RESERVE

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 19

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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.

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NOTICE SECTION

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 4.5.102, 4.5.108 and 4.5.109; repeal of 4.5.113	) NOTICE OF PROPOSED AMENDMENTS) PERTAINING TO PROJECTS,) PROCEDURES AND UPDATES AND) REPEAL OF REQUIREMENTS TO THE) NOXIOUS WEED TRUST FUND

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On November 2, 1996, the department of agriculture proposes to amend and repeal the above mentioned rules.

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

4.5.102 APPLICATION PROCEDURE (1) through (4) remains the same.

(5) The advisory council will review and ~~rank~~ recommend proposed projects according to the guidelines and criteria described in ARM 4.5.108. Advisory council recommendations will be submitted to the department for final ~~ranking~~ review and determination of funding. The applicant will receive written notification from the department of the action taken on the proposal.

Sec. 80-7-802 MCA; IMP: Sec. 80-7-814 MCA

Reason: The council decided that the ranking process did not work well and that, based on several years experience, most projects could be funded at some level.

4.5.108 ~~RANKING~~ EVALUATION OF PROJECTS (1) The advisory council shall ~~utilize a scoring system to rank all projects in regard to how well they~~ by vote, recommend to the department those projects which meet the criteria for the program.

(2) The advisory council shall consider the following criteria in ~~ranking~~ recommending projects for funding.

(a) Remains the same.

(b) Projects that involve community groups and weed districts~~.~~, reservations or conservation districts.

(c) through (l) remains the same.

(3) ~~The results of this scoring system will be submitted to the department for final ranking and determination of funding priority for grant requests. The department will use the same criteria in ranking the proposals.~~ The advisory council recommendations will be submitted to the department for final review and determination of funding for grant requests.

Reason: The council decided that the ranking process did not work well and that proposed projects should be recommended on a

majority vote of the council. Reservations and conservation districts have always been recognized as legitimate project sponsors, but it was decided to clarify this in the rule.

AUTH: Sec. 80-7-802 MCA; IMP: Sec. 80-7-814 MCA

4.5.109 REPORTING AND MONITORING PROCEDURES (1) The project sponsor or project manager shall monitor the progress and results of the project and evaluate its overall effectiveness. The project sponsor shall submit to the department ~~quarterly~~ fiscal reports and written progress reports as determined by contract. The department reserves the right to require fiscal reports on a more frequent schedule. If the department determines through field or office evaluations that improper progress or fiscal reports have been filed, the project sponsor shall initiate necessary corrective action.

AUTH: Sec. 80-7-802 MCA IMP: Sec. 80-7-814 MCA

Reason: Most project sponsors are required by contract to report on a quarterly basis. However, some of the larger grants are purchasing equipment, chemicals, etc. on a monthly basis which can result in a complex fiscal report when only reported on a quarterly basis.

4.5.113 DEALER RECORD REQUIREMENTS, the rule to be repealed, is on page 4-107 of the Administrative Rules of Montana.

AUTH: Sec. 80-8-105 and 80-7-802 MCA; IMP, Sec. 80-7-812 MCA

Reason: The herbicide reporting requirement was needed when an annual surcharge was assessed on herbicides sold in the state. Since the herbicide surcharge was rescinded when the Noxious Weed Trust Fund reached $2.5 million, this rule is no longer needed.

3. Interested persons may submit their written data, views, or arguments concerning these proposed actions to Gary Gingery, Administrator, Department of Agriculture, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201, FAX (406)444-5409, or "e" mail: AGR@MT.GOV, no later than October 31, 1996.

4. If a party who is directly affected by the proposed actions wishes to express his/her data, views, and arguments orally or in writing at a public hearing, he/she must make written request for a hearing and submit this request along with any written comments he/she has to Gary Gingery, Administrator, Department of Agriculture, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201, FAX (406)444-5409, or "e" mail: AGR@MT.GOV no later than October 31, 1996.

5. If the department receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons who are directly affected by

the proposed actions; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not fewer 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 more than 25 based on 117 noxious weed grant applications in 1996.

W. Ralph Peck, Director
DEPARTMENT OF AGRICULTURE

Timothy J. Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State this 23rd day of September 1996

BEFORE THE BOARD OF ARCHITECTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment, repeal and adoption of rules pertaining to the practice of architecture	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT, REPEAL AND ADOPTION OF RULES PERTAINING TO THE PRACTICE OF ARCHITECTURE

TO: All Interested Persons:

1. On August 8, 1996, the Board of Architects published a notice of proposed amendment, repeal and adoption of rules pertaining to the practice of architecture at page 2060, 1996 Montana Administrative Register, Issue No. 15.

2. The Board received a sufficient number of requests from qualifying individuals for a public hearing on the proposed amendment, repeal and adoption. The Board will hold a hearing on October 24, 1996, at 10:00 a.m., in the Professional and Occupational Licensing Conference room, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana, to consider the proposed amendment, repeal and adoption of those rules.

3. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., October 15, 1996, to advise us of the nature of the accommodation that you need. Please contact Sharon McCullough, Board of Architects, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-3745; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Sharon McCullough.

4. 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 Architects, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-1667, to be received no later than 5 p.m., October 31, 1996.

5. Carol Grell, attorney, has been designated to preside over and conduct this hearing.

BOARD OF ARCHITECTS
PAMELA HILL, CHAIRMAN

BY: _____
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, September 23, 1996.

BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment, repeal and adoption of rules pertaining to dentists, dental hygienists and denturists	NOTICE OF PROPOSED AMENDMENT, REPEAL AND ADOPTION OF RULES PERTAINING TO THE PRACTICE OF DENTISTRY AND DENTURITRY

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 2, 1996, the Board of Dentistry proposes to amend, repeal and adopt rules pertaining to dentists, dental hygienists and denturists.

2. The proposed amendment of ARM 8.16.402, 8.16.405, 8.16.408, 8.16.602, 8.16.605, 8.16.606, 8.16.607, 8.16.608, 8.16.707A, 8.16.719, 8.16.722, 8.16.1002, 8.16.1003, 8.16.1004, 8.16.1005, 8.17.403, 8.17.404, 8.17.702, 8.17.705, 8.17.706, 8.17.707, 8.17.708 and 8.17.801 will read as follows: (new matter underlined, deleted matter interlined)

"8.16.402 DENTISTS EXAMINATIONS (1) ~~Applications for the jurisprudence examinations must be submitted to the office of the board at least 20 days prior to the examination date.~~

~~(2) Notice of cancellation of examination by examinees must be postmarked at least 20 days prior to the examination before the examination fee, minus $10.00 administrative costs, will be refunded.~~

~~(3) Examinees must furnish their own dental supplies for the examination.~~

~~(4) The grading will be done by a board member or department staff. A final grade of at least 75% is required for passing the examination.~~

~~(5) All candidates for license must submit a national board examination certificate and score card from the national board of dental examiners, except that only scores in part II of the national board examination will be required if 10 or more years have passed since the candidate's graduation from dental school.~~

~~(6) The board accepts, in satisfaction of the practical part, successful completion of an examination administered by the western regional examining board, after June 1979. The examination results of the western regional examining board shall be valid for a period of 5 years from the date of successful completion of the examination.~~

~~(7) Applicants for licensure shall submit an application, which shall be furnished by the board and shall include:~~

~~(a) certificate of successful completion of the western regional examining board clinical examination;~~

~~(b) three affidavits of good moral character;~~

~~(c) certificate of graduation from a board approved dental school;~~

~~(d) an examination fee;~~

~~(e) a recent photograph of the applicant;~~

~~(f) upon successful completion of the examination, a licensure fee; and~~

~~(g) copies of all current licenses held in other states or territories.~~

(1) All candidates for licensure shall verify passage of the national board examination and submit a national board certificate and score card from the national board of dental examiners, except that only scores in part II of the national board examination will be required if 10 or more years have passed since the candidate's graduation from dental school.

(2) The board accepts, in satisfaction of the practical part, successful completion of an examination administered by the western regional examining board. The examination board shall be valid for a period of five years from the date of successful completion of the examination.

(3) A jurisprudence examination shall be taken once the application for licensure has been approved. The grading may be done by a board member or department staff. A final grade of at least 75% is required for passing the examination."

Auth: Sec. 37-1-131, 37-4-205, 37-4-301, MCA; IMP, Sec. 37-4-301, MCA

REASON: Change the wording to define examination requirements for dentists. Clarify the requirements needed.

"8.16.405 FEE SCHEDULE

(1) Jurisprudence ~~E~~examination fee	$ 85
(2) through (9) will remain the same.	
(10) Laws and rules packet	10"

Auth: Sec. 37-1-134, 37-4-205, MCA; IMP, Sec. 37-1-134, 37-4-301, 37-4-303, ~~37-4-306,~~ 37-4-307, MCA

REASON: Change language to clarify examination fee. Implement fee for laws and rules packets.

"8.16.408 APPLICATION TO CONVERT AN INACTIVE STATUS LICENSE TO AN ACTIVE STATUS LICENSE ~~(1) An inactive status license does not entitle the holder to practice dentistry in the state of Montana. Upon application and payment of the appropriate fee, the board may reactivate an inactive license if the applicant does each of the following:~~

~~(a) signifies to the board in writing that, upon issuance of the active license, he or she intends to be an active practitioner in the state of Montana; and~~

~~(b) presents satisfactory evidence of operative competency, which may include, but not be limited to:~~

~~(i) evidence that the applicant has actively and competently practiced in another jurisdiction during the year immediately prior to the application, or~~

~~(ii) evidence that the applicant has not been out of active practice for more than four years; and that, during the immediately previous three years, the applicant has attended 20 hours of clinical continuing education that contributes directly to the applicant's basic clinical skills in the practice of dentistry. Such continuing education should not be limited in scope, but should reflect an attempt to retain competency throughout the entire field of dentistry, or~~

~~(iii) evidence that, within the last year, the applicant has successfully passed the board's licensure examination.~~

~~(c) submits certification from the dental licensing body of all jurisdictions where the applicant is licensed or has practiced that the licensee is in good standing and has not had any disciplinary action taken against his or her license, or if the application is not in good standing by that jurisdiction or has had disciplinary action taken by that jurisdiction, an explanation of the nature of the violation or violations resulting in the licensee's not being in good standing or having disciplinary action against the license and the extent of the disciplinary treatment imposed;~~

~~(d) presents evidence of having previously fulfilled the licensure requirements of the Montana state board of dentistry.~~

(1) Licensees may place their license on inactive status upon written request to the board.

(2) An inactive status license does not entitle the holder to practice dentistry in the state of Montana. Upon application and payment of the appropriate fee, the board may reactivate an inactive license if the applicant does each of the following:

(a) presents satisfactory evidence of operative competency, which may include, but not be limited to:

(i) evidence that the applicant has actively and competently practiced in another jurisdiction during the year immediately prior to the application for reactivation; or

(ii) evidence that the applicant has not been out of practice for more than three years. If the applicant has been out of practice for longer than three years, the request for reactivation will be at the board's discretion; or

(iii) evidence that, within the last year, the applicant has successfully passed the board's regional licensure examination.

(b) submits license verification from all jurisdictions where the applicant is licensed or has held a license;

(c) submits 20 hours of continuing education for each year the license has been inactive;

(d) submits a current CPR card; and

(e) applicant must take and pass the jurisprudence examination if the applicant has been inactive for three years or longer.

~~(2) A dentist who is employed by a federal agency may maintain an active license upon verification to the board of the dentist's federal employment status as a dentist, and must meet all requirements for being licensed in an active status.~~"

Auth: Sec. 37-1-319, 37-4-205, 37-4-307, MCA; IMP, Sec. 37-4-307, MCA

REASON: Change language to clarify requirements for licensees to convert license from inactive to active.

"8.16.602 FUNCTIONS FOR DENTAL HYGIENISTS (1) will remain the same.

(a) the hygienist was instructed and qualified to perform in a~~n accredited~~ school of dental hygiene accredited by the commission on dental accreditation or its successor; or

(b) through (d) will remain the same.

(2) A dental hygienist will be allowed to perform the following dental auxiliary functions, under general supervision, including, but not limited to:

(a) making radiographic exposures, as prescribed by the supervising dentist;

(b) taking impressions for study or working casts;

(c) removing sutures and dressings;

(d) applying topical anesthetic agents;

(e) providing oral health instruction;

(f) applying topical fluoride agents;

(g) removing excess cement from coronal surfaces;

(h) placing and removing rubber dams;

(i) placing and removing matrices;

(j) collecting patient data;

(k) polishing amalgam restorations;

(l) placing pit and fissure sealants; and

(m) coronal polishing.

(2) will remain the same, but will be renumbered (3).

(a) through (c) will remain the same.

(d) administering or dispensing any drugs, without the prior authorization and direct supervision of the supervising dentist. This does not pertain to topical agents or to sucular medicaments;

(e) and (f) will remain the same.

(g) bonding or cementing orthodontic brackets, or orthodontic appliances that would provide activation upon cementation~~.~~;

(h) bonding or cementing any fixed prosthesis, including veneers, except for provisionals.

(3) through (7) will remain the same, but will be renumbered (4) through (8)."

Auth: 37-1-131, 37-4-205, 37-4-408, MCA; IMP, Sec. 37-4-401, 37-4-405, 37-4-408, MCA

REASON: Language clarification suggested by the Administrative Code Committee to help better define Hygiene functions.

"8.16.605 DENTAL HYGIENIST EXAMINATION ~~(1) Notice of cancellation of examination by examinees must be postmarked at least 20 days prior to examination before the examination fee, minus $10 administrative costs, will be refunded.~~

~~(2) Applications for the jurisprudence examination must be submitted to the office of the board at least 20 days prior to the examination date.~~

~~(3) The grading will be done by a board member or department staff. A final grade of at least 75% is required for passing the examination.~~

~~(4) The board accepts, in satisfaction of the practical part, successful completion of an examination administered by the western regional examining board, after June 1979. The examination results of the western regional examining board shall be valid for a period of five years from the date of successful completion of the examination.~~

~~(5) Applicants for licensure shall submit an application, which shall be furnished by the board, and which shall include:~~

~~(a) certificate of successful completion of the western regional examining board clinical examination;~~

~~(b) two affidavits of good moral character;~~

~~(c) certificate of graduation from an accredited dental hygiene school;~~

~~(d) an examination fee;~~

~~(e) a recent photograph of the applicant;~~

~~(f) copies of current licenses held in other states or territories;~~

~~(g) certificate of successful completion of examination by the national board of dental hygiene examiners; and~~

~~(h) upon successful completion of the jurisprudence examination, a licensure fee.~~

~~(6) No licensed dental hygienist shall administer local anesthetic agents during a dental procedure or dental surgical procedure unless and until he or she possesses a local anesthetic permit issued by the board. Application for a local anesthetic permit shall be made by letter to the board with proof of possession of a WREB local anesthetic certificate and a current CPR certificate. Such permits shall be renewed every year.~~

(1) All candidates for licensure shall verify passage of the national board examination and submit a national board certificate and score card from the national board of dental examiners.

(2) The board accepts, in satisfaction of the practical part, successful completion of an examination administered by the western regional examining board. The examination results of the western regional examination board shall be valid for a period of five years from the date of successful completion of the examination.

(3) A jurisprudence examination shall be taken once the application for licensure has been approved. The grading may be done by a board member or department staff. A final grade of at least 75% is required for passing the examination."

Auth: Sec. 37-1-131, 37-4-205, 37-4-401, 37-4-402, 37-4-403, 37-4-406, MCA; IMP, 37-4-401, 37-4-402, 37-4-403, ~~37-4-404,~~ MCA

REASON: Change the wording to define examination requirements for dental hygienists. Clarify the requirements needed.

"8.16.606 FEE SCHEDULE

(1) Jurisprudence ~~E~~examination fee	$ 85
(2) through (9) will remain the same.	
(10) ~~Credential~~ Out-of-state application fee	75
~~(11) Credential examination fee~~	~~85~~
(11) Laws and rules packet	10"

Auth: Sec. 37-1-134, 37-4-205, MCA; IMP, Sec. 37-4-402, 37-4-403, ~~37-4-404,~~ 37-4-406, MCA

REASON: Change language to clarify examination fee. Implement fee for laws and rules packets. Change language for credentialing fee to out-of-state fee to comply with House Bill 518.

"8.16.607 APPLICATION TO CONVERT AN INACTIVE STATUS LICENSE TO AN ACTIVE STATUS LICENSE ~~(1) An inactive status license does not entitle the holder to practice dental hygiene in the state of Montana. Upon application and payment of the appropriate fee, the board may reactivate an inactive license if the applicant does each of the following:~~

~~(a) signifies to the board in writing that, upon issuance of the active license, he or she intends to be an active practitioner in the state of Montana; and~~

~~(b) presents satisfactory evidence of operative competency, which may include, but not be limited to:~~

~~(i) evidence that the applicant has actively and competently practiced in another jurisdiction during the year immediately prior to the application, or~~

~~(ii) evidence that the applicant has not been out of active practice for more than four years; and that, during the immediately previous three years, the applicant has attended 20 hours of clinical continuing education that contributes directly to the applicant's basic clinical skills in the practice of dental hygiene. Such continuing education should not be limited in scope, but should reflect an attempt to retain competency throughout the entire field of dental hygiene, or~~

~~(iii) evidence that, within the last year, the applicant has successfully passed the board's licensure examination.~~

~~(c) submits certification from the dental hygiene licensing body of all jurisdictions where the applicant is licensed or has practiced that the licensee is in good standing and has not had any disciplinary action taken against his or her license, or, if the applicant is not in good standing in that jurisdiction or has had disciplinary action taken by that jurisdiction, an explanation of the nature of~~

~~the violation or violations resulting in the licensee's not being in good standing or having disciplinary action against the license and the extent of the disciplinary treatment imposed;~~

~~(d) presents evidence of having previously fulfilled the licensure requirements of the Montana state board of dentistry.~~

~~(2) A dental hygienist who is employed by a federal agency may maintain an active license upon verification to the board of the hygienist's federal employment status as a dental hygienist and must meet all requirements for being licensed in an active status.~~

(1) Licensees may place their license on inactive status upon written request to the board.

(2) An inactive status license does not entitle the holder to practice dental hygiene in the state of Montana. Upon application and payment of the appropriate fee, the board may reactivate an inactive license if the applicant does each of the following:

(a) presents satisfactory evidence of operative competency, which may include, but not be limited to:

(i) evidence that the applicant has actively and competently practiced in another jurisdiction during the year immediately prior to the application for reactivation; or

(ii) evidence that the applicant has not been out of active practice for more than three years. If the applicant has been out of practice for longer than three years, the request for reactivation will be at the board's discretion; or

(iii) evidence that, within the last year, the applicant has successfully passed the board's regional licensure examination.

(b) submits license verifications from all jurisdictions where the applicant is licensed or has held a license;

(c) submits 12 hours of continuing education for each year the license has been inactive;

(d) submits a current CPR card; and

(e) applicant must take the jurisprudence examination if the applicant has been inactive for three years or longer.

(2) will remain the same, but will be renumbered (3)."

Auth: Sec. 37-1-131, 37-1-319, 37-4-205, 37-4-406, MCA; IMP, Sec. 37-4-406, MCA

REASON: Change language to clarify requirements for licensee to convert license from inactive to active.

"8.16.608 DENTAL HYGIENIST MANDATORY CPR (1) will remain the same.

~~(2) This rule will be effective January 1, 1991.~~"

Auth: Sec. 37-1-131, 37-4-205, 37-4-406, MCA; IMP, Sec. 37-4-406, MCA

REASON: Delete a portion of the rule that is no longer necessary.

"8.16.707A FUNCTIONS FOR DENTAL AUXILIARIES

(1) Allowable functions for a dental auxiliary practicing under the supervision of a licensed dentist shall include dental procedures as allowed by board rule and subject to ~~(4)~~ (2) below, in which:

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

(a) making radiographic exposures as prescribed by the supervising dentist; and

(b) will remain the same.

~~(3) The allowed procedures listed in (1) include, but are not limited to:~~

~~(a)~~ (c) taking impressions for study or working ~~models~~ casts;

(b) through (m) will remain the same, but will be renumbered (d) through (o), and the ending commas will be changed to semicolons.

(4) through (8) will remain the same, but will be renumbered (3) through (7).

~~(9)~~ (8) A dentist licensed to use or direct the use of an x-ray producing device must assure that the radiation source under the dentist's jurisdiction is used only by individuals competent to use it, as per ARM ~~16.40.603~~17.70.603. ~~The allowable auxiliary function of making radiographic exposures must be performed under the direct supervision of a licensed dentist. Only a licensed dentist is allowed to prescribe radiation dosage and exposure. The auxiliary shall have either graduated from an accredited program of dental assisting, dental hygiene or dentistry accredited by the commission on dental accreditation or its successor, or have successfully completed a board approved course in radiology with a written and practical examination approved by the board, or have been certified in radiology in another state or have passed the CDA radiology component. A list of board approved courses and examinations is on file in the board office. No dentist shall allow a dental auxiliary in the dentist's employ to expose radiographs without having first completed the didactic and clinical portions of the board approved course. (A six month grace period after November 23, 1995, the effective date of the amendment, will be allowed before the certificate will be required to allow the certificate to be obtained.)~~ Only a licensed dentist is allowed to prescribe radiation dosage and exposure. The dental auxiliary, under the direct supervision of a licensed dentist, will qualify to expose radiographs if the auxiliary:

(a) has graduated from an accredited program of dental assisting, dental hygiene or dentistry accredited by the commission on dental accreditation or its successor; or

(b) has been certified in dental radiology in another state; or

(c) has been certified in dental radiology by the U.S. military; or

(d) has successfully completed a board-approved radiology written and practical examination. To prepare for the examination, the auxiliary may, in any combination;

(i) complete an available didactic course in radiology;
(ii) complete an available clinical course in radiology;
(iii) train didactically with the supervising dentist;
(iv) train clinically with the supervising dentist.

(9) No dentist shall allow a dental auxiliary not qualified as stated above to expose radiographs except during one training period that:

(a) is under the direct supervision of the dentist; and

(b) is not longer than six calendar months commencing from the time the auxiliary begins training.

(10) A list of board-approved examinations will be kept on file in the board office.

(11) The board will accept documentation of (8)(a) through (c) above as certification for radiographic exposure. The board will issue a certificate to those auxiliaries who complete (8)(d) as their means to qualify for radiographic exposure."

Auth: Sec. 37-4-205, 37-4-408, MCA; IMP, Sec. 37-4-408, MCA

REASON: Language clarification suggested by the Administrative Code Committee to help better define auxiliaries functions.

"8.16.719 GENERAL STANDARDS (1) through (1)(c) will remain the same.

(d) Dental health screenings do not constitute the practice of dentistry or dental hygiene."

Auth: Sec. 37-4-321, MCA; IMP, Sec. 37-4-321, MCA

REASON: To allow dental health screenings by persons other than licensed dentists.

"8.16.722 UNPROFESSIONAL CONDUCT ~~(1) For the purpose of implementing the provisions of 37-4-321(3), MCA, t~~The board defines "unprofessional conduct" as follows:

~~(a) Resorting to fraud, misrepresentation or deception in applying for or in securing a license or in taking an examination required by Title 37, chapter 4, MCA, or ARM Title 8, chapter 16.~~

(b) will remain the same, but will be renumbered (1).

~~(c) Having been convicted of an offense involving moral turpitude and not having been sufficiently rehabilitated as to warrant the public trust.~~

(d) will remain the same, but will be renumbered (2).

~~(e) Disobeying the law or rules of the board.~~

(f) will remain the same, but will be renumbered (3).

(g) will remain the same, but will be renumbered (4).

~~(h) Failing to cooperate with an authorized investigation of a complaint.~~

~~(i) Being mentally and/or physically incompetent to engage in the practice for which a license has been issued.~~

~~(j) Being habitually intemperate or habitually indulging in excessive use of narcotic drugs, alcohol or any other drug or substance to the extent that the use impairs the user's capacity, either physically or mentally.~~

~~(k) Engaging in morally depraved conduct with patients on the licensee's office premises or under practice related circumstances.~~

~~(l) Failing to exercise due regard for the safety, health and welfare and life of the patient.~~

~~(m) Engaging in conduct unbecoming to the person of the licensee, when such conduct involved the use of any device, drug, medication or material when such use is detrimental to the best interests of the public.~~

(5) A dentist's failure to maintain his/her office(s) in sanitary conditions consistent with current accepted sterilization and disinfection protocols for treatment rooms, sterilization and laboratory areas.

(n) will remain the same, but will be renumbered (6).

~~(o) Resorting to fraud, misrepresentation or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution or organization.~~

(p) will remain the same, but will be renumbered (7).

~~(q) Willfully permitting unauthorized disclosure of information relative to patient's records.~~

(r) will remain the same, but will be renumbered (8).

(s) will remain the same, but will be renumbered (9).

~~(t) Conspiring to misrepresent, or willfully misrepresenting, dental conditions to increase or decrease a settlement award verdict or judgement.~~

~~(u) Employing, procuring, inducing, aiding or abetting a person not licensed or registered as a dentist to engage in the practice of dentistry.~~

~~(v) Professional connection or association with or lending a dentist's name to another for the illegal practice of dentistry by another, or professional connection or association with any person, firm or corporation holding itself out in any manner contrary to this chapter.~~

~~(w) Suspension or revocation of the dentist's license to practice dentistry by competent authority in any state, federal or foreign jurisdiction.~~

~~(x)~~ (10) Failing to supervise and monitor the actions of all dental auxiliaries and dental hygienists in regard to patient care.

~~(y) Engaging in false or misleading advertising as defined by ARM 8.16.516, et seq.~~

(z) will remain the same, but will be renumbered (11)."

Auth: Sec. 37-1-319, 37-4-205, ~~37-4-321,~~ 37-4-405, 37-4-408, MCA; IMP, Sec. 37-1-316, ~~37-4-321,~~ 37-4-405, 37-4-408, 37-4-511, MCA

"8.16.1002 SUBJECT MATTER ACCEPTABLE FOR DENTIST AND DENTAL HYGIENIST CONTINUING EDUCATION ~~(1) The board of dentistry shall determine the acceptability or unacceptability of hours that are claimed for continuing education credit. Determination of course acceptability rests with the board, and all decisions are final. The burden of proof regarding the acceptability of any continuing education course lies entirely with the licensee.~~

~~(2) Upon approval by the board, an organization shall be exempt from the requirement of applying for approval of individual programs.~~

~~(3) The following are currently recognized as organizers of quality continuing education:~~

~~(a) American dental association (ADA);~~

~~(b) American dental hygienists' association (ADHA);~~

~~(c) Constituent associations of the ADA and ADHA;~~

~~(d) Academy of general dentistry and its component academies;~~

~~(e) Accredited schools of dentistry and/or dental hygiene;~~

~~(f) Organizations of the recognized specialty certifying board;~~

~~(g) Study groups that fulfill the following criteria:~~

~~(i) the group consists of a minimum of four members;~~

~~(ii) the group submits to the board:~~

~~(A) copy of charter or constitution,~~

~~(B) roster of officers,~~

~~(C) schedule of meeting dates,~~

~~(D) duration of meetings,~~

~~(E) brief summary of content of meetings, and~~

~~(F) method by which attendance is recorded and authenticated;~~

~~(h) Government agencies.~~

~~(4) A primary consideration in the evaluation of organizations shall be their previous experience presenting continuing dental education activities.~~

~~(5) In order for specific course subject material to be acceptable for credit, the stated course objectives, overall curriculum design and course outlines should clearly establish conformance with the following criteria:~~

(1) Acceptable continuing education includes courses in which:

(a) through (d) will remain the same.

~~(e) Courses should be conducted in a setting physically suitable to the educational activity of the program.~~"

Auth: Sec. 37-1-319, 37-4-205, ~~37-4-307, 37-4-406,~~ MCA; IMP, Sec. 37-1-306, 37-4-205, ~~37-4-307, 37-4-406,~~ MCA

REASON: ARM 8.16.1001 and 8.16.1002 are being amended to make language changes to redefine the subject matter requirements for continuing education and to delete language no longer applicable.

8.16.1003 REQUIREMENTS AND RESTRICTION (1) Each dentist and dental hygienist licensed by the Montana board of dentistry shall have completed, within a three-year cycle, the following minimum number of continuing education credits of instruction in ~~approved courses~~ acceptable courses of continued education:

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

~~(3) Continuing education credit may be secured by these methods:~~

~~(a) lectures;~~

~~(b) clinical sessions;~~

~~(c) study groups;~~

~~(d) A maximum each three year cycle of 24 credits for dentists, and 12 credits for dental hygienists is allowed for group study;~~

~~(e) presentation (instruction) of dental or dental hygiene continuing education:~~

~~(i) Two continuing education credits are allowed for each hour of original presentation.~~

~~(ii) One credit will be given for each hour of presentation of essentially the same material.~~

~~(iii) A maximum each three year cycle of 30 credits for dentists and 18 credits for dental hygienists will be allowed in this manner.~~

~~(f) practice management courses not to exceed six credits per three year cycle;~~

~~(g) live interactive telecommunication;~~

~~(h) home study courses whose materials must be prepared by organizations listed as an approved sponsor of continuing education in ARM 8.16.1002. A licensee may submit such home study for no more than 25 percent of his or her continuing education requirements per three year cycle. Home study courses are limited to two categories:~~

~~(i) audio/video tape presentations; and~~

~~(ii) correspondence/journal study with a successfully completed self-test.~~

(4) will remain the same, but will be renumbered (3).

(a) through (e) will remain the same."

Auth: Sec. 37-1-319, 37-4-205, ~~37-4-307, 37-4-406,~~ MCA; IMP, Sec. 37-1-306, 37-4-205, ~~37-4-307, 37-4-406,~~ MCA

REASON: Language changes to redefine the requirements and restrictions for continuing education. Delete language no longer applicable.

"8.16.1004 REPORTING PROCEDURES (1) Continuing education credits may not be carried over from one three-year cycle to another. ~~Continuing education credits are to be submitted with the dentist and dental hygiene annual license renewal, on the "Montana state board of dentistry continuing education report form." The individual licensee is responsible for maintaining official "proof of attendance" documents. Examples of acceptable proof of attendance documents include:~~

~~(a) "Proof of attendance" form with presenter's signature or sponsor's verification;~~

~~(b) Signed "academy of general dentistry" report form; and~~

~~(c) American dental association official verification of course attendance.~~

~~(2) Dentist and dental hygiene licensees, upon request of the board of dentistry, must be able to produce official proof of attendance in order to receive continuing education credit. Proof must be retained for a period of five years following course attendance.~~

(2) Licensees are required to keep a record of continuing education completed and make this available to the board if so requested.

(3) Licensees shall affirm their understanding of and compliance with continuing education requirements with the annual license renewal.

(4) Failure of licensee to produce records of required continuing education may result in disciplinary action. Following an audit failure, the licensee will be afforded a one-year period to gain the appropriate continuing education requirements. If compliance is not attained, disciplinary action pursuant to 37-1-312, MCA, will be taken.

(5) A random audit of the licensees will be conducted in every three-year cycle."

Auth: Sec. 37-1-319, 37-4-205, ~~37-4-307, 37-4-406,~~ MCA; IMP, Sec. 37-1-306, 37-4-205, ~~37-4-307, 37-4-406,~~ MCA

REASON: Language changes to redefine the requirements for reporting continuing education. Delete language no longer applicable.

"8.16.1005 EXEMPTIONS AND EXCEPTIONS (1) and (2) will remain the same.

(3) Inactive dental and dental hygiene licensees shall be exempt from the continuing education requirements so long as the license remains on inactive status. Inactive licensees seeking to convert to an active status must comply with ARM 8.16.408 or 8.16.607. An inactive license, when activated, will begin a new three-year cycle."

Auth: Sec. 37-1-319, 37-4-205, ~~37-4-307, 37-4-406,~~ MCA; IMP, Sec. 37-1-306, 37-4-205, ~~37-4-307, 37-4-406,~~ MCA

REASON: Add language to clarify a new exemption for continuing education.

"8.17.403 DENTURIST APPLICATIONS (1) through (2)(a) will remain the same."

Auth: Sec. 37-29-201, MCA; IMP, Sec. 37-29-303, 37-29-304, 37-29-306, MCA

REASON: Add language to title to identify Denturists applications.

