MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 22

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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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BEFORE THE CONSUMER AFFAIRS DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed repeal of rules pertaining to proprietary schools	)))	NOTICE OF PROPOSED REPEAL OF RULES PERTAINING TO PROPRIETARY SCHOOLS

NO PUBLIC HEARING CONTEMPLATED

1. On December 17, 1997, the Consumer Affairs Division proposes to repeal rules pertaining to proprietary schools.

2. The Division is proposing to repeal ARM 8.78.401 (authority 20-30-201, MCA and implementing 20-30-201, MCA); 8.78.402 (authority 20-30-201, MCA and implementing 20-30-201, MCA); 8.78.403 (authority 20-30-201, MCA and implementing 20-30-201, MCA). The text of these rules is located at pages 8-2277 and 8-2278, Administrative Rules of Montana. The rules are being proposed for repeal because of HB 58 enacted by the 1997 Legislative Session which eliminated the licensing and permitting of Postsecondary Educational Institutions by the Department of Commerce. The administrative rules implemented the law that has been repealed.

3. Interested persons may present their data, views or arguments, concerning the proposed repeal in writing to the Consumer Affairs Division, Department of Commerce, 1424 9th Avenue, P.O. Box 200501, Helena, Montana 59620-0546, no later than 5:00 p.m., December 15, 1997.

4. Persons who wish to be informed of all Consumer Affairs Divisions administrative rulemaking hearings or other administrative hearings may be placed on a list of interested persons by advising the Division in writing to the Consumer Affairs Division, Department of Commerce, 1424 9th Avenue, P.O. Box 200501, Helena, Montana 59620-0546.

5. If a person who is directly affected by the proposed repeal wishes to present his data, views or arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit the request along with any comments he has to the Consumer Affairs Division, Department of Commerce, 1424 9th Avenue, P.O. Box 200501, Helena, Montana 59620-0546, or by facsimile to (406) 444-2903, to be received no later than 5:00 p.m., December 15, 1997.

6. If the Division receives requests for a public hearing on the proposed repeal from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed repeal, 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 hearing will be published in the Montana

Administrative Register. Ten percent of those persons directly affected has been determined to be 4 based on the 41 proprietary schools in Montana.

CONSUMER AFFAIRS DIVISION

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

Ann M. Bartos.
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 3, 1997.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of 17.8.1201, 1210, and 1213, in order to obtain approval by EPA for the air quality operating permit program.	))))	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULES

(Air Quality)

To: All Interested Persons

1. On December 9, 1997, at 1:30 p.m., or as soon thereafter as it may be heard, the board will hold a public hearing at Room 111 of the Metcalf Building, 1520 E. 6th Ave., Helena, Montana, to consider amendment of the above-captioned rules.

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

17.8.1201 DEFINITIONS As used in this subchapter, unless indicated otherwise, the following definitions apply:

(1) "Administrative permit amendment" means an air quality operating permit revision that:

(a)-(c) Remain the same.

~~(d) requires changes in monitoring or reporting requirements that the department deems to be no less stringent than current monitoring or reporting requirements;~~

(e) Remains the same, but is renumbered (d).

~~(f)~~(e) incorporates any other type of change which the department ~~has~~ and EPA have determined to be similar to those revisions set forth in (a) through ~~(e)~~ (d) above.

(2)-(21) Remain the same.

(22)(a) "Insignificant emissions unit" means any activity or emissions unit located within a source that:

(i) has a potential to emit less than ~~15~~ 5 tons per year of any regulated pollutant~~, other than a hazardous air pollutant listed pursuant to section 7412(b) of the FCAA or lead~~;

(ii) has a potential to emit ~~of~~ less than 500 pounds per year of lead;

(iii) ~~does not have~~ has a potential to emit less than 500 pounds per year of hazardous air pollutants listed pursuant to section 7412(b) of the FCAA ~~in any amount~~; and

(iv) is not regulated by an applicable requirement, other than a generally applicable requirement that applies to all emission units subject to this subchapter.

(b) Remains the same.

(23) Remains the same.

(24)(a) "Non-federally enforceable requirement" means the following as they apply to emissions units in a source requiring

an air quality operating permit:

(i) Remains the same.

(ii) any term, condition or other requirement contained in any air quality preconstruction permit issued by the department under ~~subchapters 7, 8, 9, and 10 of~~ this chapter that is not ~~federally enforceable~~ contained in the Montana state implementation plan approved or promulgated by the administrator through rulemaking under Title I of the FCAA;

(b) Remains the same.

(25)-(33) Remain the same.

AUTH: 75-2-217, MCA; IMP: 75-2-217, 75-2-218, MCA

17.8.1210 GENERAL REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT CONTENT (1) Remains the same.

(2) The following standard terms and conditions are applicable to each air quality operating permit issued pursuant to this subchapter:

(a) The permittee must comply with all conditions of the permit. Any noncompliance with the terms or conditions of a permit constitutes a violation of the Montana Clean Air Act, and may result in enforcement action, operating permit modification, revocation and reissuance, or termination, or denial of a permit renewal application under this subchapter. Permits may ~~only~~ be modified, reopened, terminated or revoked and reissued for ~~continuing and substantial violations~~ cause. Appropriate "cause" for permit termination is noncompliance with permit terms or conditions that is continuing or substantial in nature and scope.

(b) Remains the same.

(c) ~~The permit may be modified, revoked and reissued, reopened, or terminated for cause.~~ The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(d)-(k) Remain the same.

(l) If any provision of a permit is found to be invalid, all valid parts that are severable from the invalid part remain in effect. If a provision of a permit is invalid in 1 or more of its applications, the provision remains in effect in all valid applications that are severable from the invalid applications.

(3)-(5) Remain the same.

AUTH: 75-2-217, 75-2-218, MCA; IMP: 75-2-217, 75-2-218, MCA

17.8.1213 REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT CONTENT RELATING TO COMPLIANCE (1) Remains the same.

(2) Consistent with ARM 17.8.1212, all permits shall contain compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any such data, generated as a condition of the permit, may be used to demonstrate compliance with the conditions of the permit and may be used for direct enforcement. Any document (including

reports) required by a permit shall contain a certification by a responsible official that meets the requirements of ARM 17.8.1207.

(3)-(7) Remain the same.

AUTH: 75-2-217, 75-2-218, MCA; IMP: 75-2-217, 75-2-218, MCA;

3. The board is proposing these amendments as part of its attempt to obtain final approval by the Environmental Protection Agency (EPA) of the department's air quality operating permit program, adopted pursuant to Title V of the federal Clean Air Act Amendments of 1990. EPA indicated that the amendments are necessary for EPA approval and delegation of the operating permit program to the state.

The board is proposing to delete ARM 17.8.1201(1)(d), which gives the department authority to process a permit revision as an administrative permit amendment when the revision requires changes in monitoring or reporting requirements that the department deems to be no less stringent than current monitoring or reporting requirements. 40 CFR 70.7(d)(1) specifies the instances in which a permit revision may be processed as an administrative amendment. 40 CFR 70.7(d)(1)(iii) specifies that a permit revision may be processed as an administrative amendment if the revision requires more frequent monitoring or reporting but there is no provision in the federal regulation for processing other changes in monitoring or reporting requirements as administrative permit amendments.

The board is proposing to amend ARM 17.8.1201(1)(f) to specify that approval of the department and EPA is necessary to process a permit revision as an administrative amendment if the revision is not listed under the definition of administrative amendment but is similar to the types of revisions listed in the definition. The existing rule requires approval only of the department and is inconsistent with 40 CFR 70.7(d)(1)(vi), which requires EPA approval.

