine residual determination is used most often by public water supply operators. The minimum chlorine concentration that can be reliably determined with this method is 0.2 ppm. However, the amperometric method, used by the City of Billings, is accurate to 0.1 ppm. The proposed rules were modified to allow 0.1 ppm as a minimum if the more sensitive method is used.

COMMENT - RULE V Adoption and Incorporation by Reference:

The City of Philipsburg requested that language be added to Circular PWS-3 to allow turbidity values to exceed the maximum if it could be determined the exceedance was not reflective of the quality of the water source.

RESPONSE:

The department feels instrumentation problems or turbidity spikes caused by sample location should be invalidated and not used for compliance determinations. The board amended the proposal to allow invalidation by the department if the utility can show the exceedance did not represent true water quality or interfere with disinfection.

COMMENT:

Seeley Lake Water District and Montana Rural Water Systems Inc. requested that the department relax the proposed requirements for watersheds supplying an unfiltered surface water system.

RESPONSE:

The requirements in Circular PWS-3 provide substantial protection of source water quality. Unfiltered surface water systems have only the raw water quality and a disinfection system to protect consumers from waterborne disease. The department feels utility ownership of its watershed or authority to regulate activities in the watershed are critical to minimizing the occurrence of detrimental activities. The department also feels certain activities should be prohibited in the watershed as minimum requirements. These requirements are considered preventive and protective measures necessary to

protect public health.

COMMENT:

The proposal required transient non-community water systems to comply with THM regulations.

RESPONSE:

The board modified Circular PWS-3 to require only community and non-transient non-community water systems to comply with this regulation because THM's present a long-term health effect and not an acute problem. The board also clarified sampling and compliance requirements.

COMMENT:

Seeley Lake Water District questioned why the department does not consider compelling factors such as economic impact in setting the requirements for treatment and compliance with public water supply rules.

RESPONSE:

The existing process for requesting and granting an exemption (16.20.252) was developed to consider economic hardship. The purpose of an exemption is to establish a reasonable timeframe for compliance given economic burden on the utility.

COMMENT:

Montana Rural Water Systems requested the deletion of language in Department Circular PWS-3 that specifies that runoff and turnover events in a reservoir are not considered unusual or unpredictable in determining raw water turbidity compliance. Montana Rural Water Systems further requested that language be deleted which specifies that turbidity may be required to be monitored more frequently than every four hours.

RESPONSE:

The runoff/turnover language was intended to clarify that typical seasonal turbidity increases would be used to determine compliance with the turbidity criteria. The statement was deleted as requested since it further confused the turbidity compliance issue. The language dealing with frequency of turbidity monitoring was not amended because it is federal language and the department needs to retain the authority for continuous turbidity monitoring when systems are unable to reliably monitor turbidity every four hours.

COMMENT:

Montana Rural Water Systems Inc. requested language be added to Department Circular PWS-3 to specify that watershed control program inspections are limited to the criteria set by the department for each system that is allowed to filter.

RESPONSE:

The annual on-site inspection is performed to assess the
Montana Administrative Register 15-8/15/91

watershed control program and disinfection treatment process. Inspectors must look for activities or equipment deficiencies which may have an adverse impact on the safety of the treated water, whether or not they are included in the initial version of the watershed control program. Public water supply system suppliers are also required to continuously reevaluate their program for needed improvements. A water system opting to avoid filtration must be aware that the regulatory environment changes in response to new knowledge gained through research and response to disease outbreaks. Therefore, there is no assurance the criteria will not change, particularly if public health protection is compromised.


DENNIS IVERSON, Director

Certified to the Secretary of State August 5, 1991.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the Matter of the	)	NOTICE OF ADOPTION OF
Adoption of Temporary	)	TEMPORARY RULES ON
Rules on Gambling	)	GAMBLING

TO: All Interested Persons:

1. On June 27, 1991, the Department of Justice published notice of the proposed amendment and adoption of temporary rules pertaining to sports pools, sports tab games, and a license application processing fee at page 972 of the 1991 Montana Administrative Register, Issue No. 12.

2. A public hearing was not held on the proposed temporary rules, and no written comments were received. However, the Department met informally with several interested persons while developing the rules.

3. The Department adopts rules IV, VII, VIII, and X and the amendments to ARM 23.16.101 as proposed.

4. The Department adopts the remaining temporary rules with the following changes:

23.16.1701 DEFINITIONS As used throughout this subchapter, the following definitions apply: (1) and (2) remain as proposed.

(3) "Competitor" means:

(a) a team in a sports event in which teams compete; or

(b) an individual in a sports event in which individuals compete.

(3)(4) "Master square" means that portion of the sports pool card used in a traditional, series, or multiple way, or progressive sports pool that is divided into spaces representing chances purchased by the participants and containing the name or initials of the participant in the sports pool.

(4)(5) "Series of sports events" means two or more sports events involving the same sport that determines a champion among a group of competitors, such as a tournament or a playoff or championship series are conducted at the same level (e.g., collegiate, professional).