8.17.404 DENTURIST EXAMINATION (1) through (5) will remain the same.

(6) The applicant shall successfully pass the jurisprudence examination."

Auth: Sec. 37-29-201, MCA; IMP, Sec. 37-29-305, MCA

REASON: Add language to title to identify Denturists examinations. Add language to require a jurisprudence exam.

"8.17.501 FEE SCHEDULE

(1) through (5) will remain the same.

(6) ~~License~~ Active renewal ~~by March 1 of each year~~	$100
(7) and (8) will remain the same.	
(9) License verification fee	20
(10) Inactive renewal	100
(11) Jurisprudence examination fee	85
(12) Laws and rules packet	10"

Auth: Sec. 37-1-134, 37-29-201, 37-29-304, MCA; IMP, Sec. 37-1-134, 37-29-304, MCA

REASON: Implement fee for license verification. Implement fee for a jurisprudence exam. Implement inactive renewal fee. Implement fee for laws and rules packets. Change language to identify active and inactive renewal fees.

"8.17.702 RENEWAL (1) Licenses must be renewed by March 1st of each year upon payment of the annual renewal fee, proof of ~~12 hours~~ continuing education requirements and possession of a current cardiopulmonary resuscitation card.

(2) through (4)(e) will remain the same."

Auth: Sec. 37-1-141, 37-29-201, MCA; IMP, Sec. 37-29-306, MCA

REASON: To delete the reference to an hourly requirement for CE, as this has now been placed in ARM 8.17.706.

"8.17.705 SUBJECT MATTER ACCEPTABLE FOR DENTURIST CONTINUING EDUCATION ~~(1) The board of dentistry shall determine the acceptability or unacceptability of hours that are claimed for continuing education credit. Determination of course acceptability rests with the board and all decisions are final. Licensees are urged to obtain board approval of courses prior to taking the course. The "continuing education approval request form" is designed to collect data for the board to make an informed decision regarding the acceptability of continuing education courses. The form must be submitted a minimum of 60 days prior to the course date. The burden of proof regarding the acceptability of any continuing education course lies entirely with the licensee.~~

~~(2) Upon approval of a sponsor, an organization shall be exempt from the requirement of applying for approval of programs. The board, at any time, may re-evaluate and revoke the status of an approved sponsor. A list of organizations or groups which are approved as sponsors will be maintained in the office of the board.~~

~~(3) Organizations who wish to be course sponsors, are urged to apply for approval prior to course presentation. Application must be made to the board office a minimum of 60 days prior to the course date. A primary consideration in the evaluation of applications, shall be the previous experience of the organization in sponsoring and presenting continuing denturitry education activities.~~

~~(4) In order for specific course subject material to be acceptable for credit, the stated course objectives, overall curriculum design and course outlines should clearly establish conformance with the following criteria:~~

~~(a) The subject matter contributes directly to the quality of the patient care rendered by the licensee. This includes the following subjects as they relate to the practice of denturitry:~~

(1) Acceptable continuing education includes courses in which:

(a) The subject matter contributes directly to the quality of the patient care rendered by the licensee. This includes the following subjects as they relate to the practice of denturitry:

(i) through (d) will remain the same.

~~(e) Courses should be conducted in a setting physically suitable to the educational activity of the program.~~"

Auth: Sec. 37-1-319, 37-29-201, MCA; IMP, Sec. 37-1-306, 37-29-306, MCA

REASON: Language changes to redefine the subject matter requirements for continuing education. Delete language no longer applicable.

"8.17.706 REQUIREMENTS AND RESTRICTIONS ~~(1) Each denturist licensed to practice in the state of Montana shall have completed annually a minimum of 12 continuing education credits of instruction in approved courses.~~

~~(2) For the purpose of compliance, one continuing education credit will be recognized for each sixty minutes of involvement. Credit will not be earned for time spent in introductory remarks, coffee and luncheon breaks, or business meetings.~~

~~(3) Home study courses or television programs, i.e. videotapes, journals, etc. are not acceptable for continuing education credit.~~

(1) Each denturist licensed by the Montana board of dentistry shall have completed, within a three-year cycle, a minimum of 36 continuing education credits of instruction in acceptable courses, commencing on March 1, 1996.

(2) For the purpose of compliance, one continuing education credit will be recognized for each 60 minutes of involvement. Credit will not be earned for time spent in introductory remarks, coffee and luncheon breaks or business meetings.

(3) Courses that are unacceptable for continuing education credit include, but are not necessarily limited to the following:

(a) self-help/pop psychology (i.e. personal goal development, transactional analysis, assertiveness training);

(b) legislative/political issues;

(c) unproven modalities or experimental techniques;

(d) basic science courses; and

(e) basic life support (CPR)."

Auth: Sec. 37-1-319, 37-29-201, MCA; IMP, Sec. 37-1-306, 37-29-306, MCA

REASON: Language changes to redefine the requirements and restrictions for continuing education. Delete language no longer applicable.

"8.17.707 REPORTING PROCEDURES ~~(1) Continuing education credits may not be carried over from one licensing period to another. Continuing education credits are to be submitted with the denturist license renewal, on the "Montana state board of dentistry continuing education report form." A signed written report of attendance must accompany the renewal application. The report must include:~~

~~(a) title of the course or seminar;~~

~~(b) dates of attendance;~~

~~(c) number of clock hours;~~

~~(d) licensee's name and address;~~

~~(e) signature of the instructor or monitor of the continuing education program.~~

(1) Continuing education credits may not be carried over from one three-year cycle to another.

(2) Licensees are required to keep a record of continuing education completed and make this available to the board if so requested.

(3) Licensees shall affirm their understanding of and compliance with continuing education requirements with the annual license renewal.

(4) Failure of a licensee to produce records of required continuing education may result in disciplinary action. Following an audit failure, the licensee will be afforded a one-year period to gain the appropriate continuing education requirements. If compliance is not attained, disciplinary action pursuant to 37-1-312, MCA, will be taken.

(5) A random audit of the licensees will be conducted in every three-year cycle."

Auth: Sec. 37-1-319, 37-29-201, MCA; IMP, Sec. 37-1-306, 37-29-306, MCA

REASON: Language changes to redefine the requirements for reporting continuing education. Delete language not applicable.

"8.17.708 EXEMPTIONS AND EXCEPTIONS (1) and (2) will remain the same.

(3) Inactive denturist licensees shall be exempt from the continuing education requirements so long as the license remains on inactive status. Inactive licensees seeking to convert to an active status must comply with [new rule IX]. An inactive license, when activated, will begin a new three-year cycle."

Auth: Sec. 37-1-319, 37-29-201, MCA; IMP, Sec. 37-1-306, 37-29-306, MCA

REASON: Add language to clarify a new exemption for continuing education.

"8.17.801 UNPROFESSIONAL CONDUCT ~~(1) For the purpose of implementing the provisions of section 37-29-311, MCA,~~ tThe board defines "unprofessional conduct" as follows:

~~(a) misrepresentation, fraud or deception in applying for a license, taking an examination to secure a license, or holding or renewing a license in the practice of denturitry;~~

(b) and (c) will remain the same, but will be renumbered (1) and (2).

~~(d) failure to comply with the statutes regulating the practice of denturitry or the rules of the board;~~

~~(e) employing, procuring, inducing, aiding or abetting a person not licensed to engage in the practice of denturitry;~~

(f) will remain the same, but will be renumbered (3).

~~(g) resorting to fraud, misrepresentation or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, organization or government entity;~~

(h) will remain the same, but will be renumbered (4).

~~(i) being unfit to safely practice denturitry because of physical or mental impairment;~~

(j) will remain the same, but will be renumbered (5).

~~(k) the use of any narcotic, dangerous drug or intoxicating liquor to an extent that such use impairs the ability to safely conduct the practice of denturitry; and~~

(l) will remain the same, but will be renumbered (6).

~~(m) continuing to practice denturitry when the licensee's license has been suspended, revoked, or is not currently renewed;~~

~~(n) having been convicted of an offense involving moral turpitude and not having been sufficiently rehabilitated so as to warrant the public trust;~~

(o) will remain the same, but will be renumbered (7).

~~(p) failing to cooperate with an authorized investigation of a complaint;~~

(8) A denturist's failure to maintain his/her office(s) in sanitary conditions consistent with the current accepted sterilization and disinfection protocols for treatment, sterilization and laboratory areas.

~~(q) engaging in morally depraved conduct with patients on the licensee's office premises or under practice-related circumstances;~~

~~(r) failing to exercise due regard for the safety, health, welfare, and life of the patient;~~

~~(s) willfully permitting unauthorized disclosure of information relative to patient's records;~~

(t)and (u) will remain the same, but will be renumbered (9) and (10).

~~(v) conspiring to misrepresent, or willfully misrepresenting, denture services to increase or decrease a settlement award, verdict or judgment;~~

~~(w) suspension or revocation of the denturist's license to practice denturitry by competent authority in any state, federal, or foreign jurisdiction;~~

(x) will remain the same, but will be renumbered (11)."

Auth: Sec. 37-1-136, 37-1-319, 37-29-201, 37-29-311, MCA; IMP, 37-1-136, 37-1-316, ~~37-29-311,~~ 37-29-402, 37-29-403, MCA

REASON: Language change for clarification and compliance with House Bill 518 language. Delete language already contained in statute.

3. The Board is proposing to repeal ARM 8.16.404 (authority 37-1-131, MCA; implementing 37-4-323, MCA); 8.16.510 (authority 37-4-205, MCA; implementing 37-4-205, MCA); 8.16.801 (authority 37-1-136, MCA; implementing 37-1-136, 37-4-323, MCA); 8.16.802 (authority 37-1-136, 37-4-321, MCA; implementing 37-1-136, 37-4-321, 37-4-323, MCA); 8.16.803 (authority 37-1-136, 37-4-321, MCA; implementing 37-1-136, 37-4-321, 37-4-323, MCA); 8.16.804 (authority 37-1-136, MCA; implementing 37-1-136, 37-4-321, 37-4-323, MCA); 8.16.805 (authority 37-1-136, MCA; implementing 37-1-136, 37-4-323, MCA; 8.16.806 (authority 37-1-136, 37-1-137, 37-4-205, MCA; implementing 37-1-136, 37-1-137, 37-4-323, MCA); 8.16.808 (authority 37-1-136, MCA; implementing 37-1-136, 37-4-323, MCA); 8.17.807 (authority 37-1-136, 37-29-201, MCA; implementing 37-1-136, 37-29-201, 37-29-311, MCA); 8.17.809 (authority 37-1-131, 37-29-201, MCA; implementing 37-29-402, MCA); 8.17.810 (authority 37-1-131, 37-29-201, MCA; implementing 37-29-403, MCA). Text of the rules is located at pages 8-504, 8-506, 8-525, 8-526, 8-527, 8-539.14 and 8-539.15, Administrative Rules of Montana. These repeals are necessary because the language currently in the rules is now contained in statutes mandated by the 1995 Legislature in House Bill 518 (the Uniform Professional Licensing and Regulation Procedures Act).

4. The proposed new rules will read as follows:

"I DENTIST APPLICATION REQUIREMENT (1) Applications for licensure shall be submitted 20 days prior to taking the jurisprudence exam.

(2) Applicants for licensure shall submit an application, which shall be furnished by the board and shall include:

(a) certification of successful completion of the national board written examination;

(b) certification of successful completion of the western regional examining board practical examination;

(c) copy of the national board score card;

(d) three affidavits of good moral character;

(e) certificate of graduation from a board-approved dental school or a letter from the dean of the school of dentistry attesting to the program of study and that graduation status was attained;

(f) license verification from all jurisdictions where the licensee has held or holds a license;

(g) copies of all other state licenses that are held by the applicant;
(h) original dental school transcripts;
(i) copy of a self-query of the national practitioners data bank;
(j) successful passage of the jurisprudence examination;
(k) copy of current CPR card (active licensees only);
(l) photograph of the applicant;
(m) jurisprudence examination fee; and
(n) licensure fee."

Auth: Sec. 37-4-205, MCA; IMP, Sec. 37-4-301, MCA

REASON: Add new section to separate the language from dentist examinations section and to clarify requirements for applications.

"II DENTIST OUT-OF-STATE APPLICANTS (1) All out-of-state applicants shall be required to meet all of the requirements set forth in ARM 8.16.402 and [new rule I]."

Auth: Sec. 37-1-319, 37-4-205, MCA; IMP, Sec. 37-1-304, MCA

REASON: Add rule to comply with statutory language in 37-1-304 Licensure of out-of-state applicants.

"III COMPLAINT PROCEDURE (1) A person, government or private entity may submit a written complaint to the board charging a licensee or license applicant with a violation of board statute or rules, and specifying the grounds for the complaint.

(2) Complaints must be in writing, and shall be filed on the proper complaint form prescribed by the board.

(3) Upon receipt of the written complaint form, the board office shall log in the complaint and assign it a complaint number. The complaint shall then be sent to the licensee complained about for a written response. Upon receipt of the licensee's written response, both complaint and response shall be considered by the screening panel of the board for appropriate action including dismissal, investigation or a finding of reasonable cause of violation of a statute or rule. The board office shall notify both complainant and licensee of the determination made by the screening panel.

(4) If a reasonable cause violation determination is made by the screening panel, the Montana Administrative Procedure Act shall be followed for all disciplinary proceedings undertaken.

(5) The screening panel shall review anonymous complaints to determine whether appropriate investigative or disciplinary action may be pursued, or whether the matter may be dismissed for lack of sufficient information."

Auth: Sec. 37-4-205, MCA; IMP, Sec. 37-1-308, 37-1-309, MCA

REASON: Add rule to comply with statutory language in House Bill 518. To inform individuals how the complaint process is implemented.

"IV SCREENING PANEL (1) The board screening panel shall consist of the senior member dentist appointment, one additional dentist, one dental hygienist, one public member, one denturist and the non-voting member. The chairman may reappoint screening panel members, or replace screening panel members as necessary at the chairman's discretion."

Auth: Sec. 37-4-205, MCA; IMP, Sec. 37-1-307, MCA

REASON: Add rule to comply with statutory language in House Bill 518. Language requires that all Boards implement screening panel under 37-1-307(1)(e), MCA.

"V DENTAL HYGIENIST APPLICATION REQUIREMENTS

(1) Applications for licensure shall be submitted 20 days prior to taking the jurisprudence examination.

(2) Applicants for licensure shall submit an application, which shall be furnished by the board and shall include:

(a) certification of successful completion of the national board written examination;

(b) certification of successful completion of the regional board written examination;

(c) copy of the national board score card;

(d) two affidavits of good moral character;

(e) certificate of graduation from a board-approved dental hygiene school or a letter from the dean of the school of dental hygiene attesting to the program of study and that graduation status was attained;

(f) original dental hygiene school transcripts;

(g) license verification from all jurisdictions that the licensee has held or currently holds a license;

(h) copies of all other state licenses that are held by the applicant;

(i) recent photograph of the applicant;

(j) successful passage of the jurisprudence examination;

(k) copy of current CPR card (active licensees only);

(l) jurisprudence examination fee; and

(m) original licensure fee.

(3) No licensed dental hygienist shall administer local anesthetic agents during a dental procedure or dental-surgical procedure unless and until he or she possesses a local anesthetic permit issued by the board. Application for a local anesthetic permit shall be made by letter of request to the board with proof of successful completion of a WREB local anesthetic certificate, and a valid and current CPR card."

Auth: Sec. 37-4-205, 37-4-402, MCA; IMP, Sec. 37-4-402, MCA

REASON: Add new section to separate the language from dental hygiene examinations section to application requirement section and to clarify requirements for applications.

"VI DENTAL HYGIENE OUT-OF-STATE APPLICANTS (1) An out-of-state applicant for dental hygiene licensure not fulfilling the western regional examination requirement, shall fulfill the following requirements and submit an application and supporting documentation:

(a) certificate of graduation from an accredited dental hygiene school;

(b) successful completion of the national board of dental hygiene examination;

(c) successful completion of a clinical examination certified by the state;

(d) license verification from all jurisdictions where the licensee has held or currently holds a license;

(e) successful passage of the jurisprudence examination;

(f) proof that the applicant has practiced dental hygiene continuously for a minimum of 500 hours during the one year immediately prior to application;

(g) copy of a current CPR card;

(h) upon approval of the application, successful completion of the Montana jurisprudence examination;

(i) jurisprudence examination fee;

(j) original licensure fee; and

(k) out-of-state application fee."

Auth: Sec. 37-4-205, MCA; IMP, Sec. 37-1-304, MCA

REASON: Add new rule to comply with statutory language in 37-1-304, Licensure of out-of-state application.

"VII COMPLAINT PROCEDURE (1) A person, government or private entity may submit a written complaint to the board charging a licensee or license applicant with a violation of board statute or rules, and specifying the grounds for the complaint.

(2) Complaints must be in writing, and shall be filed on the proper complaint form prescribed by the board.

(3) Upon receipt of the written complaint form, the board office shall log in the complaint and assign it a complaint number. The complaint shall then be sent to the licensee complained about for a written response. Upon receipt of the licensee's written response, both complaint and response shall be considered by the screening panel of the board for appropriate action including dismissal, investigation or a finding of reasonable cause of violation of a statute or rule. The board office shall notify both complainant and licensee of the determination made by the screening panel.

(4) If a reasonable cause violation determination is made by the screening panel, the Montana Administrative Procedure Act shall be followed for all disciplinary proceedings undertaken.

(5) The screening panel shall review anonymous complaints to determine whether appropriate investigative or disciplinary action may be pursued, or whether the matter may be dismissed for lack of sufficient information."

Auth: Sec. 37-4-205, MCA; IMP, Sec. 37-1-308, 37-1-309, MCA

REASON: Add rule to comply with statutory language in House Bill 518. To inform individuals how the complaint process is implemented.

"VIII DENTURIST INACTIVE STATUS LICENSE TO ACTIVE STATUS LICENSE (1) Licenses may be placed on inactive status upon written request to the board.

(2) An inactive status license does not entitle the holder to practice denturitry in the state of Montana. Upon application and payment of the appropriate fee, the board may reactivate an inactive license if the applicant does each of the following:

(a) present satisfactory evidence of operative competency, which may include, but not be limited to:

(i) evidence that the applicant has actively and competently practiced in another jurisdiction during the year immediately prior to the application for reactivation; or

(ii) evidence that the applicant has not been out of active practice for more than three years, if the applicant has been out of practice for longer than 3 years the request for reactivation will be at the board's discretion, or

(iii) evidence that, within the last year, the applicant has successfully passed the board's licensure examination.

(b) submits license verifications from all jurisdictions where the applicant is licensed or has held a license;

(c) submits 12 hours of continuing education for each year the license has been inactive;

(d) submits a current CPR card;

(e) applicant must take the jurisprudence examination if the applicant has been inactive for three years or longer."

Auth: Sec. 37-1-319, 37-4-205, MCA; IMP, Sec. 37-1-319, MCA

REASON: Add language to provide an inactive status to Denturists and to allow them to convert the license.

"IX COMPLAINT PROCEDURE (1) A person, government or private entity may submit a written complaint to the board charging a licensee or license applicant with a violation of board statute or rules, and specifying the grounds for the complaint.

(2) Complaints must be in writing, and shall be filed on the proper complaint form prescribed by the board.

(3) Upon receipt of the written complaint form, the board office shall log in the complaint and assign it a complaint number. The complaint shall then be sent to the licensee complained about for a written response. Upon receipt of the licensee's written response, both complaint and response shall be considered by the screening panel of the board for appropriate action including dismissal, investigation or a finding of reasonable cause of violation of a statute or rule.

The board office shall notify both complainant and licensee of the determination made by the screening panel.

(4) If a reasonable cause violation determination is made by the screening panel, the Montana Administrative Procedure Act shall be followed for all disciplinary proceedings undertaken.

(5) The screening panel shall review anonymous complaints to determine whether appropriate investigative or disciplinary action may be pursued, or whether the matter may be dismissed for lack of sufficient information."

Auth: Sec. 37-4-205, MCA; IMP, Sec. 37-1-308, 37-1-309, MCA

REASON: Add rule to comply with statutory language in House Bill 518. To inform individuals how the complaint process is implemented.

"X SCREENING PANEL (1) The board screening panel shall consist of the senior member dentist appointment, one additional dentist, one dental hygienist, one public member, one denturist and the non-voting member. The chairman may reappoint screening panel members, or replace screening panel members as necessary at the chairman's discretion."

Auth: Sec. 37-4-205, MCA; IMP, Sec. 37-1-307, MCA

REASON: Add rule to comply with statutory language in House Bill 518. Language requires that all Boards implement screening panel under 37-1-307(1)(e), MCA.

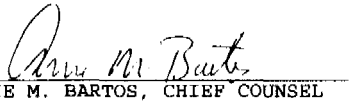
5. Interested persons may submit their data, views or arguments concerning the proposed amendments, repeals and adoptions in writing to the Board of Dentistry, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., October 31, 1996.

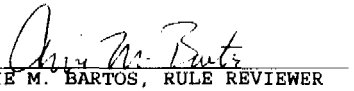
6. If a person who is directly affected by the proposed amendments, repeals and adoptions wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Dentistry, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., October 31, 1996.

7. If the Board receives requests for a public hearing on the proposed amendments, repeals and adoptions from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, repeals and adoptions, 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. Ten percent of those persons directly

affected has been determined to be 113 based on the 1128 licensees in Montana.

BOARD OF DENTISTRY
DONALD NORDSTROM, DDS, CHAIRMAN

BY: 
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, September 23, 1996.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption of new rule I regarding temporary water standards for Daisy Creek, Stillwater River, Fisher Creek, and the Clark's Fork of the Yellowstone River.	)))))	NOTICE OF SUPPLEMENTAL COMMENT PERIOD

(Water Quality)

To: All Interested Persons

1. On August 24, 1995, on page 1652 of the Montana Administrative Register, Issue No. 16, and October 26, 1995, on page 2211 of the Montana Administrative Register, Issue No. 20, the Board gave notice of a proposed rule to establish temporary water quality standards for four streams or stream segments near Cooke City. At the December 7, 1995, hearing, commenting parties disagreed whether the rule should be adopted. The Board requested several of the parties to engage in discussions to reach a mutually acceptable resolution of the issues. The parties negotiated with the goal of agreeing on a consent decree to be entered in an enforcement action filed by the Department of Environmental Quality. On April 25, 1996, on page 1049 of the 1996 Montana Administrative Register, Issue No. 8, and in anticipation that the parties would reach agreement on a consent decree, the Board published a notice of supplemental comment period. In that notice, the Board asked the public to comment on whether the Board should adopt temporary standards or allow the matter to be resolved by entry of the consent decree. However, the parties did not reach agreement on a consent decree before the close of the supplement period on June 24,1996.

On August 12, 1996, Crown Butte Mines, Inc., the United States Department of Justice, and a number of public interest groups entered an agreement whereby the parties agreed to pursue an exchange of Crown Butte's mining property, which is located in the drainages to which this rulemaking pertains, for federal land at another location or locations. In the agreement the parties also committed to negotiate in good faith the terms of a consent decree, to be entered in a federal court action, that would require environmental response and/or restoration actions on these drainages. The parties anticipate that, if an acceptable consent decree is entered, they will recommend that the Board not act in the present rulemaking proceeding. The Board is interested in the public's view of whether, if a consent decree is negotiated, the Board should decline to adopt temporary standards as proposed or in a modified form. Therefore, in order to provide this opportunity for public comment, the Board is reopening the public comment period.

The parties have advised the Board that they will attempt

to complete negotiations as expeditiously as possible. Under the policies of both the United States Environmental Protection Agency and the Montana Department of Environmental Quality, the consent decree will be available for public comment before it is entered by the court. In order to allow the parties adequate time to complete negotiations and to allow the public an opportunity to comment on whether the consent decree eliminates the need for temporary standards, the Board is reopening the comment period on the proposed temporary standards rule until March 20, 1997. Persons who wish to receive a copy of the proposed consent decree, when it is available, may receive it by sending a request to Leona Holm, Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

2. Interested persons may submit their views or arguments concerning the proposed rule, in writing, to Leona Holm, Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901, no later than March 20, 1997. To be guaranteed consideration, the comments must be postmarked on or before that date.

BOARD OF ENVIRONMENTAL REVIEW

CINDY E. YOUNKIN, Chairperson

Reviewed by:

JOHN F. NORTH
Rule Reviewer

Certified to the Secretary of State September 23, 1996.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

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

TO: All Interested Persons.

1. On October 29, 1996 at 9:00 a.m., a public hearing will be held in the auditorium of the Scott Hart Building, 1st Floor, 303 N. Roberts, Helena, Montana, to consider the adoption, amendment and repeal of rules regulating gambling.

2. The proposed new rule implements a provision concerning loan evaluation. The rules proposed to be amended pertain to general definitions; specific definitions governing video poker, keno, and bingo displays; references to the Gambling Control Division's correct address; application for gambling license; license fees; distributor's license; route operator's license; manufacturer's license; manufacturer of devices not legal in state license; record retention periods for such licenses; renewal of gambling license; applicant investigations; reapplication rule; withdrawal of application grounds for denial of gambling license, permit or authorization; general specifications of video gambling machines and video gaming machine software; use of temporary replacement or loaner machines; video gambling machine application, permits, records inspection, reports, and reporting requirements; letters of withdrawal for permitted machines; importation of illegal gambling devices; equipment specifications; quarterly reporting requirements; general requirements of manufacturers, distributors and route operators of video gambling machines or producers of associated equipment; manufacturer reporting and record keeping requirements; loans to licensees; noninstitutional lending disclosures; transfer of interest among licensees; transfer of interest to a stranger to the license; participation in gambling operations; administrative procedure; confiscation of temporary dealer licenses; application for authorization and permits to conduct card game tournaments; application for authorization and permits to conduct a Calcutta pool; credit play prohibition and the cashing of checks; sports tab card manufacturer license and fee; and department approval of promotional games of chance, devices or enterprises.

The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you desire an accommodation, please contact the department no later than Friday, October 25, 1996, to advise it of the nature of the accommodation that you need. Please contact Kathy Fisher at 2550 Prospect Avenue, Helena, Montana 59620-1424, tel. (406) 444-1973.

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

23.16.101 DEFINITIONS As used throughout this ~~sub~~chapter, the following definitions apply:

~~(1) "Applicant" means a person who has applied for a license issued by the department under Title 23, chapter 5, MCA.~~

(1) "Control" means the power to cause or direct management and policies through ownership, contract, or otherwise.

(2) and (3) remain the same.

~~(4) "Department" means the department of justice unless otherwise specifically stated.~~

(4) "Financing" means investments, gifts, loans, or deferred payment agreements for the purchase of real property, tangible or intangible personal property, or past or prospective services.

(5) remains the same.

(6) "Lease agreement" means a contract that transfers the right to possess and use of property for a term, in return for consideration. The terms of the lease may not transfer an ownership interest in the licensed gambling operation as defined in this rule.

(7) "Loan" means a written contract by which one delivers a sum of money or other thing of value to another and the latter agrees to return at a future time a sum equivalent to that which he/she borrowed.

(8) "Management agreement" means a contract between the licensee and a person to whom management duties are assigned, e.g., supervision of personnel, bookkeeping and ordering goods or supplies. The agreement may not transfer an ownership interest in the licensed operation or limit or relieve the licensee of record from the responsibilities of ownership. Bonuses or bonus-type payments based on job performance are not considered ownership interests if they are provided in conjunction with a reasonable salary base and do not assign or transfer an ownership interest.

(9) "Manager" means a person employed by the licensee to whom overall management responsibilities have been assigned.

(6) through (8) remain the same but are renumbered (10) through (12).

~~(9)~~ (13) "Noninstitutional lender" or "noninstitutional source" means a person, ~~who loans money to an applicant~~ other than a state or federally regulated banking or financial institution, who loans money or supplies financing to an applicant or a licensee.

~~(10) "Operator" means a person who operates or controls for use in public a gambling device or gambling enterprise.~~

(14) "Owner" or "owner of an interest" means a person with a right to share in the profits, losses, or liabilities of a gambling operation. The term ownership interest is synonymous with owner or owner of an interest. The term "owner" or "owner of an interest" does not include route operators with a right to share in proceeds from video gambling machines they have leased to location operators. "Owner" or "owner of an interest" includes:

(a) loan guarantors who make actual debt payments for or contribute capital to a gambling operation;

(b) any person whose compensation or contractual rights in relation to the licensed gambling operation are based in whole or part upon the assumption of economic risk or level of any or all proceeds or sales;

(c) any person whose stated or prospective compensation is based on a percentage of business activity, gross or net sales; or

(d) a holding company, defined under this rule as a corporation operated for the purpose of owning the stocks of other corporations and controlling the operations of these corporations.

~~(11)~~(15) "Person" means either a natural or an artificial person, and includes all partnerships, corporations, limited liability companies, associations, clubs, fraternal orders, religious organizations, or charitable organizations. A separate person exists when a partner in a partnership changes, any member(s) in a limited liability company changes, any shareholder(s) in a closed corporation changes, or 5% or more of the interest in a publicly traded corporation is transferred to or from a single individual.

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

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

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

(19) "Working day" means every day except Saturdays, Sundays and all state legal holidays enumerated under 1-1-216, MCA.

AUTH: 23-5-115, MCA IMP: 23-5-112, 23-5-118, 23-5-176, 23-5-629, MCA

23.16.102 APPLICATION FOR GAMBLING LICENSE - LICENSE FEE

(1) Every person working or acting as a card dealer, operator, route operator, card room contractor, ~~manufacturer/distributor~~, 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, any nonprofit organization, or any other person required by statute or rule to hold a license issued by the department, must ~~have~~ possess a valid license issued by the department. All licenses expire annually at midnight on June 30 unless otherwise provided for in these rules. All owners or owners of an interest, as that term is defined under ARM 23.16.101, are considered applicants for all licensing purposes within this chapter.

(2) An application for a gambling license must be submitted to the department of justice, gambling control division, on forms prescribed by the department and described herein. The application is not complete unless it is signed and dated by ~~the~~

all or any applicant(s) and contains all information, statements, documentation, and fees required by the department.

(3) The application must also contain:

(a) a document authorizing the 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~~ all or any applicant(s) whose signatures must be attested to before a notary public;

(b) remains the same.

(c) any ~~first year~~ license or processing fee required by Title 23, chapter 5, MCA, or these rules; and

(d) remains the same.

(4) Forms 1 through 3 and 10, as the forms read on ~~October 1, 1991~~ August 26, 1996, are incorporated by reference and available from the Gambling Control Division, ~~2687 Airport Rd.,~~ 2550 Prospect Ave., Helena, Montana 59620-1424.

(5) An original and two copies of all required documents must be submitted by the applicant(s) in all new and amended license applications.

AUTH: 23-5-115, MCA IMP: 23-5-115, 23-5-177, 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 any noninstitutional lender to complete a document (form 13) authorizing examination and release of information and (form 10) a personal history statement on the lender, as well as any contract, statement or other document from the lender deemed necessary 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 and form 10 as the forms read on ~~October 1, 1991~~ August 26, 1996 ~~and June 30, 1993, respectively~~ are incorporated by reference and available ~~upon request~~ from the Gambling Control Division, ~~2687 Airport Rd.~~ 2550 Prospect Ave., Helena, Montana 59620-1424.)

AUTH: 23-5-115, MCA IMP: 23-5-115, MCA

23.16.105 WITHDRAWAL OF APPLICATION (1) remains the same.

(2) The department may, in its discretion, grant the request with or without prejudice. If the division's decision to grant a request to withdraw an application is made with prejudice, it must be based on a finding that the ~~application is made with intentional disregard of the gambling laws of Montana~~ applicant has engaged or is engaging in an act or practice constituting a violation of a provision of Title 23, chapter 5, MCA, or a rule or order of the department, or that the applicant is a person whom the department determines is not qualified to receive a license under 23-5-176, MCA, or ARM 23.16.107. This decision is subject to challenge pursuant to the Montana Administrative Procedure Act.