The board is proposing to amend the definition of "insignificant emissions unit" in ARM 17.8.1201(22)(a), which exempts low-emitting units from most of the requirements otherwise applicable to emission units subject to an air quality operating permit. The board is proposing to lower the "significance" threshold for sulfur dioxide, nitrogen oxides, particulate matter, carbon monoxide and ozone from 15 tons per year to 5 tons per year. EPA has informed the department that it will not approve the present 15 ton cap and the highest emission cap EPA has approved nationwide to date for these pollutants is 5 tons. A 5 ton cap will also provide greater protection of public health, public welfare and the environment from emission units emitting 5 or more tons of these pollutants per year. The board is proposing to increase the significance threshold for hazardous air pollutants from 0 to 500 pounds per year because emissions below that amount do not significantly affect public health, public welfare or the environment. The board is also proposing to clarify that an emissions unit is not considered "significant" merely because it is subject to the generally applicable requirements that apply to all emissions units.

The board is proposing to correct the definition of "non-federally enforceable requirement" in ARM 17.8.1201(24)(a)(ii), which exempts requirements in an air quality operating permit that are not federally enforceable from certain procedures otherwise applicable to permit conditions. The board is proposing to delete the reference to permits issued under subchapters 7 through 10 of the department's air quality rules. Subchapters 7 through 10 are contained in the Montana State Implementation Plan (SIP), permits issued under those subchapters are submitted to EPA for inclusion in the SIP, and all conditions in those permits are federally enforceable.

The board is proposing to amend ARM 17.8.1210(2) to specify that a permit may be modified, reopened, terminated or revoked and reissued for "cause" and to define "cause for terminating a permit" as noncompliance that is "continuing or substantial in nature and scope." The present language in ARM 17.8.1210(2)(a), which states that the department may terminate or revoke and reissue a permit "for continuing and substantial violations," may be inconsistent with ARM 17.8.1210(2)(c), which states that the department may modify, revoke and reissue, reopen or terminate a permit for "cause," and may inappropriately limit the department's ability to terminate a permit for substantial violations that are not necessarily continuing violations. Section 502(b)(5)(D), of the federal Clean Air Act, 42 U.S.C. § 7661a(b)(5)(D), specifies that the permitting authority must have authority to terminate, modify or revoke a permit "for cause." 40 CFR 70.7(f)(iv) specifies that a permit shall be reopened and revised whenever necessary to assure compliance with applicable requirements, but does not limit revocation and reissuance to instances of continuing and substantial violations. The proposed amendments are necessary to ensure that the rule is internally consistent, to allow the department to revoke and reissue a permit whenever necessary to ensure compliance with the permit, and to allow the department to terminate a permit for continuing or substantial violations.

The board is proposing to add a new subsection (1) to ARM 17.8.1210(2) that would require each permit to include a severability clause. 40 CFR 70.6(a)(5) provides that each operating permit must include a severability clause to ensure the continuing validity of other permit requirements in case a permit requirement is found to be invalid. This provision is necessary to ensure the continuing validity of the remainder of a permit if portions of the permit are challenged.

The board is proposing to amend ARM 17.8.1213(2) to specify that any testing, monitoring, reporting or recordkeeping data, generated as a condition of a permit, may be used to determine compliance with the permit and may be used for direct enforcement of permit conditions. 40 CFR § 70.6(3)(B) provides that, when an applicable requirement does not require periodic testing or monitoring, which may include recordkeeping, a permit must include periodic monitoring sufficient to yield data representative of compliance with the permit. Specifying that this data may be used to directly enforce the conditions of the permit is necessary to ensure that the department can take

enforcement action based upon such data, without having to conduct further monitoring or testing.

4. Interested persons may submit their data, views, or arguments either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, PO Box 200901, Helena, MT 59620-0901, no later than 5:00 p.m., December 16, 1997.

5. Jim Madden has been appointed to preside over and conduct the hearing.

BOARD OF ENVIRONMENTAL REVIEW

By: _____
CINDY E. YOUNKIN, Chairperson

Reviewed by:

_____
John F. North, Rule Reviewer

Certified to the Secretary of State November 3, 1997

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

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

TO: All Interested Persons

1. On Wednesday, December 10, 1997, at 9:00 a.m., a public hearing will be held in the auditorium of the Scott Hart Building, 1st Floor, 303 North Roberts, Helena, Montana, to consider the amendment and repeal of rules regulating gambling.

2. The Department of Justice, Gambling Control Division maintains an interested persons list so that all interested parties are informed of prospective gambling rule changes. Persons interested in being on this list should contact the Gambling Control Division, Attn: Julie Burch, 2550 Prospect Avenue, Helena Montana 59620-1424.

3. 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, December 5, 1997, 5:00 p.m., to advise it of the nature of the accommodation that you need. Please contact Kathy Fisher at 2550 Prospect Avenue, Helena, Montana 59620-1424, telephone (406) 444-1973.

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

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

(1) through (11) remain the same.

~~(12) "Manufacturer of sports tab cards" means a person who manufactures sports tab cards for use in conducting sports tab games.~~

(13) remains the same but is renumbered (12).

~~(14)~~(13) "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:

(14)(a) through (19) remain the same but are renumbered (13)(a) through (18).

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 of electronic live bingo or keno equipment, ~~manufacturer of sports tab cards~~ sports tab game seller, or ~~manufacturer of gambling devices not legal in Montana~~ manufacturer of illegal devices, 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 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) through (3)(d) remain the same.

(4) Forms 1 through 3 and 10, as the forms read on ~~August 26, 1996~~ November 3, 1997, are incorporated by reference and available from the Gambling Control Division, 2550 Prospect Ave., Helena, Montana 59620-1424.

(5) remains the same.

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 ~~August 26, 1996~~ November 3, 1997, are incorporated by reference and available from the Gambling Control Division, 2550 Prospect Ave., Helena, Montana 59620-1424.~~)~~

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

23.16.120 LOANS AND OTHER FORMS OF FINANCING (1) through (7)(d) remain the same.

(e) ~~the exception provided in (7)(a)~~ this rule does not apply to video gambling machine retail installment sale agreements or conversions from a "cash equivalent" sale to a retail installment sale agreement.

(8) remains the same.

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

23.16.121 LEASING OF LICENSE PROHIBITED (1) through (2)(a) remain the same.

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

(c) through (3) remain the same.

AUTH: 23-5-115, MCA IMP: 23-5-110, 23-5-159, MCA

23.16.502 APPLICATION FOR OPERATOR LICENSE (1) All applicants shall submit the following information on forms 5 and 5a, as ~~that~~ those forms read on ~~August 26, 1996~~ November 3, 1997, which ~~is~~ are incorporated by reference and available from the Gambling Control Division, 2550 Prospect Avenue, Helena, Montana 59620-1424:

(a) remains the same;

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

(c) through (2) remain the same.

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

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

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

(2) and (3) remain the same but are renumbered (1) and (2).

~~(4)~~(3) ~~"Manufacturer" means a manufacturer of sports tab cards as defined in ARM 23.16.101.~~ "Manufacturer of sports tabs" means a person who manufactures from raw materials or subparts completed sports tabs, sports tab cards, or sports tab games as they are defined by statute and rule.

(5) through (7) remain the same but are renumbered (4) through (6).

~~(8)~~(7) "Sponsor" means a person conducting a sports tab game by selling individual sports tabs.

(9) through (12) remain the same but are renumbered (8) through (11).