(5)(6) "Space" means one of the smaller squares into which the master square is divided, which represents a chance in a traditional, series, or multiple way, or progressive sports pool, and which contains the name or initials of the participant in a sports pool who has purchased that space.

(6) is renumbered (7).

(7)(8) "Sports event" means a an athletic game, race, or athletic contest wherein the contestants involving two or more competitors who are natural persons or animals, and upon which a sports pool is based in which the winner is determined by a score or placement.

(8) through (12) are renumbered (9) through (13).

AUTH: Sec. 23-5-115, MCA.

IMP: Sec. 23-5-503, MCA.

RULE I DESIGN AND CONDUCT OF SPORTS TAB GAME (1) through (2) remain as proposed.

(3) Before the sale of any sports tabs in a sports tab game, the sponsor shall describe the game by prominently displaying the following information on the sports tab card or on a board to which the card is attached:

(a) through (g) remain as proposed.

(h) dollar amount or type and value of merchandise to be awarded to each winner; and

(i) intervals during the sports event for which prizes are to be awarded, if any; and

(j) name of the competitors and the date of the sports event that will be substituted for the original sports event if it is cancelled.

(4) remains as proposed.

AUTH: Sec. 23-5-115, MCA.

IMP: Sec. 23-5-502, MCA.

RULE II PURCHASE AND SALE OF SPORTS TABS BY SPONSOR

(1) A sponsor may purchase a sports tab card only from a person licensed under 23-5-152, MCA, as a manufacturer of gambling devices that are illegal in Montana or the manufacturer's authorized agent. The sports tab card must contain a sports tab decal as provided for in [rule ~~VI~~ V].

(2) and (3) remain as proposed.

AUTH: Sec. 23-5-115, MCA.

IMP: Sec. 23-5-502, MCA.

RULE III PRIZES (1) and (2) remain as proposed.

(3) Except as provided in subsection ~~++(6)~~, a sponsor shall pay to the winners of a sports tab game at least 90% of the cost of the sports tabs. The sponsor may retain up to 10% of the cost of the sports tabs.

(4) through (7) remain as proposed.

AUTH: Sec. 23-5-115, MCA.

IMP: Sec. 23-5-503, MCA.

RULE V SALE OF SPORTS TAB CARDS BY MANUFACTURER -- COLLECTION OF TAX (1) remains as proposed.

(2) Before a sports tab card may be sold to a sponsor, the manufacturer shall:

(a) remains as proposed.

(b) affix a sports tab decal provided by the department in a conspicuous location on the ~~bottom portion of~~ the front of the card. Once affixed, the decal may not be tampered with by any person; and

(c) remains as proposed.

(3) and (4) remain as proposed.

AUTH: Sec. 23-5-115, MCA.

IMP: Sec. 23-5-502, MCA.

RULE VI REMITTAL OF TAX TO DEPARTMENT (1) Within 15 days following the end of each fiscal year quarter, the manufacturer shall submit to the department a report on a form provided by the department and the tax proceeds collected by the manufacturer and his authorized agent under [rule ~~VI~~ V].

(2) remains as proposed.

AUTH: Sec. 23-5-115, MCA.

IMP: Sec. 23-5-502, MCA.

RULE IX AUTHORIZED SPORTS POOLS (1) and (2) remain as proposed.

(3) The following sports pools are authorized under 23-5-501 through 23-5-503, MCA:

(a) remains as proposed.

(b) A "tournament series sports pool" conducted on a master square ~~as in a traditional sports pool but is not limited to a single in conjunction with a series of~~ sports events. The pair of numbers assigned to each space on the master square remains the same for each sports event in the series. This pool generally involves a tournament and is conducted in the same manner as a traditional sports pool except that The competitors for in each sports event in the series may be changed before the start of that event. All chances must be sold before the tournament begins may be individual teams or a combination of teams (e.g., a group of teams designated as home teams versus a group of teams designated as away teams). Spaces must be sold for all events in the series of sports events and may not be sold for individual events. Winners for each sports event in the series are determined:

(i) in the same manner as in a traditional sports pool; or

(ii) in the same manner as in a traditional sports pool for the first sports event in the series. For the second and subsequent events, winners are determined by combining the scores generated by each competitor in the previous events.

(c) A "multiple way sports pool" conducted on a master square ~~as in a traditional sports pool but has with~~ multiple sets of numbers randomly assigned to the horizontal and the vertical axis representing certain intervals of a single sports event or individual sports events in a series of events. Winners are determined in the same manner as in a traditional sports pool.

~~(d) A "progressive series sports pool" conducted on a master square as in a traditional sports pool but involves a series of events (e.g., National Basketball Association playoffs or finals, baseball pennant playoffs, World Series). For the second and subsequent events in a series of events the winners are determined by combining the scores generated by each competitor in the previous events.~~

~~(e)(d)~~ A "selected point sports pool" in which the winner is the participant whose assigned competitor is the first to attain a final score that matches a predetermined number (e.g. 28, 39). If in a given week none of the competitor's score match the predetermined number, the prize is carried over to the next and subsequent weeks until a match occurs. However, the pool must be designed to ensure that a prize does not exceed the value of \$500. The number of participants in a selected point sports pool is limited to the number of competitors in an established league. Teams or competitors Competitors are randomly assigned to the participants and may be assigned for a single week or the duration of the pool.