(3) If a request for withdrawal is granted with prejudice,

the applicant is not eligible to apply again for licensing or approval until after expiration of 1 year from the date of ~~such withdrawal~~ the final department action upon the decision to grant the withdrawal of the application with prejudice.
AUTH: 23-5-115, MCA IMP: 23-5-115, 23-5-136, 23-5-176, MCA

23.16.107 GROUNDS FOR DENIAL OF GAMBLING LICENSE, PERMIT OR AUTHORIZATION (1) remains the same.

(a) concealed, failed to disclose, or otherwise attempted to mislead the department with respect to any material fact contained in the application or ~~investigation for a gambling license or license renewal application~~ contained in any other information required of or submitted by an applicant or licensee for any licensing purpose;

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

(2) The department may, in its discretion, deny a license under (1) with or without prejudice. If the division's decision to grant a request to withdraw an application is made with prejudice, it must be based on a finding that the applicant has engaged or is engaging in an act or practice constituting a violation of a provision of Title 23, chapter 5, MCA, or a rule or order of the department, or that the applicant is a person whom the department determines is not qualified to receive a license under 23-5-176, MCA, or this rule. This decision is subject to challenge pursuant to the Montana Administrative Procedure Act. Any person whose application has been denied with prejudice is not eligible to apply again for licensing or approval until after expiration of 1 year from the date of the final department action upon the decision to deny the application with prejudice.
AUTH: 23-5-115, MCA IMP: 23-5-115, 23-5-176, MCA

23.16.109 RENEWAL OF GAMBLING LICENSE (1) remains the same.

(2) ~~The~~ Any renewal or annual ~~license~~ fee required by Title 23, chapter 5, MCA, or these rules, must accompany each renewal application.
AUTH: 23-5-115, MCA IMP: 23-5-115, 23-5-177, MCA

RULE I LOAN EVALUATION (1) The department will evaluate a transaction to determine if it is a loan using standards in the uniform commercial code, the internal revenue code and generally accepted commercial lending practices. Loans will also be evaluated in the context of overall financing of the business to determine that a loan rather than an ownership interest exists and that the contract does not grant the lender control of the licensed operation.
AUTH: 23-5-115, MCA IMP: 23-5-115, 23-5-118, 23-5-176, MCA

23.16.116 TRANSFER OF INTEREST AMONG LICENSEES

(1) Except as provided in (5), an ownership interest ~~in a licensed gambling operation may not be transferred to another owner or group of owners of an interest or interests in the same licensed gambling operation~~ may not be transferred among

existing owners without submitting an amended gambling license application to the department and obtaining department approval prior to the transfer.

(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. In any case of the transfer of an ownership interest among existing owners, the department must determine that the transferred ownership interest is independently exercised by the new owner and does not remain under the control of the transferor before approving the transfer.

(3) remains the same.

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

(5) through (5)(a) remain the same.

(b) transfer of less than 5% interest in a publicly-traded corporation. Transfers of an interest of 5% or more in a publicly-traded corporation are subject to the provisions of this rule, except that the transfer may occur without prior department approval. The department reserves the right to act under 23-5-136, MCA, in this situation if it determines that the transfer violates Montana gambling law or the rules in this chapter.

AUTH: 23-5-115, MCA IMP: 23-5-115, 23-5-118, 23-5-176, MCA

23.16.117 TRANSFER OF INTEREST TO ~~A STRANGER TO THE LICENSE~~ NEW OWNER (1) Except as provided in (7), (8), and (9), an ~~owner of an interest in a licensed gambling operation may not transfer an interest in the operation to a stranger to the license~~ ownership interest may not be transferred to a new owner 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~~ the annual license fees~~,~~ if ~~required~~ applicable, and the processing fee required for the specific license; and

(b) remains the same.

(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. In any case of the transfer of an ownership interest to a new owner, the department must determine that the transferred ownership interest will be independently exercised by the new owner and will not remain under the control of the transferor before approving the transfer.

(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 take other ~~appropriate~~ action.

(5) through (7)(a) remain the same.

(b) transfer of less than 5% interest in a publicly-traded corporation. Transfers of an interest of 5% or more in a

publicly-traded corporation are subject to the provisions of this rule, except that the transfer may occur without prior department approval. The department reserves the right to act under 23-5-136, MCA, in this situation if it determines that the transfer violates Montana gambling law or the rules in this chapter.

(8)(a) through (8)(a)(iv) remain the same.

(v) the former licensee has notified the department of the foreclosure at the time the foreclosure is executed; notification must be made within 5 ~~business~~ working days of execution and an application must be received by the department within 30 working days following notification; failure to notify the department within this time frame may result in department action to cause gambling operations to cease immediately.

(b) through (9)(b) remain the same.

AUTH: 23-5-115, MCA IMP: 23-5-115, 23-5-118, 23-5-176, MCA

23.16.119 PARTICIPATION IN OPERATIONS (1) ~~Except as provided in (2), a~~ A person who proposes to acquire an ownership interest in a licensed gambling operation may not control or participate ~~in a managerial or supervisory capacity or~~ in any capacity reflecting ownership in ~~the conduct~~ that ~~of the gambling~~ operations ~~or operation of the establishment in which the gambling operations are conducted~~ until the ~~transfer~~ applicant's license has been approved by the department as provided for in ARM 23.16.116 or ~~ARM~~ 23.16.117.

(2) remains the same.

AUTH: 23-5-115, MCA IMP: 23-5-115, 23-5-118, 23-5-176, MCA

23.16.120 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)~~ (1) Except as provided in (4), ~~and~~ (5), and (6) of this rule, if a gambling licensee or license applicant proposes to acquires a loan or other forms of financing from a noninstitutional source for use in ~~conducting~~ his licensed gambling operation or grant a security interest to a noninstitutional source ~~acquires a security interest in a licensed gambling operation~~, the department ~~shall~~ must approve the ~~loan or acquisition~~ contract or security interest transfer before any funds from the loan or financing may be received or expended by the licensee or license applicant ~~or the acquisition of the security interest is finalized~~ and before the security interest may be transferred.

(2) Except as provided in (4) and (5), a gambling licensee proposing to lend money to or acquire a security interest from, another gambling licensee must receive confirmation of department approval of the loan, or security interest transfer before any funds from the loan may be transferred to or expended by the borrower licensee and before the security interest may be transferred. (As it is used in this rule, confirmation of approval means a copy of the department's letter approving the loan or transfer of the security interest.)

(3) ~~A licensee shall~~ All licensees who propose to acquire

loans or grant security interests in their licensed gambling operation, must 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~~ prior to acquiring the loan from a noninstitutional source, or transferring a security interest to a noninstitutional source. The notice, which is to be signed under oath, must include:

(a) through (d) remain the same.

(e) a copy of the loan agreement or, in the case of a transfer of a security interest, the agreement precipitating the transfer, and 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)(a) and (b) remain the same.

(c) at least twice each month, the route operator must reconcile the amount of prizes paid out with the cash remaining in the change bank. If the amount of prizes paid out cannot be reconciled with the cash remaining in the change bank, the route operator must analyze and document the difference. Any material differences must be immediately reported to the department. (For the purposes of this rule, material difference means any amount greater than 5% of the value of the change bank loan or $100, whichever is less.) A record of the reconciliations and analysis of material differences must be maintained ~~for a period not less than 3 years~~ for a minimum of 12 full quarters from the previous quarterly tax return due date; and

(4)(d) through (5)(e) remain the same.

(6) Prior department approval is not required for accounts payable incurred for the purpose of acquiring non-gambling inventories, supplies and other materials or equipment under the following conditions:

(a) The payable does not require the transfer of a security interest;

(b) repayment term does not extend beyond the seller's normal repayment term or 90 days which ever is less;

(c) repayment is due the seller of the products; and

(d) the sale of such products is in the seller's normal course of business.

~~(6)~~(7) 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~~ or the agreement(s) involves an unsuitable source of financing or otherwise violates any statute or rule.

AUTH: 23-5-115, MCA IMP: 23-5-115, 23-5-118, 23-5-176, MCA

23.16.202 CREDIT PLAY PROHIBITED (1) All playing of games of chance must be on a cash basis. No credit may be extended to any player. Consideration to play a game of chance must be paid in full, in cash, in advance of any play.

(2) No operator may grant a loan of any kind at any time to a player or permit a deferred payment including post-dated checks or engage in any similar practice. A check used to obtain cash on the premises of a licensed operator must be delivered and accepted unconditionally. An operator may not

accept or hold a check pending the outcome of a gambling activity. An operator may not accept cash from the person who wrote the check to repurchase a check previously cashed on the premises, unless the cash is tendered within normal business hours on the date written on the check.

(a) Checks returned from a banking institution labeled "dishonored" or "non-sufficient funds" are not subject to the above time-limit requirements.

(3) The play of authorized card games which are normally scored using points is not considered credit gambling.

AUTH: 23-5-115, MCA IMP: 23-5-112, 23-5-115, 23-5-157, MCA

23.16.203 ADMINISTRATIVE PROCEDURE (1) through (3) remain the same.

(4) This rule does not apply to temporary cease and desist orders issued by the department under 23-5-136, MCA.

AUTH: 23-5-115, MCA IMP: 23-5-115, 23-5-136, MCA

23.16.407 CONFISCATION OF TEMPORARY DEALER LICENSE

(1) The department may immediately confiscate ~~A~~ a temporary dealer license by issuing ~~may be immediately confiscated by authorized representatives of the department if the department has issued~~ a temporary cease and desist order ~~and~~ based on a finding of any of the following conditions ~~can be demonstrated~~:

(a) through (d) remain the same.

(e) the department, pursuant to ARM 23.16.203(1), has notified the holder of such a license of the department's intent to deny ~~has denied~~ a permanent dealer license to the holder ~~of such a license~~; or

(f) remains the same.

~~(2) An applicant whose temporary dealer license has been confiscated under these rules may appeal the confiscation through the provision of the Montana Administrative Procedure Act.~~

AUTH: 23-5-115, MCA IMP: 23-5-115, 23-5-308, MCA

23.16.502 APPLICATION FOR OPERATOR LICENSE (1) All applicants shall submit the following information on form 5, as that form read on ~~October 1, 1991~~ August 26, 1996, which is incorporated by reference and available from the Gambling Control Division, ~~2687 Airport Rd.~~ 2550 Prospect Ave., Helena, Montana 59620-1424:

(a) name(s), addresses, telephone numbers, and social security numbers; history of gambling licensure with any federal, state, or local agency; civil and criminal record; and record of residence and employment of any person with an ownership interest in the applicant entity and a list of those with an option to purchase a share of the business ~~owners~~ for the last 10 years;

(b) remains the same.

(c) the amounts and sources of all business financing, along with the terms of each loan agreement and all related security agreements, and guarantees;

(d) through (d)(iv) remain the same.

(v) if the business is a limited liability company, the information must be submitted on all members and managers in the company; or

(v) and (vi) remain the same but are renumbered (vi) and (vii).

~~(e) the following information regarding employees and business associates:~~

~~(i)~~(e) the full name and address of every person employed in a management capacity by the applicant in a gambling-related activity in Montana. ~~on a salary or commission basis;~~

~~(ii) every person who has any right to share in the profits of the gambling operation including assignees, landlords, or otherwise, to whom any interest or share of profits has been pledged as security for a debt or deposited as security for the performance of any act or to secure the performance of a contract of sale;~~

~~(iii) a list of those with options to purchase a share of the business.~~

(2) Operator licenses must be renewed annually by completing forms prescribed by the department. There is no renewal fee or annual license fee required for an operator license.

AUTH: 23-5-115, MCA IMP: 23-5-115, 23-5-118 23-5-176, 23-5-177, MCA

23.16.1101 CARD GAME TOURNAMENTS (1) remains the same.

(2) If a licensed operator 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 an application to the department for a card game tournament permit. Form 14, the card game tournament permit application, is available from the department upon request. The application must include:

(a) through (j) remain the same.

(3) The card game tournament application must be received by the department at least ~~5~~ 10 working days before the start of the tournament ~~allowing sufficient time for processing~~. The department may process an application received by FAX but shall not issue a permit on such an application until the fee is received by the department.

(4) through (7) remain the same.

(8) A tournament may not be conducted for more than 5 consecutive working days. Card games may not 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.

(9) and (10) remain the same.

AUTH: 23-5-115, MCA IMP: 23-5-115, 23-5-311, 23-5-317, MCA

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

(1) remains the same.

(2) "Authority reference" means Official Montana Poker Rulebook (1990 Edition) and Scarne's Encyclopedia of Card Games, copyright 1983, by John Scarne, pages 18 through 276. These books will be used by the department as the authority on how to play authorized card games. The authority references are adopted and incorporated by reference; copies of Scarne's Encyclopedia of Card Games may be obtained from local bookstores and copies of the Official Montana Poker Rulebook may be obtained for $5.00 per copy from the ~~Department of Justice,~~ Gambling Control Division, ~~2687 Airport Road~~ 2550 Prospect Ave., Helena, Montana 59620-~~1424~~. The sections of the books cited as authority will not apply where there is a conflict with state law or department rule.

(3) through (19) remain the same.

AUTH: 23-5-115, MCA IMP: 23-5-115, MCA

23.16.1716 SPORTS TAB CARD MANUFACTURER LICENSE

(1) remains the same.

(a) a sports tab card manufacturer license application (form 21 as the form read on ~~October 1, 1991~~ August 26, 1996, is incorporated by reference and available ~~upon request~~ from the Gambling Control Division, ~~2687 Airport Road~~ 2550 Prospect Ave., Helena, Montana 59620-~~1424~~);

(b) and (c) remain the same.

(d) a check or money order for ~~$2,000~~ $1,500 made payable to the state treasurer, which includes payment for the:

(i) ~~$1,000~~ $500 annual license fee; and

(d)(ii) through (4) remain the same.

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

23.16.1719 MANUFACTURER RECORD KEEPING 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. The manufacturer must maintain these records for a ~~period not less than 3 years from the due date of related quarterly reports~~ minimum of 12 full quarters from the previous quarterly tax return due date.

(2)and (3) remain the same.

AUTH: 23-5-115, MCA IMP: 23-5-502, MCA

23.16.1802 DEFINITIONS (1) through (4) remain the same.

(5) "Draw poker" means a game of poker in which the player makes a wager, then the initial cards are dealt. After the initial deal, the player may raise his wager (if that option is available), discard and replace any unwanted cards prior to playing out the hand. The image or images projected on the video display of video draw poker gambling machines are a material component of the game and shall not simulate an illegal gambling device or enterprise. Varieties of poker simulated by video gambling machines must be found in the department's authority reference used for the live game of draw poker.

(6) through (14) remain the same.

(15) "Video bingo" means the game of bingo as defined in

Montana law when offered and simulated by a video gambling machine which uses video images and a random number generator rather than authorized equipment as defined in 23-5-112, MCA. The image or images projected on the video display of video bingo gambling machines are a material component of the game and shall not simulate an illegal gambling device or enterprise.

(16) remains the same.

(17) "Video keno" means the game of keno as defined in Montana law when offered and simulated by a video gambling machine which uses video images and a random number generator rather than authorized equipment as defined in 23-5-112, MCA. The image or images projected on the video display of video keno gambling machines are a material component of the game and shall not simulate an illegal gambling device or enterprise.

AUTH: 23-5-115, MCA IMP: 23-5-111, 23-5-112, 23-5-115 23-5-151, 23-5-602, 23-5-603, MCA

23.16.1822 PERMIT NOT TRANSFERABLE (1) through (5) remain the same.

(6) A completed Letter of Withdrawal (LOW) must be submitted to the department when a permitted machine is removed from play prior to the renewal deadline of each year, June 30. A LOW form is available upon request from the department. The LOW is not complete unless it is dated and signed by the licensee, and contains all of the information and attachments required by the department. The provisions of this rule do not apply to a machine temporarily removed from play for repair service.

AUTH: 23-5-115, MCA IMP: 23-5-603, 23-5-611, 23-5-612, MCA

23.16.1826 QUARTERLY REPORTING REQUIREMENTS (1) Operator quarterly reporting requirements are as follows:

(1) remains the same but is renumbered (a).

~~(a)~~ (i) The report must be delivered to the ~~Department of Justice~~ Gambling Control Division, 2550 Prospect Ave., Helena, Montana 59620-1424, or bear a United States postal service postmark not later than midnight of the 15th of the month following the quarters ending March 31, June 30, September 30, and December 31.

(1)(b) and (1)(c) remain the same but are renumbered (ii) and (iii).

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

(3) Form 6 is a quarterly video gambling machine tax report; form 6 is incorporated by reference and is available ~~upon request~~ from the ~~department at 2687 Airport Road~~ Gambling Control Division, 2550 Prospect Ave., Helena, Montana 59620-1424.

(4) through (5)(d) remain the same.

(6) The imposition of these penalties does not preclude the department from taking further action against the operator or route operator responsible for preparing the report, including but not limited to temporary cease and desist orders under 23-5-136, MCA.

AUTH: 23-5-115, MCA IMP: 23-5-115, 23-5-136, MCA

23.16.1827 ~~RECORD RETENTION~~ RECORD KEEPING REQUIREMENTS (1) through (2)(e) remain the same.

(3) The licensee's records required by this rule must be maintained in the state of Montana by the licensee or his representative for a minimum of ~~3 years~~ 12 full quarters from the previous quarterly report due date.

(4) remains the same.

(5) ~~In cases of dispute concerning this rule~~ For any violation of the record keeping requirements found in this rule, the department may:

(a) act by means of temporary cease and desist ~~order~~ orders under 23-5-136(1)(a), MCA; or ~~by emergency rule.~~

(b) impose civil penalties under 23-5-136(1)(b), MCA.

AUTH: 23-5-115, MCA IMP: 23-5-115, 23-5-136, 23-5-610, 23-5-628, MCA

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

(A) total ~~credits~~ dollars accepted by the coin acceptor mechanism(s), and bill acceptor (if applicable);

(B) total ~~credits~~ dollars played;

(C) total ~~credits~~ dollars won;

(D) total ~~credits~~ dollars paid;

(x) remains the same.

(A) total ~~credits~~ cents in mechanism(s) 1 and 2 (if applicable);

(B) total ~~credits~~ cents through the bill acceptor (if applicable);

(C) total ~~credits~~ cents, total ~~credits~~ cents played, total ~~credits~~ cents won, and total ~~credits~~ cents paid;

(D) through (xiii) remain the same.

~~(xiv) no machine may offer for play more than one paytable per program;~~

(xv) and (xvi) remain the same but are renumbered (xiv) and (xv).

(2) and (3) remain the same.

AUTH: 23-5-115, MCA IMP: 23-5-115, 23-5-602, 23-5-621, MCA 23-5-610, 23-5-621, MCA

23.16.1906 GENERAL VIDEO GAMING MACHINE SOFTWARE SPECIFICATIONS (1) through (2) remain the same:

(a) paytables ~~(limited to one per program)~~;

(b) through (e) remain the same.

(3) Notwithstanding any other rule to the contrary, on or after January 31, 1997, the image or images projected on each video gambling machine shall not simulate, in part or in whole, an illegal gambling device or enterprise.

AUTH: 23-5-115, MCA IMP: 23-5-111, 23-5-112, 23-5-115, 23-5-151, 23-5-602, 23-5-603, 23-5-621, MCA

23.16.1913 USE OF TEMPORARY REPLACEMENT OR LOANER MACHINES - PERMIT REQUIRED - REPORTING (1) remains the same.

(2) Any operator placing a temporary replacement machine in service must notify the department on a form prescribed by the department. An application to place a temporary replacement machine in service is incorporated by reference as form 7 and is available ~~upon request~~ from the ~~department at 2687 Airport Road~~ Gambling Control Division, 2550 Prospect Ave., Helena, MT 59620-1424.

(3) through (6) remain the same.

AUTH: 23-5-115, MCA IMP: 23-5-115, MCA

23.16.1914 DISTRIBUTOR'S LICENSE (1) remains the same.

(a) a distributor license application (form 17, as the form read on ~~September 30, 1993~~ August 26, 1996, is incorporated by reference and available ~~upon request~~ from the Gambling Control Division, ~~2687 Airport Rd.,~~ 2550 Prospect Ave., Helena, Montana 59620-1424);

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

(c) through (3) remain the same.

AUTH: 23-5-115, MCA IMP: 23-5-115, MCA

23.16.1915 ROUTE OPERATOR'S LICENSE (1) remains the same.

(a) a route operator license application (form 17, as the form read on ~~September 30, 1993~~ August 26, 1996, is incorporated by reference and available ~~upon request~~ from the Gambling Control Division, ~~2687 Airport Rd.,~~ 2550 Prospect Ave., Helena, Montana 59620-1424);

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

(c) through (3) remain the same.

AUTH: 23-5-115, MCA IMP: 23-5-115, MCA

23.16.1916 MANUFACTURER'S LICENSE (1) remains the same.

(a) a manufacturer license application (form 17, as the form read on ~~September 30, 1993~~ August 26, 1996, is incorporated by reference and available ~~upon request~~ from the Gambling Control Division, ~~2687 Airport Rd.,~~ 2550 Prospect Ave., Helena, Montana 59620-1424);

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

(c) through (3) remain the same.

~~(4) A person licensed under this section must comply with all laws and rules of the state of Montana and the department of justice.~~

AUTH: 23-5-115, MCA IMP: 23-5-115, 23-5-625, MCA

23.16.1917 GENERAL REQUIREMENTS OF OPERATORS, MANUFACTURERS, DISTRIBUTORS AND ROUTE OPERATORS OF VIDEO GAMBLING MACHINES OR PRODUCERS OF ASSOCIATED EQUIPMENT (1) ~~A~~ Every operator, manufacturer, distributor, or route operator~~, or producer of associated equipment~~ must retain for a period of 3 years all records relating to the ~~operation of~~ possession,

destruction, purchase, lease, rental, or sales of any video gambling machines ~~in Montana~~. For purpose of this rule, 3 years means a minimum of 12 full quarters from the previous quarterly tax return due date. The information detailed in (2)(a), (b), (c) and (d) below must be retained on each individual machine.

(2) ~~A~~ An operator, manufacturer, distributor, or route operator~~, or producer of associated equipment~~ must provide the division with a current list of all video gambling machines ~~kept in his or her storage in Montana~~ owned at the times of application and licensure and provide status reports as required by the department. These reports must include the following information:

(a) through (d) remain the same.

(3) ~~Any person~~ Every operator, manufacturer, distributor, route operator, or producer of associated equipment desiring to sell, distribute, lease, or rent video gambling machines ~~in this state~~ must:

(a) remains the same.

(b) furnish to the department monthly reports identifying the quantities, serial number, manufacturer and model number of the machine such person destroys, purchases, or sells ~~manufacturer, supplier, distributor, or route operator, ships into Montana or receives from outside Montana~~, and such other information the department may determine is necessary to regulate and control video gambling machines in accordance with the act and these rules. Any person shipping machines to a final destination within the state or shipping machines outside the state from a point within Montana must report such shipments on a monthly basis. All monthly reports under this rule must be filed with the department within 15 days after the end of each required monthly reporting period. The department shall not approve a permit without prior notification of shipment by the machine's manufacturer.

AUTH: 23-5-115, MCA IMP: 23-5-115, 23-5-611, 23-5-614, 23-5-621, 23-5-625, 23-5-631, MCA

23.16.2001 MANUFACTURER OF DEVICES NOT LEGAL IN STATE - LICENSE - FEE - REPORTING REQUIREMENTS - INSPECTION OF RECORDS - REPORTS (1) A manufacturer of gambling devices in Montana which are not authorized for use in Montana and are intended for use outside of Montana must be licensed by the department. The ~~administrative~~ annual fee for this license is $1000 ~~annually~~ if the manufacturer is not licensed as a manufacturer under 23-5-625, MCA. ~~A license issued under this section shall for all purposes expire at midnight on June 30 each year.~~ A person seeking a license under this rule must comply with all the requirements of ARM 23.16.1916 including the submission of a license processing fee. A person licensed under this ~~section~~ rule must provide a monthly report listing kinds and amounts of devices manufactured, number of shipments of these devices, destinations of all shipments and method of shipment including carrier used. All monthly reports under this rule must be filed with the department within 15 days after the end of each required monthly reporting period.

AUTH: 23-5-115, MCA IMP: 23-5-115, 23-5-152, 23-5-611, 23-5-614, 23-5-621, 23-5-625, 23-5-631, MCA

23.16.2004 IMPORTATION OF ILLEGAL GAMBLING DEVICES (1) through (2)(g) remain the same.

(3) Form 22, as the form read on ~~October 1, 1993~~ August 26, 1996, is incorporated by reference and available from the Gambling Control Division, ~~2687 Airport Rd.~~ 2550 Prospect Ave., Helena, Montana 59620-1424.

AUTH: 23-5-115, MCA IMP: 23-5-115, 23-5-152, MCA

23.16.2302 MANUFACTURER LICENSE (1) remains the same.

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

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

(c) through (2) remain the same.

AUTH: 23-5-115, MCA IMP: 23-5-115, 23-5-424, MCA

23.16.2305 EQUIPMENT SPECIFICATIONS (1) through (2)(d) remain the same.

~~(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)~~ (e) 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; and

(g) remains the same but is renumbered (f).

~~(g)~~(f)(i) ARM 23.16.1901(1)(d)~~(xvi)~~(xiv);

(ii) ARM 23.16.1901(1)(d)(xv);

(ii) and (iii) remain the same but are renumbered (iii) and (iv).

(3) through (6) remain the same.

AUTH: 23-5-115, 23-5-426, MCA IMP: 23-5-115, 23-5-426, MCA

23.16.2306 REPORTING AND RECORD KEEPING REQUIREMENTS (1) through (2)(d) remain the same.

(3) A licensed manufacturer shall retain for ~~3 years~~ a minimum of 12 full quarters from the previous quarterly tax return due date all records verifying the information reported under this rule.

AUTH: 23-5-115, MCA IMP: 23-5-115, MCA

23.16.2803 APPLICATION FOR AUTHORIZATION TO CONDUCT A CALCUTTA POOL (1) through (1)(f) remain the same.

(2) All applications for authorization to conduct Calcutta

pools must be received by the department at least 10 working days ~~prior to~~ before the start of the auction~~, with adequate time for processing~~. The department may process an application received by FAX but shall not issue a permit on such an application until the fee is received by the department.
AUTH: 23-5-115, MCA IMP: 23-5-115, 23-5-221, 23-5-222, MCA

23.16.3102 APPLICATION FOR PERMIT (1) through (3) remain the same.

(4) An application for a casino night permit must be received by the department at least 10 working days before the proposed start of the casino night ~~allowing sufficient time for processing the application~~. The department may process an application received by FAX but shall not issue a permit on such an application until the fee is received by the department.
AUTH: 23-5-115, 23-5-715, MCA IMP: 23-5-115, 23-5-702, 23-5-705 23-5-706, 23-5-715, MCA

23.16.3501 DEPARTMENT APPROVAL OF PROMOTIONAL GAMES OF CHANCE, DEVICES OR ENTERPRISES (1) The department may approve devices, machines, instruments, apparatuses, contrivances, schemes, activities, or enterprises ~~for use in~~ used in, or associated with, promotional games of chance authorized by Title 23, chapter 5, MCA. ~~Persons submitting devices or enterprises for approval must provide the following information to the department:~~

~~(a) a complete physical description of the device or enterprise;~~

~~(b) a complete description of the method of operation of the device or enterprise;~~

~~(c) proof that the device or enterprise was manufactured or intended for purposes other than gambling.~~ Any promotional game of chance offered or displayed in public without conforming to the requirements of this rule is prohibited.

~~(2) The department may require a physical examination and actual demonstration of any device or enterprise submitted for approval.~~

~~(3) Upon completion by the department of its investigation of a proposed device or enterprise proposed for use in a promotional game of chance, the department shall notify in writing the person submitting the device or enterprise of the department's decision. If the person then desires a hearing, he or she must submit a written request to the department within 20 days. From that point forward, all proceedings shall be conducted in accordance with the Montana Administrative Procedure Act and the attorney general's Model Rules of Procedure.~~

~~(4) No devices may be played prior to department approval.~~

(2) A bona fide promotional game of chance utilizes or involves any scheme, device, or enterprise, by whatever name known, for the disposal or distribution of property among persons who have not paid or are not expected to pay any valuable consideration or who have not purchased or are not expected to purchase any goods or services for a chance to

obtain the property, a portion of it, or a share in it, and which is not manufactured or intended for purposes of gambling.

(a) As used in this rule, valuable consideration means a payment or promise of payment of anything of value, a token, object or article exchangeable for money or property, credit or promise directly or indirectly or contemplating transfer of money or property or interest therein, deposits or any other thing of pecuniary value as a condition of entering a promotional game of chance, or winning a prize from the game. Valuable consideration does not mean, for example, registering to participate, or to qualify to participate, in the promotional game of chance without purchasing goods or services; personally attending places or events without payment of an admission price or fee; or purchasing postage for purposes of mailing.

(b) Payouts for bona fide promotional games of chance are subject to the maximum payout limitation for any single element of the authorized gambling enterprise simulated.

(3) Any devices, machines, instruments, apparatuses, contrivances, schemes, activities or enterprises that simulate the following games, variations of the following games, or in any manner incorporate aspects of the following games are prohibited and shall not be approved by the department:

(a) banking card games, such as blackjack, twenty-one, jacks or better, baccarat, or chemin de fer;

(b) dice games, such as craps, hazard, or chuck-a-luck;

(c) sports betting other than horse racing or sports pools as authorized by law; or

(d) table games, such as roulette or faro.

(4) All schemes, activities or enterprises that are not prohibited by (3) of this rule and that are used in bona fide promotional games of chance do not require approval by the department before such activities or enterprises are played, displayed, operated, or conducted in public so long as the game is conducted in compliance with these rules.

(5) All schemes, activities or enterprises shall be conducted in a manner that do not allow the winner to be unfairly predetermined or the game to be manipulated or rigged. The person or business conducting the promotion shall not arbitrarily remove, disqualify, disallow or reject any entry or fail to award prizes offered or print, publish or circulate literature or advertising material used in connection with such promotional game of chance that is false, deceptive or misleading.

(6) Gambling operators conducting promotional schemes, commonly called by such names as "coupon(s)" or "5 for 5", "5 for 10", or "10 for 5", in which an establishment pays for video gambling machine play to customers who purchase additional play on the machine shall post a clearly readable sign on a wall in the operator's establishment in full view of patrons playing video gambling machines. The sign shall include the following language:

> This establishment requests that if you accept one of our promotions or promotional

coupons for video gambling machine play that you play the machine for [time limit established by location] minutes.

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

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

(a) An operator who does not suggest, impose, recommend, or state a time limit is exempt from the foregoing sign requirement.

(7) All devices, machines, instruments, apparatuses, or contrivances not prohibited by (3) of this rule and which are used in bona fide promotional games of chance as provided in statute shall be approved by the department before such device is played or displayed in public. Persons submitting such proposed devices, machines, instruments, apparatuses, or contrivances for approval shall comply with the following:

(a) The applicant must submit a promotional device application to the department that shall include:

(i) a complete physical description, the printed circuit board schematics, and the wiring diagrams of the proposed device;

(ii) a complete description of the method of operation of the device and promotional scheme, activity, or enterprise in which the device is intended to be used;

(iii) marketing, promotion, or sale literature denoting that the new proposed device is for promotional purposes only; and

(iv) proof by a preponderance of the evidence that the proposed device was manufactured for purposes other than gambling. In determining whether a device meets the requirements of this rule, the department may review such factors as initial and resulting design of the device, its prior and intended use, the device's inability to accumulate credits, and the source of the device and component parts. The proposed device shall not be manufactured from already existing or modified gambling devices.

(b) Concurrent with the submission of the application pursuant to (7)(a), the applicant shall submit a prototype of the proposed device to the department for final physical inspection;

(c) The individual or entity submitting the game for review shall be responsible for transportation of the proposed device to and from the department's offices;

(d) The proposed device shall not be manufactured with an

input mechanism or related components. For purposes of this rule only, an input mechanism is defined as an electrical, mechanical or electro-mechanical device, instrument, apparatus, contrivance, or part used or intended for use with money, token, credit, deposit, check, or any other thing of monetary value that by activation puts the device into the play mode. Examples of devices used as input mechanisms are: coin or token acceptors, bill acceptors, magnetic card readers, buttons or switches (local, wire remote, radio remote, etc.). Examples of related components include coin or token head, coin or token chute, and coin or token return;

(e) The proposed device must free play. For purposes of this rule only, free play means one game after another can be played without any intervention by player or operator;

(f) The proposed device shall be labeled "No Purchase Required" printed in a clearly legible typeface in a minimum of 20 point type size;

(g) The manufacturer shall attach to the proposed device a manufacturer identification tag that includes the manufacturer name, the date the proposed device was manufactured, and a unique serial and model number;

(h) Thirty days from or after the date the department renders final approval of the proposed device, the applicant shall submit to the department 25 color photographic prints (5" x 7") of the front view of the authorized proposed device.