~~(13)~~(12) "Sports tab card" means the card to which ~~the~~ 100 sports tabs are randomly attached by ~~the~~ a manufacturer of sports tabs and which is used in a sports tab game.

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

(13) "Sports tab game seller" means a person who:

(a) purchases or otherwise obtains sports tab games from a manufacturer of sports tabs; and

(b) sells sports tab games to sponsors for use in conducting sports tab games.

AUTH: 23-5-115, MCA IMP: 23-5-501, 23-5-503, MCA

23.16.1712 DESIGN AND CONDUCT OF SPORTS TAB GAME (1) through (4)(a) remain the same.

(b) shall award all prizes at the end of the sports event in accordance with the description required under (3), regardless of whether all sports tabs on the sports tab card are sold to participants before the start of the sports event.

(5) The sports tab games purchased must have a permanent, unduplicated serial number printed on the sports tab card and have the same number printed on each sports tab affixed to the sports tab card. The sports tab cards must not have any concealed numbers on the card other than those concealed by the 100 sports tabs.

AUTH: 23-5-115, MCA IMP: 23-5-501, 23-5-503, MCA

23.16.1713 PURCHASE AND SALE OF SPORTS TABS BY SPONSOR (1) A sponsor ~~may~~ shall purchase a sports tab ~~card~~ game only from a licensed ~~manufacturer or the manufacturer's authorized agent~~ sports tab game seller. The sports tab card must ~~contain~~ display a sports tab decal as provided for in ARM 23.16.1717.

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

(3) remains the same.

AUTH: 23-5-115, MCA IMP: 23-5-501, 23-5-503, MCA

23.16.1715 SPONSOR RECORD KEEPING REQUIREMENTS (1) remains the same.

(2) The sponsor shall retain a sports tab card ~~or board to which the card is attached~~ that was used in a sports tab game for at least 1 year after the date of the sports event upon which the sports tab game was based.

(3) remains the same.

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

23.16.1716 SPORTS TAB ~~CARD MANUFACTURER~~ GAME SELLER LICENSE (1) Before conducting business in this state, a ~~manufacturer~~ sports tab game seller shall obtain a sports tab ~~card manufacturer~~ game seller license from the department. An applicant for a license shall submit to the department:

(a) a sports tab ~~card manufacturer~~ game seller license application, ~~(form~~ Forms ~~2t~~ 20 and 20a as the forms read on ~~October 1, 1993~~ November 3, 1997, ~~is~~ are incorporated by reference and available upon request from the Gambling Control Division, ~~2687 Airport Road~~, 2550 Prospect Ave., Helena, Montana 59620-~~1424)~~;

(b) forms 1 and 10 as described in ARM 23.16.102, available upon request from the Gambling Control Division, 2550 Prospect Avenue, Helena, Montana 59620-1424;

(c) remains the same;

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

(i) ~~$1,000~~ $100 annual license fee; and

(ii) ~~$1,000~~ $400 processing fee to cover the actual cost of processing the license.

(2) through (4) remain the same.

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

23.16.1717 SALE OF SPORTS TAB ~~CARDS~~ GAMES BY ~~MANUFACTURER~~ SPORTS TAB GAME SELLERS - COLLECTION OF TAX (1) ~~A sports tab card used in conducting a sports tab game may be sold only by a licensed manufacturer or by the manufacturer's authorized agent.~~ A sports tab game seller shall only acquire sports tab games from a manufacturer of sports tabs. A sports tab game shall be sold only by a licensed sports tab game seller. Sports tab game sellers shall only sell sports tab games that meet the requirements of statute and rule.

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

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

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

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

(2) A sports tab game seller, either in the conduct of acquiring or selling sports tab games, or in the carrying on of the business and financial arrangements incidental to acquiring or selling sports tab games, shall not pose a threat to the public interest of the state; pose a threat to the effective regulation and control of gambling; or create a danger of illegal practices, methods, or activities.

(3) Before a sports tab game may be sold to a sponsor, the sports tab game seller shall affix a sports tab decal provided by the department in a conspicuous location on the front of the sports tab card. Once affixed, the decal may not be tampered with by any person.

~~(3)~~(4) The ~~manufacturer~~ licensed sports tab game seller ~~may~~ shall obtain sports tab decals by submitting a request to the department on a form provided by the department. ~~The completed form must list the names of the manufacturer's authorized agents.~~ Upon receipt of the form, the department shall issue sports tab game decals to the ~~manufacturer~~ sports tab game seller at no cost.

~~(4) If a sport tab card is sold to a sponsor who is a licensed gambling operator, the manufacturer or authorized agent shall collect at the time of sale a tax of $1 for each card~~

~~sold. The tax may not be collected from a sponsor who is not a licensed gambling operator.~~

(5) The sports tab game seller shall collect a tax of $1 from the sponsor for each 100 sports tabs sold.

AUTH: 23-5-115, MCA IMP: 23-5-110,23-5-176,23-5-502, MCA

23.16.1718 ~~REMITTAL OF TAX TO DEPARTMENT~~ QUARTERLY REPORTING REQUIREMENTS (1) Within 15 days following the end of each fiscal year quarter, the ~~manufacturer~~ sports tab game seller shall submit to the department on a form provided by the department a report ~~on a form provided by the department and~~ of the tax proceeds collected under ARM 23.16.1717 by the ~~manufacturer and his authorized agent~~ sports tab game seller ~~under ARM 23.16.1717~~.

(2) If the ~~manufacturer~~ sports tab game seller fails to file the form or remit the required tax when due, the following penalties will be assessed:

(a) through (d) remain the same.

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

23.16.1719 ~~MANUFACTURER~~ SPORTS TAB GAME SELLER RECORD KEEPING REQUIREMENTS - DECAL INVENTORIES (1) A sports tab game seller shall maintain records by serial number and by manufacturer of all sports tab cards purchased.

~~(1)~~(2) A ~~manufacturer~~ sports tab game seller shall maintain records documenting the total number of sports tab cards sold, ~~number sold to licensed gambling operators by operator,~~ sponsor and ~~number of sports tab decals in his possession~~ card serial number. The ~~manufacturer~~ sports tab game seller must maintain these records, and make the records available to the department upon request, for a minimum of 12 full quarters from the previous quarterly tax return due date. Such records shall document:

(a) the total number of sports tab games sold by referencing the sports tab game serial number to the sponsor, including the sponsor's name, address and phone number; and

(b) the total number of sports tab game decals in the sports tab game seller's possession.

~~(2)~~(3) A ~~manufacturer~~ sports tab game seller may not transfer ~~a~~ sports tab decals to any person, except when affixed to a sports tab card ~~to any person~~. If ~~a manufacturer~~ sports tab game sellers wishes to reduce ~~his~~ their decal inventory, ~~he~~ they may only return the decals to the department. If ~~a manufacturer~~ sports tab game sellers ceases to sell sports tab ~~cards~~ games, ~~he~~ they shall file, within 15 days following the date upon which ~~he~~ they terminated sales, a report on a form provided by the department, remit any tax due, and return all unused decals.

~~(3)~~(4) A ~~manufacturer~~ sports tab game seller shall return any sports tab decals to the department upon request of the department.

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

23.16.1720 USE OF SPORTS TABS AND SPORTS TAB CARD RESTRICTED (1) A sports tab or sports tab card may be possessed and used only ~~in conducting a sports tab game as described in~~ as authorized by statute and rule. A sports tab or sports tab card used for any other purpose is an illegal gambling device.