(f) is renumbered (e).

~~(g)(f)~~ A "weekly sweepstakes sports pool" in which a different competitor or competitors are randomly assigned to

participants for each week. The winner is determined based on by the total ~~most or least~~ points scored by the competitor or competitors' ~~competitors assigned to a participant or by the most games won by the competitors assigned to a participant.~~ Generally the winner is the participant whose competitor's or competitors' scores represent the highest or lowest total. The number of participants is limited to the number of competitors in a league or to the maximum combination of competitors in a league.

(g) A "multiple competitor sports pool" in which three or more competitors simultaneously compete in a sports event or series of sports events as individuals, not as a team, such as in a car race or golf tournament. Competitors are randomly assigned to participants, and a pool winner is determined by the score or place that the competitor attains in the sports event or series of sports events.

AUTH: Sec. 44, ch. 647, L. 119 1991. IMP: Sec. 44, ch. 647, L. 1991.

23.16.1702 SPORTS POOL CARD (1) A traditional, series, or multiple way, ~~or progressive~~ sports pool must be conducted on a sports pool card containing a master square.

(1) (a) through (2) remain as proposed.

(3) The sports pool card shall, in advance of any sale of any chance, clearly indicate:

(3) (a) through (j) remain as proposed.

(k) the amount or value of each individual prize and the total value of all prizes;

(l) name of the competitors and the date of a sports event that will be substituted for the original sports event if it is cancelled.

(4) and (5) remain as proposed.

AUTH: Sec. 23-5-115, MCA.

IMP: Sec. 23-5-503, MCA.

23.16.1703 SALE OF CHANCES (1) The total cost of a chance shall not exceed \$5 per sports event and must be paid in full and in cash at the time the chance is selected.

(2) and (3) remain as proposed.

(4) In an authorized sports pool in which a competitor is randomly assigned to each participant purchasing a chance in the pool, a participant may not sell, trade, or otherwise transfer his competitor to another person.

AUTH: Sec. 23-5-115, MCA.

IMP: Sec. 23-5-503, MCA.

23.16.1704 PRIZES (1) There must be at least one winner from among the participants in a sports pool. A winner or winners are determined by the score or place attained by one or more competitors in the sports event upon which the sports pool is conducted.

(2) The prizes awarded to the winner or winners of a sports pool may be cash or merchandise but must not exceed a total value of \$500 per sports event.

(2) (a) through (4) remain as proposed.

AUTH: Sec. 23-5-115, MCA.

IMP: Sec. 23-5-503, MCA.

RULE XI APPLICATION PROCESSING FEE (1) An applicant submitting an application for a gambling operator license on or after July 1, 1991 shall pay a license application processing fee in the following amount:

- (a) \$50 if the applicant is a nonprofit organization;
- (b) \$400 if the applicant is a sole proprietorship;
- (c) ~~\$600~~ \$500 if the applicant is a partnership or subchapter S corporation; and
- (d) \$1,000 if the applicant is a corporation other than a subchapter S corporation.

(2) through (4) remain the same.

AUTH: Sec 23-5-115, MCA.

IMP: Sec. 23-5-177, MCA.

5. The Department thoroughly considered the following oral comments made by gambling industry representatives, tavern owners, and other interested persons:

COMMENT: The proposed definition of "series of sports events" is too restrictive and should not be limited only to events that are conducted to determine a champion among a group of competitors.

RESPONSE: The Department deleted the reference to determining a champion in ARM 23.16.1701.

COMMENT: It is impractical for a person conducting a sports tab game or sports pool to return wagers to participants if a sports event is cancelled. An operator should be required to designate a back-up game to the sports event on which the tab game or pool is based to ensure that the game or pool is conducted.

RESPONSE: The Department incorporated this suggestion in rule I and ARM 23.16.1702.

COMMENT: Sports pools involving three or more competitors simultaneously competing in a sports event as individuals, not as teams, should be added to the list of authorized sports pools.

RESPONSE: The Department added multiple competitor sports pools to rule IX.

COMMENT: The \$5 limit on wagers and \$500 limit on prizes for sports pools should apply to each sports event conducted in a series of sports events.

RESPONSE: The Department incorporated this suggestion in ARM 23.16.1703 and 23.16.1704.

COMMENT: The \$1,000 license application processing fee places a financial burden on some small gambling operators who have incorporated as subchapter S corporations because of liability and insurance concerns.

RESPONSE: The Department amended rule XI to charge subcorporations S the same fee as partnerships and reduced this fee from \$600 to \$500.

COMMENT: There is not enough room on the bottom portion of the front of some sports tab cards to affix a sports tab decal.

RESPONSE: The Department amended rule V to allow placement of the decal in a conspicuous location anywhere on the front of the card.

COMMENT: Sports tab games should be allowed to be conducted on a series of sports events.