(8) No department approval is required for ticket or card devices described under 23-5-112(16)(a), MCA, and promotional wheel devices as defined herein, so long as such devices are bona fide promotional games of chance; and the ticket or card devices described under 23-5-112(16)(a), MCA, comply with (7)(f) of this rule; and promotional wheel devices comply with (7)(e), (f), and (g) of this rule. For the purposes of this rule, a promotional wheel device is defined as one or more vertically constructed circular frames or disks, displaying various symbols, such as numbers or pre-identified sectors, that is freely spun for the random selection of a symbol as determined by a permanently stationary mark for selecting the particular symbol when the wheel stops spinning.

(9) Upon completion by the department of its investigation of a proposed device, activity, or enterprise for use in a promotional game of chance, the department shall notify the person submitting the device or enterprise in writing of the department's decision. If the person then desires a hearing, he or she must submit a written request to the department within 20 days. From that point forward, all proceedings shall be conducted in accordance with the Montana Administrative Procedure Act and the Attorney General's Model Rules of Procedure.

(10) Nothing in this rule is intended to approve or authorize promotional games of chance conducted via wire, satellite or telephone communication or similar remote electronic forum. Approval from the department is required for all such proposed activities.

(11) For any violation of this rule, the department may:
(a) act by means of temporary cease and desist orders under 23-5-136(1)(a), MCA; or
(b) impose civil penalties under 23-5-136(1)(b), MCA.
AUTH: 23-5-115, MCA IMP: 23-5-112, 23-5-115, 23-5-152, MCA

4. Rule 23.16.111, a rule proposed to be repealed, is on page 23-622 of the Administrative Rules of Montana.
AUTH: 23-5-115, MCA IMP: 23-5-115, MCA

Rule 23.16.115, a rule proposed to be repealed, is on page 23-622 and 23-623 of the Administrative Rules of Montana.
AUTH: 23-5-115, MCA IMP: 23-5-118, 23-5-176, MCA

Rule 23.16.501, a rule proposed to be repealed, is on page 23-649 of the Administrative Rules of Montana.
AUTH: 23-5-115, MCA IMP: 23-5-176, 23-5-177 MCA

5. RATIONALE: (a) NEW RULE I is necessary to retain language from the definition of loan in the repeal of ARM 23.16.115. The proposed readopted language is unchanged except for the last clause which comports with the statutory prohibition against the sale, assignment, lease, or transfer of a gambling license. The last clause also coordinates with other rules such as ARM 23.16.116, ARM 23.16.117, ARM 23.16.119, ARM 23.16.120 that govern the transfer of ownership interests.

(b) The department proposes to amend ARM 23.16.101 to consolidate definitions from other definition sections. ARM 23.16.101 is also being amended to clarify the definitions of ownership interest and person in order to provide greater consistency in the manner in which those terms are used throughout the rules; to provide a definition of financing, control, and working day as those terms are used in the rules.

(c) The department proposes to amend ARM 23.16.102, ARM 23.16.103, ARM 23.16.502, ARM 23.16.1201, ARM 23.16.1716, ARM 23.16.1826, ARM 23.16.1913, ARM 23.16.1914, ARM 23.16.1915, ARM 23.16.1916, and ARM 23.16.2004, to provide the correct address of the Gambling Control Division.

(d) ARM 23.16.102 is also being amended in order to specify who must have a valid license to operate gambling; to provide greater specificity for the date in which all gambling licenses expire; and, to require submittal of multiple application copies to expedite department processing.

(e) ARM 23.16.103, ARM 23.16.117, ARM 23.16.502, ARM 23.16.1716, ARM 23.16.1914, ARM 23.16.1915, ARM 23.16.1916, ARM 23.16.2004, ARM 23.16.2302, and ARM 23.16.3102 are being amended to update forms used by the department in regulating gambling that have been incorporated by reference in earlier adopted rules.

(f) ARM 23.16.103 is also being amended to describe types of loan documents that are currently being requested by the department pursuant to statute.

(g) The amendment of ARM 23.16.105 is to explain vague language found in the current rule concerning "intentional disregard of the gambling laws;" and to set the date from which the eligibility to reapply will occur.

(h) The proposed amendment of ARM 23.16.107 is necessary

to incorporate into the term "application" the present usage of that term as including the entire application process. The usage fulfills the department's on-going responsibility to protect the public from fraudulent misconduct. ARM 23.16.107 is also being amended in order to re-incorporate language omitted by the repeal ARM 23.16.111 and to coordinate new language governing the reapplication of a license with the same or similar language found in the proposed amendment to ARM 23.16.105, whose rationale is described elsewhere in this statement.

(i) The department proposes to amend ARM 23.16.109 to clarify which renewal license fee is required by Title 23, chapter 5, MCA, and so provide greater guidance to current licensees.

(j) ARM 23.16.116 and ARM 23.16.117 are being amended to replace turgid and vague wording with more specific, readable language; to codify how the department evaluates a transfer of ownership interests and to allow transfers of an interest of 5% or more in a publicly-traded corporation without prior department approval because it is impractical to require such prior approval.

(k) The department proposes to amend ARM 23.16.119 to replace turgid and vague wording with more specific, readable language; to clarify how a person who proposes to acquire an interest in a licensed gambling establishment may participate in the operation of that establishment.

(l) The department proposes to amend ARM 23.16.120 to provide better guidance to licensees, applicants, and their legal representatives for obtaining approval of noninstitutional loans and other forms of financing; to clarify which loans or financing require prior notice and approval, including non-gambling transactions; to ensure suitability of all sources of financing as required by statute; to replace turgid and vague wording with more specific, readable language.

(m) The amendment of ARM 23.16.202 is being proposed in order to delineate when the holding of a check becomes credit gambling; to exempt the lawful holding of checks dishonored by banking institutions.

(n) ARM 23.16.203 is being amended to conform to the statute governing the non-availability of procedural rights relating to issuance of temporary cease and desist orders.

(o) The proposed amendment of ARM 23.16.407 is to replace turgid and vague wording with more specific, readable language; and, to eliminate redundant language regarding procedural rights which is provided already by another rule.

(p) ARM 23.16.502 is being amended to remove language made redundant by the proposed amendment to the definition of ownership at ARM 23.16.101; to limit the prior requirement to identify gambling operation employees to those in a management capacity; and, to clarify that there is no annual renewal fee for an operator license. ARM 23.16.502 is being amended to identify types of financing arrangements for greater guidance to applicants. The added provision relating to limited liability companies reflects the development of law relating to such

entities.

(q) The department proposes to amend ARM 23.16.1101, ARM 23.16.2803, ARM 23.16.3102 to allow applicants to submit certain applications by FAX and to provide the department at least 10 working days to process those applications.

(r) ARM 23.16.1101 is also being amended to eliminate a confusing requirement relating to card game tournaments.

(s) ARM 23.16.1716 is also being amended to lower the annual license fee for sports tab card manufacturer license from $1,000 to $500.

(t) ARM 23.16.1802 and ARM 23.16.1906 are being amended to prohibit the video simulation of illegal gambling devices or enterprises in all forms of authorized video gaming to fulfill the department's obligation under statute and the state constitution to distinguish legal from illegal gambling activity; to ensure the maintenance of a uniform regulatory climate; and, to adhere to the statute and Montana supreme court case precedent mandating that gambling regulation in this state must allow only those types of gambling and gambling activity that are specifically and clearly allowed by law.

(u) The amendment of ARM 23.16.1822 is necessary to provide the department with an audit trail from the time the machine is permitted to the time it is taken out of play at a specific location so the department can determine the final tax due.

(v) The amendment of ARM 23.16.1826 is necessary to eliminate redundant language; and, to conform to the statute governing the availability of department remedies for late tax filing and reporting violations.

(w) ARM 23.16.1827 is being amended to harmonize the title of the rule with its substance; and, to conform to the statute governing the availability of department remedies for violations of record retention requirements.

(x) The department proposes to amend ARM 23.16.1901 to address current technological changes by eliminating a pay table requirement and by requiring electronic meters to track cents and mechanical meters to track dollars.

(y) For the same rationale, ARM 23.16.1906 is also being amended to eliminate the pay table requirement.

(z) ARM 23.16.1914, ARM 23.16.1915, ARM 23.16.1916 are also being amended to specify the forms required of all applicants. An additional amendment to ARM 23.16.1916 eliminates redundant language. The proposed eliminated language addresses a requirement already implied by statute.

(aa) The amendment of ARM 23.16.1917 is to replace turgid and vague wording with more specific, readable language; to require operators to keep the same records as manufacturers, distributors and route operators for a uniform regulatory climate; and, to require reporting of all exported machines to ensure a uniform regulatory climate and that the statutory licensure requirements are met.

(bb) The department proposes to amend ARM 23.16.2001 to clarify language regarding the submission of license processing fees relating to licenses for the manufacture of devices not

legal in state; and, to require reporting of exporting and importing of illegal devices within 15 days of the required monthly reporting to ensure a uniform regulatory climate and that the statutory licensure requirements are met.

(cc) The proposed amendment of ARM 23.16.2302 is necessary to eliminate redundant language; and, to specify the forms required of all applicants.

(dd) The proposed amendment of ARM 23.16.2305 is to address current technological changes by eliminating outdated technical requirements; and, to coordinate with the amendment to 23.16.1901. ARM 23.16.120, ARM 23.16.1719, ARM 23.16.1827, ARM 23.16.1917, ARM 23.16.2306 are being amended to replace language stating a three year record retention requirement with more precise language that conforms to date-specific references to gambling tax quarters found in other rules.

(ee) ARM 23.16.3501 is being amended to define expressly the department's approval of promotional games of chance, devices or enterprises; to restrict the department's oversight of certain promotions; to fulfill the department's obligation under statute and the state constitution to distinguish legal from illegal gambling activity; and, to respond to gambling industry requests for expanded use of promotional activity and devices.

(ff) The department proposes to repeal ARM 23.16.111 because of redundancy. The rule regarding reapplication for a license where an applicant has been previously denied is addressed in the amendment to ARM 23.16.107, whose rationale is described elsewhere in this statement. The department proposes to repeal ARM 23.16.115 because of redundancy. Many of the definitions contained in the rule are already contained in statute. Those definitions that the department proposes to retain from the repeal of ARM 23.16.115 are consolidated by the amendment to ARM 23.16.101 and by the adoption of New Rule I. The department proposes to repeal ARM 23.16.501 because the definitions are already contained in statute.

6. Interested persons may present their data, views, or arguments, either orally or in writing at the hearing. Written date, views, or arguments may be submitted to Wilbur Rehmann, Administrative Officer, Gambling Control Division, 2550 Prospect Avenue, Helena, Montana, 59620-1424, no later than November 4, 1996.

7. C. Mark Fowler, Assistant Attorney General, Gambling Control Division, has been designated to preside over and conduct the hearing.

By: _____
JOSEPH P. MAZUREK
Attorney General

By: _____
ROBERT F.W. SMITH
Chief Deputy Attorney General
Rule Reviewer

Certified to the Secretary of State September 23, 1996.

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the Matter of Proposed Adoption of Rules Pertaining to Local Exchange Competition and Dispute Resolution in Negotiations between Telecommunications Providers for Interconnection, Services and Network Elements.	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF TELECOMMUNICATIONS RULES

TO: All Interested Persons

1. On November 7-8, 1996 at 9:00 a.m. in the Bollinger Room, Public Service Commission Offices, 1701 Prospect Ave., Helena, Montana, a hearing will be held to consider the proposed adoption of above-described telecommunications rules.

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

3. The rules proposed to be adopted provide as follows:

RULE I. SCOPE AND PURPOSE OF RULES (1) This subchapter governs all hearings and other proceedings before the Montana public service commission which relate to agreements between carriers seeking to provide competitive local exchange services in Montana. This subchapter shall be construed to secure the just, speedy and inexpensive determination of every action. All rules promulgated by the commission with regard to other adjudicative proceedings are superseded by this subchapter in proceedings governed by them to the extent they conflict with this subchapter.

(a) All references made in state or federal statutes and regulations to state commission proceedings for dispute resolution and approval of negotiated or arbitrated agreements for interconnection, services or network elements shall be governed by this subchapter.

(b) All matters before the Montana public service commission relating to negotiated or arbitrated agreements for interconnection, services or network elements shall be governed by this subchapter.

(c) Proceedings referred to in the Federal Telecommunications Act of 1996 (1996 Act) will be governed by this subchapter. The commission may deviate from the provisions of this subchapter as it deems necessary to fulfill its obligations under the 1996 Act.

(d) All controversies arising under provisions of state and federal law pursuant to negotiated or arbitrated agreements for interconnection, services or network elements involving the interpretation and application of such agreements shall be governed by this subchapter, except that parties to an agreement for interconnection, services or network elements may include methods allowed by applicable federal or state law for resolving disputes over the interpretation and application of terms and conditions in their agreement.

(2) The purpose of this subchapter is to provide guidelines and procedures for the commission to carry out its duties pursuant to the 1996 Act. The commission imposes this subchapter for competition within local service areas in order to encourage competitive entry, preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers while ensuring that the rates charged and services rendered by telecommunications services providers are just and reasonable. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE II. TERMS AND DEFINITIONS Terms used in this subchapter have the following meanings:

(1) "Arbitrated agreement" means an agreement between telecommunications carriers for interconnection, services or network elements pursuant to the 1996 Act, which is reached through arbitration or a combination of negotiation and arbitration.

(2) "Arbitration" means an alternative dispute resolution process in which a neutral third party decides a matter in dispute. Arbitration is an investigatory contested case proceeding under the Montana Administrative Procedures Act. The term arbitration as used in the 1996 Act is not arbitration under either the United States Arbitration Act, 9 USC 1, et seq., or the Montana Uniform Arbitration Act, 27-2-401, MCA, et seq.

(3) "CMRS" is commercial mobile radio service.

(4) "Commission" refers to the Montana public service commission.

(5) "Contested case" means any proceeding in which a determination of legal rights, duties or privileges of a party is required by law. Such proceedings are required by law whenever the Montana legislature has so provided or where constitutional due process requires a hearing.

(6) "FCC" is the federal communications commission.

(7) "Incumbent LEC" means, with respect to an area, the LEC that on February 8, 1996, provided telephone exchange service in that area.

(8) "Interconnection" is the linking of two networks for the mutual exchange of traffic. This term does not include the transport and termination of traffic.

(9) "Local exchange carrier (LEC)" is any person or entity that is engaged in the provision of telephone exchange service

or exchange access but does not include CMRS providers until or unless the FCC so includes them.

(10) "Mediation" means an alternative dispute resolution process in which a neutral third party assists the disputants in reaching their own agreement but does not have the authority to make a binding decision.

(11) "Meet point" is a point of interconnection between two networks, designated by two telecommunications carriers, at which one carrier's responsibility for service begins and the other carrier's responsibility ends.

(12) "Meet point interconnection arrangement" is an arrangement by which each telecommunications carrier builds and maintains its network to a meet point.

(13) "Network element" is a facility or equipment used in the provision of a telecommunications service. Such term also includes, but is not limited to, features, functions, and capabilities that are provided by means of such facility or equipment, including but not limited to, subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing or other provision of a telecommunications service.

(14) "Negotiated agreement" means a voluntary agreement between telecommunications carriers for interconnection, services or network elements pursuant to the 1996 Act.

(15) "The 1996 Act" means the Telecommunications Act of 1996, Public Law No. 104-104, amending the Telecommunications Act of 1934, 47 USC 151, et seq.

(16) "Number portability" means the ability of users of telecommunication services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability or convenience when switching from one telecommunications carrier to another.

(17) "Open issues" means any difference arising in the negotiations.

(18) "Physical collocation" is an offering by an incumbent LEC that enables a requesting telecommunications carrier to:

(a) place its own equipment to be used for interconnection or access to unbundled network elements within or upon an incumbent LEC's premises;

(b) use such equipment to interconnect with an incumbent LEC's network facilities for the transmission and routing of telephone exchange service, exchange access service or both or to gain access to an incumbent LEC's unbundled network elements for the provision of a telecommunications service;

(c) enter those premises, subject to reasonable terms and conditions, to install, maintain, and repair equipment necessary for interconnection or access to unbundled elements; and

(d) obtain reasonable amounts of space in an incumbent LEC's premises, as provided in this subchapter, for the equipment necessary for interconnection or access to unbundled elements, allocated on a first-come, first-served basis.

(19) "Premises" refers to an incumbent LEC's central offices and serving wire centers, as well as all buildings or similar structures owned or leased by an incumbent LEC that house its network facilities, and all structures that house incumbent LEC facilities on public rights-of-way, including but not limited to vaults containing loop concentrators or similar structures.

(20) "Rural LEC" is an entity that:

(a) provides common carrier service to any LEC study area that does not include either:

(i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the bureau of the census; or

(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the bureau of the census as of August 10, 1993;

(b) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(c) provides telephone exchange service to any LEC study area with fewer than 100,000 access lines; or

(d) has less than 15 percent of its access lines in communities of more than 50,000 on February 8, 1996.

(21) "Statement of generally available terms and conditions" means a statement by a bell operating company (BOC) of the terms and conditions that such company generally offers within a particular state to comply with the requirements of section 251 of the 1996 Act and the regulations thereunder and the standards applicable under section 252 of the 1996 Act.

(22) "Telecommunications carrier" is any provider of telecommunications services, except that such term does not include aggregators of telecommunications services.

(23) "Virtual collocation" is an offering by an incumbent LEC that enables a requesting telecommunications carrier to:

(a) designate or specify equipment to be used for interconnection or access to unbundled network elements to be located within or upon an incumbent LEC's premises, and dedicated to such telecommunications carrier's use;

(b) use such equipment to interconnect with an incumbent LEC's network facilities for the transmission and routing of telephone exchange service, exchange access service or both or for access to an incumbent LEC's unbundled network elements for the provision of a telecommunications service; and

(c) electronically monitor and control its communications channels terminating in such equipment.

(24) The meaning of undefined terms used in this subchapter shall be consistent with their general usage in the telecommunications industry unless specifically defined by other applicable Montana or federal law. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE III. COMMISSION NOTIFICATION (1) Any LEC that receives a request for negotiation of interconnection, services or network elements under sections 251 and 252(a)(1) of

the 1996 Act shall notify the commission in writing within five calendar days.

(2) Any party making a request for negotiation shall notify the commission in writing at the time it makes its request.

(3) Parties to a negotiation shall notify the commission in writing of the status of their negotiations 90 days following the request for negotiation.

(4) Notification in writing shall be directed to Program Manager, Utility Division, Montana Public Service Commission, 1701 Prospect Ave., PO Box 202601, Helena, Montana 59620-2601. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE IV. DUTY TO NEGOTIATE (1) Section 251(c)(1) of the 1996 Act imposes upon incumbent LECs the duty to negotiate in good faith the terms and conditions of agreements to fulfill the duties described in section 251 of the 1996 Act. Section 252(b)(5) imposes a duty to negotiate in good faith upon any party to the negotiation such that the refusal of any party to the negotiation to participate further in the negotiations, to cooperate with the commission in carrying out its function as an arbitrator or to continue to negotiate in good faith in the presence or with the assistance, of the commission shall be considered a failure to negotiate in good faith. The commission will presume that a party who refuses to provide information about its costs or other relevant information upon request of another party has not negotiated in good faith. Further acts or omissions of a party indicative of failure to negotiate in good faith include, but are not limited to the following acts or omissions of a party:

(a) demanding that another party sign a nondisclosure agreement that precludes such party from providing information requested by the commission or in support of a request for arbitration under section 252(b)(2)(B) of the 1996 Act;

(b) demanding that a requesting telecommunications carrier attest that an agreement complies with all provisions of the 1996 Act, federal regulations or state law;

(c) refusing to include in an arbitrated or negotiated agreement a provision that permits the agreement to be amended in the future to take into account changes in FCC or commission rules;

(d) conditioning negotiation on a requesting telecommunications carrier first obtaining commission certification;

(e) intentionally misleading or coercing another party into reaching an agreement that it would not otherwise have made;

(f) intentionally obstructing or delaying negotiations or resolutions of disputes;

(g) refusing throughout the negotiation process to designate a representative with authority to make binding representations, if such refusal significantly delays resolution of issues; and

(h) refusing to provide information necessary to reach agreement. Such refusal includes, but is not limited to:

(i) refusal by an incumbent LEC to furnish information about its network that a requesting telecommunications carrier reasonably requires to identify the network elements that it needs in order to serve a particular customer; and

(ii) refusal by a requesting telecommunications carrier to furnish cost data that would be relevant to setting rates if the parties were in arbitration.

(2) A presumption of failure to negotiate in good faith is rebuttable.

(3) The commission will resolve disputes concerning the furnishing of information upon complaint of a party to the negotiation and may impose sanctions where appropriate.

(4) The duty to negotiate in good faith applies during the negotiation, mediation, arbitration and approval processes for negotiated and arbitrated agreements.

(5) Allegations of failure to negotiate in good faith may be resolved in accordance with existing commission complaint procedures. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE V. NEGOTIATION (1) The commission encourages the voluntary negotiation of agreements for interconnection, services or network elements. In order to facilitate the streamlined processes mandated by the 1996 Act, negotiating parties should resolve as many terms and conditions in their agreements as possible prior to making a request for the commission to mediate or arbitrate unresolved terms. Parties should continue negotiating unresolved terms after petitioning the commission to arbitrate open issues and shall notify the arbitrator immediately when any open issue is resolved voluntarily.

AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 & 69-3-201, MCA

RULE VI. MEDIATION (1) Any party negotiating an agreement under section 252 of the 1996 Act may, at any point in the negotiation, ask the commission to participate in the negotiation and to mediate any differences arising in the course of the negotiation. Parties need not seek mediation by the commission and are free to employ the services of a private mediator.

(2) If a party requests mediation by the commission, the commission will use one of the following processes:

(a) The commission may appoint a staff member to mediate. Employees acting as mediators will not participate in the arbitration or approval process for the same agreement, unless the parties consent.

(b) The commission may appoint a commissioner to mediate. A commissioner acting as a mediator will not participate in the arbitration or approval process for the same agreement, unless the parties consent.

(c) The commission may use a co-mediation process involving both a commissioner or a commission staff member and a neutral professional mediator from outside the agency. If co-

mediation is chosen, the negotiating parties shall jointly retain the services of a professional mediator acceptable to all parties and shall share the costs of the mediator equally. The parties shall secure the mediation services and identify the professional mediator to the commission not later than five business days after the request for mediation, unless more time is allowed by the commission. The commission will appoint a commissioner or a staff member to serve as a co-mediator. The parties may recommend the area of expertise required by a commission staff mediator, who may provide technical or other related information and advice to the professional mediator as needed throughout the mediation process.

(3) The mediator shall have discretion to regulate the course of the mediation, including scheduling of mediation sessions, in consultation with the parties. The following general procedures apply:

(a) the mediator may not impose a settlement but can offer proposals for settlement;

(b) the mediator may meet individually with the parties or attorneys during mediation;

(c) only the parties to the negotiation may attend the mediation session(s), unless all parties consent to the presence of others;

(d) parties shall provide the mediator with a brief statement of position and relevant background information prior to the first mediation session, including a list of all issues raised in the negotiation on which mediation is sought and a list of all issues the parties have resolved through negotiation;

(e) the mediator may not provide legal advice to the parties, nor are any mediator's statements as to law or policy binding on the commission, unless later adopted by the commission;

(f) the mediation process is considered to be a private resolution process and is confidential to the extent permitted by law; and

(g) no stenographic record will be kept.

(4) Although mediation is generally a voluntary process, section 252(a)(2) of the 1996 Act requires all parties to participate in a commission mediation, once requested, unless disputes are otherwise resolved. The mediator may terminate the mediation if it appears that the likelihood of agreement is remote. Ordinarily, a mediation should not be terminated prior to the completion of at least one mediation session.

(5) Parties may indicate their preference for the skills desired in a mediator and may indicate a preference for the preferred mediation process as set forth in (Rule VI(2)).

(6) For good cause, the commission may refuse to mediate negotiations between parties. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE VII. PETITION FOR ARBITRATION OF OPEN ISSUES (1) Any party to the negotiation of an interconnection agreement may, during the period from the 135th to the 160th day (inclusive) after the date on which a LEC receives a request for negotiation, petition the commission to arbitrate any open issues.

(2) To petition the commission for arbitration, a party to the negotiation shall file 10 copies of the request with the commission. On the same day it files its petition for arbitration with the commission, the petitioner shall serve a copy of the petition and all supporting documentation on any other party to the negotiation and the Montana consumer counsel. A docket number will be assigned and appropriate notice will be provided. The petition shall include the following information:

(a) the name, address, telephone number, fax number, and e-mail address of the party to the negotiation making the request;

(b) the name, address, telephone number, fax number, and e-mail address (if known) of the other party to the negotiation;

(c) the name, address, telephone number, fax number, and e-mail address (if known) of the parties' representatives who are participating in the negotiation and to whom inquiries should be made;

(d) the negotiation history, including meeting times and locations;

(e) all relevant nonproprietary documentation and arguments concerning unresolved issues and the position of each party on the unresolved issues;

(f) all relevant nonproprietary documentation on any other issue discussed and resolved by the parties; and

(g) a statement identifying information needed to resolve open issues or information which has been requested during negotiations but not yet provided.

(3) Copies of the petition for arbitration shall be directed to Program Manager, Utility Division, Montana Public Service Commission, 1701 Prospect Avenue, PO Box 202601, Helena, Montana 59620-2601. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE VIII. OPPORTUNITY TO RESPOND TO PETITION (1) A nonpetitioning party to a petition for arbitration shall file a response to the other party's petition and provide additional information within 25 days after the petition to arbitrate is filed. The response should identify information needed to resolve open issues, including information identified in the other party's petition for arbitration as information which has been requested during negotiations but not yet provided and must address each issue presented in the petition for arbitration. The response shall also present any additional issues for which the respondent seeks resolution and provide additional information and evidence necessary for the

arbitrator's review. On the same day that it files its response with the commission, the respondent shall serve a copy of the response, and all supporting documentation, on any other party to the negotiation and the Montana consumer counsel. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE IX. COMMISSION RESPONSIBILITY (1) Upon receipt of a timely and complete petition for arbitration, the commission shall appoint an arbitrator pursuant to (Rule X). It is the function of the commission to approve a resolution of the issues in dispute if the parties cannot reach a voluntary agreement. The commission may not approve an arbitrator's resolution of issues that have not been identified by the parties as open issues. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE X. APPOINTMENT OF ARBITRATOR (1) Arbitrations will be conducted by arbitrators appointed by the commission. The commission may appoint a single commissioner, a commission staff member, an internal arbitration panel which may be comprised of the commission or an independent arbitrator. The commission will not appoint an independent arbitrator unless it has insufficient resources with which to arbitrate the matter. The commission may permit parties to comment on the selection of the arbitrator prior to the appointment.

(2) The commission will appoint an arbitrator within 10 days of receiving a petition for arbitration.

(3) The arbitrator, if the commission does not act as such, shall be considered a hearings examiner under the Montana Administrative Procedure Act. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XI. AUTHORITY OF ARBITRATOR (1) The arbitrator will exercise all authority reasonable and necessary for the conduct of the arbitration subject to the provisions of this subchapter, the commission's procedural order on arbitration, and other provisions of law. If the commission is not the arbitrator, the arbitrator appointed by the commission shall have all the powers and duties of hearings examiners as set forth in the Montana Administrative Procedure Act.

(2) If the commission acts as the arbitrator, it may appoint a staff member to act as a hearings officer for procedural matters. The hearings officer may conduct scheduling and procedural conferences and decide procedural issues as necessary and reasonable to promote the speedy resolution of arbitration proceedings as mandated by the 1996 Act. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XII. PREHEARING CONFERENCES (1) Within 10 days after the respondent files its response to the petition for arbitration, the arbitrator or hearings officer will hold a conference to discuss a procedural schedule for the proceeding

that conforms to the deadlines set forth in section 252 of the 1996 Act. The parties and the arbitrator will also attempt to identify, simplify and limit the issues to be resolved and discuss the scope and timing of discovery. The arbitrator or hearings officer may schedule other prehearing conferences as reasonable and necessary to ensure a timely resolution of open issues as required by the 1996 Act. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XIII. OTHER RESPONSIBILITIES OF THE ARBITRATOR (1) The arbitrator must limit the arbitration process to the resolution of issues raised by the negotiating parties in the petition and response. The arbitrator, in resolving these issues must ensure that their resolution meets the requirements of the 1996 Act.

(2) The arbitrator shall resolve each issue raised by the parties by imposing appropriate conditions as required to implement section 252(b)(4)(C) of the 1996 Act upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not later than nine months after the date on which the LEC received the request to negotiate. If any party refuses or fails unreasonably to respond on a timely basis to any reasonable request from the arbitrator, the arbitrator may proceed on the basis of the best information available to the arbitrator from whatever source derived.

(3) In resolving open issues by arbitration and imposing conditions upon the parties to the agreement, the arbitrator shall:

(a) ensure that such resolution and conditions meet the requirements of section 251 of the 1996 Act;

(b) establish any rates for interconnection, services or network elements according to the pricing standards in (Rule XXXIII); and

(c) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

(4) The arbitrator may decide whether any written statements, pleadings or motions other than the petition and response shall be required from the parties or may be presented by them and shall fix the period of time for submission of such statements, pleadings or motions.

(5) The arbitrator shall supervise discovery, including the setting of limits on the timing of discovery and the number of questions. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XIV. INTERVENTION AND PARTICIPATION BY INTERESTED PARTIES (1) The addition of other parties to an arbitration would jeopardize the commission's ability to complete the arbitration within the limited time frame imposed by the 1996 Act and (Rule XIII) by lengthening the proceeding and detracting from the arbitrator's ability to move forward expeditiously on the merits of the petition for arbitration. Intervention shall be limited to the Montana consumer counsel,

the sole statutory intervenor, who shall have the rights and duties as directed under Montana law. The Montana consumer counsel, if he requests intervention, shall intervene as early as practicable and no later than 25 days after the petitioner files a request for arbitration.

(2) Other interested persons will be permitted to take part in arbitration as nonparty participants. Participants, upon request, shall have access to all written information submitted and developed in the arbitration subject to the same requirements as the parties with respect to confidential or proprietary data. In addition to observing arbitration proceedings and receiving documents sent to all persons on the arbitration service list, participants may file comments prior to the arbitration hearing and exceptions to the arbitration decision. Nonparty participants may comment only on the open issues as identified pursuant to (Rule XII). AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XV. PROPRIETARY INFORMATION (1) Trade secret and proprietary information will be treated as provided for in the commission's rules of practice and procedure. The arbitrator or hearings officer may, at any time during the proceeding, enter a protective order to govern the treatment of information of a trade secret nature. Parties should request a protective order at the earliest possible time and may file a motion for protective order with the petition or response. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XVI. CONSOLIDATION OF ARBITRATION PROCEEDINGS (1) The commission may consolidate multiple arbitration proceedings in order to reduce administrative burdens on telecommunications carriers, other parties and the commission in carrying out its responsibilities under the 1996 Act. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XVII. ARBITRATION HEARING (1) The arbitrator may require the parties to substitute closing arguments in lieu of post-hearing briefing. If briefs are submitted, the arbitrator may require filing of briefs as reasonable and necessary to allow for sufficient time to issue the recommended arbitration decision.