AUTH: 23-5-115, MCA IMP: 23-5-501, 23-5-503 MCA

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

(a) a correct lifetime audit ticket as provided for by department rules, which must include progressive accounting data if applicable. The lifetime audit ticket must be printed for each machine at least once every 7 days~~.~~;

(b) through (5) remain the same.

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

23.16.1828 GENERAL REQUIREMENTS OF OPERATORS, MANUFACTURERS, MANUFACTURERS OF ILLEGAL DEVICES, DISTRIBUTORS AND ROUTE OPERATORS OF VIDEO GAMBLING MACHINES OR PRODUCERS OF ASSOCIATED EQUIPMENT (1) Every operator, manufacturer, manufacturer of illegal devices, distributor, or route operator must retain for a period of 3 years all records relating to the possession, destruction, purchase, lease, rental, or sale of any ~~video~~ gambling ~~machine~~ device. 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) An operator, manufacturer, manufacturer of illegal devices, distributor, or route operator must provide the division with a current list of all video gambling machines 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) Every operator, manufacturer, distributor, route operator, or producer of associated equipment desiring to sell, distribute, lease, or rent video gambling machines or associated equipment in this state or ship video gambling machines to a final destination within the state must:

(a) be issued and maintain all required federal, state, county, and municipal licenses and registrations;

(b) furnish to the department monthly reports identifying the quantities, serial number, manufacturer and model number of ~~the~~ each machine such person destroys, purchases, or sells, 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 such 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.

(4) Every manufacturer or distributor proposing to import video gambling machines not approved under ARM 23.16.1901 for research and development or proposing to export legal gambling machines from the state must:

(a) report such shipments to the department on form 22 as described in ARM 23.16.2001(5)(b); and

(b) receive prior approval. If the department has taken no action within five working days of receipt of form 22, the application for approval is deemed granted.

AUTH: 23-5-115, MCA IMP: 23-5-115, 23-5-611, 23-5-614, 23-5-621, 23-5-625, 23-5-626, 23-5-631, MCA

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

(x) the machine must contain electronic metering, using meters that record and display the following on the video screen in a format prescribed by the department~~:~~

(A) through (D) remain the same.

(E) any other metering required by these rules~~.~~;

(xi) through (3) remain the same.

AUTH: 23-5-115, 23-5-621, MCA IMP: 23-5-115, 23-5-136, 23-5-602, 23-5-606, 23-5-609, 23-5-610, 23-5-621, MCA

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

(a) through (i) remain the same;

(j) a complete copy of the ~~programmers~~ programmer's memory map;

(k) through (m) remain the same.

AUTH: 23-5-115, MCA IMP: 23-5-606, 23-5-607, 23-5-621, 23-5-631, MCA

23.16.1913 USE OF TEMPORARY REPLACEMENT OR LOANER MACHINES - PERMIT REQUIRED - REPORTING (1) and (2) remain the same.

(3) The temporary replacement machine must have an identification number issued by the department. The identification number must be issued in advance of the machine being placed into service, and must be issued to a holder of a ~~manufacturer/distributor or~~ an operator license. The identification number must be affixed to the machine.

(4) through (6) remain the same.

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

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

(a) a distributor's license application, ~~forms~~ 17 and 17a, as the forms read on ~~August 26, 1996~~ November 3, 1997, ~~is~~ are incorporated by reference and available from the Gambling Control Division, 2550 Prospect Ave., Helena, Montana 59620-1424~~;~~;

(b) through (2) remain the same.

(3) The department may waive the application license and processing fees provided for in (1)(d)~~(i) and (1)(d)(ii)~~ if the applicant is licensed as a manufacturer, manufacturer of illegal devices, or route operator and if the applicant is substantially the same and has no strangers to the license.

AUTH: 23-5-115, MCA IMP: 23-5-115, 23-5-128, MCA

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

(a) a route operator license application, ~~forms~~ 17 and 17a, as the forms read on ~~August 26, 1996~~ November 3, 1997, ~~is~~ are incorporated by reference and available from the Gambling Control Division, 2550 Prospect Ave., Helena, Montana 59620-1424~~;~~;

(b) through (2) remain the same.

(3) The department may waive the application license and processing fee provided in (1)(d)(i) and (1)(d)(ii) if the applicant is licensed as a manufacturer, manufacturer of illegal devices, or distributor and if the applicant is substantially the same and has no strangers to the license.

AUTH: 23-5-115, MCA IMP: 23-5-115, 23-5-129, MCA

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

(a) a manufacturer's license application, ~~forms~~ 17 and 17a, as the forms read on ~~August 26, 1996~~ November 3, 1997, ~~is~~ are incorporated by reference and available from the Gambling Control Division, 2550 Prospect Ave., Helena, Montana 59620-1424~~;~~;

(b) through (2) remain the same.

(3) The department may waive the application license and processing fee if the applicant is licensed as a distributor, manufacturer of illegal devices, or route operator and if the applicant is substantially the same and has not added strangers to the license.

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

23.16.1918 VIDEO GAMBLING MACHINES TESTING FEES

(1) remains the same.

(a) be licensed as a manufacturer~~, distributor, route operator, or as a producer of associated equipment~~ within the state of Montana;

(b) through (3) remains the same.

AUTH: 23-5-115, MCA IMP: 23-5-631, MCA

23.16.1925 POSSESSION OF ~~UNLICENSED~~ UNPERMITTED MACHINES BY MANUFACTURER, DISTRIBUTOR, ROUTE OPERATOR, ~~OWNER, OR REPAIR SERVICE~~ OR OPERATOR (1) A manufacturer, distributor, route operator, ~~owner, or repair service~~ or operator may possess or own ~~unlicensed~~ unpermitted machines~~, logic boards, meters, and machine components~~ or associated equipment which conform to the statutory requirements and rules relating to electronic video gambling machines. ~~Such machines possessed or owned may not be operated except when inspected, licensed, and placed on a licensee's premises.~~ Such machines may not be made available for play by the public without a current permit issued by the department.

AUTH: 23-5-115, MCA IMP: 23-5-603, 23-5-616, MCA

23.16.2001 MANUFACTURER OF ~~DEVICES NOT LEGAL IN STATE~~ ILLEGAL GAMBLING DEVICES - 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 annual fee for this license is $1000 if the manufacturer is not licensed as a manufacturer under 23-5-625, MCA. 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 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.~~

(1) Before conducting business in the state, a manufacturer of illegal gambling devices shall obtain a license from the department. An applicant for a license shall submit to the department:

(a) a manufacturer license application, form 17, as the form read on November 3, 1997, is incorporated by reference and available from the Gambling Control Division, 2550 Prospect Avenue, Helena, Montana 59620-1424;

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

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

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

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

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

(2) Based on the actual cost incurred by the department in determining whether the applicant qualifies for licensure, the department shall refund any overpayment of the processing fee or collect an amount sufficient to reimburse the department for any underpayment of actual costs. If an applicant withdraws the application after the department has begun processing the

application, the department shall refund any amount not expended as of the date of withdrawal.

(3) The department may waive the application license and processing fee if the applicant is licensed as a distributor, route operator, or manufacturer and if the applicant is substantially the same and has not added strangers to the license.

(4) A person licensed under this rule may import or export illegal gambling devices and associated equipment or either of them only if the sale and transportation of the devices or equipment complies with all applicable local, tribal, state, and federal laws and regulations. The department must approve all proposed imports and exports of illegal gambling devices and associated equipment prior to shipment.