RESPONSE: The Department rejects this suggestion because 23-5-501, MCA, as amended by ch. 647, L. 1991, defines a sports tab game as a gambling enterprise in which "[a] person may purchase a sports tab from the card for the chance to win money or other items of value on a sports event." [Emphasis added] Unlike the definition of a sports pools, the sports tab game definition does not provide for wagering on a series of sports events.

COMMENT: The list of authorized sports pools should include games based on such occurrences as the number of hits or errors in a sports event.

RESPONSE: The Department rejects this suggestion and believes that sports pool winners should be determined by the scores or placement attained by competitors in the sports event. "Sports pool" is defined in 23-5-501, MCA, as amended by ch. 647, L. 1991, as "a gambling activity . . . in which a person wagers money . . . to win money or other items of value based on the outcome of a sports event or series of sports events" [Emphasis added] The Department finds that the outcome of a sports event or series of events is determined by a score or place, not by other statistics that may be generated during the event or series.

COMMENT: Authorized sports pools should include activities in which participants pick competitors.

RESPONSE: The Department rejects this suggestion because section 44, ch. 647, L. 1991 requires competitors to the randomly assigned to each participant in a sports pool.

6. The tournament sports pool in rule IX was renamed the a series sports pool to reflect changes made to the definition of series of sports events in ARM 23.16.1701. The Department also deleted the progressive series sports pool from the list of authorized sports pools in rule IX and incorporated the elements of that pool type in the description of a series sports pool.

7. Amendments to the rules, other than those addressed in items 5 and 6 above, were made for purposes of clarification or to correct internal reference errors.

The temporary action is effective July 29, 1991.

By: Marc Racicot
MARC RACICOT
Attorney General

Certified to the Secretary of State July 29, 1991.

VOLUME NO. 44

OPINION NO. 16

CITIES AND TOWNS - Creation of new rural fire district from consolidation of two existing rural fire districts;
CONSOLIDATION - Creation of new rural fire district from consolidation of two existing rural fire districts;
COUNTIES - Creation of new rural fire district from consolidation of two existing rural fire districts;
FIRE DISTRICTS - Creation of new rural fire district from consolidation of two existing rural fire districts;
TAXATION AND REVENUE - Whether consolidated rural fire district formed after tax year 1986 is subject to mill levy limitations;
MONTANA CODE ANNOTATED - Sections 7-33-2101, 7-33-2104, 7-33-2120, 15-10-401 to 15-10-412;
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 109 (1988), 42 Op. Att'y Gen. No. 80 (1988).

- HELD: 1. Two rural fire districts that consolidate pursuant to section 7-33-2120, MCA, result in the creation of a new rural fire district for purposes of determining mill levy limitations.
2. The property tax limitations in sections 15-10-401 to 412, MCA, are not applicable to a trustee-managed rural fire district established after tax year 1986.

July 30, 1991

Robert L. "Dusty" Deschamps III
Missoula County Attorney
Missoula County Courthouse
Missoula MT 59802

Dear Mr. Deschamps:

You have requested my opinion concerning the following questions:

1. Does the consolidation of two rural fire districts pursuant to section 7-33-2120, MCA, result in the creation of a new rural fire district for purposes of determining mill levy limitations under sections 15-10-401 to 412, MCA?
2. If not, what is the appropriate mill levy limit for the consolidated rural fire districts?

I conclude that the consolidation of two rural fire districts pursuant to section 7-33-2120, MCA, results in the creation of a new rural fire district for purposes of calculating mill levy limitations.

A rural fire district is established by the board of county commissioners of the county in which the fire district is located. § 7-33-2101, MCA. The county commissioners may either operate the fire district itself or appoint five trustees "to govern and manage the affairs of the fire district." § 7-33-2104, MCA. In this instance, both the Frenchtown rural fire district and the Petty Creek rural fire district are governed by boards of trustees. The two distinct rural fire districts are contemplating consolidating to improve their services to the Frenchtown and Petty Creek communities. You have asked whether the Petty Creek and Frenchtown fire districts upon consolidation form a new fire district for purposes of calculating mill levy limits under sections 15-10-401 to 412, MCA.

The consolidation of existing rural fire districts is controlled by section 7-33-2120, MCA, which states:

Consolidation of fire districts. (1) Two or more rural fire districts may consolidate to form a single rural fire district upon an affirmative vote of each rural fire district's board of trustees. At the time they vote to consolidate, the boards of trustees must also adopt a consolidation plan. The plan must contain:

(a) a timetable for consolidation, including the effective date of consolidation, which must be after the time allowed for protests to the creation of the consolidated rural fire district under subsection (3);

(b) the name of the new rural fire district;

(c) a boundary map of the new rural fire district; and

(d) the estimated financial impact of consolidation on the average taxpayer within the proposed district.

(2) Within 14 days of the date that the trustees vote to consolidate, notice of the consolidation must be published as provided in 7-1-2121 in each county in which any part of the consolidated fire district will be located. A public hearing on the consolidation must be held within 14 days of the first publication of notice. The hearing must be held before the joint boards of trustees at a time and place set forth in the publication of notice.