(2) The arbitrator may limit the number of days permitted for hearing and may limit the number of witnesses permitted to testify at the hearing. Such limitations must consider the complexity and number of issues to be resolved. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XVIII. BURDEN OF PROOF IN ARBITRATION PROCEEDINGS (1) The burden of proof with respect to all issues shall be on the incumbent LEC as the critical information relevant to costs and other issues will be within the control of and

may be known only to the incumbent LEC. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XIX. MOTIONS (1) The filing of motions will not relieve a party of any requirements during the arbitration proceeding and must not delay the proceeding. The arbitrator will act promptly to consider all motions so as not to prejudice any party to the proceeding. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XX. STAFF INVOLVEMENT (1) Commission staff will advise the arbitrator as is reasonable and necessary to resolve open issues. The arbitrator may allow staff to question witnesses to the extent the questions are relevant and helpful in developing the record. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XXI. ARBITRATOR'S DECISION (1) Unless the commission is the arbitrator the arbitrator shall issue a recommended decision on all the issues submitted for arbitration no later than 30 days before the date established for the commission's final decision on arbitration.

(2) The arbitrator's recommended decision shall set forth the recommended resolution of each issue submitted for arbitration and provide a recommended schedule for implementation by the parties. The decision shall provide a written rationale for each recommended resolution, including any necessary findings and relevant citations to law or the record.

(3) Parties and nonparty participants may file exceptions to the recommended decision and request oral argument with the commission no later than 10 days after the arbitrator issues the recommended decision.

(4) The 1996 Act gives the commission broad latitude to apply state standards directed toward protecting the public interest. The issues presented shall be resolved, consistent with the public interest, to ensure compliance with the requirements of sections 251 and 252(d) of the 1996 Act, applicable FCC regulations, relevant state law and applicable rules or orders of the commission. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XXII. OTHER DUTIES OF INCUMBENT LOCAL EXCHANGE CARRIERS (1) Within 10 days after receiving a petition for arbitration, the incumbent LEC shall serve a copy of the petition on all other telecommunications carriers requesting interconnection, services or network elements from it and with whom it has not negotiated a binding agreement.

(2) Upon filing a petition for approval of a negotiated or arbitrated agreement, the incumbent LEC shall serve copies of the agreement on all other telecommunications carriers requesting interconnection, services or network elements from it pursuant to section 252 of the 1996 Act. The petitioning parties shall also serve copies of the agreement or a comprehen-

sive summary of its contents on all persons on the commission's arbitration service list. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XXIII. PREEXISTING AGREEMENTS (1) All interconnection agreements between an incumbent LEC and a telecommunications carrier, including those negotiated before February 8, 1996, shall be submitted by the parties to the commission for approval.

(2) If the commission approves a preexisting agreement, it shall be made available to other parties upon request.

(3) The commission may reject a preexisting agreement on the grounds that it is inconsistent with the public interest or for other reasons set forth in section 252(e)(2) of the 1996 Act. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XXIV. APPROVAL OF NEGOTIATED AND ARBITRATED AGREEMENTS (1) An interconnection agreement shall be submitted to the commission for approval under section 252(e) of the 1996 Act within 15 days after the issuance of the final arbitration order by the commission in the case of arbitrated agreements or, in the case of negotiated agreements, within 15 days after the execution of the agreement. The commission may extend the 15 day deadline for good cause. The nine month time line for arbitration under section 252(b)(4)(C) and (Rule XIII) is not applicable to the approval process.

(2) Petitions for approval of agreements and all relevant accompanying documents shall be filed with the commission in the manner provided for in (Rule VII). A copy of the petition and accompanying documents shall be served on the commission's telecommunications mailing list no later than the day the petition is filed. Any party to the agreement may submit a petition for approval. Unless filed jointly by all parties, the petition for approval and any accompanying materials should be served on the other signatories by delivery on the day of filing. Any filing not containing the required materials will be rejected and must be refiled when complete. The statutory time lines shall be deemed not to begin until the petition for approval has been properly filed.

(3) Documents which must accompany the petition to constitute proper filing include the following:

(a) In the case of negotiated agreements:

(i) a complete copy of the signed agreement, including any attachments or appendices;

(ii) a brief or memorandum summarizing the main provisions of the agreement, setting forth the party's position on whether the agreement should be adopted or modified, including a statement on why the agreement does not discriminate against nonparty carriers, is consistent with the public interest, convenience, and necessity, and is consistent with applicable state law requirements; and

(iii) a proposed order containing findings and conclusions.

(b) In the case of arbitrated agreements:

(i) a complete copy of the signed agreement, including any attachments or appendices;

(ii) a brief or memorandum summarizing the main provisions of the agreement, setting forth the party's position on whether the agreement should be adopted or modified; a separate explanation of the manner in which the agreement meets each of the applicable specific requirements of section 251 of the 1996 Act, including the FCC regulations thereunder, and applicable state requirements;

(iii) complete and specific information to enable the commission to make the determinations required by section 252(d) of the 1996 Act regarding pricing standards, including supporting information on the cost basis for rates on interconnection and network elements and the profit component of the proposed rate, transport and termination charges, and wholesale prices; and

(iv) a proposed order containing findings and conclusions.

(c) In the case of combined agreements containing both arbitrated and negotiated provisions, the request for approval shall include the foregoing materials as appropriate, depending on whether a provision is negotiated or arbitrated. The memorandum or brief should clearly identify which sections were negotiated and which arbitrated.

(4) The commission interprets the 1996 Act to require approval of agreements as follows:

(a) arbitrated agreements must be approved within 30 days after filing the executed agreement;

(b) negotiated agreements must be approved within 90 days after filing the executed agreement; and

(c) agreements containing both arbitrated and negotiated terms must be approved within 90 days after filing the executed agreement.

(5) Commission review of agreements:

(a) Upon the filing by one or more parties of an agreement adopted under the arbitration process, the parties involved in the arbitration and any other interested persons may file written comments supporting or opposing the proposed agreement within 10 days. Responses to the comments may be filed within five days following the filing of the comments.

(i) The commission will review agreements adopted through arbitration and will approve or reject an agreement by issuing an order with written findings as to any deficiencies within 30 days after filing of the agreement.

(ii) The commission may only reject an arbitrated agreement if it finds that the agreement does not meet the requirements of section 251 of the 1996 Act, including FCC regulations under section 251 or the standards set forth in section 252(d) of the 1996 Act.

(b) Upon the filing of an agreement resulting from voluntary negotiations, including mediation, of a combination of voluntary negotiations and arbitration, interested persons may file written comments supporting or opposing the proposed interconnection agreement within 21 days. Responses to the comments may be filed within 10 days following the filing of comments.

(i) The commission will review agreements resulting from voluntary negotiations or a combination of voluntary negotiations and arbitration and will approve or reject an agreement by issuing an order with written findings as to any deficiencies within 90 days after filing of the agreement. If the commission has not issued such order within 90 days, the agreement shall be deemed approved on the 91st day.

(ii) The commission may reject the agreement if it finds that the agreement or any portion of the agreement, discriminates against a telecommunications carrier not a party to the agreement; or if it finds the implementation of the agreement or portion is not consistent with the public interest, convenience, and necessity. The commission will only apply this standard when reviewing negotiated portions of an agreement resulting from both negotiation and arbitration or when reviewing such an agreement as a whole.

(6) The commission may review requests for approval and comments submitted pursuant to those requests at a public meeting and may schedule oral arguments to be presented at a public meeting. The commission does not interpret the approval process required by the 1996 Act as requiring an contested case type hearing. However, if reasonable or necessary, the commission may hold a hearing under the contested case procedures outlined in the Montana Administrative Procedure Act.

(7) Within 30 days of the commission's rejection of an agreement resulting from negotiation or arbitration or both, the parties may:

(a) file an application for reconsideration for the commission's consideration; or

(b) resubmit the agreement for commission approval if the parties have remedied the deficiencies found by the commission in its order.

(8) The commission may approve a negotiated interconnection agreement even if the terms of the agreement do not comply with the requirements of this subchapter.

(9) The commission may not approve a BOC statement of generally available terms and conditions unless such statement complies with sections 251 and 252(d) of the 1996 Act. In approving such statement, the commission shall consider applicable state law and commission rules, including requiring compliance with telecommunications service quality standards or requirements.

(a) Within 60 days after a BOC statement of generally available terms and conditions is filed with the commission, the commission shall:

(i) complete the review of the statement, including reconsideration of the statement (unless the BOC agrees to an extension of the period for the review); or

(ii) permit the statement to take effect.

(b) If the commission has permitted the statement of generally available terms and conditions to take effect pursuant to (Rule XXIV(9)(a)(ii)), the commission may continue its review of such statement and may approve or reject the statement upon completion of its review.

(10) All interconnection agreements between an incumbent LEC and another telecommunications carrier, including those negotiated before February 8, 1996, shall be submitted by the parties to the commission for approval pursuant to section 252(e) of the 1996 Act. Interconnection agreements negotiated before February 8, 1996, between class A carriers as defined in FCC regulations, shall be filed with the commission by June 30, 1997, unless the commission determines that earlier submission is necessary and reasonable in carrying out its functions under the 1996 Act. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XXV. APPROVED AGREEMENTS (1) The commission retains continuing jurisdiction and will maintain regulatory oversight of the approved interconnection agreements. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XXVI. INTERCONNECTION (1) An incumbent LEC shall provide interconnection of its network with the facilities and equipment of any requesting telecommunications carrier:

(a) for the transmission and routing of telephone exchange traffic, exchange access traffic or both;

(b) at any technically feasible point within the incumbent LEC's network including, at a minimum:

(i) the line-side of a local switch;

(ii) the trunk-side of a local switch;

(iii) the trunk interconnection points for a tandem switch;

(iv) central office cross-connect points;

(v) out-of-band signaling transfer points necessary to exchange traffic at these points and access call-related databases; and

(vi) the points of access to unbundled network elements.

(c) that is at a level of quality equal to that which the incumbent LEC provides itself, a subsidiary, an affiliate or any other party, except as provided in (1)(d) of this rule. At a minimum, this requires an incumbent LEC to design interconnection facilities to meet the same technical criteria and service standards that are used within the incumbent LEC's network. This obligation is not limited to a consideration of service quality as perceived by end users, and includes, but is not limited to, service quality as perceived by the requesting telecommunications carrier;

(d) that, if so requested by a telecommunications carrier and to the extent technically feasible, is superior in quality to that provided by the incumbent LEC to itself or to any subsidiary, affiliate or any other party to which the incumbent LEC provides interconnection. Nothing in this rule prohibits an incumbent LEC from providing interconnection that is lesser in quality at the sole request of the requesting telecommunications carrier; and

(e) on terms and conditions that are just, reasonable, and nondiscriminatory including, but not limited to, offering such terms and conditions equally to all requesting telecommunications carriers, and offering such terms and conditions that are no less favorable than the terms and conditions the incumbent LEC provides such interconnection to itself. This includes, but is not limited to, the time within which the incumbent LEC provides such interconnection.

(2) A carrier that requests interconnection solely for the purpose of originating or terminating its interexchange traffic on an incumbent LEC's network and not to provide telephone exchange service, exchange access service or both, is not entitled to receive interconnection pursuant to the rules in this subchapter.

(3) Previous successful interconnection at a particular point in a network, using particular facilities, constitutes substantial evidence that interconnection is technically feasible at that point or at substantially similar points, in networks employing substantially similar facilities. Adherence to the same interface or protocol standards shall constitute evidence of the substantial similarity of network facilities.

(4) Previous successful interconnection at a particular point in a network at a particular level of quality constitutes substantial evidence that interconnection is technically feasible at that point or at substantially similar points, at that level of quality.

(5) An incumbent LEC that denies a request for interconnection at a particular point must prove to the commission that interconnection at that point is not technically feasible.

(6) Interconnection, access to unbundled network elements, collocation, and other methods of achieving interconnection or access to unbundled network elements at a point in the network shall be deemed technically feasible absent technical or operational concerns that prevent the fulfillment of a request by a telecommunications carrier for such interconnection, access or methods.

(a) A determination of technical feasibility does not include consideration of economic, accounting, billing, space or site concerns, except that space and site concerns may be considered in circumstances where there is no possibility of expanding the space available.

(b) The fact that an incumbent LEC must modify its facilities or equipment to respond to such request does not de-

termine whether satisfying such request is technically feasible.

(c) An incumbent LEC that claims that it cannot satisfy such request because of adverse network reliability impacts must prove to the commission by clear and convincing evidence that such interconnection, access or methods would result in specific and significant adverse network reliability impacts. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XXVII. UNBUNDLING OF LOCAL EXCHANGE NETWORK ELEMENTS (1) Each incumbent LEC and interconnecting facilities-based new exchange carrier shall unbundle its local network elements. Network elements shall be unbundled at technically feasible points upon the bona fide request of a LEC. The requirement to fulfill all bona fide requests for the purchase of unbundled network elements by other LECs applies equally to incumbent LECs and new exchange carriers.

(2) At a minimum LECs shall unbundle the local loop, switching, transport, databases and signaling systems. Unbundling of networks shall include access to necessary customer databases, such as, but not limited to, 9-1-1 databases, billing name and address, directory assistance, local exchange routing guide, line information database and 800 databases. Unbundling shall also include operator services, and signaling system functionalities. If a LEC receives a bona fide request for the purchase of a network element, the LEC receiving the request for unbundling shall have the burden of proving that the provision of the network element is not technically feasible.

(3) The commission may conclude that the unbundling of a network element is technically feasible but decline to unbundle the network element. The commission may decline to unbundle a network element if it determines the network element is proprietary and the proposed telecommunication service can be provided through the use of other, nonproprietary unbundled network elements.

(4) Unbundled network element rates, terms and conditions should be established through negotiation between LECs upon receipt of a bona fide request for interconnection or through arbitration. A LEC may, however, provide unbundled network element rates, terms and conditions through tariffs or other arrangements approved by the commission. The commission, at its discretion, may order the filing of tariffs establishing unbundled network element rates, terms and conditions.

(5) Once an unbundled network element has been made available to an interconnecting carrier, on a contractual basis, the providing carrier shall make that unbundled network element available for purchase for all similar requests.

(6) Unbundled network elements shall be priced at cost based rates pursuant to the pricing standards in (Rule

XXXIII). AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XXVIII. EXEMPTIONS FROM THE REQUIREMENTS OF THIS SUBCHAPTER (1) The commission shall determine whether a LEC is entitled to exemption from the requirements of this subchapter.

(2) The requirements of this subchapter shall not apply to a rural LEC until:

(a) the rural LEC has received a bona fide request for interconnection, services or network elements; and

(b) the commission determines that such request is not unduly economically burdensome, is technically feasible, and is consistent with universal service considerations.

(3) Upon receipt of a bona fide request for interconnection, services or access to unbundled network elements, a rural LEC must prove to the commission that the LEC is entitled to continued exemption from the requirements of this subchapter.

(4) In order to justify continued exemption under this rule once a bona fide request has been made, a rural LEC must offer evidence that the application of the requirements in this subchapter would likely cause undue economic burden beyond the economic burden that is typically associated with efficient competitive entry. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XXIX. METHODS OF OBTAINING INTERCONNECTION AND ACCESS TO UNBUNDLED ELEMENTS (1) Except as provided in (5) below, an incumbent LEC shall provide, on terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the requirements of this subchapter, any technically feasible method of obtaining interconnection or access to unbundled network elements at a particular point upon a request by a telecommunications carrier.

(2) Technically feasible methods of obtaining interconnection or access to unbundled network elements include, but are not limited to:

(a) collocation at the premises of an incumbent LEC; and

(b) meet point interconnection arrangements.

(3) A previously successful method of obtaining interconnection or access to unbundled network elements at a particular premises or point on an incumbent LEC's network is substantial evidence that such method is technically feasible in the case of substantially similar network premises or points.

(4) An incumbent LEC that denies a request for a particular method of obtaining interconnection or access to unbundled network elements on the incumbent LEC's network must prove to the commission that the requested method of obtaining interconnection or access to unbundled network elements at that point is not technically feasible.

(5) An incumbent LEC shall not be required to provide for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the incumbent LEC's premises if it demonstrates to the commission that physical collocation is not practical for technical reasons or because of space limitations. In such cases, the incumbent LEC shall be required to provide virtual collocation, except at points where the incumbent LEC proves to the commission that virtual collocation is not technically feasible. If virtual collocation is not technically feasible, the incumbent LEC shall provide other methods of interconnection and access to unbundled network elements to the extent technically feasible.

(6) An incumbent LEC shall submit to the commission detailed floor plans or diagrams of any premises where the incumbent LEC claims that physical collocation is not practical because of space limitations. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XXX. TELEPHONE NUMBER PORTABILITY (1) All facilities-based LECs shall provide number portability so that end users may retain the same telephone number as they change from one service provider to another as long as they remain at the same location or if moving, retain the same NXX code.

(2) A facilities-based LEC not offering permanent number portability shall provide interim number portability. Interim number portability shall be provided using remote call forwarding, direct inward dialing or any other comparable and technically feasible method.

(a) Prices for interim number portability using remote call forwarding or direct inward dialing shall be set at a level that recognizes the relative inferior quality of the service.

(b) LECs shall not charge any non-recurring expenses to recover service order charges, installation, and similar up-front expenses associated with the provision of interim number portability.

(3) Pursuant to FCC regulations, beginning January 1, 1999, all facilities-based LECs shall provide permanent number portability within six months after receiving a specific request by another telecommunications carrier. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XXXI. STANDARDS FOR PHYSICAL COLLOCATION AND VIRTUAL COLLOCATION (1) Except as provided in (Rule XXIX(5)) an incumbent LEC shall provide physical collocation and virtual collocation to requesting telecommunications carriers.

(2) An incumbent LEC shall permit the collocation of any type of equipment used for interconnection or access to unbundled network elements. Whenever an incumbent LEC objects to collocation of equipment by a requesting telecommunications carrier for purposes within the scope of this subchapter, the incumbent LEC must prove to the commission that the equipment

will not be actually used by the telecommunications carrier for the purpose of obtaining interconnection or access to unbundled network elements. Equipment used for interconnection and access to unbundled network elements includes, but is not limited to:

(a) transmission equipment including, but not limited to, optical terminating equipment and multiplexers; and

(b) equipment being collocated to terminate basic transmission facilities.

(3) Nothing in this rule requires an incumbent LEC to permit collocation of switching equipment or equipment used to provide enhanced services.

(4) When an incumbent LEC provides physical collocation, virtual collocation or both, the incumbent LEC shall:

(a) provide an interconnection point or points, physically accessible by both the incumbent LEC and the collocating telecommunications carrier, at which the fiber optic cable carrying an interconnector's circuits can enter the incumbent LEC's premises, provided that the incumbent LEC shall designate interconnection points as close as reasonably possible to its premises;

(b) provide at least two such interconnection points at each incumbent LEC premises at which there are at least two entry points for the incumbent LEC's cable facilities, and at which space is available for new facilities in at least two of those entry points;

(c) permit interconnection of copper or coaxial cable if such interconnection is first approved by the commission; and

(d) permit physical collocation of microwave transmission facilities except where such collocation is not practical for technical reasons or because of space limitations, in which case virtual collocation of such facilities is required where technically feasible.

(5) When providing virtual collocation, an incumbent LEC shall, at a minimum, install, maintain, and repair collocated equipment identified in (2) of this rule within the same time periods and with failure rates that are no greater than those that apply to the performance of similar functions for comparable equipment of the incumbent LEC itself.

(6) An incumbent LEC shall allocate space for the collocation of the equipment identified in (2) of this rule in accordance with the following requirements:

(a) an incumbent LEC shall make space available within or on its premises to requesting telecommunications carriers on a first-come, first-served basis, provided, however, that the incumbent LEC shall not be required to lease or construct additional space to provide for physical collocation when existing space has been exhausted;

(b) to the extent possible, an incumbent LEC shall make contiguous space available to requesting telecommunications carriers that seek to expand their existing collocation space;

(c) when planning renovations of existing facilities or constructing or leasing new facilities, an incumbent LEC shall

take into account projected demand for collocation of equipment;

(d) an incumbent LEC may retain a limited amount of floor space for its own specific future uses, provided, however, that the incumbent LEC may not reserve space for future use on terms more favorable than those that apply to other telecommunications carriers seeking to reserve collocation space for their own future use;

(e) an incumbent LEC shall relinquish any space held for future use before denying a request for virtual collocation on the grounds of space limitations, unless the incumbent LEC proves to the commission that virtual collocation at that point is not technically feasible; and

(f) an incumbent LEC may impose reasonable restrictions on the warehousing of unused space by collocating telecommunications carriers, provided, however, that the incumbent LEC shall not set maximum space limitations applicable to such carriers unless the incumbent LEC proves to the commission that space constraints make such restrictions necessary.

(7) An incumbent LEC shall permit collocating telecommunications carriers to collocate equipment and connect such equipment to unbundled network transmission elements obtained from the incumbent LEC, and shall not require such telecommunications carriers to bring their own transmission facilities to the incumbent LEC's premises in which they seek to collocate equipment.

(8) An incumbent LEC shall permit a collocating telecommunications carrier to interconnect its network with that of another collocating telecommunications carrier at the incumbent LEC's premises and to connect its collocated equipment to the collocated equipment of another telecommunications carrier within the same premises provided that the collocated equipment is also used for interconnection with the incumbent LEC or for access to the incumbent LEC's unbundled network elements.

(a) An incumbent LEC shall provide the connection between the equipment in the collocated spaces of two or more telecommunications carriers, unless the incumbent LEC permits one or more of the collocating parties to provide this connection for themselves; and

(b) An incumbent LEC is not required to permit collocating telecommunications carriers to place their own connecting transmission facilities within the incumbent LEC's premises outside of the actual physical collocation space.

(9) An incumbent LEC may require reasonable security arrangements to separate a collocating telecommunications carrier's space from the incumbent LEC's facilities.

(10) An incumbent LEC shall permit a collocating telecommunications carrier to subcontract the construction of physical collocation arrangements with contractors approved by the incumbent LEC, provided, however, that the incumbent LEC shall not unreasonably withhold approval of contractors. Approval by an incumbent LEC shall be based on the same criteria it

uses in approving contractors for its own purposes. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XXXII. PRICING OF NETWORK ELEMENTS AND INTERCONNECTION (1) (Rule XXXII) through (Rule XXXIX) apply to the commission's pricing of network elements, and interconnection.

(2) ARM (Rule XXXII) through (Rule XXXIX) apply only during commission arbitration of interconnection negotiations pursuant to (Rule VII).

(3) As used in (Rule XXXIII) through (Rule XXXIX) the term "element" includes network elements and interconnection. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XXXIII. GENERAL PRICING STANDARD (1) An incumbent LEC shall offer elements to requesting telecommunications carriers at rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

(2) An incumbent LEC's rates for each element it offers shall be established, at the election of the commission:

(a) pursuant to the pricing methodology set forth in (Rule XXXIV); or

(b) consistent with the proxy ceilings and ranges set forth in (Rule XXXVIII).

(3) The rates that an incumbent LEC assesses for elements may not vary on the basis of the class of customers served by the requesting carrier or on the type of services that the requesting carrier purchasing such elements uses them to provide. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XXXIV. PRICING METHODOLOGY (1) The forward-looking price of an element equals the sum of:

(a) the total element long-run incremental cost of the element, as described in (2) below; and

(b) a reasonable allocation of forward-looking common costs, as described in (3) and (4) below.

(2) The total element long-run incremental cost of an element is the forward-looking cost over the long-run of the total quantity of the facilities and functions that are directly attributable to or reasonably identifiable as incremental to, the element, calculated taking as a given the incumbent LEC's provision of other elements.

(a) The total element long-run incremental cost of an element should be measured based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of the incumbent LEC's wire centers.

(b) Forward-looking cost of capital and economic depreciation rates shall be used in calculating the total element long-run incremental cost of an element.

(3) Forward-looking common costs are economic costs efficiently incurred in providing a group of elements or ser-

vices (which may include all elements or services provided by the incumbent LEC) that cannot be attributed directly to individual elements or services.

(4) The determination of a reasonable allocation of forward-looking common costs shall be calculated using the following guidelines:

(a) The sum of a reasonable allocation of forward-looking common costs and the total element long-run incremental cost of an element shall not exceed the stand-alone costs associated with the element. In this context, stand-alone costs are the total forward-looking costs, including corporate costs, that would be incurred to produce a given element if that element were provided by an efficient firm that produced nothing but the given element.

(b) The sum of the allocation of forward-looking common costs for all elements and services shall equal the total forward-looking common costs, exclusive of retail costs, attributable to operating the incumbent LEC's total network, so as to provide all the elements and services offered.

(5) The following factors shall not be considered in a calculation of the forward-looking cost of an element:

(a) embedded costs that the incumbent LEC incurred in the past and that are recorded in the incumbent LEC's books of accounts;

(b) retail costs including the costs of marketing, billing, collection, and other costs associated with offering retail telecommunications services to subscribers who are not telecommunications carriers that are avoided when an incumbent LEC offers an element to another carrier;

(c) revenues that the incumbent LEC would have otherwise received for the sale of telecommunications services, in the absence of competition from telecommunications carriers that purchase the elements; and

(d) revenues to subsidize other services include revenues associated with elements or telecommunications service offerings other than the element for which a rate is being established.

(6) Using appropriate cost studies an incumbent LEC must prove to the commission that the rates for each element it offers do not exceed the forward-looking cost per unit of providing the element, using a cost study that complies with the methodology set forth in this rule. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XXXV. GENERAL RATE STRUCTURE STANDARD (1) Rates for network elements shall be structured consistently with the manner in which the costs of providing the elements are incurred.

(2) The costs of dedicated facilities shall be recovered through flat-rated charges.

(3) The costs of shared facilities shall be recovered in a manner that efficiently apportions costs among users.

(4) Recurring costs shall be recovered through recurring charges, unless an incumbent LEC proves to the commission that the costs of administering the recurring charge would be excessive in relation to the amount of the recurring costs.

(5) The commission may, where reasonable, allow incumbent LECs to recover nonrecurring costs through recurring charges over a reasonable period of time. Nonrecurring charges shall be allocated efficiently among requesting telecommunications carriers, and shall not permit an incumbent LEC to recover more than the total forward-looking cost of providing the applicable element.

(6) Incumbent LECs shall establish different rates for elements in at least three defined geographic areas within the state to reflect geographic cost differences. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XXXVI. RATE STRUCTURE STANDARDS FOR SPECIFIC ELEMENTS (1) Local loop costs shall be recovered through flat-rated charges.

(2) Local switching costs shall be recovered through a combination of a flat-rated charge for line ports and one or more flat-rated or per-minute usage charges for the switching matrix and for trunk ports.

(3) Dedicated transmission link costs shall be recovered through flat-rated charges.

(4) The costs of shared transmission facilities between tandem switches and end offices may be recovered through usage-sensitive charges or in another manner consistent with the manner that the incumbent LEC incurs those costs.

(5) Tandem switching costs may be recovered through usage-sensitive charges or in another manner consistent with the manner that the incumbent LEC incurs those costs.

(6) Signaling and call-related database service costs shall be usage-sensitive, based on either the number of queries or the number of messages, with the exception of the dedicated circuits known as signaling links, the cost of which shall be recovered through flat-rated charges.

(7) Collocation costs shall be recovered consistent with the rate structure policies established in the FCC's expanded interconnection proceeding, CC Docket No. 91-141. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XXXVII. FORWARD-LOOKING COST PER UNIT (1) The forward-looking cost per unit of an element equals the forward-looking cost of the element, as defined in (Rule XXXIV), divided by a reasonable projection of the sum of the total number of units of the element that the incumbent LEC is likely to provide to requesting telecommunications carriers and the total number of units of the element that the incumbent LEC is likely to use in offering its own services, during a reasonable measuring period.

(2) With respect to elements that an incumbent LEC offers on a flat-rate basis, the number of units is defined as

the discrete number of elements (e.g., local loops or local switch ports) that the incumbent LEC uses or provides.

(3) With respect to elements that an incumbent LEC offers on a usage-sensitive basis, the number of units is defined as the unit of measurement of the usage (e.g., minutes of use or call-related database queries) of the element. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XXXVIII. PROXIES FOR FORWARD-LOOKING COST (1) If the commission determines that the cost information available to it with respect to one or more elements does not support the adoption of a rate or rates that are consistent with the requirements set forth in (Rule XXXIV), the commission will establish a rate for an element that is consistent with the proxies specified in this rule.

(2) Any rate established through use of such proxies shall be superseded once the commission has completed review of a cost study that complies with the pricing methodology described in (Rule XXXIV), and has concluded that such study is a reasonable basis for establishing element rates.

(3) The commission shall set forth in writing the basis for its selection of a particular proxy-based rate for an element.

(4) Proxies for specific elements are:

(a) The proxy-based monthly rate for unbundled local loops, on a statewide weighted average basis, shall be no greater than $25.18 per month.

(b) The blended proxy-based rate for unbundled local switching shall be no greater than $0.004 per minute, and no less than $0.002 per minute. The blended rate for unbundled local switching shall be calculated as the sum of the following:

(i) the applicable flat-rated charges for subelements associated with unbundled local switching, such as line ports, divided by the projected average minutes of use per flat-rated subelement; and

(ii) the applicable usage-sensitive charges for subelements associated with unbundled local switching, such as switching and trunk ports. A weighted average of such charges shall be used in appropriate circumstances, such as when peak and off-peak charges are used.

(c) The proxy-based rates for dedicated transmission links shall be no greater than the incumbent LEC's tariffed interstate charges for comparable entrance facilities or direct-trunked transport offerings.

(d) The proxy-based rates for shared transmission facilities between tandem switches and end offices shall be no greater than the weighted per-minute equivalent of DS1 and DS3 interoffice dedicated transmission link rates that reflects the relative number of DS1 and DS3 circuits used in the tandem to end office links (or a surrogate based on the proportion of copper and fiber facilities in the interoffice network), cal-

culated using a loading factor of 9,000 minutes per month per voice-grade circuit.

(e) The proxy-based rate for tandem switching shall be no greater than $0.0015 per minute of use.

(f) To the extent that the incumbent LEC offers a comparable form of collocation in its interstate expanded interconnection tariffs, the proxy-based rates for collocation shall be no greater than the effective rates for equivalent services in the interstate expanded interconnection tariff. To the extent that the incumbent LEC does not offer a comparable form of collocation in its interstate expanded interconnection tariffs, the commission may establish a proxy-based rate that approximates the result of a cost study, as described in (Rule XXXIV).

(g) For signaling, call-related database, and other elements, to the extent that the incumbent LEC has established rates for offerings comparable to other elements in its interstate access tariffs, the proxy-based rates for those elements shall be no greater than the effective rates for equivalent services in the interstate access tariffs. In other cases, the proxy-based rate shall be no greater than a rate based on direct costs plus a reasonable allocation of overhead loadings, pursuant to (Rule XXXIV). AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XXXIX. APPLICATION OF ACCESS CHARGES (1) Intrastate access charges shall not be assessed by an incumbent LEC on purchasers of elements that offer telephone exchange or exchange access services.

(2) An incumbent LEC may assess upon telecommunications carriers that purchase unbundled local switching elements, as described in (Rule XXVII), for intrastate minutes of use traversing such unbundled local switching elements, the carrier common line charge, and a charge equal to 75 percent of the interconnection charge, only until June 30, 1997.

(3) An incumbent LEC may assess upon telecommunications carriers that purchase unbundled local switching elements, as described in (Rule XXVII), for intrastate toll minutes of use traversing such unbundled local switching elements, intrastate access charges comparable to those listed in (2) above and any explicit intrastate universal service mechanism based on access charges, only until June 30, 1997. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XL. RESALE OBLIGATION OF ALL LOCAL EXCHANGE CARRIERS (1) A LEC shall make its telecommunications services available for resale to requesting telecommunications carriers on terms and conditions that are reasonable and non-discriminatory.

(2) A LEC must provide services to requesting telecommunications carriers for resale that are equal in quality, subject to the same conditions, and provided within the same

provisioning time intervals that the LEC provides these services to others, including end users.

(3) A LEC is not required to make exchange access services available for resale at wholesale rates to requesting telecommunications carriers. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XLI. ADDITIONAL RESALE OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS (1) Incumbent LECs shall offer to any requesting telecommunications carrier any telecommunications service that it offers on a retail basis to subscribers that are not telecommunications carriers for resale at wholesale rates. The wholesale rates are to be established either:

(a) using the avoided cost methodology described in (Rule XLIII); or

(b) using the interim wholesale rates set forth in (Rule XLIV). AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XLII. RESALE RESTRICTION (1) Except as provided below, an incumbent LEC shall not impose restrictions on the resale by a requesting carrier of telecommunications services offered by the incumbent LEC.