(5) A person licensed under this rule may apply for prior approval to import or export illegal gambling devices and associated equipment or either of them, by submitting to the department:

(a) copies of the applicable gambling licenses held by that person from the jurisdiction(s) to which the person intends to export or from which the person intends to import illegal gambling devices and associated equipment or either of them and, when applicable, approved tribal compacts and relevant ordinances or documents; or

(b) a completed form 22 including:

(i) the identity of the seller, purchaser, shipper, receiver, method of shipment, proposed date of shipment and estimated date of delivery;

(ii) the terms of the sale, including all contracts, invoices or other documents related to the sale;

(iii) written approval from the jurisdiction in which the devices or associated equipment will be exported or imported; and

(iv) the manufacturer, model number, serial number, type and number of:

(A) devices or associated equipment that will be exported;

(B) illegal devices and associated equipment that contain components that will be imported and used by the licensee to manufacture an illegal device for export from the state;

(C) illegal devices and associated equipment that will be imported and reconditioned, refurbished, repaired, or otherwise substantially modified in preparation for export from the state;

(D) illegal devices that will be imported and modified into gambling machines specifically authorized by Montana law or rule; or

(E) illegal devices that will be imported and used for research and development purposes.

(6) If the department has taken no action within five working days of receipt of form 22, the application for approval is deemed granted.

(7) A person importing or exporting illegal gambling devices and associated equipment or either of them under (5)(a) must provide monthly report(s) to the department using form 22 as described in (5)(b)(i), (ii), and (iv). All monthly reports

under this rule must be filed with the department within 15 days after the end of each required monthly reporting period.

(8) A person who proposes to import an illegal gambling device to be modified into a gambling machine which is specifically authorized by Montana law or rule must be licensed as a manufacturer and hold the department's approval under ARM 23.16.1901(1)(a) for the machine model to which it is to be modified.

(9) Form 22 as the form read on November 3, 1997, is incorporated by reference and available from the Gambling Control Division, 2550 Prospect Avenue, Helena, Montana 59620-1424.

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

5. Rule 23.16.2004, a rule proposed to be repealed, is on pages 23-805 and 23-806 of the Administrative Rules of Montana.
AUTH: 23-5-115, MCA IMP: 23-5-115, 23-5-152 MCA

6. RATIONALE: The 55th Montana legislature's enactment of Chapter 13 regarding the licensing of "sellers of sports tab games", requires the Department of Justice to investigate, license and regulate a new category of licensee, "sports tab game sellers." Many of the proposed amendments address the Department's duties with respect to this new category of licensee.

Chapter 354, enacted by the same legislature, changes how the Department regulates the import and export of legal video gambling machines and illegal gambling devices. Again, numerous amendments to the Department of Justice's gambling regulations are necessary to conform with this new legislation.

Finally, the Department of Justice has amended certain rules, as requested by the Secretary of State, to correct grammatical and punctuation errors, to improve clarity and internal consistency and to conform to language contained in Chapters 13 and 354. Those changes are summarized as follows:

ARM 23.16.102, 23.16.1713(1), 23.16.1716, 23.16.1718 and 23.16.1719 are amended to delete the obsolete language regarding the manufacturer of sports tab cards and to insert the term "sports tab game seller" as required by Chapter 13.

ARM 23.16.102(4), 23.16.103(3), 23.16.502(1), 23.16.1716(1)(a)and(b), 23.16.1914(1)(a), 23.16.1915(1)(a), and 23.16.1916(1)(a) are amended to simplify and update the

Department's forms and to include the changes contained in Chapters 13 and 354.

ARM 23.16.101(13), 23.16.121(2), 23.16.1827(2)(a), 23.16.1716(1), 23.16.1901(1)(d)(x), 23.16.1901(d)(x)(E) and 23.16.1911(1)(j) are amended to correct punctuation.

ARM 23.16.1914, 23.16.1915 and 23.16.1916 are amended to reflect statutory changes contained in Chapter 354 regarding "manufacturers of illegal devices". Punctuation and grammar changes are also included.

Chapter 13, which pertains to the licensing of "sellers of sports tab games" and requires the department of justice to investigate, license and regulate a new category of licensee, "sports tab game sellers," compels the following changes:

ARM 23.16.101 is amended to delete obsolete language regarding the manufacture of sports tab cards.

ARM 23.16.120 is amended to correct an internal reference.

ARM 23.16.1701 is amended to delete obsolete definitions, replace superseded definitions, clarify existing definitions and define the new term "sports tab game seller".

ARM 23.16.1712 is amended to clarify that the term "tab" means "sports tabs" and consolidate existing rules regarding decal requirements.

ARM 23.16.1713 is amended to delete obsolete language referencing "sports tab cards" and their "manufacturer" and clarify the display of decals.

ARM 23.16.1715 is amended to delete obsolete language referencing "sports tab boards."

ARM 23.16.1716 is amended to reduce license and processing fees as required by Chapter 13 (23-5-503, MCA).

ARM 23.16.1717 is amended to delete obsolete language referencing sports tab cards, their manufacturer and their design; to prescribe the acquisition, sale and design of sports tab games; to establish standards consistent with public policy (23-5-110(a)(b) and (c), MCA) and (23-5-176, MCA); and to establish tax collection and verification procedures for sports tab games.

ARM 23.16.1719 is amended to limit possession of decals to licensed sellers and establish new record keeping requirements which are consistent with Chapter 13.

ARM 23.16.1720 is amended to conform with Chapter 13's limits on possession and use of sports tab cards.

Chapter 354, which pertains to the sale and import of video gambling machines and illegal gambling devices, compels the following changes:

ARM 23.16.1828(1) and (2) are amended to reference "manufacturer of illegal devices" and "gambling device" as defined in Chapter 354.

ARM 23.16.1828(3) and (4) are amended to require compliance with federal law regarding registration; delete duplicate reporting requirements; establish licensing and reporting requirements for "associated equipment shipments"; and establish reporting and prior approval requirements for unapproved video gambling machines used for research and development and for exporting legal gambling machines pursuant to 23-5-152(3)(a), MCA.

ARM 23.16.1911(1) is amended to delete reference to obsolete terms.

ARM 23.16.1913 is amended to delete reference to obsolete terms.

ARM 23.16.1918 is amended to conform to 23-5-631(4), MCA, which limits video gambling machine testing to licensed manufacturers.

ARM 23.16.1925 is amended to delete references to obsolete terms; substitute the statutory term "unpermitted" for the term "unlicensed" as 23-5-603, MCA, references permits, not licenses; and limit the possession or ownership of unpermitted machines to those statutorily authorized. Repair service as a separate licensed entity is not allowed in statute.

ARM 23.16.2001 is amended to comply with Chapter 354 and to be consistent with similar Division licensing regulations.

Revisions and additions at ARM 23.16.2001(1) to (3) mirror requirements for distributor, route operator and manufacturer licenses found at ARM 23.16.1914 to 23.16.1916.

ARM 23.16.2001(4) to (9) implement 23-5-152, MCA, concerning the export and import of illegal gambling devices and are consistent with Chapter 354 and existing regulations regarding export of Montana approved video gambling machines and associated equipment (23-5-614(3), MCA). Subsection (5) provides

for two independent procedures to gain approval for the import/export of illegal gambling devices and associated equipment. The first method in Subsection (a) provides a simplified process for those licensed in each affected jurisdiction. The second method in Subsection (b) provides for approval through submission of revised form 22 and accompanying documents which adopts standards consistent with Chapter 354. Subsection (6) provides for automatic approval of proposed import/export in certain circumstances. Subsection (7) creates a record keeping requirement for those gaining approval pursuant to ARM 23.16.2001(5)(a). Subsection (8) provides for the importation of illegal gambling devices which can be modified into gambling machines specifically authorized by Montana law and rule only by the licensed manufacturer who holds the department's approval for the specific machine model.