(3) Property owners of each affected rural fire district may submit written protests opposing consolidation to the trustees of their district. If within 21 days of the first publication of notice more than 50% of the property owners in an existing district protest the consolidation, it is void.

(4) After consolidation, the former rural fire districts constitute a single rural fire district governed under the provisions of 7-33-2104 through 7-33-2106. [Emphasis added.]

Section 7-33-2120, MCA, by its clear language contemplates the creation of a new rural fire district as the result of the consolidation of two existing rural fire districts. The consolidated fire district will have new trustees appointed under section 7-33-2104, MCA, and will then operate as a single rural fire district under the control of those trustees. § 7-33-2120(4), MCA. The consolidation of the Frenchtown and Petty Creek fire district will also result in a new name and new boundary map for the consolidated district. § 7-33-2120(1)(b) and (c), MCA. Accordingly, I conclude, after reviewing section 7-33-2120, MCA, that the consolidation of two existing rural fire districts creates a new rural fire district.

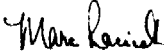
This new rural fire district is not subject to the mill levy limitations under Initiative No. 105 (I-105) and sections 15-10-401 to 412, MCA. Former Attorney General Mike Greely held that rural fire districts created after tax year 1986 and managed by a board of trustees are not subject to the property tax limitations in sections 15-10-401 to 412, MCA; 42 Op. Att'y Gen. No. 80 at 312 (1988); 42 Op. Att'y Gen. No. 109 at 416 (1988). A new rural fire district, created by consolidating Petty Creek rural fire district and Frenchtown rural fire district, will be managed by a board of trustees, and thus the new district would not be subject to the property tax limitations. The new consolidated fire district would be subject to property tax limitations only if the new fire district were governed by the board of county commissioners under section 7-33-2104, MCA. 42 Op. Att'y Gen. No. 109, supra. In 42 Op. Att'y Gen. No. 109, Attorney General Greely stated that "if a new fire district is operated by the county and not a board of trustees, the county would constitute the taxing unit and would be subject to the property tax limitations in sections 15-10-401 to 412, MCA, since it imposed taxes in 1986."

THEREFORE, IT IS MY OPINION:

1. Two rural fire districts that consolidate pursuant to section 7-33-2120, MCA, result in the creation of a new rural fire district for purposes of determining mill levy limitations.

2. The property tax limitations in sections 15-10-401 to 412, MCA, are not applicable to a trustee-managed rural fire district established after tax year 1986.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marc Racicot".

MARC RACICOT
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules, amendment or repeal of existing rules filed with the Secretary of State, except rules proposed by the Department of Revenue. Proposals of the Department of Revenue are reviewed by the Revenue Oversight Committee.

The Administrative Code Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with the existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE
MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|------------|---|
| Known | 1. Consult ARM topical index. |
| Subject | Update the rule by checking the accumulative |
| Matter | table and the table of contents in the last |
| | Montana Administrative Register issued. |
| Statute | 2. Go to cross reference table at end of each |
| Number and | title which lists MCA section numbers and |
| Department | corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1991. This table includes those rules adopted during the period July 1, 1991 through September 30, 1991 and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 1991, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1991 Montana Administrative Register.

ADMINISTRATION, Department of, Title 2

- 2.21.306 and other rules - Work Cite Closure During A Localized Disaster or Emergency, p. 2209, 994
- 2.21.1801 and other rules - Leave Administration for Salaried Employees, p. 876
- 2.21.1812 Exempt Compensatory Time, p. 2062, 430
- 2.21.3802 and other rules - Probation - Recruitment and Selection - Reduction in Work Force, p. 1982, 433
- 2.21.8011 and other rules - Grievances, p. 2212, 352
(Public Employees' Retirement Board)
- 2.43.432 Allowing PERS Members to Purchase Full Months of Additional Service When Eligible to Purchase a Full Year, p. 2215, 510
(State Compensation Mutual Insurance Fund)
- I-XI Organization and Board Meetings of the State Fund - Establishment of Premium Rates, p. 1975, 353
- 2.55.301 Method for Assignment of Classifications of Employments, p. 568, 996
- 2.55.310 Variable Pricing Within a Classification, p. 486, 997

AGRICULTURE, Department of, Title 4

- I Honeybee Hourly Inspection Fee, p. 880, 1272
- I Grading Standards for Hullless Barley, p. 383, 812
- I-IV Specifying the Exact Scientific Procedures for Testing Kjeldahl Proteins on Barley, Chit and

- Germinations on Barley and Falling Number Determinations on Wheat, p. 935
- 4.5.201 and other rules - Designation of Noxious Weeds, p. 210, 511
- 4.10.311 and other rules - Regulatory Status and Use of Aquatic Herbicides, p. 100, 354
- 4.12.1012 Grain Fee Schedule, p. 570, 998
- 4.12.1229 Fees Established for Service Samples, p. 2065, 440
- 4.12.1504 Fee on All Mint Oil Producers, p. 385, 813
- 4.12.3402 Seed Laboratory - Reports - Enforcement, p. 341, 738