(2) The following types of restrictions on resale may be imposed:

(a) Upon approval by the commission, an incumbent LEC may prohibit a requesting telecommunications carrier that purchases at wholesale rates for resale, telecommunications services that the incumbent LEC makes available only to residential customers or to a limited class of residential customers, from offering such services to classes of customers that are not eligible to subscribe to such services from the incumbent LEC.

(b) An incumbent LEC may apply the wholesale discount to the ordinary rate for a retail service rather than a special promotional rate only if:

(i) such promotions involve rates that will be in effect for no more than 90 days; and

(ii) the incumbent LEC does not use such promotional offerings to evade the wholesale rate obligation, for example by making available a sequential series of 90-day promotional rates.

(c) Incumbent LECs may impose additional restrictions only if the commission finds the restriction to be reasonable and nondiscriminatory.

(3) Where operator, call completion or directory assistance service is part of the service or service package an incumbent LEC offers for resale, failure by an incumbent LEC to comply with reseller unbranding or rebranding requests shall constitute a restriction on resale.

(a) An incumbent LEC may impose such a restriction only if it proves to the commission that the restriction is reasonable and nondiscriminatory.

(b) For purposes of this rule, unbranding or rebranding shall mean that operator, call completion or directory assistance services are offered in such a manner that an incumbent LEC's brand name or other identifying information is not identified to subscribers or that such services are offered in such a manner that identifies to subscribers the requesting carrier's brand name or other identifying information. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XLIII. WHOLESALE PRICING STANDARD (1) Except as provided under (Rule XLIV) for interim pricing, the wholesale rate that an incumbent LEC may charge for a telecommunications service provided for resale to other telecommunications carriers shall equal the incumbent LEC's existing retail rate for the telecommunications service, less avoided retail costs, as described in (2) below.

(2) Avoided retail costs shall be those costs that reasonably can be avoided when an incumbent LEC provides a telecommunications service for resale at wholesale rates to a requesting carrier.

(3) Using appropriate cost studies and other information as necessary, an incumbent LEC must prove to the commission that its wholesale rate for each telecommunications service provided to requesting telecommunications carriers for resale complies with (1) and (2) of this rule. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XLIV. INTERIM WHOLESALE RATES (1) If the commission is not able to establish a wholesale rate using the methodology prescribed in (Rule XLIII), then it may establish an interim wholesale rate as described in (2) below.

(2) The commission may establish interim wholesale rates that are at least 17 percent, and no more than 25 percent, below the incumbent LEC's existing retail rates, and shall articulate the basis for selecting a particular discount rate. The same discount percentage rate shall be used to establish interim wholesale rates for each telecommunications service.

(3) If the commission establishes interim wholesale rates, it shall, within a reasonable period of time thereafter, establish wholesale rates on the basis of an avoided retail cost study that complies with (Rule XLIII). AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XLV. WITHDRAWAL OF SERVICES (1) When an incumbent LEC makes a telecommunications service available only to a limited group of customers that have purchased such a service in the past, the incumbent LEC must also make such a service available at wholesale rates to requesting carriers to offer on a resale basis to the same limited group of customers that have purchased such a service in the past. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XLVI. ASSESSMENT OF INTRASTATE ACCESS CHARGES ON RESELLERS (1) When an incumbent LEC provides telephone exchange service to a requesting carrier at wholesale rates for resale, the incumbent LEC may continue to assess intrastate access charges upon interexchange carriers that use the incumbent LEC's facilities to provide intrastate services to the interexchange carriers' subscribers. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XLVII. RECIPROCAL COMPENSATION FOR TRANSPORT AND TERMINATION OF LOCAL TELECOMMUNICATIONS TRAFFIC (1) (Rule XLVII) through (Rule LV) apply to reciprocal compensation for transport and termination of local telecommunications traffic between LECs and other telecommunications carriers.

(2) For purposes of (Rule XLVII) through (Rule LV), local telecommunications traffic means:

(a) telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that originates and terminates within a local service area; or

(b) telecommunications traffic between a LEC and a CMRS provider that, at the beginning of the call originates and terminates within the same major trading area, as defined by the FCC.

(3) For purposes of (Rule XLVII) through (Rule LV), transport is the transmission and any necessary tandem switching of local telecommunications traffic from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party or equivalent facility provided by a carrier other than an incumbent LEC.

(4) For purposes of (Rule XLVII) through (Rule LV), termination is the switching of local telecommunications traffic at the terminating carrier's end office switch or equivalent facility, and delivery of such traffic to the called party's premises.

(5) For purposes of (Rule XLVII) through (Rule LV), carriers is one in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of local telecommunications traffic that originates on the network facilities of the other carrier. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XLVIII. RECIPROCAL COMPENSATION OBLIGATION OF LOCAL EXCHANGE CARRIERS (1) Each LEC shall establish reciprocal compensation arrangements for transport and termination of local telecommunications traffic with any requesting telecommunications carrier.

(2) A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XLIX. INCUMBENT LOCAL EXCHANGE CARRIERS' RATES FOR TRANSPORT AND TERMINATION (1) An incumbent LEC's rates for transport and termination of local telecommunications traffic shall be established, at the election of the commission, on the basis of:

(a) the forward-looking economic costs of such offerings, using a cost study pursuant to (Rule XXXIV);

(b) default proxies, as provided in (Rule L); or

(c) a bill-and-keep arrangement, as provided in (Rule LIII).

(2) In cases where both carriers in a reciprocal compensation arrangement are incumbent LECs, the rates of the smaller carrier shall be established on the basis of the larger carrier's forward-looking costs, pursuant to (Rule XXXIV). AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE L. DEFAULT PROXIES FOR INCUMBENT LOCAL EXCHANGE CARRIERS' TRANSPORT AND TERMINATION RATES (1) If the commission determines that the cost information available to it with respect to transport and termination of local telecommunications traffic does not support the adoption of a rate or rates for an incumbent LEC that are consistent with the requirements of (Rule XLIX), the commission may establish proxy rates for transport and termination of local telecommunications traffic or for specific components included therein.

(a) Such proxy rate shall be superseded once the commission establishes rates for transport and termination pursuant to (Rule XLIX).

(b) The commission shall set forth in writing a reasonable basis for its selection of a particular proxy for transport and termination of local telecommunications traffic or for specific components included within transport and termination.

(2) If the commission establishes proxy rates for transport and termination of local telecommunications traffic, such rates must meet the following requirements:

(a) The incumbent LEC's rates for the termination of local telecommunications traffic shall be no greater than $0.004 per minute, and no less than $0.002 per minute.

(b) The incumbent LEC's rates for the transport of local telecommunications traffic, under this rule, shall comply with the proxies described in (Rule XXXVIII) that apply to the analogous unbundled network elements used in transporting a call to the end office that serves the called party. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE LI. RATE STRUCTURE FOR TRANSPORT AND TERMINATION (1) The commission shall establish rates for the transport and termination of local telecommunications traffic that are structured consistently with the manner that carriers incur those costs, and consistently with the rate structure principles in (Rule XXXV).

(2) The rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network. Such proportions may be measured during peak periods. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE LII. SYMMETRICAL RECIPROCAL COMPENSATION (1) Rates for transport and termination of local telecommunications traffic shall be symmetrical, except as provided in (2) below.

(a) Symmetrical rates are rates that a carrier other than an incumbent LEC assesses upon an incumbent LEC for transport and termination of local telecommunications traffic equal to those that the incumbent LEC assesses upon the other carrier for the same services.

(b) In cases where both parties are incumbent LECs or neither party is an incumbent LEC, the commission shall establish the symmetrical rates for transport and termination based on the larger carrier's forward-looking costs.

(c) Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate.

(2) The commission may establish asymmetrical rates for transport and termination of local telecommunications traffic only if the carrier other than the incumbent LEC (or the smaller of two incumbent LECs) proves to the commission on the basis of a cost study using the forward-looking cost based pricing methodology described in (Rule XXXIV), that the forward-looking costs for a network efficiently configured and operated by the carrier other than the incumbent LEC (or the smaller of two incumbent LECs), exceed the costs incurred by the incumbent LEC (or the larger incumbent LEC), and, consequently, that such that a higher rate is justified. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE LIII. BILL-AND-KEEP ARRANGEMENTS FOR RECIPROCAL COMPENSATION (1) Bill-and-keep arrangements are those in which neither of the two interconnecting carriers charges the other for the termination of local telecommunications traffic that originates on the other carrier's network.

(2) The commission may impose bill-and-keep arrangements if it determines that the amount of local telecommunications traffic from one network to the other is roughly balanced with the amount of local telecommunications traffic flowing in the opposite direction, and is expected to remain so, and no showing has been made pursuant to (Rule LII(2)).

(3) Nothing in this rule precludes the commission from presuming that the amount of local telecommunications traffic

from one network to the other is roughly balanced with the amount of local telecommunications traffic flowing in the opposite direction and is expected to remain so, unless a party rebuts such a presumption. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE LIV. INTERIM TRANSPORT AND TERMINATION PRICING

(1) Upon request from a telecommunications carrier without an existing interconnection arrangement with an incumbent LEC, the incumbent LEC shall provide transport and termination of local telecommunications traffic immediately under an interim arrangement, pending resolution of negotiation or arbitration regarding transport and termination rates and approval of such rates by the commission.

(a) This requirement shall not apply when the requesting carrier has an existing interconnection arrangement that provides for the transport and termination of local telecommunications traffic by the incumbent LEC.

(b) A telecommunications carrier may take advantage of such an interim arrangement only after it has requested negotiation with the incumbent LEC.

(2) Upon receipt of a request as described in (1) above, an incumbent LEC must, without unreasonable delay, establish an interim arrangement for transport and termination of local telecommunications traffic at symmetrical rates.

(a) If the commission has previously established transport and termination rates for the incumbent LEC, the incumbent LEC shall use these as interim transport and termination rates.

(b) If the commission has previously established default transport and termination rates for the incumbent LEC, consistent with the default price ranges and ceilings described in (Rule L), the incumbent LEC shall use these as interim rates.

(c) If the commission has not established final or interim transport and termination rates for the incumbent LEC, the incumbent LEC shall set interim transport and termination rates at the default ceilings for end-office switching (0.4 cents per minute of use), tandem switching (0.15 cents per minute of use), and transport (as described in (Rule L(2)(b)).

(3) An interim arrangement shall cease to be in effect when one of the following occurs with respect to rates for transport and termination of local telecommunications traffic subject to the interim arrangement:

(a) a voluntary agreement has been negotiated and approved by the commission;

(b) an agreement has been arbitrated and approved by the commission; or

(c) the period for requesting arbitration has passed with no such request.

(4) If the rates for transport and termination of local telecommunications traffic in an interim arrangement differ from the rates established by the commission, carriers shall make adjustments to past compensation. Such adjustments to

past compensation shall allow each carrier to receive the level of compensation it would have received had the rates in the interim arrangement equaled the rates later established by the commission pursuant to (Rule XLIX). AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE LV. RENEGOTIATION OF EXISTING NON-RECIPROCAL ARRANGEMENTS (1) Any CMRS provider that operates under an arrangement with an incumbent LEC that was established before February 8, 1996, and that provides for non-reciprocal compensation for transport and termination of local telecommunications traffic is entitled to renegotiate these arrangements with no termination liability or other contract penalties.

(2) From the date that a CMRS provider makes a request under (1) above until a new agreement has been either arbitrated or negotiated and has been approved by the commission, the CMRS provider shall be entitled to assess upon the incumbent LEC the same rates for the transport and termination of local telecommunications traffic that the incumbent LEC assesses upon the CMRS provider pursuant to the pre-existing arrangement. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE LVI. MINIMUM SERVICE STANDARDS (1) All LECs shall comply with this commission's Telecommunication Service Standards, ARM 38.5.3301 through 38.5.3371, as these currently exist and as may be modified by this commission. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE LVII. MINIMUM INTERCONNECTION SERVICE REQUIREMENTS (1) All LECs providing interconnection shall provide this service on a nondiscriminatory basis. The service standards to be provided by a LEC to an interconnecting carrier should be incorporated into the negotiated or arbitrated agreement. If service standards are not included in the agreement the LEC at a minimum shall provide an interconnecting carrier the same level of service it would provide itself or an affiliated entity. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE LVIII. SEVERABILITY (1) If any rule in this subchapter is held invalid or any part of any rule in this is held invalid, the remainder or its application to other situations or person(s), shall not be affected. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

4. Rationale: The Commission is proposing the adoption of these new rules in order to establish procedures and guidelines for fulfilling its responsibilities under the Telecommunications Act of 1996, Public Law No. 104-104, 101 Stat. 56 (1996), enacted on February 8, 1996 and amending the Communications Act of 1934, to be codified at 47 USC 151, et seq.

The 1996 Act reflects the changing marketplace in the telecommunications industry and requires incumbent local exchange carriers to open the local exchange and exchange access markets to competitive entry, promote increased competition in telecommunications markets that are already open to competition such as the long distance market, and to reform the system of universal service so that universal service is preserved and advanced as the local exchange and exchange access markets move from monopoly to competition. The new legislative framework echoes the purposes which the Montana Legislature has articulated in the Montana Telecommunications Act, 69-3-801, MCA, et seq., relating to encouraging competition for telecommunications services. With this new framework, the industry is shifting from a regulated, rate-based, rate of return monopolistic industry to one that is competitive. Congress has set the stage for telecommunications reform by placing major responsibilities upon state commissions in implementing the requirements of the 1996 Act.

The 1996 Act provides for the submission to state commissions for their approval of interconnection agreements and other issues between telecommunications carriers and incumbent local exchange carriers. In the event negotiations fail, in whole or in part, parties may request mediation or arbitration from the Montana public service commission. The 1996 Act imposes expedited schedules for commencement of arbitration and for state commission approval of negotiated or arbitrated agreements. In particular, the 1996 Act imposes a time limit of nine months from the date the telecommunications carrier requests an interconnection agreement until state resolution by arbitration of any unresolved issues. If the commission does not arbitrate agreements, the responsibility for arbitrating and approval is preempted by the Federal Communications Commission. Once an agreement is submitted for state commission approval, the commission must act to approve or reject it within 90 days of submission by the parties of an agreement reached through negotiation and within 30 days of submission of an agreement adopted by arbitration. If the commission allows these deadlines to lapse, the agreement is to be deemed approved.

In light of the need for expeditious action under the 1996 Act, the commission proposes to adopt these rules to facilitate orderly decision-making, to provide a framework for dispute resolution, and to provide notice to interested parties of the procedures the commission intends to use to carry out its responsibilities under the 1996 Act and the Montana Telecommunications Act. Section 69-3-103, MCA, gives the commission authority to "prescribe rules of procedure and to do all things necessary and convenient in the exercise" of the full power of supervision, regulation, and control of public utilities, including the power to adopt reasonable and proper rules governing its proceedings and the power to regulate the mode and manner of all investigations and hearings of public utilities and other parties before the commission.

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 (original and 10 copies) to Karen Hammel, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601 no later than November 4, 1996. When submitting written comments please refer to Commission Docket No. D96.2.16.

6. The Montana Consumer Counsel, 34 West Sixth Avenue, P.O. Box 201703, Helena, Montana 59620-1703, (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

Dave Fisher
DAVE FISHER, VICE CHAIR

CERTIFIED TO THE SECRETARY OF STATE SEPTEMBER 23, 1996.

Robin A. McHugh
Reviewed By Robin A. McHugh

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT OF ARM 42.11.243, 42.13.105, and 42.13.221 relating to Liquor Regulations for Golf Course and Moveable Devices	) NOTICE OF PUBLIC HEARING) ON PROPOSED AMENDMENT))))

TO: All Interested Persons:

1. On October 30, 1996, at 1:30 p.m., a public hearing will be held in the Fourth Floor Conference Room, Mitchell Building at Helena, Montana, to consider the amendments to ARM 42.11.243; 42.13.105 and 42.13.221, relating to Liquor.

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

42.11.243 SAMPLES (1) ~~A vendor may use no more than 24 cases of liquor as samples during any calendar year. This allotment includes all brands of liquor produced or sold by a vendor. Representatives may distribute samples.~~

~~(2) For the purposes of this section and ARM 42.11.244 a sample is defined as a container of liquor presented by a representative for inspection or a demonstration of the quality of the product.~~

~~(3) A sample may not exceed 1 pint or its metric equivalent, 500 milliliters.~~

~~(4) A sample of no more than 1 pint or its metric equivalent of any liquor may be furnished or given to a licensed retailer who has not previously purchased that product~~.

~~(5)~~ A sample of liquor may only be purchased through ~~state~~ agency liquor stores at ~~retail~~ the state posted price. A separate order for a sample must be placed with a liquor store agent by each registered representative whose name and identification number must appear on the order. AUTH: Sec. 16-1-303, MCA; IMP, Sec. 16-3-103, MCA

42.13.105 APPLICABILITY OF LICENSES; PREMISES DEFINED; GOLF COURSE EXCEPTION; PORTABLE SATELLITE VEHICLE, MOVABLE DEVICES (1) All licenses shall be applicable only to the premises in respect to which they were issued. The premises is described by a floor plan on file with the department which accompanied the application and was approved by the department. The licensee must have possessory interest in the entire premises. No more than one license can be issued for the area described in the floor plan unless the first license has been granted nonuse status. The floor plan may be amended by a licensee submitting an application to alter the licensed premises and gaining department approval pursuant to ARM 42.13.106. Where a licensee conducts as a single business enterprise two or

more ~~bars~~ service areas located on the same premises and which have such inter-communication as will enable patrons to move freely from one ~~bar~~ service area to another without leaving the premises, the various ~~bars~~ service areas shall be regarded as but one premises for which but one license is required. In all other cases licenses must be obtained for each ~~bar~~ service area even though operated in the same building with another ~~bar~~ service area.

(2) The term "premises" ~~shall be construed to~~ means ~~the~~ one building or a specific portion or portions of ~~any~~ one building ~~in~~ which contain all service areas used by the licensee and the licensee's patrons ~~the liquor and/or beer business is conducted~~ and those service areas in which the licensee operates ~~a sidewalk cafe, open air restaurant, or tavern~~ outside of and ~~adjacent~~ attached to the licensed building and to which patrons are permitted free access from ~~said~~ the building.

(3) The term "service area" means the area in which the preparation, sale, service or consumption of alcoholic beverages occurs, except as provided in 16-3-105, MCA.

(4) The term "building" means an enclosed structure with external walls and a roof. A series of structures linked together, such as a commercial mall, structures contained on a city block or structures connected by skyways, are not considered one building for licensing purposes.

~~(3)~~(5) Retail all-beverages licensees operating at a golf course may sell alcoholic beverages and publicly owned golf courses holding a retail beer and table wine license may sell beer and table wine, under the provisions of 16-3-302, MCA, ~~sell beer and table wine~~ anywhere within the golf course boundaries from portable satellite devices and other moveable satellite devices.

~~(4)~~(6) Non-publicly owned golf courses holding retail beer or table wine licenses are restricted to sales of beer and table wines on their premises as defined in ~~subsection~~(2).

~~(5)~~(7) "Portable satellite vehicle" or "other movable satellite device" as used in 16-3-302~~(2)~~, MCA, may include:

(a) self-propelled wheeled vehicles such as golf carts, concession vans or similar conveyances containing beverage dispensing and storage equipment; or

(b) wheeled devices such as concession wagons or vendors carts and other similar vehicles which may be towed, pushed or transported to a temporary site and which contain~~s~~ beverage dispensing and storage equipment; and

(c) fixed booths or stands in which portable beverage dispensing and storage equipment may be temporarily installed and removed after use.

(d) Other devices not described within these categories may be submitted to the liquor division for approval of use.

(8) Premises licensed prior to the effective date of this rule that do not meet these standards would be required to meet the above standards when requesting the department to approve an application for transfer of ownership, and/or location or a

request to alter the existing licensed premises.

AUTH: Sec. 16-1-303, MCA, IMP, Secs. 16-3-302, 16-3-311, ~~16-4-204~~ 16-4-404 and 16-6-104, MCA.

42.13.221 ADOPTION OF CERTAIN FEDERAL REGULATIONS

~~(1) Regulations Nos. 4, 5, and 7 of the bureau of alcohol, tobacco, and firearms, United States, department of the treasury, as set forth in 27 C.F.R., and amendments thereof and supplements thereto are hereby adopted and are made a part hereof as though fully set forth herein, as the regulations for the labelling and advertising of liquor (distilled spirits, wine, and malt beverages) sold within this state except insofar as the provisions of such regulations may be contrary to or inconsistent with the provisions of Montana law or regulations of the department.~~

(1) The United States department of treasury, bureau of alcohol, tobacco, and firearms regulations 4, 5, 6.91, and 7, as set forth in 27 C.F.R., along with any amendments and supplements are adopted by reference. These regulations apply to labeling, sampling and advertising of liquor (distilled spirits, wine, and malt beverages) sold within this state except where the provisions of these federal regulations may be contrary to or inconsistent with the provisions of Montana law or regulations of the department. AUTH: Sec. 16-1-303, MCA; IMP, Sec. 16-3-103 and 16-3-244, MCA

3. The amendment to ARM 42.11.243 is proposed to delete language currently contained in Federal regulation 6.91. That language is contained in the amendment to ARM 42.13.221. ARM 42.11.243 is being amended to correct the reference from state or agency liquor stores since there are no longer state operated liquor stores. Also, the amendment to subsection (5) is proposed to replace the reference to "retail price" with "state posted price" which would place a ceiling on the price an agent can charge a vendor representative for a product.

The Department is proposing the amendment to ARM 42.13.105 to describe what constitutes a premises where alcoholic beverages can be sold. In subsection (1) bar is replaced by service area as licensed establishments are not required to have what is commonly considered a bar. The rule clarifies that a licensee can prepare, sell, serve or allow consumption only within the confined area of the floor plan which was filed with and approved by the department. In subsection (2), the word "adjacent" has been replaced by "attached" to clarify the close proximity within which the outside area must be to the premises within the building to be considered as part of the licensed premises. The new subsection (3) defines what is meant by "service area". Subsection (4) defines what is considered a "building". New subsection (5) as previously written, limited an all-beverages licensee to selling only beer and wine anywhere

within the boundaries of the licensed golf course. Section 16-3-302, MCA, allows an all-beverages licensee to sell "alcoholic beverages" anywhere within the boundaries of the golf course licensed with an all-beverages license. The rule goes beyond the scope of the law by prohibiting alcoholic beverages other than beer and wine from being sold anywhere within the boundaries of the all-beverages licensed golf course. The amendments to the rule will clarify this provision of the law. New subsection (8) grandfathers establishments issued licenses prior to July 1, 1996, which under the amendments would not meet the premises' criteria until the licensee transfers ownership and/or location or requests alterations to the existing premises.

The history is being amended to reflect the correct implementation statute. Section 16-4-204, MCA, cited as an implementing statute is inaccurate. The proper cite is 16-4-404, MCA.

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:

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than November 1, 1996.

5. Cleo Anderson, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State September 23, 1996

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) NOTICE OF THE PROPOSED AMENDMENT
OF ARM 42.19.501, relating to)
Property Tax Exemption for)
Disabled Veterans) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 22, 1996, the Department of Revenue proposes to amend ARM 42.19.501 relating to Property Tax Exemption for 100% Disabled Veterans.

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

42.19.501 PROPERTY TAX EXEMPTION FOR 100% DISABLED VETERANS (1) The property owner of record or his agent must make application through the Property Assessment Division, the Department of Revenue, Mitchell Building, Helena, Montana, 59620, in order to obtain a property tax exemption. An application must be filed, on a form available from the county assessment office, before March ~~1~~ 15 of the year for which the exemption is sought. Applications post marked after March ~~1~~ 15 will not be considered for that tax year unless the agent of the department or office manager determines the following conditions are met:

(a) and (b) remain the same.

(2) through (7) remain the same.

AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-6-151 and 15-6-211, MCA

3. ARM 42.19.501 is being amended to change the application deadline for a property tax exemption of a 100% disabled veteran to before March 15 in order to match the application deadline for the property tax assistance program.

4. Interested parties may submit their data, views, or arguments concerning the proposed action in writing to:

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than November 1, 1996.

5. If a person who is directly affected by the proposed amendments 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 November 1, 1996.

6. If the agency receives requests for a public hearing on the proposed action 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 greater than 25.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State September 23, 1996

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the public hearing to consider whether new or amended rules that address lobbying activities are necessary pursuant to the petition submitted by Montana Common Cause	))))))	NOTICE OF PUBLIC HEARING

TO: All Interested Persons.

1. On December 13, 1996, at 9:00 a.m., a public hearing will be held in Room 325 of the State Capitol Building, Helena, Montana, to consider whether new or amended rules that address lobbying activities are necessary pursuant to the petition submitted by Montana Common Cause (Common Cause).

2. On April 29, 1994, Common Cause filed a petition with the Commissioner of Political Practices (Commissioner) requesting the Commissioner to "adopt rules that define and specify 'lobbying' activities under Montana's Lobbying Act. . . ." Common Cause's petition contained proposed rules, the text of which is as follows:

LOBBYING--DEFINITIONS AND SCOPE--REPORTABLE ACTIVITIES

(1) for purposes of this section,

(a) "Administrative action" means any action taken by a public official in any agency, department, division, office, board or commission of state government with regard to any proposal, drafting, development or consideration of a policy, practice or rule. "Administrative action" does not include actions that are quasi-judicial or ministerial in nature.

(b) "Individual" shall have the definition set forth at section 5-7-102(5), MCA.

(c) "Legislative action" means any action by a legislator with regard to introduction of a bill, resolution or amendment or with regard to any bill, resolution, amendment, report, appointment, recommendation, nomination, election, proposed or final proposed rule or other matter proposed for consideration by or pending in the state legislature or in any committee of the state legislature.

(d) "Lobbyist" shall have the definition set forth at section 5-7-102(8), MCA.

(e) "Official action" means legislative action or administrative action, or both, as required by the context in which the phrase is used so that its meaning is inclusive rather than exclusive.

(f) "Payment" and "payment to influence official action" shall have the definitions set forth at section 5-7-102(9) and (10), MCA.

(g) "Principal" shall have the definition set forth at section 5-7-102(12), MCA.

(h) "Public official" shall have the definition set forth at section 5-7-102(13), MCA.

(2) Pursuant to section 5-7-102(6), MCA, lobbying shall mean the practice of promoting or opposing legislative or administrative action by any public official. Unless otherwise exempted from the definition of "lobbying" by ARM section 44.12.102, lobbying activities shall include, without limitation:

(a) any direct communications (including face-to-face meetings, telephone conversations or written correspondence) by a lobbyist with a public official to promote or oppose legislative or administrative action;

(b) all time spent by a lobbyist to prepare or deliver testimony (including time spent by a lobbyist to prepare testimony for a principal that is delivered by another individual) promoting or opposing official action by any public official or group of public officials;

(c) all time spent by a lobbyist (i) at the Capitol, or other meeting location of the state legislature, during any regular or special legislative session for the purpose of promoting or opposing legislative action, or (ii) at any interim legislative committee meeting whereat any pending or proposed legislative action is considered, on which a principal of the lobbyist has taken or later takes a position promoting or opposing said legislative action;

(d) all time spent by a lobbyist attending a meeting of, or hearing before, a public official or group of public officials whereat any pending or proposed official action is considered, on which a principal of the lobbyist has taken or later takes a position promoting or opposing said official action;

(e) all time spent by a lobbyist tracking the progress of, analyzing, or otherwise monitoring pending or proposed legislative or administrative action that is, or that will be, promoted or opposed by a principal of the lobbyist;

(f) all time spent by a lobbyist to develop or implement a lobbying campaign or strategy, including time spent working with other lobbyists, for the purpose of promoting or opposing official action; and

(g) all time spent by a lobbyist to develop or implement an advertising campaign for the purpose of promoting or opposing official action.

(3) Pursuant to section 5-7-208, MCA, a principal shall report all payments made for the following lobbying activities, without limitation:

(a) all payments made to a lobbyist to influence official action, including payments made for any lobbying activity specified in subsection (2); and

(b) payments in which the principal reimburses a lobbyist for costs of the lobbyist's support staff,

including secretaries, administrative staff, or any other individuals, in proportion to their time spent on lobbying activities.

(4) (a) Except as otherwise provided in paragraphs (b) and (c) herein, a lobbyist who is paid by a principal to be present

(i) at the Capitol, or other meeting location of the state legislature, during any regular or special legislative session or at any interim legislative committee meeting, or

(ii) at a meeting of, or hearing before, a public official or group of public officials concerning any potential administrative action

is receiving a payment to influence official action, which must be reported by the principal pursuant to section 5-7-208, MCA.

(b) In each lobbying report submitted pursuant to section 5-7-208, MCA, a principal must either (i) declare payments made to a lobbyist for the activities identified in paragraph (a) herein, or (ii) provide a detailed explanation demonstrating that the principal was not paying the lobbyist to be present at the locations identified in paragraph (a) herein in order to influence official action.

(c) Even if a principal declares that it made no payments for lobbying activities during a reporting period, the principal must file a lobbying report providing the explanation required in paragraph (b)(ii), if the principal made a payment to a lobbyist for an activity described in paragraph (a).

(5) A principal who is a governmental entity and who claims a reporting exemption pursuant to section 5-7-211, MCA, must file an explanation setting forth the statutory basis of such exemption in lieu of filing the report required by section 5-7-208, MCA. Such explanations must be filed on the same time schedule set forth for filing lobbying reports in section 5-7-208, MCA. Payments for lobbying activities not falling within the exemptions set forth in section 5-7-211, MCA, must be reported in accordance with this section.

(6) Pursuant to section 5-7-108, MCA, the Commissioner will issue an order of noncompliance for any explanation filed pursuant to subsections (4)(b)(ii) or (5), if the Commissioner finds that such explanation does not adequately substantiate the principal's claim that no payment was made to influence official action or that such payment is exempted from being considered a lobbying payment pursuant to section 5-7-211, MCA.

3. The Commissioner states no opinion at this time regarding whether or not the rules proposed by Common Cause are necessary. A hearing to determine whether rules are necessary is required based on the Montana Supreme Court's ruling in Common Cause of Montana, et al. v. Ed Argenbright, et al., 53 St. Rptr. 386, 917

P.2d 425 (1996). The Montana Supreme Court stated:

> Although section 5-7-111, MCA, requires the Commissioner to adopt rules "as necessary," that discretionary phrase does not permit the Commissioner to circumvent the initial directive that he "shall" adopt rules. The Commissioner has the ultimate discretion to determine what, if any, rules are necessary. He cannot, however, in the face of a petition alleging the necessity for rules, deny the petition without first conducting a hearing as to the question of necessity, . . .

Common Cause of Montana, 53 St. Rptr. at 390, 917 P.2d at 431. The scope of the hearing will therefore be limited to a determination of whether rules are necessary. If, following the hearing, a determination is made that rules are necessary, the Commissioner may schedule additional rulemaking proceedings.

4. 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 Ed Argenbright, Commissioner of Political Practices, 1205 Eighth Avenue, P.O. Box 202401, Helena, MT 59620-2401, and must be received no later than December 20, 1996.

5. Jim Scheier has been designated to preside over and conduct the hearing.

Jim Scheier
Rule Reviewer
JIM SCHEIER

Commissioner of Political Practices
ED ARGENBRIGHT, Ed.D.

Certified to the Secretary of State Sept. 19, 1996

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 1.2.419 regarding scheduled dates for the Montana Administrative Register	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 1.2.419 FILING, COMPILING, PRINTER PICKUP AND PUBLICATION OF THE MONTANA ADMINISTRATIVE REGISTER

TO: All Interested Persons.

1. On October 24, 1996, a public hearing will be held at 10:00 a.m. in the Secretary of State's Office Conference Room at room 225 of the Capitol Building at Helena, Montana, to consider the proposed amendment of ARM 1.2.419 regarding the scheduled dates for the Montana Administrative Register.