ARM 23.16.2004 is repealed in order to eliminate an obsolete regulatory system for the importation of illegal gambling devices which conflicts with the new system provided for in Chapter 354.

7. Interested persons may present their data, views, or arguments, either orally or in writing at the hearing. Written data, views, or arguments may be submitted to Wilbur W. Rehmann, Administrative Officer, Gambling Control Division, 2550 Prospect Avenue, Box 201424, Helena, Montana, 59620-1424, no later than 5:00 p.m., December 15, 1997.

8. Michael L. Fanning, Assistant Attorney General, Gambling Control Division, has been designated to preside over and conduct the hearing.

DEPARTMENT OF JUSTICE

for JOSEPH P. MAZUREK
Attorney General

Rule Reviewer

Certified to the Secretary of State November 3, 1997.

BEFORE THE BOARD OF OIL AND GAS CONSERVATION
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rules 36.22.1303, 36.22.1308, and 36.22.1408 pertaining to well plugging requirement, plugging and restoration bond, and financial responsibility	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons

On September 22, 1997, the department published a notice at page 1646 of the Montana Administrative Register, Issue No. 18, of the proposed amendment of the above-captioned rules. The notice of proposed agency action is amended as follows because the required number of persons designated therein has requested a public hearing.

1. On December 18, 1997, at 8:00 a.m., a public hearing will be held in the Petroleum Club of the Sheraton Hotel in Billings, Montana, to consider the amendment of rules 36.22.1303, 36.22.1308, and 36.22.1408 pertaining to well plugging requirement, plugging and restoration bond, and financial responsibility.

2. 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 Thomas P. Richmond, Administrator, Oil and Gas Conservation Division, 2535 St. John's Avenue, Billings, Montana, 59107, and must be received no later than December 15, 1997.

3. Dave Ballard, Chairman of the Board, has been designated to preside over and conduct the hearing.

4. The Board of Oil and Gas Conservation will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the division no later than one week before the date of the hearing you plan to attend to advise us of the nature of the accommodation that you need. Providing an interpreter for the deaf or hearing impaired may require more time. Please contact Thomas P. Richmond, Administrator, Oil and Gas Conservation Division, 2535 St. John's Avenue, Billings, Montana, 59107, telephone (406) 656-0040, no later than December 11, 1997.

5. The Department of Natural Resources and Conservation maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list have a right

to be placed on the department's list. A person must make a written request which includes the name and mailing address of the person to receive notices and specifies whether the person wishes to receive notices of administrative rules regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources or combination thereof. Such written request may be mailed or delivered to the Department of Natural Resources and Conservation, 1625 11th Avenue, P.O. Box 201601, Helena, MT 59620-1601, faxed to the office at (406) 444-2684, or may be made by completing a request form at any rules hearing held by the Department of Natural Resources and Conservation.

BOARD OF OIL & GAS CONSERVATION

By: _____
THOMAS P. RICHMOND, ADMINISTRATOR

_____
DON MacINTYRE, RULE REVIEWER

Certified to the Secretary of State on November 3, 1997.

BEFORE THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES OF THE STATE OF MONTANA

In the matter of the amendment of 20.3.502, 20.3.503, 20.3.508 and 20.3.509 pertaining to chemical dependency educational courses	)	NOTICE OF PROPOSED AMENDMENT
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On December 17, 1997, the Department of Public Health and Human Services proposes to amend 20.3.502, 20.3.503, 20.3.508 and 20.3.509 pertaining to chemical dependency educational courses.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on December 1, 1997, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

2. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

20.3.502 CHEMICAL DEPENDENCY EDUCATIONAL COURSES: DEFINITIONS In addition to terms defined in 53-24-103, MCA and ARM 20.3.202, the following are defined:

(1) remains the same.

(2) "ACT (assessment, course, treatment) program" means an assessment, educational course and/or referral to treatment. This is a three part process designed to assess, educate and to recommend treatment placement as appropriate for persons convicted of driving under the influence of intoxicating substances, UDD, MDD and third or subsequent MIP.

(3) through (5) remains the same.

(6) "Assessment/evaluation instruments" are those diagnostic and screening tools utilized primarily to provide information for the counselor to assist in making a determination of the severity of an offender's chemical use. A list of suggested assessment/evaluation instruments may be obtained from the Department of Public Health and Human Services, ~~Alcohol and Drug Abuse Program~~ Addictive and Mental

Disorders Division, P.O. Box ~~4210~~ 202951, Helena, MT ~~59604-4210~~ 59620-2951.

(7) through (11) remain the same.

(12) "DUI" means driving under the influence and, for the purpose of these rules, includes violation of an offense under ~~either~~ 61-8-401 ~~or 61-8-406~~, MCA.

(13) through (17) remain the same.

(18) "MIP (minors in possession)" means minors convicted of possession of an intoxicating substance, or unlawful attempt to purchase an intoxicating substance under 45-5-624, MCA~~; or operation of a vehicle by a person under 21 years of age with an alcohol concentration of 0.02 or more under 61-8-410, MCA~~.

(19) through (22) remain the same.

(23) "Offender" means a person convicted of DUI/per se/UDD, MIP, or a dangerous drug misdemeanor and sentenced to complete a chemical dependency educational course provided by a state approved program and/or treatment provided by a certified chemical dependency counselor.

(24) remains the same.

(25) "Per se" means for the purpose of this sub-chapter, ~~driving with an excessive alcohol concentration and includes committing an offense under~~ violating the provisions of 61-8-406, MCA, operation of vehicle by a person with alcohol concentration of 1.10 or more.

(26) "UDD" means underage drinking and driving, the operation of a vehicle by a person under the age of 21 with an alcohol concentration of 0.02 or more. For the purpose of these rules, this includes violation of an offense under 61-8-410, MCA.

(26) remains the same in text, but is renumbered (27).

AUTH: Sec. 53-24-204 and 53-24-208, MCA
IMP: Sec. 53-24-204, 53-24-208, and 61-8-401, MCA

20.3.503 CHEMICAL DEPENDENCY EDUCATION COURSES: GENERAL EDUCATIONAL COURSE REQUIREMENTS (1) This program is for persons convicted of a DUI/per se/UDD or misdemeanor dangerous drug offense and sentenced under 61-8-410, ~~61-8-714, 61-8-722~~ 61-8-732, or Title 45, chapter 9 or 10, MCA to complete an alcohol or other dangerous drugs information course provided by a state approved program and which may include alcohol or drug treatment or both in accordance with state approved placement criteria and provided by a certified chemical dependency counselor.

(2) The ACT program is a three part process which includes:

(a) Assessment, which is the evaluation component utilized to identify chemical use patterns of DUI/per se/UDD offenders and to make appropriate recommendations for education and/or treatment. Misdemeanor dangerous drug offenders may complete the assessment with the ACT program or a state approved treatment program which offers an MDD education program.

(2)(b) and (c) remain the same.

(i) First DUI/per se/UDD offenders assessed as chemically dependent, all second and subsequent DUI/per se/UDD offenders and MDD offenders ordered by the court must complete all three components of the ACT program. The treatment provided must be at a level appropriate to the offender's alcohol/drug problem, based upon patient placement criteria as defined in ARM 20.3.208.

(3) through (3)(c) remain the same.