STATE AUDITOR, Title 6

- I-VI Pricing of Noncompetitive or Volatile Lines, p. 2067, 253

COMMERCE, Department of, Title 8

(Board of Athletics)

- 8.8.3402 Referees, p. 387, 814

(Board of Barbers)

- 8.10.403 and other rules - Fees - General Requirements - Sanitation Requirements - Teaching Staff - College Requirements - Applications - Procedure Upon Completion - Identification and Sanitation Requirements - Preparation and Publication of Posters, Notices, Orders, New Schools - Violation, p. 344, 911

(Board of Dentistry)

- 8.16.401 and other rules - Practice of Dentistry, p. 943
- 8.17.403 and other rules - Practice of Dentistry, p. 937

(Board of Hearing Aid Dispensers)

- 8.20.402 and other rule - Fees - Record Retention, p. 575, 1273

(Board of Horse Racing)

- 8.22.501 and other rules - Definitions - Fees - General Provisions - Definition of Conduct Detrimental to the Best Interests of Racing, p. 172, 355

(Board of Medical Examiners)

- 8.28.908 and other rule - Equivalency - EMT - Advanced Certification, p. 764

(Board of Optometrists)

- 8.36.403 and other rule - Application for Examination - Examination, p. 882

(Board of Outfitters)

- 8.39.502 and other rules - Licensure - Qualifications - Licensure - Examinations - Conduct, p. 213, 999

(Board of Social Workers and Professional Counselors)

- 8.61.401 Definitions, p. 884

(Board of Passenger Tramway Safety)

- 8.63.501 and other rule - ANSI Standard - Fee and Assessment Schedule, p. 577

(Weights and Measures Bureau)

- 8.77.101 and other rules - Scale Pit Clearance - Fees - Voluntary Registration of Servicemen and Service Agencies - Weighing Device License Transfer - Random Inspection of Packages - Liquified Petroleum Gas - Accessibility to Stock Scales, p. 886

(Consumer Affairs Unit)

- 8.78.301 Disclosure Fees, p. 176, 739

(Milk Control Bureau)

- 8.79.301 Licensee Assessments, p. 178, 441

(Financial Division)

- I-II Repurchase Agreements - Fixed Annuity Sales, p. 389, 490

- 8.80.307 Dollar Amounts to Which Consumer Loan Rates Are to be Applied, p. 766, 1274

- 8.80.401 and other rule - Credit Unions - Supervisory and Examination Fees - Credit Unions - Limited Income Persons - Definitions, p. 1872, 292, 442

(Board of Milk Control)

- 8.86.301 and other rules - Class I Wholesale Price - Statewide Pool and Quota Plan, p. 768

- 8.86.301 Pricing Rules - Jobber Prices, p. 215, 513

- 8.86.301 Pricing Rules - Class I Wholesale Prices, p. 1, 296

(Board of County Printing)

- 8.91.303 and other rule - Official Publications and Legal Advertising - Schedule of Prices, p. 892

(Local Government Assistance Division)

- I Incorporation by Reference - Administration of the 1991 Federal Community Development Block Grant (CDBG) Program, p. 105, 358

(Board of Investments)

- 8.97.1301 and other rules - Definitions Related to General Requirements for All Investments in Mortgages and Loans - Requirements for All Residential, Commercial, Multi-Family, Federally Guaranteed Loans - Economic Development Linked Deposit Programs, p. 772

(Business Development Division)

- I-III Microbusiness Finance Program - Definitions - Composition of the Council - Soliciting Nominations, p. 579, 1140

EDUCATION, Title 10

(Board of Public Education)

- 10.55.707 Certification, p. 493

- 10.55.903 Basic Education Program: Junior High and Grades 7 and 8 Budgeted at High School Rates, p. 217

- 10.57.208 and other rules - Reinstatement - Class 1 Professional Teaching Certificate - Class 3 Administrative Certificate, p. 2232, 297

- 10.57.211 Test for Certification, p. 2231, 298

- 10.57.301 and other rule - Endorsement Information - Foreign Languages, p. 2229, 299

- 10.57.301 and other rules - Endorsement Information - Computer
Endorsement Review Committee - Endorsement of
Computer Science Teachers, p. 2235, 300
- 10.57.403 Class 3 Administrative Certificate, p. 491
- 10.57.601 and other rule - Request to Suspend or Revoke a
Teacher or Specialist Certificate: Preliminary Action
- Notice and Opportunity for Hearing Upon
Determination that Substantial Reason Exists to
Suspend or Revoke Teacher or Specialist Certificate,
p. 219
- 10.61.207 Student Transportation, p. 2227, 301

FAMILY SERVICES, Department of, Title 11

- 11.7.604 Foster Care Support Services, p. 893
- 11.14.105 Licensing and Registering Day Care Facilities,
p. 495, 1000

FISH, WILDLIFE AND PARKS, Department of, Title 12

- I Species Hunted on Shooting Preserves, p. 1115
- I-VI and other rules - Fish Health and Importation Rules,
p. 895, 1275
- I-XXII Hunting License and Damage Hunt Rules, p. 4, 288, 815
- 12.6.901 Water Safety Regulations - Use of Electric Motors on
Gartside Reservoir, p. 582, 1003
- 12.6.901 Water Safety Regulations - Establishing a No-Wake
Restriction on Hyalite Reservoir, p. 221, 912
- 12.6.901 Extension of 10 Horsepower Restriction on Yellowstone
River to the Springdale Bridge, p. 180, 740