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

1.2.419 FILING, COMPILING, PRINTER PICKUP AND PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER

(1) The scheduled filing dates, time deadlines, compiling dates, printer pickup dates and publication dates for material to be published in the Montana Administrative Register are listed below:

199697 Schedule

Filing	Compiling	Printer Pickup	Publication
January 26	January 37	January 48	January 1116
January 1221	January 1622	January 1723	January 2530
~~January 29~~	~~January 30~~	~~January 31~~	~~February 8~~
February 123	February 134	February 145	February 2213
February 2618	February 2719	February 2820	~~March 7~~ February 27
March 113	March 124	March 135	March 2113
March 2517	March 2618	March 2719	~~April 4~~March 27
~~April 15~~March 31	April 161	April 172	April 2510
April 2914	April 3015	~~May 1~~April 16	~~May 9~~April 24
~~May 13~~April 28	~~May 14~~April 29	~~May 15~~April 30	May 238
May 2812	May 2913	May 3014	~~June 6~~May 22
June 102	June 113	June 124	June 2012
June 2416	June 2517	June 2618	~~July 3~~ June 26
July 87	July 98	July 109	July 1817
July 2921	July 3022	July 3123	~~August 8~~ July 31
August 124	August 135	August 146	August 2214
August 2618	August 2719	August 2820	~~September 5~~ August 28
September 92	September 103	September 114	September 1911

September ~~23~~15	September ~~24~~16	September ~~25~~17	~~October 3~~
			September 25
~~October 11~~	~~October 15~~	October ~~16~~1	October ~~24~~9
September 29	September 30		
October ~~28~~14	October ~~29~~15	October ~~30~~16	~~November 7~~
			October 23
~~November 8~~	~~November 12~~	~~November 13~~	November ~~21~~6
October 27	October 28	October 29	
November ~~25~~10	November ~~26~~12	November ~~27~~13	~~December 5~~
			November 20
~~December 9~~	~~December 10~~	~~December 11~~	December ~~19~~4
November 24	November 25	November 26	
December 8	December 9	December 10	December 18

(2) Remains the same.

AUTH: Sec. 2-4-312, MCA IMP, Sec. 2-4-312, MCA

3. The rule is proposed to be amended to set dates pertinent to the publication of the Montana Administrative Register during 1997.

4. 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 Kathy Lubke, Administrative Rules Bureau, Secretary of State's office, State Capitol, 1236 Sixth Avenue, Helena, Montana 59620, and must be received no later than October 31, 1996.

5. Kathy Lubke, address given in paragraph 4 above, has been designated to preside over and conduct the hearing.

Mike Cooney
MIKE COONEY
Secretary of State

by Kathy Lubke
Deputy

GARTH JACOBSON
Rule Reviewer

Dated this 23th day of September 1996.

BEFORE THE BOARD OF ALTERNATIVE HEALTH CARE
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment and adoption of rules pertaining to fees, renewal, unprofessional conduct, licensing of out-of-state applicants, certification for specialty practice of naturopathic childbirth attendance, naturopathic physician continuing education, and direct entry midwife apprenticeship requirements	NOTICE OF AMENDMENT AND ADOPTION OF RULES PERTAINING TO THE ALTERNATIVE HEALTH CARE INDUSTRY

TO: All Interested Persons:

1. On August 22, 1996, the Board of Alternative Health Care published a notice of proposed amendment and adoption of rules pertaining to the alternative health care industry at page 2230, 1996 Montana Administrative Register, issue number 16.

2. The Board has amended ARM 8.4.301, 8.4.302, 8.4.303, 8.4.403, 8.4.405, 8.4.503, 8.4.507 and 8.4.508 and adopted new rules I (8.4.510), II (8.4.305) and III (8.4.306) exactly as proposed.

3. No public comments or testimony were received.

BOARD OF ALTERNATIVE HEALTH CARE
MICHAEL BERGKAMP, ND, CHAIRMAN

BY: Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, September 23, 1996.

BEFORE THE BOARD OF PLUMBERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment,) CORRECTED NOTICE OF
and adoption of rules pertaining) AMENDMENT
to the plumbing industry)

TO: All Interested Persons:

1. On August 8, 1996, the Board of Plumbers published a notice of proposed amendment and adoption of rules pertaining to the plumbing industry at page 2081, 1996 Montana Administrative Register, issue number 15. On September 19, 1996, the Board published a notice of adoption at page 2426, 1996 Montana Administrative Register, issue number 18.

2. ARM 8.44.412 should have been amended as follows in the original notice.

"8.44.412 FEE SCHEDULE

(1) through (9) will remain the same.

(10) Out-of-state licensure fee	95
(11) Temporary practice permit fee	20"

3. Subsections (10) and (11), shown above, were inadvertently numbered incorrectly in the original notice. The replacement pages for this rule were submitted for the September 30, 1996 filing date.

BOARD OF PLUMBERS
DICK GROVER, CHAIRMAN

BY: _____
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, September 23, 1996.

BEFORE THE BOARD OF SANITARIANS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment, repeal and adoption of rules pertaining to sanitarians	)))	CORRECTED NOTICE OF AMENDMENT

TO: All Interested Persons:

1. On March 7, 1996, the Board of Sanitarians published a notice of proposed amendment, repeal and adoption of rules pertaining to sanitarians at page 626, 1996 Montana Administrative Register, issue number 5. On April 25, 1996, the Board published a notice of public hearing at page 985, 1996 Montana Administrative Register, issue number 8, because a sufficient number of individuals requested that the Board hold a public hearing. On July 18, 1996, the Board published a notice of adoption at page 1965, 1996 Montana Administrative Register, issue number 14.

2. The last sentence of subsection (2) in ARM 8.60.415, "The supervising sanitarian must file quarterly reports with the board regarding the status and progress of the sanitarian-in-training." was inadvertently omitted from the original notice and the adoption notice. That sentence will remain the same as it currently appears in the administrative rules. Subsection (2) should have been amended in the adoption notice as shown below:

8.60.415 SANITARIAN-IN-TRAINING (1) will remain the same as shown in the adoption notice.

(2) A sanitarian-in-training must work under the ~~direct~~ supervision of a licensed sanitarian. The supervising sanitarian must submit a plan for supervision for approval by the board. The supervising sanitarian must file quarterly reports with the board regarding the status and progress of the sanitarian-in-training.

(a) will remain the same as shown in the adoption notice.

(i) an estimate of time of ~~direct~~ supervision provided~~;~~;

(ii) number of hours of training to be provided per month~~;~~; and

(iii) through (4) will remain the same as shown in the adoption notice.

3. The replacement pages for this rule were submitted for the September 30, 1996 filing date.

BOARD OF SANITARIANS
MELISSA TUEMMLER, CHAIRMAN

BY: _____
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, September 23, 1996.

BEFORE THE BOARD OF VETERINARY MEDICINE
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment repeal and adoption of rules pertaining to fees, application requirements, temporary permits, examinations, annual renewals, continuing education, unprofessional conduct, applications for certification of embryo transfer, unprofessional conduct for embryo transfer, disciplinary actions and advisory committee	NOTICE OF AMENDMENT, REPEAL AND ADOPTION OF RULES PERTAINING TO THE PRACTICE OF VETERINARY MEDICINE AND EMBRYO TRANSFER

TO: All Interested Persons:

1. On August 22, 1996, the Board of Veterinary Medicine published a notice of proposed amendment, repeal and adoption of rules pertaining to the practice of veterinary medicine and embryo transfer at page 2253, 1996 Montana Administrative register, issue number 16.

2. The Board has adopted ARM 8.64.402, 8.64.501, 8.64.502, 8.64.503, 8.64.504, 8.64.505, 8.64.508, 8.64.509, 8.64.802 and 8.64.807; repealed ARM 8.64.405 and 8.64.701; and adopted new rules I (8.64.407) and II (8.64.408) exactly as proposed.

3. The Board received one comment in support of the Board's intention to adopt the rules. The Board acknowledges the comment. No other comments or testimony were received.

BOARD OF VETERINARY MEDICINE
W. DEAN HOLMES, DVM, PRESIDENT

BY: Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, September 23, 1996.

BEFORE THE BUSINESS DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) CORRECTED NOTICE
of rules pertaining to the) OF AMENDMENT
Microbusiness Advisory Council)

TO: All Interested Persons:

1. On March 7, 1996, the Business Development Division published a notice of proposed amendment of rules pertaining to the Microbusiness Development Council at page 636, 1996 Montana Administrative Register, issue number 5. On August 8, 1996, the Board published a notice of adoption at page 2166, 1996 Montana Administrative Register, issue number 15.

2. The Division inadvertently omitted an amendment to the existing language in ARM 8.99.404(5)(d) in the original notice and stated that it would stay the same, but be renumbered (c). Subsection 8.99.404(5)(d), now (4)(c), should have been amended in the original notice as follows:

8.99.404 CERTIFICATION OF REGIONAL MICROBUSINESS DEVELOPMENT CORPORATIONS (1) through (4)(b) will remain the same as adopted.

~~(d)~~ (c) In regions with proposals for certification from more than one organization, the department will convene and chair a regional evaluation committee. Nominations for membership to the committee will be solicited from groups including, but not limited to, proposers from that region, local governments, certified community lead organizations, financial institutions, business assistance groups, women, and representatives of low-income and minority populations. The committee will attempt, through negotiation, to arrive at a consensus proposal from the region. If, however, in the opinion of the chair and a majority of the committee a consensus cannot be reached in a timely fashion, then the committee will evaluate the competing proposals or any modified proposals that have emerged from negotiation~~, using the evaluation form and method prescribed in subsection (5)(b) above~~, and will select by means of that evaluation a single proposal to be forwarded to the department for certification review.

(5) will remain the same as adopted.

3. Replacement pages for this amendment were submitted for the September 30, 1996 filing date.

BUSINESS DEVELOPMENT DIVISION

ANNIE M. BARTOS
RULE REVIEWER

BY: ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, September 23, 1996.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of 16.8.1903, regarding air quality operation fees, and 16.8.1905, regarding air quality permit application fees.	NOTICE OF AMENDMENT OF RULES (Air Quality)

To: All Interested Persons

1. On July 18, 1996, the board published notice of the proposed amendments at page 1928 of the Montana Administrative Register, Issue No. 14.

2. The rules were amended as proposed, with no changes.

3. A public hearing was held on August 15, 1996, on the proposed amendments. Comments on the proposed amendments are summarized below and the board's responses follow:

COMMENT: Dexter Busby, Montana Refining Company, Great Falls, MT. Mr. Busby stated that the internal reorganization of the Department, coupled with changes to Clean Air Act Title V requirements and the recent de minimis rule changes, should result in a substantial reduction in permit workloads. He predicted that these changes, if properly implemented by the Department, should result in cost savings for the Department. Mr. Busby also testified that Montana Refining Company would pay about ten percent more in fees under the new fee schedule. Mr. Busby stated that the Department's expected FY 97 spending increase is not justified in light of his predicted cost savings, and in light of the existence of year-to-year carry-over funds.

Mr. Busby also suggested that the Department should be audited to determine if appropriations were being spent only for authorized activities. Of particular concern to Mr. Busby was the whereabouts of the interest earned on the $500,000 in carry-over funds from FY 96.

RESPONSE: The 1991 Montana Legislature gave the former Board of Health and Environmental Sciences, now Board of Environmental Review, the authority to establish annual operating fees and air quality application permit fees under Section 75-2-111 (5), MCA. The 1991 legislation was designed in part to comply with Title V of the Clean Air Act Amendments of 1990 [42 U.S.C. Section 7661a (b)(3)] requiring that states charge permit fees to adequately fund air pollution prevention programs. The proposed fees are necessary for the Department of Environmental Quality to pay the costs of Montana's air quality permit, compliance and enforcement (not including court costs or litigation expenses) activities.

The Montana Legislature adopted a "Statement of Intent" in conjunction with House Bill 652, the legislation which amended Section 75-2-111 (5), MCA, in 1991. The Statement of Intent explains that the "[B]oard's rules defining the fee structure to be used by the department shall ensure that the fees charged

will not collect, in the aggregate, more than is authorized and appropriated by the legislature to the department for the development and administration of the permitting program."

The Department sought the assistance of the Clean Air Act Advisory Committee (CAAAC) established by Section 2-15-2106, MCA, on this rulemaking. The CAAAC considered but did not object to the proposed rulemaking.

In conjunction with this rulemaking, the Department reported to the Board of Environmental Review on the results of last year's fee collections and program expenditures. Section 75-2-220 (3), MCA, requires that the Board "shall by rule provide for the annual adjustment of all fees assessed for operating permit applications under 75-2-217 and 75-2-218 to account for changes to the consumer price index, as required by Subchapter V of the federal Clean Air Act." This rulemaking serves to satisfy this statutory fee review requirement.

One of the regulated pollutants for which the fees are collected, "total particulate", is proposed to be changed to "PM-10" (particulate matter of less than or equal to 10 micrometers in aerodynamic diameter as defined in ARM 16.8.701 (31)) in the rule amendments to reflect guidance issued by the U.S. Environmental Protection Agency (EPA). The EPA's October 16, 1995, guidance clarifies that the only regulated form of particulate matter under the Clean Air Act is PM-10 emissions.

The proposed amendments will raise the fees charged from $14.00 to $15.50 per ton of total particulate, sulfur dioxide and lead, and from $3.50 to $3.88 per ton for oxides of nitrogen and volatile organic compounds. In contrast, Title V of the federal Clean Air Act Amendments of 1990 set an across-the-board minimum permit fee of $25 per ton of regulated pollutant for the year 1990, with incremental raises in the fee each year based on the percentage increase of the Consumer Price Index over that Index as it existed in 1989 (see 42 U.S.C. Section 7661a (b)(3)(B)(i) and (v)). The minimum federal fee was $30.07 per ton of regulated pollutant in 1995. However, Montana's fees are less than the federally-mandated minimums because 42 U.S.C. Section 7661a (b)(3)(B) of the Clean Air Act Amendments of 1991 allows a state permitting authority to collect fees less than the per ton minimum if it can demonstrate that the fees collected are sufficient to cover all reasonable costs of the state's permit program.

The Legislature appropriated $1,873,966 for fiscal year (FY) 1996. However, the Department collected $14,478.43 less than was appropriated in FY 96. In FY 97, the Department plans to carry-over $500,000 from FY 96. There is carry-over money because the Department was unable to classify and hire employees in FY 96 to fill all of the positions authorized by the Legislature. Four of the five positions have since been filled. The $500,000 in carry-over money will be used by the Department to reduce the appropriation in FY 97.

The Department expects to collect $35,366 in major open burning permit fees and $1,312,658.62 in operating permit fees in FY 97. Together with the $500,000 in carry-over funds, the total expected program fund for FY 97 is expected to be $1,848,024.62. There will be a $246,828.95 decrease in fees

collected for FY 97 from the fees collected in FY 96. The appropriation for FY 97 is less than the $2,097,401 authorized by the Montana Legislature. The FY 97 appropriation was less than the amount authorized by the Legislature because an expected decrease in federal grant funds did not materialize.

The change from using "total particulate" in the ARM fee schedules to "PM-10" would have resulted in less fees collected because PM-10 is only one constituent of total particulate. The fee raises proposed in this rulemaking are calculated to off-set the expected reduction in fees collected that would have resulted from using PM-10 as the regulated pollutant rather than total particulate.

The Department continues to work with the Fee Review Subcommittee of the Clean Air Act Advisory Committee to develop fee schedules that are fair and equitable to the regulated community, and sufficient for funding the permit program.

The expenditures should be relatively equal to appropriations for FY 97 resulting in little if any carry-over funds from FY 97 to FY 98. The Department is behind in its program workload due to its inability to fill new program positions until April of 1996. Any overall program savings realized through reorganization of the Department would be used to off-set fees for subsequent years. It is unclear at this time whether such savings will actually occur. There is no evidence tending to prove that the reorganization will result in reduced costs to the air quality permit program.

The total fees to be collected under the proposed fee schedules are projected to be less than were collected by the Department in FY 96. There is, however, expected to be a slight shift in fee burden from certain emission sources to other sources due to the change from basing fees on "total particulate" to basing fees on "PM-10." This shifting might account for Dexter Busby's predictions that his employer, Montana Refining Company, will pay 10 percent more in fees next year under the proposed rulemaking. Some sources may be adversely impacted through an increase in fees, while some other sources may be beneficially impacted through a reduction in fees. However, the rule amendments are expected to have an overall effect of reducing the total amount of fees collected in FY 97 as compared to FY 96. The expected FY 97 fee revenues are also well below the amount appropriated by the Legislature. The Board of Environmental Review has the discretion to not take any action on these proposed rules, or to take another action (e.g., different fee schedules). However, a "no action" approach might risk federal intervention if it appears that the air quality permit fees will not generate adequate revenues to run the program. A "no action" approach would also put the Department's rules at odds with EPA's October 16, 1995, guidance concerning the use of "PM-10" over "total particulate" as the preferred measure of regulated pollutant. The Department proposed these fee schedules in the absence of any alternative proposals from the Clean Air Act Advisory Committee or individual emission sources. Any attempt to further adjust the fee schedule at this time will likely merely shift without balancing the fee burden. If the regulated industries could not come to a consensus on a

fair and equitable fee schedule, there is no reason to believe that the Board of Environmental Review will fare any better.

No testimony or evidence was presented by any party proving that the proposed fee increases will result in the Department collecting more or less money than is necessary to adequately administer the air quality permit program. The proposed fee schedules are expected to raise enough money to adequately administer the air quality permit program. 42 U.S.C. Section 7661a (b)(3) requires that the State of Montana demonstrate to the EPA that the air quality permit "program will result in the collection, in the aggregate, from all sources . . ." an amount sufficient to run the program.

Several commentators expressed concern over the eventual destination of interest on air quality permitting program funds carried-over from one fiscal year to the next. The implication was that, contrary to Legislative directive, air quality permit fee revenues were being spent on non-program activities when the interest from those revenues is deposited into the State general fund. The Department has no control over the interest generated from program revenues or carry-over funds unless the legislation creating the special revenue account specifically directs that interest be retained in that account. There is no specific statutory authority for the Department to retain the interest generated from the carry-over funds at issue here.

COMMENT: John Cobb, Augusta, MT. Mr. Cobb wrote on July 25, 1996, to express his concerns that the fee increases not be used to pay for Department expenses related to reorganization, or for other programs within the Department. He also expressed concern that the fees should not be increased if the internal reorganization was preventing Department personnel from maintaining air quality monitoring at the same levels as prior to reorganization.

RESPONSE: No reorganization costs are included in the proposed fee schedules and the Department's reorganization has not changed program monitoring. Most of the monitoring is paid for with federal grant money so that the fees proposed here do not, for the most part, reflect monitoring costs.

COMMENT: Gail Abercrombie, Montana Petroleum Association, Helena, MT. Ms. Abercrombie calculates that there will be a 35.9 percent increase in spending for the Department's air quality permit program from FY 96 to FY 97 despite an overall decrease in the amount of fees collected. She is concerned about the large increase in spending for FY 97. She also asks "where does the interest go on [the carry-over] funds or on any of the permit fees collected before being expended by the Department?"

RESPONSE: The FY 96 budget included five new positions which were not immediately filled due to the time it takes to create and classify position descriptions, advertise the positions, interview, and hire. One of the positions is yet to be filled. The vacant new positions resulted in $300,000 in savings over FY

96. An additional $100,000 contingency fund that was not spent in FY 96 was also carried-over to FY 97. The final $100,000 in carry-over funds was the result of a Department-wide spending freeze during FY 96. The projected spending for FY 97, while more than was actually spent in FY 96, is merely the expected result of fully staffing all positions authorized by the Legislature. There may be carry-over funds from FY 97 to FY 98 as a result of employee turn-over and vacancy savings. However, the carry-over is expected to be much less that $500,000. The Department will reassess the fee schedules in future years if there are carry-over funds with a fully-staffed program.

See the response to Dexter Busby's comments above for a discussion of the Department's lack of authority for retaining interest earned on permit program funds.

COMMENT: Don Allen, Montana Wood Products Association, Helena, MT. Mr. Allen also appeared neither in favor nor in opposition of the proposed rule amendments. However, Mr. Allen expressed some concerns over the effect of incremental fee increases over time on the timber industry. According to Mr. Allen, the wood products industry believes that the Department tried to be fair in the proposed fee increases. He stated that the wood products industry supports what the Department is asking for.

Mr. Allen echoed Mr. Busby's concerns that there be some assurances that the fees collected be spent only on authorized activities. He stated that while the wood products industry does not oppose this fee increase, it is only a cautiously reserved endorsement of the proposed amendments due to concerns about automatic fee escalation.

RESPONSE: The Department predicted during the 1995 Legislative session that permit fee appropriations must be raised to off-set an expected decrease in the EPA grant. However, the federal grant did not decrease during the 1996-97 biennium. As a consequence, no off-setting fee increase was factored into the proposed rule amendments. The Board of Environmental Review can address Mr. Allen's concerns each year when it reviews and adjusts the permit fee assessments as required by Section 75-2-220 (3), MCA. The Legislature can also address these concerns in 1997, and thereafter every other year, when it meets to consider upcoming biennium appropriations.

See the response to Dexter Busby's comments above for a discussion of the Department's lack of authority for retaining interest earned on permit program funds.

BOARD OF ENVIRONMENTAL REVIEW

Cindy Younkin

CINDY YOUNKIN, Chairperson

Reviewed by:

John F. North

JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State September 23, 1996 .

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of rules 26.4.107M through 26.4.107P pertaining to enforcement and penalties.	NOTICE OF AMENDMENT OF RULES

(Hard Rock)

To: All Interested Persons

1. On July 3, 1996, the board published notice of proposed amendment of rules at page 1786 of the Montana Administrative Register, Issue No. 13.

2. The rules were amended as proposed, with no changes.

3. No comments were received.

BOARD OF ENVIRONMENTAL REVIEW

by Cindy E. Younkin
CINDY E. YOUNKIN, Chairperson

Reviewed by

John F. North
John F. North, Rule Reviewer

Certified to the Secretary of State September 23, 1996.

BEFORE THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES OF THE STATE OF MONTANA

In the matter of the adoption of Rules I through XVII pertaining to home infusion therapy	))))	NOTICE OF THE ADOPTION OF RULES

TO: All Interested Persons

1. On April 4, 1996, the Department of Public Health and Human Services published notice of the proposed adoption of Rules I through XVII pertaining to home infusion therapy at page 883 of the 1996 Montana Administrative Register, issue number 7.

2. The Department has adopted [RULE II] 16.32.702 HOME INFUSION THERAPY: RESPONSIBILITY FOR SERVICES; [RULE III] 16.32.703 HOME INFUSION THERAPY: ADMINISTRATOR; [RULE IV] 16.32.704 HOME INFUSION THERAPY: ADMINISTRATION OF MEDICATION AND TREATMENT; [RULE VIII] 16.32.708 HOME INFUSION THERAPY: QUALITY ASSESSMENT; [RULE X] 16.32.712 HOME INFUSION THERAPY: PHARMACY POLICY AND PROCEDURE MANUAL; [RULE XI] 16.32.713 HOME INFUSION THERAPY: PHYSICAL REQUIREMENTS FOR PHARMACIES; [RULE XII] 16.32.714 HOME INFUSION THERAPY: DISPENSING OF STERILE PHARMACEUTICALS; [RULE XIII] 16.32.715 HOME INFUSION THERAPY: PHARMACY PERSONNEL; [RULE XIV] 16.32.716 HOME INFUSION THERAPY: LABELING; [RULE XV] 16.32.717 HOME INFUSION THERAPY: ANTINEOPLASTIC DRUGS; [RULE XVI] 16.32.718 HOME INFUSION THERAPY: DISPOSAL OF ANTINEOPLASTIC, INFECTIOUS, AND HAZARDOUS WASTES; and [RULE XVII] 16.32.719 HOME INFUSION THERAPY: DELIVERY OF MEDICATIONS; as proposed.

3. The Department has adopted the following rules as proposed with the following changes from the original proposal. New language being added is underlined. Language to be deleted is interlined.

[RULE I] 16.32.701 HOME INFUSION THERAPY: DEFINITIONS In addition to the definitions in 50-5-101, MCA, the following definitions apply to this subchapter:

(1) remains as proposed.

(2) "Biological safety cabinet" means a containment unit suitable for the preparation of low to moderate risk agents where there is a need, according to national sanitation foundation ~~S~~standard 49 for class II biohazard cabinetry, as revised May 1992, for protection of the product, personnel, and environment. The department hereby adopts and incorporates by reference national sanitation foundation standard 49 for class II biohazard cabinetry, as revised May 1992, promulgated by the National Sanitation Foundation International, 3475 Plymouth Road, P.O. Box 1468, Ann Arbor, Michigan 48113. A copy of

national sanitation foundation standard 49 may be obtained from the Department of Public Health and Human Services, Licensing Bureau, Cogswell Building, P.O. Box 202951, Helena, Montana, 59620-2951.

(3) and (4) remain as proposed.

(5) "Enteral" means a preparation compounded in a class 100 environment and dispensed by a pharmacist and administered within or by way of the intestine.

(6) remains as proposed.

(7) "Parenteral" means a sterile preparation of drugs for injection through one or more layers of the skin with infusion administration time equal to or greater than 15 minutes.

(8) through (11) remain as proposed.

(12) "Sterile pharmaceutical or product" means a dosage form free from living micro-organisms (aseptic).

AUTH: 50-5-103, MCA
IMP: 50-5-103 and 50-5-213, MCA

[RULE V] 16.32.705 HOME INFUSION THERAPY: CLINICAL SERVICES (1) Each home infusion therapy agency, ~~in consultation with any contracted parties, if applicable,~~ shall:

(a) provide clinical and laboratory data concerning each patient to ~~the pharmacist~~ any contracted party providing services to the patient;

(b) report, in a timely manner, any abnormal values to the ~~pharmacist and~~ prescribing practitioner and any contracted party providing services to the patient; and

(c) ensure that each patient complies with and adheres to the home infusion regimen;.

(2) Each home infusion therapy agency, and any contracted party providing services to the patient, together, shall:

(1)(d) through (1)(f)(vi) remain as proposed but are renumbered (2)(a) through (2)(c)(vi).

(2) through (3) remain as proposed but are renumbered (3) through (4).

AUTH: 50-5-103, MCA
IMP: 50-5-103 and 50-5-213, MCA

[RULE VI] 16.32.706 HOME INFUSION THERAPY: EDUCATION SERVICES (1) Each home infusion therapy agency, ~~in consultation with any contracted parties, if applicable~~ and any contracted party providing services to the patient, together, shall:

(1)(a) and (1)(b) remain as proposed.

AUTH: 50-5-103, MCA
IMP: 50-5-103 and 50-5-213, MCA

[RULE VII] 16.32.707 HOME INFUSION THERAPY: HOME CARE RECORD (1) Each home infusion therapy agency, ~~in consultation~~

~~with any contracted parties, if applicable~~ and any contracted party providing services to the patient, together, shall establish and maintain for each patient accepted for care, a home care record which must include the following information:

(1)(a) through (2) remain as proposed.

(3) The home infusion therapy agency, ~~in consultation with any contracted parties, if applicable~~ and any contracted party providing services to the patient, together, shall develop a plan of care within 3 working days of the initiation of therapy, which must include:

(3)(a) through (3)(c) remain as proposed.

(d) the estimated length of service;

(3)(e) through (3)(k) remain as proposed.

AUTH: 50-5-103, MCA
IMP: 50-5-103 and 50-5-213, MCA

[RULE IX] 16.32.711 HOME INFUSION THERAPY: PARENTERAL OR ENTERAL SOLUTIONS (1) In addition to the minimum requirements for a pharmacist and a pharmacy established by Title 37, chapter 7, MCA, and ARM Title 8, chapter 40, any parenteral or enteral solution ~~compounded~~ provided by the home infusion therapy agency or obtained through contract with a third party pharmacy and provided to patients of the home infusion therapy agency must be ~~prepared~~ dispensed by a licensed pharmacist in a licensed pharmacy, whom and which are in compliance with the requirements of ARM 16.32.712 through 16.32.719 in this subchapter.

AUTH: 50-5-103, MCA
IMP: 50-5-103 and 50-5-213, MCA

4. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

GENERAL COMMENTS

COMMENT #1: One commentor was concerned that where a home health agency is licensed as a home infusion therapy agency and contracts separately with a pharmacy, the pharmacy would not be held liable for its actions. The commentor felt that both the home health agency and the pharmacy should be held equally liable under the rules.

RESPONSE: The statutory directive of section 50-5-213, MCA, provides that an agency providing home infusion therapy services shall directly provide either the home infusion therapy services or skilled nursing services and may either directly provide or may arrange for the provision of the other services. The proposed rules reflect the statutory directive of section 50-5-213, MCA. The rules neither apportion nor predetermine

liability between a pharmacy and a home infusion therapy agency, rather they only establish the rules and procedures applicable to each entity.

COMMENT #2: One commentor felt that the rules should be modified to require both the agency and the pharmacy to comply with all the requirements contained therein.

RESPONSE: Upon consideration, the department has amended Rule V (16.32.705)(Clinical Services), Rule VI (16.32.706)(Education Services), and Rule VII (16.32.707)(Home Care Record), to clarify the responsibilities, some shared, of the home infusion therapy agency and any contracted parties providing home infusion therapy services or skilled nursing services.

COMMENT #3: One commentor felt that the department should use the term "infusion therapy agency" instead of "home infusion therapy," thereby regulating all infusion therapy agencies. One commentor felt that the department should use the term "client" instead of "patient" because it is a standard industry term used in health care services.

RESPONSE: The department does not have the authority by rule to change the statutory terms contained in sections 50-5-101(20) and (21), MCA, nor to bring within its regulation all infusion therapy agencies. Specifically, section 50-5-101(20), MCA, uses the term "home infusion therapy agency" and defines the same as a health care facility that provides home infusion therapy services. Similarly, section 50-5-101(21), MCA, defines "home infusion therapy services" in part as the preparation, administration, or furnishings of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. Similarly, section 50-5-101(21), MCA, in its definition of "home infusion therapy services" uses the term "patient" and not "client."

COMMENT #4: One commentor felt that a clear definition of infusion therapy is required in the rules.

RESPONSE: The department feels that the statutory term "home infusion therapy services" in section 50-5-101(21), MCA, is clearly defined and requires no further clarification or expansion.

COMMENT #5: One commentor felt that the department needs to add definitions for parenteral and compounded medications. Parenteral medications should include non-compounded medications as well as compounded medications.

RESPONSE: Upon consideration, the department has amended the definition of "parenteral" found in Rule I (16.32.701) (Definitions) to clearly define that term for purposes of these

rules. Rule I (16.32.701) was further amended by changing the term "sterile pharmaceutical" to "sterile pharmaceutical or product," as "sterile pharmaceutical" and "sterile product" are used interchangeably throughout the rules, with the same meaning attributed to each term.

COMMENT #6: One commentor noted that there was a typographical error in the spelling of parenteral medications on page 7 of the notice.

RESPONSE: The department noted no misspellings on page 7 of parenteral medications.

COMMENT #7: Two commentors requested that the word "compounded," used in Rule IX (16.32.711), be changed to "non-compounded. "Several commentors requested that in Rule IX (16.32.711) the phase "prepared by" be changed to "dispensed by" so the medications can be prepared by a technician, which is an industry standard practice but still requires dispensing by a licensed pharmacist.

RESPONSE: Upon consideration, the department has deleted the word "compounded" and in its place, inserted the word "provided," so as to include both compounded and non-compounded parenteral or enteral solutions. The department agrees with the commentors with respect to changing "prepared by" to "dispensed by" and has amended the rule accordingly.

COMMENT #8: One commentor asked whether all home health nursing agencies that administer home infusion are required to be licensed under the proposed rules?

RESPONSE: Pursuant to section 50-5-101(20), MCA, a home infusion therapy agency means a health care facility that provides home infusion therapy services. Home infusion therapy services is defined by section 50-5-101(21), MCA, in part, as the preparation, administration, of furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. If a home health nursing agency administers home infusion therapy services to an individual in that individual's residence, the home health nursing agency is required to be licensed as a home infusion therapy agency (or to have contracted with a licensed home infusion therapy agency to provide skilled nursing services) under Title 50, chapter 5, MCA.