AUTH: Sec. 53-24-204, 53-24-208 and 53-24-209, MCA
IMP: Sec. 45-9-208, 45-10-108, 61-8-410, 61-8-714, 61-8-722, and 61-8-732, MCA

20.3.508 CHEMICAL DEPENDENCY EDUCATIONAL COURSES: REQUIRED SERVICES (1) through (1)(c) remain the same.

(d) an evaluation and recommendation report must be submitted by a certified chemical dependency counselor to the sentencing court if a first DUI/per se/UDD offender is diagnosed as chemically dependent and recommended for treatment or the DUI/per se/UDD offender has a second or subsequent offense.

(1)(d)(i) and (ii) remain the same.

(2) The process for recommending treatment shall be as follows:

(a) If a DUI/per se/MDD/UDD offender is assessed as chemically dependent or is a repeat DUI/per se/UDD offender, recommendations for treatment must be developed by the program counselor in accordance with state approved patient placement rules. The offender may disagree with the program recommendations and seek an independent assessment from a certified chemical dependency counselor. The determination from this assessment must be based on diagnosis and patient placement rules adopted by the department of public health and human services. Offenders must be advised of this right by the program.

(2)(b) remains the same.

(c) Pursuant to ~~61-8-714~~ 61-8-732, MCA, the sentencing court must order compliance with treatment recommendations in the case of first DUI/per se/UDD offenders assessed as chemically dependent or repeat DUI/per se/UDD offenders. When the offender has disagreed with recommendations and obtained a second opinion, the sentencing court shall order the appropriate level of treatment as determined by one of the counselors.

(2)(d) through (f) remain the same.

AUTH: Sec. 53-24-204, 53-24-208 and 53-24-209, MCA
IMP: Sec. 45-9-208, 45-10-108, 61-8-714, 61-8-722 and 61-8-732, MCA

20.3.509 CHEMICAL DEPENDENCY EDUCATIONAL COURSES: COURSE CURRICULUM (1) Course curriculum shall include the following

(specific content of the topic areas below may be found in the ACT curriculum manual):

(a) The DUI/UDD and/or MDD educational component must include a minimum of four educational sessions totaling at least 8 hours.

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

AUTH: Sec. 53-24-204, 53-24-208 and 53-24-209, MCA
IMP: Sec. 45-9-208, 45-10-108, 61-8-401, 61-8-714, 61-8-722 and 61-8-732, MCA

3. The first two proposed changes listed above are necessary to effectuate the amendments made in HB339 and HB559 passed in the 1997 legislative session.

HB339 was amended to add new penalties for those persons under the age of 21 convicted of driving a vehicle with an alcohol concentration of 0.02 or more. Section 61-8-410, MCA, now requires the person to comply with the alcohol information course and alcohol and drug treatment provisions in 61-8-732, MCA (these provisions were formerly found in 61-8-714). The addition of the underage drinking and driving (UDD) offenders to the assessment, course, treatment (ACT) program does not require any changes to the structure of the existing program.

HB559 was amended by taking the provisions for the ACT program out of 61-8-714 and re-codifying them in a new section 61-8-732, MCA. Since the actual content was not changed, but restructured for better understanding, only the reference to the MCA code needs to be changed in the administrative rule. The amendment does not change the format of the ACT program.

The third proposed change is necessary to update the administrative rules with the correct name and address where the "Assessment/evaluation instruments" may be obtained. When the current rules were adopted, the reorganization of the Department of Public Health and Human Services was taking place and the Addictive and Mental Disorders Division had not yet been formed.

4. Interested persons may submit their data, views or arguments concerning the proposed action in writing to Debbie G. Allen, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than December 15, 1997. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. If a person who is directly affected by the proposed action wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written

request for a public hearing and submit such request, along with any written comments to Debbie G. Allen, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than December 15, 1997.

6. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those who are directly affected by the proposed action, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date and a notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 20 based on the number of ACT programs affected by rules covering chemical dependency educational courses.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State November 3, 1997.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of 46.8.1510 pertaining to exceptions to placement rules for developmental disabilities service positions	)))))	NOTICE OF PUBLIC HEARING OF PROPOSED AMENDMENT

TO: All Interested Persons

1. On December 9, 1997, at 2:00 p.m., a public hearing will be held in the Auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of 46.8.1510 pertaining to exceptions to placement rules for developmental disabilities service positions.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on December 1, 1997, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

2. The rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

46.8.1510 PLACEMENT DETERMINATIONS: CATEGORICAL EXCEPTIONS TO PLACEMENT RULES (1) through (2)(a) remain the same.

(b) a budgeting decision in the legislative process is made to expand services so as to serve 4 or more persons who are committed to the Montana developmental center, the eastmont human services center, or the Montana state hospital or who are residing in a nursing facility but for whom appropriate services can be provided in a community setting; or

(c) a person is placed out of a nursing facility in accordance with the requirements of federal law into a service position which is funded with federal monies that are specifically available for the provision of services to that particular person; ; or

(d) a budgeting decision in the legislative process is made to expand services so as to serve 4 or more persons who are on a waiting list for services, who reside in the community, and who are not committed to the Montana developmental center,

eastmont human services center, or the Montana state hospital.

(3) remains the same.

~~(4) A service position arising out of a legislative decision in the budgeting process to expand services so as to serve 4 or more persons who are on a waiting list for services and who are not committed to the Montana developmental center, the eastmont human services center, or the Montana state hospital is not available to a person who is committed to one of those facilities. Placement into one of these positions of noncommitted persons is subject to the screening process specified otherwise in this subchapter.~~

~~(5)~~ (4) A service position used to provide services for the purposes stated in ~~subsections~~ (2)(a), (2)(b) and ~~(4)~~ (2)(d) will be available for those purposes for a period not to exceed 1 year in duration. After the 1 year period, the service position when it may come open will be available to any person who is selected for it in accordance with the screening process otherwise specified in this subchapter.

AUTH: Sec. 53-2-201, 53-20-203 and 53-20-204, MCA
IMP: Sec. 53-20-203 and 53-20-209, MCA

3. The proposed amendments are necessary to appropriately implement both the legislative direction to expand supported living and supported work opportunities in the community developmental disabilities system and the administrative decision to proceed with this expansion of services to a large number of persons in an individualized manner.

The rules of subchapter 15 of ARM Title 46, chapter 8, generally provide the procedures and criteria to govern the placement of persons into community services for persons with developmental disabilities. ARM 46.8.1510 provides certain exceptions to the applicability of the general procedures and criteria. Those exceptions are necessary for implementing legislative and administrative decisions to facilitate service expansion for the movement of large numbers of people into new or expanded service opportunities.

The proposed amendments would modify the categorical exceptions in ARM 46.8.1510 to further accommodate a budgeting decision in the appropriation process. The 1997 Legislature provided for some growth in supported living and supported work service opportunities in the community service system for persons with developmental disabilities. This expansion is intended to provide opportunities to persons who are without services and who have indicated a desire to obtain these services.

The developmental disabilities program in implementing the legislated expansion of supported living and supported work services resolved to develop and provide services in an

individualized manner. This approach differs in significant ways from the manner in which expanded services have been developed in the past under the current language of the exception provision and been made available to persons residing in the community. In the past service expansion for persons who were without services generally proceeded from the development of a service placement to a determination in the usual manner of a person who appeared to be most in need of and appropriate for the placement. The process to be implemented by this rule change would provide that: 1) persons desiring and in need of supported living and supported work services be identified; and 2) that proposed service plans be developed to determine for whom service development could successfully proceed.

4. Interested persons 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 Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than December 15, 1997. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Dawn Sliva
Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State November 3, 1997.