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

- I-XVII Monitoring Groundwater at Municipal Solid Waste
Landfills, p. 1117
- I-XXVI Licensing and Certification - Licensing for Specialty
Residential Mental Health Service, p. 956
- 16.8.1423 Air Quality - Standard of Performance for New
Stationary Sources - Emission Standards for Hazardous
Air Pollutants, p. 348, 584, 1143
- 16.18.201 and other rules - Water and Wastewater Operators,
p. 776, 1276
- 16.20.202 and other rules - Water Quality - Public Water
Supplies, p. 596
- 16.24.104 Eligibility Requirements for the Handicapped
Children's Services Program, p. 1184
- 16.35.111 Conditions for Payment of Claims Under the End Stage
Renal Disease (ESRD) Program, p. 585, 1004
- 16.38.105 and other rules - Water Quality - Licensure and
Requirements for Analysis of Public Water Supplies,
p. 587, 1279

- 16.38.115 and other rules - Fees for Laboratory Analyses and Licensure of Laboratories to Perform Drinking Water Analysis, p. 780, 1144
- 16.44.102 and other rules - Solid and Hazardous Waste - Incorporations by Reference - Exclusions - Special Requirements for Counting Hazardous Wastes - Polychlorinated Biphenyl (PBC) Wastes Regulated Under Federal Law - Toxicity Characteristic - Lists of Hazardous Wastes - General - Representative Sampling Methods - Toxicity Characteristic Leaching Procedure - Chemical Analysis Test Methods - Testing Methods, p. 182, 514
- 16.44.102 and other rules - Solid and Hazardous Waste - Adoption of Changes in Order to Achieve Parity with Federal Regulations for Montana to Independently Operate a Hazardous Waste Program, p. 23, 302
- 16.44.401 and other rules - Solid and Hazardous Waste - Defining the Terms Large Generator, Small Generator and Conditionally Exempt Small Generator of Hazardous Waste, p. 19, 307
- 16.45.1219 Underground Storage Tanks - Inspection Requirements for Small Farm and Residential Tanks, p. 900, 1280
- 16.45.1220 and other rules - Underground Storage Tanks - Inspection Fees - Requirements for Inspection Generally - Inspection Reimbursement, p. 290

JUSTICE, Department of, Title 23

- I-XII and other rules - Fire Prevention and Investigation Bureau - Enforcement of Rules - Fire Safety, p. 1186
- I-XVI and other rules - Fire Marshal Bureau - Describing Enforcement of the Rules - Incorporating by Reference the 1988 Uniform Fire Code, a Montana Supplement to the Code - Other Provisions Generally Dealing with Fire Safety, p. 2074, 291, 1283
- 23.4.201 and other rules - Alcohol Analysis, p. 785, 1281
- 23.16.1701 and other rules - Gambling, p. 972

LABOR AND INDUSTRY, Department of, Title 24

(Human Rights Commission)

- I and other rules - Document Format, Filing, Service and Time Relating to Certain Documents Filed During Investigation and Conciliation - Format, Filing and Service of Documents Filed with the Commission during Contested Case Proceedings - Calculating the Time Limits for Acts, such as Filing Documents, Required Under the Contested Case Rules, p. 2145, 308
- 24.9.805 and other rules - Records on Age, Sex, and Race - Employment Applications, p. 904
- 24.16.9007 Prevailing Wage Rates, p. 497, 1005

STATE LANDS. Department of. Title 26

- I-X Bonding Small Miner Placer and Dredge Operations - Permit Requirements for Small Miner Cyanide Ore Processing Operations, p. 2092, 445
26.3.149 Mortgaging of State Leases and Licenses, p. 109, 444
26.4.1301A Modification of Existing Coal and Uranium Permits, p. 111, 465

LIVESTOCK. Department of. Title 32

- I Emergency Rule - Control of Migratory Bison from Herds Affected with a Dangerous Disease, p. 1007
32.3.136 and other rules - Treatment, Control and Elimination of the Disease of Pseudorabies, p. 625, 1145

NATURAL RESOURCES AND CONSERVATION. Department of. Title 36

- I-X Financial Assistance Available Under the Wastewater Treatment Revolving Fund Act, p. 637
36.12.103 Water Right Application Fees, p. 634, 1009
36.16.117 Water Reservation Applications in the Upper Missouri Basin, p. 1198
(Board of Water Well Contractors)
36.21.403 and other rules - Requirements for Water Well Contractors - Definitions - Plastic Casing - Casing Perforations - Movement of Casing after Grouting - Sealing - Temporary Capping - Disinfection of the Well - Abandonment - Placement of Concrete or Cement - Verification of Experience for Monitoring Well Constructor Applicants - Application Approval - Definitions - Installation of Seals - Abandonment - Casing Depth - Verification of Equivalent Education and Experience for Monitoring Well Constructors - Types of Wells Requiring Abandonment, p. 223, 913
36.21.415 Fees, p. 636, 1010