COMMENT #9: One commentor asked if all pharmacies that dispense IV medications for home use are required to be licensed under this act, noting that all pharmacies dispense injectables for IV use on occasion.

RESPONSE: Any pharmacy providing home infusion therapy services

involving the dispensing of parenteral or enteral solutions is required to be licensed as a home infusion therapy agency, or in the alternative, under contract with a licensed home infusion therapy agency to provide the home infusion therapy services.

COMMENT #10: One commentor asked how a one time patient with a nurse or nursing agency outside of the normal/routine service area would be handled, as a contract would probably not be in place at the time of initiating infusion services. The commentor noted that some situations would require same day setup but without reasonable time to contract with nursing in remote areas or other infusion businesses.

RESPONSE: If the infusion services are provided to an individual in that individual's residence, and if the licensed home infusion therapy agency does not provide both services, the licensed entity, whether it directly provides the pharmaceutical services or skilled nursing services, is required to contract with the party providing the other services in accordance with Rule II (16.32.702). In order to provide infusion services to an individual in that individual's residence, arrangement by contract must be in place for the provision of the service not provided directly by the licensed home infusion therapy agency, whether or not the services are provided on a one time basis or over a period of time.

COMMENT #11: One commentor asked how a patient with no nursing involved (i.e., the family or patient would administer the infusion themselves) should be handled?

RESPONSE: Any individual receiving home infusion therapy services must receive those services from a licensed home infusion therapy agency. Rule V (16.32.705) requires that any sterile product administered for the first time must be administered under the supervision of a licensed health care professional to detect, monitor, and respond to adverse drug reactions. It would be the responsibility of the licensed home infusion therapy agency to insure that a licensed health care professional is present to detect, monitor, and respond to adverse drug reactions. If a pharmacy is providing home infusion therapy services involving the dispensing of parenteral or enteral solutions to an individual in that individual's residence, that pharmacy is required to be licensed as a home infusion therapy agency, or have contracted with a licensed home infusion therapy agency, whether or not the individual or the individual's family administers the infusion.

COMMENT #12: One commentor questioned whether the act applied to all non-hospital inpatient settings, i.e. nursing homes, hospital outpatient and physician offices, to provide for consistent guidelines/regulations in all infusion settings other than hospital inpatient setting? For example, would all cancer

chemotherapy agents preparation outside the hospital inpatient setting be regulated in the same manner by requiring a vertical flow biohazard safety hood or would "home infusion" providers have to meet different standards than others who provide the same medications?

RESPONSE: Pursuant to sections 50-5-101(20) and 50-5-101(21), MCA, these rules apply to any health care facility that provides home infusion therapy services to an individual in that individual's residence.

COMMENT #13: One commentor asked if out-of-state "Infusion Providers" have to meet these same regulations as the instate providers and if yes, how can this be done and how will it be enforced?

RESPONSE: Out-of-state infusion providers would have to meet the requirements of these rules and the requirements of Title 37, part 7, MCA, and implementing rules thereto, as specified in ARM 8.40.1601 through 8.40.1607, pertaining to out-of-state mail service pharmacies. The provisions of Title 37, part 7, MCA, include requirements pertaining specifically to registration and inspections of out-of-state pharmacies.

COMMENT #14: One commentor commented on the importance of having input from both nursing and pharmacy into the provision of services and ensuring that the rules defined which service is to be provided by which entity.

RESPONSE: The department believes, with the amendments made to Rule V (16.32.705)(Clinical Services), Rule VI (16.32.706)(Education Services), and Rule VII (16.32.707)(Home Care Record), that the responsibilities of both nursing and pharmacy have been clearly defined and that the rules provide for sufficient input from all parties. Additionally, pursuant to Rule II (16.32.702)(Responsibility for Services), if a home infusion therapy agency contracts with a third party to provide either the home infusion therapy services or skilled nursing services, the written contract must describe the services to be provided by each party and the role of each party in the provision of those services.

COMMENT #15: One commentor asked if a home infusion therapy agency would be eligible for licensure by the state based on the accreditation of that facility by the Joint Commission on Accreditation of Home Health Agency Organization.

RESPONSE: A home infusion therapy agency would not be eligible for licensure based on its accreditation of that facility by the Joint Commission on Accreditation of Home Health Agency Organization. Accreditation by the Joint Commission on

Accreditation of Home Health Agency Organizations does not mean that a home health agency has been accredited specifically to provide home infusion therapy services. However, pursuant to section 50-5-103(5), MCA, the department may consider as eligible for licensure as a home infusion therapy agency, any health care facility that furnishes written evidence of its accreditation by the Joint Commission on Accreditation of Health Care Organizations, specifically a home infusion therapy organization.

COMMENT #16: One commentor stated that the issue of enteral nutrition being included in home infusion licensing needs to be clarified and more specific noting that enteral nutrition formulas can be obtained from many retail outlets and may be obtained without a prescription. The commentor asked whether retail stores would be considered home infusion businesses. The commentor further noted that many people drink these supplements without the use of an enteral pump; it would seem appropriate to specify in the rules that if an enteral infusion pump is used to deliver the enteral product (which requires a prescription) that this should be considered a responsibility of the home infusion company. JCAHO does not require the provision of enteral nutrition to be a pharmaceutical responsibility and under the Medicare rules the responsibility lies with the durable medical equipment provider. A company, as part of its clinical services, uses nursing staff to call and order more products and supplies.

RESPONSE: With respect to enteral solutions, a retail outlet would not be considered a home infusion therapy agency unless it, through its registered pharmacy, compounded and dispensed a preparation, in a Class 100 environment, pursuant to a prescribing practitioner's order. The department has clarified the definition of "enteral" in Rule I (16.32.701) to mean a preparation compounded in a Class 100 environment and dispensed by a pharmacist and administered within or by way of the intestine. An enteral infusion pump would only be a requirement of a home infusion therapy agency if the product was compounded and dispensed under sterile conditions.

COMMENT #17: One commentor noted that Rule VIII (16.32.708) requires the quality assessment process to include a licensed health care professional who is not affiliated with the home infusion therapy agency. A company with JCAHO accreditation is monitored by that entity and does not require the inclusion of a person from outside the company in quality assessment. If the state would accept JCAHO standards, an accredited company could utilize JCAHO as the outside entity and avoid the expense and extra time required to familiarize the outside health care professional with the process.

RESPONSE: Pursuant to section 50-5-103(5), MCA, the department

may consider as eligible for licensure as a home infusion therapy agency, any health care facility that furnishes written evidence of its accreditation by the Joint Commission on Accreditation of Health Care Organizations, specifically a home infusion therapy organization. If the department granted licensure on the basis of JCAHO accreditation, the department would issue such license on the basis of the JCAHO standards.

COMMENT #18: With respect to Rule VII (16.32.707), one commentor asked that the word "estimated" be added before the word "length" with respect to the plan of care as it is often difficult to predict the exact length of service.

RESPONSE: The department agrees and has made the requested modification to Rule VII (16.32.707).

COMMENT #19: With respect to Rule I (16.32.701)(Definitions), one commentor noted that the definition of "Biological safety cabinet" referenced a national sanitation foundation standard 49, and in such case, that standard should be incorporated by reference into these rules.

RESPONSE: The department agrees and has incorporated the national sanitation foundation standard by reference indicating that a copy can be obtained from the department.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State September 23, 1996.

BEFORE THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES OF THE STATE OF MONTANA

In the matter of the adoption of Rules I, II, III, IV, V and VI pertaining to criteria for patient placement at the Montana Chemical Dependency Center	)))))	NOTICE OF THE ADOPTION OF RULES

TO: All Interested Persons

1. On July 18, 1996, the Department of Public Health and Human Services published notice of the proposed adoption of Rules I, II, III, IV, V and VI pertaining to criteria for patient placement at the Montana Chemical Dependency Center at page 1958 of the 1996 Montana Administrative Register, issue number 14.

2. The Department has adopted [RULE I] 20.3.601 MONTANA CHEMICAL DEPENDENCY CENTER: PURPOSE; [RULE III] 20.3.603 MONTANA CHEMICAL DEPENDENCY CENTER: APPLICABILITY; [RULE IV] 20.3.604 MONTANA CHEMICAL DEPENDENCY CENTER: CRIMINAL JUSTICE SYSTEM REFERRALS; and [RULE VI] 20.3.606 MONTANA CHEMICAL DEPENDENCY CENTER: DISCHARGE PROCESS TO LEVEL II OR I; as proposed.

3. The Department has adopted the following rules as proposed with the following changes from the original proposal. New language being added is underlined. Language to be deleted is interlined.

[RULE II] 20.3.602 MONTANA CHEMICAL DEPENDENCY CENTER: DEFINITIONS (1) through (2)(f) remain as proposed.

(3) "Supporting documentation" means any documentation of the history of medical or psychiatric ~~information~~ concerns which substantiates the need for level III care and/or negates the need for level IV care.

(4) and (5) remain as proposed.

AUTH: Sec. 53-24-209, MCA
IMP: Sec. 53-24-301, MCA

[RULE V] 20.3.605 MONTANA CHEMICAL DEPENDENCY CENTER: ADMISSION POLICIES AND PROCEDURES (1) An individual requesting admission to MCDC or a court referral must be assessed as chemically dependent pursuant to ARM 20.3.214(2)(a), and demonstrate a severity of illness which qualifies the individual for level III care based on nationally recognized patient placement criteria. Furthermore, the certified chemical dependency counselor must confirm that the individual cannot obtain necessary care locally. ~~If the referral source is other than a certified chemical dependency counselor, MCDC will~~

~~determine the appropriate level of care placement and refer the person to that level of care.~~

(2) remains as proposed.

(3) The certified counselor will send the completed level III justification packet and supporting documentation to MCDC.

(4) through (7) remain as proposed.

~~(8) MCDC may refuse an admission that fails to arrive at the scheduled date or time.~~

AUTH: Sec. 53-24-209, MCA
IMP: Sec. 53-24-301, MCA

4. The Department has thoroughly considered all commentary received. The comments received and the department's responses to each follow:

COMMENT #1: One written comment indicated that Rule II(3) (20.3.602) is unclear whether the information regarding medical and psychiatric issues is to be provided by a physician or a psychiatrist. This should be clarified.

RESPONSE: This section has been clarified to indicate that this information can be provided via existing documentation that indicates a history of psychiatric or medical concerns.

COMMENT #2: There was one comment at the public hearing regarding Rule IV(1) (20.3.604). It was in reference to the last sentence of that section which discussed a referral source other than a certified chemical dependency counselor. They felt this should be deleted.

RESPONSE: The department agrees, this sentence has been deleted.

COMMENT #3: The term "supporting documentation" was included in the definition section Rule II (20.3.602) and should be added to Rule V(3) (20.3.605).

RESPONSE: This term was overlooked when the original rule was written. It has been added to clarify what is required for documentation.

COMMENT #4: Two written comments and one comment at the public hearing were made concerning Rule V(8) (20.3.605). There was concern about this rule being too inflexible as written. One comment requested that it be "struck" from the rules.

RESPONSE: The department agrees, Rule V(8) (20.3.605) has been deleted.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State September 23, 1996.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of Rules I through IV pertaining to Medicaid coverage and reimbursement of home infusion therapy services	))))	NOTICE OF THE ADOPTION OF RULES

TO: All Interested Persons

1. On August 8, 1996, the Department of Public Health and Human Services published notice of the proposed adoption of Rules I through IV pertaining to Medicaid coverage and reimbursement of home infusion therapy services at page 2131 of the 1996 Montana Administrative Register, issue number 15.

2. The Department has adopted [RULE II] 46.12.708 HOME INFUSION THERAPY SERVICES, PROVIDER REQUIREMENTS as proposed.

3. The Department has amended the following rules as proposed with the following changes from the original proposal. New language being added is underlined. Language to be deleted is interlined.

[RULE I] 46.12.706 HOME INFUSION THERAPY SERVICES, DEFINITIONS In ARM 46.12.706 through 46.12.710, the following definitions apply:

(1) "Agency staff services" means all services provided by the home infusion therapy agency's staff, including all professional and non-professional employed and contracted individuals. Agency staff services include:

(a) preparation and revision of the plan of care;

(b) ~~treatment~~ coordination of treatment with other health care providers;

(c) ~~client or~~ recipient and/or care giver training;

(d) clinical monitoring of laboratory values and therapy progression;

(e) reporting clinical information to the recipient's physician and other health care providers;

(f) delivery, pick up and disposal of equipment, supplies and/or drugs;

(g) 24-hour on call status; and

(h) any other services ~~of~~ provided by the agency staff related to the recipient's home infusion therapy services.

(2) "Home infusion therapy services" means a comprehensive treatment program for the preparation and administration of parenteral medications or parenteral or enteral nutritional services to a recipient who is not receiving infusion therapy as a hospital inpatient or outpatient. Home infusion therapy services include all pharmacist professional services, all agency staff services and all associated medical equipment and

supplies. Home infusion therapy services do not include professional nursing services, professional physician services or drugs.

(3) "Pharmacist professional services" include:

(a) preparation and revision of the plan of care~~,~~;

(b) preparation and compounding of drugs~~,~~;

(c) monitoring~~, laboratory testing,~~ of laboratory values and therapy progression;

(d) reporting~~,~~ clinical information to the recipient's physician and other health care providers;

(e) delivery, pick up and disposal of equipment, supplies and/or drugs~~,~~;

(f) 24-hour on call status; and

(g) any other services of the pharmacist related to the recipient's home infusion therapy services. Pharmacist professional services do not include costs, fees or charges for the drugs that are compounded or administered.

AUTH: 53-2-201 and 53-6-113, MCA
IMP: 53-6-101 and 53-6-113, MCA

[RULE III] 46.12.709 HOME INFUSION THERAPY SERVICES, REQUIREMENTS (1) The requirements and restrictions in these rules apply for purposes of coverage and reimbursement of home infusion therapy services under the Montana medicaid program.

(2) Medicaid coverage and reimbursement of home infusion therapy services is available, subject to applicable requirements, for services provided to recipients that are residing in their own home, a nursing facility or any setting other than a hospital. Medicaid coverage and reimbursement of home infusion therapy services is not available ~~for services provided to hospital inpatients or outpatients~~ to recipients who are receiving infusion therapy as a hospital inpatient or outpatient service.

(3) and (4) remain as proposed.

(5) The Montana medicaid program will not cover or reimburse home infusion therapy services for the following:

~~(a) intramuscularly administered drugs;~~

~~(b) anti ulcer therapy;~~

~~(c) aerosol pentamidine;~~

~~(d) blood products;~~

~~(e) growth hormones;~~

~~(f) subcutaneous injections, including but not limited to erythroprotein, growth hormones, and filgrastrim; and~~

~~(g) biotechnology, including but not limited to human insulin products.~~

(a) medications which can be appropriately administered orally, through intramuscular or subcutaneous injection, or through inhalation; and

(b) drug products that are not FDA approved or whose use in the non-hospital setting presents an unreasonable health risk to the patient.

(6) The department will determine the specific therapies that are not allowable as home infusion therapy services under (5)(a) or (b) in consultation with the department's drug use review board established pursuant to 42 USCA 1396r-8(g). A list of the specific therapies determined not allowable under this rule will be provided upon request made to the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

AUTH: 53-2-201 and 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

[RULE IV] 46.12.710 HOME INFUSION THERAPY SERVICES, REIMBURSEMENT (1) through (3) remain as proposed.

(4) Subject to (4)(c), professional nursing services provided as part of a recipient's home infusion therapy program are separately billable and will be reimbursed in the following manner:

(a) nursing services provided by a home health agency will be reimbursed under the home health ~~service~~ services program as provided in ARM 46.12.550 through 46.12.552;

(b) nursing services provided by licensed nurses employed by the home infusion therapy agency will be reimbursed to the agency under the methodology specified in ARM 46.12.1470; and

(c) professional nursing services are not separately billable when the home infusion therapy program is provided in a nursing facility.

AUTH: 53-2-201 and 53-6-113, MCA
IMP: 53-6-101 and 53-6-113, MCA

4. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: In Rule I (46.12.706), the use of semicolons in place of commas, when appropriate, would separate more distinctly those services included under the definition of "agency staff services" and "pharmacist professional services." In addition, the terms "treatment coordination," "monitoring" and "reporting" should be further qualified to define more exactly the scope of these services. "Treatment coordination" could be changed to "coordination of treatment with other health care providers." "Monitoring" could be changed to "clinical monitoring of laboratory values and therapy's progression." "Reporting" could be changed to "reporting clinical information to patient's physician and other health care providers." In addition, "client or care giver training" could be changed to "patient and/or care giver training." In the definition of "pharmacist professional services," the term "laboratory testing" should be stricken because it refers to a separate health care service and may be confusing in this context.

RESPONSE: The department generally concurs with these suggestions for language changes and has incorporated them in the rule with minor changes.

COMMENT #2: Please clarify the exclusion of recipients who are hospital outpatients. Does this mean that hospital outpatients are not eligible recipients?

RESPONSE: The rule language has been revised to clarify the department's intent. That is, infusion therapy currently is provided by hospitals and reimbursed by medicaid as either an inpatient or outpatient hospital service. When a person receives infusion therapy in the hospital setting, then the service is not considered to be "home infusion therapy services" under these rules and medicaid will not reimburse the services under the home infusion therapy services rules. Medicaid will continue to reimburse hospital setting services under the inpatient and outpatient hospital services programs.

COMMENT #3: The definition of home infusion therapy services varies from the definition provided in section 50-5-101, MCA. For the benefit of home infusion therapy providers, the definition of home infusion therapy services needs to be consistent.

RESPONSE: The definition in section 50-5-101(21), MCA is the definition specified for licensing purposes. "Home infusion therapy services" are defined in these rules for the purpose of defining the scope of services covered by Medicaid. The services covered by Medicaid are broader than the services regulated under the licensing statute. For example, the licensing statute applies only to services provided to an individual in their residence, while medicaid covers the service in other settings as well. The department considered the licensing definition but intentionally adopted a slightly different definition suited to medicaid purposes.

COMMENT #4: The listing of "laboratory testing" and "reporting" in the context of pharmacy professional services is not clear. Could the department clarify how these are intended to fall under the scope of pharmacist professional services?

RESPONSE: The department has revised the rule language to clarify these terms.

COMMENT #5: What does the "plan of care" entail in Rule I (3)(46.12.706) "pharmacist professional services?" Isn't the care plan writing and updating part of the physician professional service component?

RESPONSE: The licensure rules for home infusion therapy agencies require that the agency develop a plan of care within

three working days of the initiation of therapy. This plan of care includes a diagnosis; the types of services and equipment required; the access device and route of administration; the estimated length of service; a statement of treatment goals; the regimen and prescription ordered; the concurrent legend and over the counter drugs; an assessment of mental status; permitted activities; the prognosis, discharge, transfer or referral plan; and instructions to patient and family. This plan of care specifically relates to the preparation and administration of medications and would be prepared primarily by a pharmacist; any plan of care prepared by a physician would be distinct from that referred to in this rule.

COMMENT #6: In order to be reimbursed by Montana medicaid for home infusion therapy services, do both the pharmacy and the nursing provider need to be a licensed home infusion therapy agency?

RESPONSE: No. Consistent with the licensure rules, either the home health agency or the pharmacy may be licensed and enrolled as a home infusion therapy service provider. The licensed provider will be responsible for ensuring that all licensure requirements are met. The licensed provider is also responsible for ensuring safe and appropriate service delivery and will be the party to bill and to be reimbursed for the home infusion therapy service.

COMMENT #7: If home infusion therapy agency licenses are not available until 45 days after implementation of the licensure rules, how will medicaid implement the current rules?

RESPONSE: The medicaid home infusion therapy program will be implemented effective December 1, 1996. Until that date, medicaid will continue its current reimbursement procedures. After December 1, 1996, only licensed home infusion therapy providers will be enrolled and reimbursed for these services.

COMMENT #8: Rule III (5)(46.12.709) is problematic and could be a source of confusion now and in the future. Could the Department clarify its language regarding those services which will not be covered as home infusion therapy services?

RESPONSE: The department has revised this section to specify the criteria that will be applied and the process that will be used by the department to determine which therapies are not covered as a home infusion therapy service. The revisions list the medication delivery processes that are not included as infusion therapy. Medications which can be appropriately administered orally, through intramuscular or subcutaneous injection, or through inhalation will not be covered as home infusion therapy services. Drug products that are not FDA approved or whose use in the non-hospital setting presents an

unreasonable health risk to the patient will not be covered as a home infusion therapy.

COMMENT #9: Are the professional nursing services provided as part of the recipient's home infusion therapy program excluded from payment if the place of service is a nursing facility?

RESPONSE: Yes. The rule has been revised to reflect that nursing services for home infusion therapy will not be reimbursed under the home infusion therapy services rules in the nursing facility setting. Nursing services are covered in the facility's per diem rate under the nursing facility services program.

COMMENT #10: Will nursing services provided by nurses employed by home infusion therapy agencies be separately billable and reimbursed?

RESPONSE: Yes. The rule has been revised to specify how services provided by nurses employed by the agencies will be reimbursed. Reimbursement will be made to the agency for these services using the same methodology specified in ARM 46.12.1470 for nursing services.

5. The proposed rules will apply to home infusion therapy services provided on or after December 1, 1996.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State September 23, 1996.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.15.101, 42.15.301, 42.15.303, 42.15.305, 42.15.309, 42.15.311, 42.15.312, 42.15.313, 42.15.314, 42.15.315, 42.15.322, and 42.15.324 and ADOPTION OF RULE I (ARM 42.15.601), RULE II (ARM 42.15.602), RULE III (ARM 42.15.603), RULE IV (ARM 42.15.604), RULE V (ARM 42.15.605), and RULE VI (ARM 42.15.606) relating to the Biennial Review of Chapter 15 and Composite Returns	NOTICE OF THE AMENDMENTS AND ADOPTION OF NEW RULES

TO: All Interested Persons:

1. On August 8, 1996 the Department published notice of the proposed amendments of ARM 42.15.101, 42.15.301, 42.15.303, 42.15.305, 42.15.309, 42.15.311, 42.15.312, 42.15.313, 42.15.314, 42.15.315, 42.15.322, and 42.15.324 and adoption of Rule I (ARM 42.15.601), Rule II (ARM 42.15.602), Rule III (ARM 42.15.603), Rule IV (ARM 42.15.604), Rule V (ARM 42.15.605), and Rule VI (ARM 42.15.606) relating to the Biennial Review of Chapter 15 and Composite Returns at page 2142 of the 1996 Montana Administrative Register, issue no. 15.

2. Written comments received are summarized as follows along with the response of the Department:

COMMENT: ARM 42.15.309(4)(a) has been changed from "Montana state refunds" to "state refunds". Since state refunds are now not included in Montana adjusted gross income, ARM 42.15.116, which deals with net operating losses, should be amended to read that state tax refunds are not included in the calculation of a net operating loss.

RESPONSE: The Department disagrees. ARM 42.15.116 should not be amended because Montana's net operating loss statute, 15-30-117(2)(a), MCA, states "a net operating loss does not include: income defined as exempt from state taxation under 15-30-111(2), MCA". Montana's calculation of the net operating loss starts with the federal adjusted gross income.

COMMENT: ARM 42.15.314(2) which allows the Department to assess the 5% and 10% penalties is a major change and is unreasonable. The notice of the rule changes is not adequate to inform the public of a 15% penalty where no penalty has been previously assessed.

RESPONSE: The Department agrees. The amendments to subsection (2) & (3) will be stricken.

COMMENT: ARM 42.15.315(8) is a restriction on 15-30-144, MCA which are the requirements of obtaining an extension of time to file and therefore invalid.

RESPONSE: The amendments to this rule reflect style changes recommended by the Code Commissioner. This is not a new rule and our application of this rule has not changed.

COMMENT: ARM 42.322(2)(a). The rule should be amended to allow the income to be allocated to either spouse. I believe the Department of Revenue has held that deductions paid from a joint account can be deducted by either spouse. Thus, income deposited into a joint account should require the same treatment. The administrative burden resulting from trying to enforce the present rule outweighs the reduction in tax from a change to allowing a favorable allocation. The current position taxes property and not the income and is contrary to one of their own declaratory rulings.

RESPONSE: We assume you are referring to subsection (2)(b). There is no substantive change to the present rule by this amendment. The proposed amendment to the rule deals with the income generated by an account. If one spouse deposited 2/3 of the money in the account and the other spouse only 1/3, the income generated from the account, under the proposed rule, would be split in half. The Department's declaratory ruling #95-18 states that the "intent of the state income tax is not to be construed as a tax on property". However, the proposed amendment allocates income received from a jointly held account and the ruling goes on to say that "for purposes of the income tax the taxpayer's income was not to be considered property". The proposed rule only allocates income and not property.

COMMENT: ARM 42.15.322(2)(b). We feel that this amendment may conflict with Montana law. The conflict with existing Montana law may be that jointly and separately owned property is owned by both taxpayers. Jointly owned bank accounts are subject to withdrawal by either spouse. Therefore, the interest income should be claimed by either spouse. The legal issues are numerous and difficult.

RESPONSE: The amendment to the administrative rule does not change our current position under the present rule of requiring the income from a joint account to be split evenly among taxpayers according to their ownership unless proven otherwise.

COMMENT: ARM 42.15.322(c). Where is "gross income" defined? A farm family may be penalized if crops are deferred until a later year or if calves are kept as replacements or sold as breeding stock and reported on a schedule other then Schedule F. As a result of any deferral, the allocation of income

between spouses would be directly affected. This change adds complexity and is not necessary.

RESPONSE: The definition of "gross income" is referred to in 15-30-101, MCA where it is defined as the taxpayer's gross income for federal income tax purposes as defined in the Internal Revenue Code. Limiting the amount of income that can be allocated to the spouse discourages any income shifting.

COMMENT: Rule II (ARM 42.15.602) needs some minor rewording. The Department's intent will be achieved by eliminating the word "to" prior to "Montana".

RESPONSE: The Department agrees. The change has already been made as it appears in the published notice of the proposed rules.

COMMENT: Rule IV (ARM 42.15.604) provides for a minimum filing threshold for a single nonresident. The determination of a filing requirement should be based on the filing status and personal exemptions of a particular nonresident, shareholder or member. Similarly, Rule V (ARM 42.15.605) should base the calculation of taxable income on the filing status and personal exemptions of the nonresident owner. By allowing only a single filing status, this provision runs counter to the objective of easing the return filing burden on both taxpayers and the Department.

RESPONSE: In allowing the filing of a composite return, the Department looks at the partners, shareholders and members of the entity only and does not go further. The composite return's goal is to make it easier for eligible nonresidents to meet Montana's filing requirements through a simplified filing process. This procedure would lose its simplicity by looking to each individual's filing status. An individual has the choice of not participating in the composite return and may file a separate Montana return, thereby, claiming all of their allowable exemptions.

COMMENT: Rule V (ARM 42.15.605) should eliminate the reference to "taxable" income if the purpose of this sentence is to carve out the Montana source income of each participant in accordance with Rule V (ARM 42.15.605).

RESPONSE: The Department concurs.

COMMENT: Rule V (ARM 41.15.605) should refer to "Montana" taxable income in the first sentence in order to be consistent in terminology with paragraph (3) of Rule V (ARM 42.15.605) which refers to the "Montana taxable income" of participating persons. Alternatively, the term "Montana" could be deleted from Rule V (ARM 42.15.605).

RESPONSE: The Department agrees with the alternative suggestion. The term "Montana" in Rule V (ARM 42.15.605) will be deleted.

COMMENT: Rule VI (ARM 42.15.606), allows the assessment of additional tax, penalties and interest based on the total liability of the composite return. We suggest that the Department clarify whether the estimated tax payment requirement in Rule V (ARM 42.15.605), and penalty for underpayment of estimated tax are to be determined on a participant or entity basis. The latter would impose an unreasonable burden on entities filing composite returns.

RESPONSE: To communicate the Department's position more clearly, we will agree to strike "may be" in Rule V (ARM 42.15.605), and replace it with "is" and add "and will be based on the entity's total liability" at the end of the sentence in (1) of Rule VI (ARM 42.15.606). All tax returns, except flow-through entities, are subject to estimated taxes and underpayment penalties. If a partner, shareholder, or member elects not to file a composite return, they are also subject to estimated tax and underpayment laws. So it follows that a composite return should also be subject to the same laws. The Department's policy is that first time filers of composite returns are not subject to the estimated tax payment requirements and the underpayment penalties.

After the first year, the composite return filer could pay into estimated tax 100% of the prior year's tax and avoid any penalties. It would be very cumbersome and inefficient to apply these laws separately to the participants. Only one estimated tax account is allowed per composite return. The goal of the composite return is to make it easier for eligible nonresidents to meet Montana's filing requirements through a simplified filing process for both parties.

COMMENT: To be in compliance with 2-4-314, MCA, housekeeping changes should be made to ARM 42.15.422 to be consistent with the suggested changes to ARM 42.15.311(a).

RESPONSE: It is assumed that the reference is to ARM 42.15.423 and not to ARM 42.15.422. The Department agrees that this may be a good idea. However, since there may be other parties with differing opinions, the Department will consider this for a future amendment in order to give those that may be affected adequate notice to comment.

3. The Department further amends ARM 42.15.314, Rule V (ARM 42.15.605) and Rule VI (ARM 42.15.606) as follows:

42.15.314 CHANGES IN FEDERAL RETURNS OR TAXES

(1) remains the same.

(2) In addition, the taxpayer will be liable for the penalties provided for under 15-30-321 ~~(2) & (3)~~(2) & (3), MCA.

AUTH: Sec. 15-30-305 MCA; IMP, Sec. 15-30-304 MCA.

RULE V (ARM 42.15.605) COMPUTATION OF TAX

(1) remains the same.

(2) An eligible nonresident partner's, member's, or shareholder's share of ~~taxable~~ income earned in Montana is the aggregate of each item of the entity's income, gain, deduction, loss and credits in Montana. If this cannot be easily attained, the entity should use the formula set out in ARM 42.16.1117 to apportion income to Montana.

(3) The ~~Montana~~ taxable income for each eligible nonresident partner, member, or shareholder is found by deducting the allowable standard deduction for a single individual and one exemption allowance from the participant's share of their federal income from the entity.

(4)remains the same.

(5) The entity ~~may be~~ IS required to make quarterly estimated tax payments as prescribed by 15-30-241, MCA.

(6) through (8) remain the same.

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-105 MCA.

RULE VI (ARM 42.15.606) RESPONSIBILITY OF ENTITY (1) Any assessments of additional tax, penalties and interest shall be the responsibility of the entity filing the return AND WILL BE BASED ON THE ENTITY'S TOTAL LIABILITY. Any additional assessment will be based on the total liability of the composite return.

(2) remains the same.

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-105 MCA.

4. Therefore, the Department adopts ARM 42.15.314, Rule V (ARM 42.15.605) and Rule VI (ARM 42.15.606) with the amendments listed above. The Department amends ARM 42.15.101, 42.15.301, 42.15.303, 42.15.305, 42.15.309, 42.15.311, 42.15.312, 42.15.313, 42.15.315, 42.15.322, 42.15.324 and adopts Rule I (ARM 42.15.601), Rule II (ARM 42.15.602), Rule III (ARM 42.15.603) and Rule IV (ARM 42.15.604) as proposed.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State September 23, 1996

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) NOTICE OF AMENDMENT
of ARM 42.17.103 relating to)
General Withholding Taxes)

TO: All Interested Persons:

1. On August 22, 1996, the Department published notice of the proposed amendment of ARM 42.17.103 relating to general withholding taxes at page 2276 of the 1996 Montana Administrative Register, issue no. 16.

2. No public comments were received regarding the rule.

3. The Department has amended the rule as proposed.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State September 23, 1996

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 Subject Matter	1. Consult ARM topical index. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.
Statute Number and Department	2. Go to cross reference table at end of each title which lists MCA section numbers and 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, 1996. This table includes those rules adopted during the period July 1, 1996 through September 30, 1996 and any proposed rule action that was 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, 1996, 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 1995 and 1996 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number. These will fall alphabetically after department rulemaking actions. Accumulative Table entries will be listed with the department name under which they were proposed, e.g., Department of Health and Environmental Sciences as opposed to Department of Environmental Quality.

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