PUBLIC SERVICE REGULATION. Department of. Title 38

- I Proper Accounting Treatment for Acceptable Conservation Expenditures, p. 1931, 466
I-II and other rules - Telecommunications Service Standards, p. 989
I-VI Two-way, End-of-Train Telemetry Devices on Trains Operating in Montana Within Mountain Grade Territory, p. 1201
I-XV and other rules - New Class E Motor Carrier Status (Transportation of Logs), p. 982
38.3.706 Motor Carrier Insurance - Endorsements, p. 45, 360
38.5.3302 and other rules - Telecommunications Service Standards, p. 392

REVENUE, Department of, Title 42

- I Use of Real Property, p. 426, 1148
- I Special Fuel Dealers Bond for Motor Fuels Tax, p. 192, 469
- 42.12.115 Liquor License Renewal, p. 115, 467
- 42.17.111 and other rules - Withholding and Workers' Compensation Payroll Taxes, p. 498, 1146
- 42.19.401 Low Income Property Tax Reduction, p. 237
- 42.20.423 and other rules - Property Tax - Sales Assessment Ratio Study, p. 239, 742
- 42.21.106 and other rules - Trending and Depreciation Schedules for Personal Property Tax, p. 396, 915
- 42.21.151 Television Cable Systems for Personal Property Taxes, p. 1204
- 42.27.118 Prepayment of Motor Fuels Tax, p. 114, 468

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

- I and other rule - Food Stamp Program - Transfer of Resources, p. 654, 1020
- I and other rules - Transition-to-Work Allowance - JOBS Program, p. 707, 1015
- I Reimbursement for General Relief Medical Assistance Services, p. 2242, 313
- I-II Conditional Medical Assistance, p. 683, 1045
- I-III Medicaid for Qualified Disabled Working Individuals, p. 686, 1052
- I-III and other rules - Licensed Professional Counselor Services, p. 679, 1032
- I-III and other rules - Group Health Plan Premium Payment, p. 505, 1021
- I-IV Federally Qualified Health Centers, p. 733, 1042
- I-XXI Targeted Case Management, p. 797, 1295
- I-XXV and other rules - Medicaid Nursing Facility Services and Reimbursement - Appeal Procedures for Certain Other Medicaid Providers, p. 1212
- 46.10.314 and other rule - Assignment of Child Support/Medical Support Rights, p. 1135
- 46.10.403 AFDC Table of Assistance Standards, p. 69 1011
- 46.10.404 Title IV-A Day Care Increase, p. 1206
- 46.10.506 Nonrecurring Gifts and Excluded Unearned Income, p. 503, 923
- 46.10.510 AFDC Excluded Earned Income, p. 350, 823
- 46.12.503 and other rule - Inpatient Hospital Reimbursement, p. 671, 1025
- 46.12.503 and other rule - Inpatient Hospital Services and Medical Assistance Facilities, p. 117, 310
- 46.12.508 and other rule - Outpatient Hospital Reimbursement, p. 669, 1027

- 46.12.521 and other rules - Billing and Reimbursement for Physician Services - Durable Medical Equipment - Podiatry Services, p. 716, 1030
- 46.12.545 and other rule - Occupational Therapy, p. 658, 1290
- 46.12.552 Home Health Services Reimbursement, p. 1138
- 46.12.575 and other rule - Family Planning Services, p. 689, 1037
- 46.12.590 and other rules - Inpatient Psychiatric Services, p. 673, 1038
- 46.12.702 Drug Rebates, p. 677, 1039
- 46.12.1025 Ambulance Services, Reimbursement, p. 699, 1040
- 46.12.1401 and other rules - Medicaid Home and Community Based Program for Elderly and Physically Disabled Persons, p. 1090, 2184, 470
- 46.12.2003 Physician Services, Reimbursement/General Requirements and Modifiers, p. 428, 824
- 46.12.2011 and other rule - Nurse Specialist Non-Covered Services, p. 665, 1044
- 46.12.3207 Transfer of Resources for Medical Services, p. 2104, 262
- 46.12.3401 and other rule - Non-Institutionalized Medical Assistance for Children, p. 661, 1046
- 46.12.3401 Presumptive and Continuous Eligibility for Medicaid Services, p. 2037, 516
- 46.12.3601 and other rule - Medicaid for Disabled Widows/Widowers, p. 692, 1049
- 46.12.3801 and other rules - Medically Needy Program, p. 2163, 265
- 46.12.3803 Medically Needy Income Standards, p. 667, 1050
- 46.14.401 Eligibility of Group Homes for Weatherization Assistance, p. 47, 311
- 46.25.101 and other rules - General Relief Assistance - General Relief Medical Assistance, p. 701, 1053
- 46.25.725 and other rules - General Relief Medical Income and Resources, p. 1209
- 46.25.727 and other rule - General Relief Assistance - General Relief Medical Income Standards, p. 663, 1057