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

In the Matter of Proposed Adoption of Rules Pertaining to IntraLATA Equal Access Presubscription.	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF INTRALATA EQUAL ACCESS PRESUBSCRIPTION RULES

TO: All Interested Persons

1. On December 18, 1997 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 the implementation of intraLATA dialing parity in Montana. This subchapter shall be construed to secure the just, speedy and inexpensive determination of every action. All matters before the Montana public service commission relating to dialing parity implementation on or after the date of adoption of these rules shall be governed by this subchapter.

(2) The purpose of this subchapter is to provide guidelines and procedures for the commission to carry out its duties pursuant to the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). The 1996 Act imposes on all local exchange carriers the duty to provide dialing parity to competing providers of telephone toll service. 47 USC 251(b)(3). The commission imposes this subchapter for competition within intraLATA areas in order to encourage competitive entry, 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. DEFINITIONS (1) "Bona fide request," for purposes of this subchapter, is a written request submitted by a telecommunications carrier, other than the primary intraLATA toll carrier, to a local exchange carrier (LEC) for intraLATA equal access presubscription service in an exchange or exchanges.

(2) "IntraLATA equal access" or "intraLATA dialing parity" means that all toll carriers are able to provide telecommunications services in such a manner that customers have the ability to route intraLATA calls automatically without the use of any access code, to the telecommunications services provider of the customer's designation from among two or more telecommunications services providers, including the incumbent local exchange carrier. From a customer perspective, this means that the local exchange carrier shall provide all telecommunications carriers operating in an intraLATA equal access presubscription office with dialing arrangements and other service characteristics that are equivalent in type and quality to that provided to the primary toll carrier in its provision of toll service.

(3) "Letter of agency" or "letter of authorization" means an authorization which meets the requirements of ARM 38.5.3802 and 69-3-1303, MCA.

(4) "Local exchange carrier" means any carrier that is engaged in the provision of telephone exchange service or exchange access, but does not include carriers that provide commercial mobile radio service under 47 USC 332(c) unless the federal communications commission (FCC) makes a specific finding that such service should be included in the definition of local exchange carrier.

(5) "Presubscription" is customer preselection of the carrier to handle 1+/0+ toll calls without having to dial an access code (i.e. 10XXX or 101XXXX).

(6) "Primary (or presubscribed) interexchange carrier" or "PIC" means the telecommunications carrier with whom a customer may presubscribe to provide 1+/0+ toll service without the use of access codes, following equal access presubscription implementation.

(7) "Registered local exchange carrier" means a carrier that has registered with the commission to provide local exchange service within Montana using its own facilities or those of another carrier or entity.

(8) "2-PIC" is the equal access presubscription option that affords customers the opportunity to select one telecommunications carrier for all interLATA 1+/0+ toll calls, and at the customers' options, to select another telecommunications carrier for all intraLATA 1+/0+ toll calls. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE III. EQUAL ACCESS PRESUBSCRIPTION IMPLEMENTATION

(1) U S west communications, inc. is required to implement intraLATA equal access presubscription in its Montana territory when it begins providing in-region interLATA services pursuant to 47 USC 271 or on February 8, 1999, whichever is earlier. Any grant of authority to U S west communications, inc. to provide in-region interLATA services pursuant to 47 USC 271 will not affect the timing requirements applied to other carriers in the provision of intraLATA

dialing parity. None of the provisions of (2) below apply to U S west communications, inc.

(2) Other local exchange carriers shall, either in response to a bona fide request or on their own initiative, provide intraLATA dialing parity where technically and economically feasible using the 2-PIC method. A carrier that begins providing facilities-based local services after adoption of these rules must have on file a commission-approved plan for the implementation of intraLATA equal access before the carrier begins providing local exchange service.

(a) Within six months after receipt of a bona fide request pursuant to (2), local exchange carriers shall complete implementation of intraLATA dialing parity.

(b) Local exchange carriers may negotiate implementation schedules that differ from the requirements in (2) with the agreement of all interexchange carriers that make bona fide requests pursuant to (2) within 90 days of the first bona fide request.

(c) A local exchange carrier may petition the commission for a waiver of the requirement to provide intraLATA dialing parity consistent with (2) on the grounds that a request it has received is not bona fide, that compliance is unduly economically burdensome or is technically infeasible, and that the waiver is consistent with the public interest. The commission, after notice and opportunity for hearing, may grant a waiver upon such a showing.

(d) A local exchange carrier may petition for an extension of the timing requirements of (2) on the grounds that equal access presubscription implementation cannot reasonably be provided in the given exchange(s) within the required time frame. The commission, after notice and opportunity for hearing, may grant such extension(s) for a reasonable period of time upon such a showing.

(e) A local exchange carrier may require a performance bond be established, in an amount approved by the commission, which would be forfeited by the requesting company in the event such company fails to provide intraLATA toll services to the particular exchange within the six months following implementation of equal access and the commission finds good cause exists for forfeiture. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE IV. CUSTOMER EDUCATION AND PRESUBSCRIPTION PROCEDURES (1) In exchanges with existing interLATA dialing parity, the local exchange carrier shall provide written information to customers, at least 30 days prior to its scheduled implementation, describing intraLATA dialing parity and explaining presubscription procedures. Any customer commencing service after that mailing, but before implementation of equal access presubscription, shall also receive a copy of the written information from the local exchange carrier providing service.

(2) In exchanges without interLATA equal access presubscription, the local exchange carrier shall furnish customers with information at least 60 days prior to implementation of dialing parity. The information must provide clear directions and forms to allow customers to presubscribe to their selected primary intraLATA carrier.

(3) Customers who commence service after the initial intraLATA equal access presubscription implementation is completed in their end office shall be informed of their carrier selection options at the time that service is requested and may select both their primary interLATA and intraLATA carriers or be assigned no PIC status and be required to use access codes to place toll calls until a PIC(s) is selected.

(4) Informational materials, forms and scripts developed for use in compliance with this rule shall be complete, clear, and unbiased. The local exchange carriers or primary toll carriers shall file these materials, forms, and scripts with the commission not more than 60 days after the receipt of a bona fide request, denial of waiver, or the expiration of the waiver, for intraLATA equal access presubscription so that they can be reviewed by the commission prior to commission approval or modification. The carrier shall promptly make any changes required by the commission before using the materials, forms or scripts. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE V. NOTICE AND IMPLEMENTATION (1) Not more than 15 days after receipt of a bona fide request for implementation of intraLATA dialing parity, unless an implementation waiver is requested consistent with Rule III(2)(c), the local exchange carrier or primary toll carrier shall provide notice of such request to the commission. The notice shall include information concerning the scheduled implementation dates as well as the ordering procedures, terms and conditions for an interexchange carrier to participate. If the local exchange carrier intends to seek a waiver, the notice shall include a brief description of the rationale for such. A copy of the notice shall be served on the person requesting dialing parity and on the Montana consumer counsel. The commission will provide notice using its general procedures.

(2) Not more than 45 days after receipt of a bona fide request for intraLATA equal access presubscription, if no waiver has been sought, the local exchange carrier or primary toll carrier shall make available to all registered carriers that intend to subscribe to intraLATA equal access presubscription a complete list, which may be provided electronically, of the primary toll carrier's customers by name, telephone number and address. The primary toll carrier shall also update the list upon request. Any charges for such lists shall be cost-based and non-discriminatory. The registered carrier shall use such lists only for purposes of presubscription solicitation exclusively to its own end user

subscribers of record and no longer than 180 days after implementation of dialing parity. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE VI. BALLOTING (1) In exchanges with existing interLATA dialing parity, balloting will not be used to determine each customer's primary intraLATA carrier.

(2) In exchanges where interLATA dialing parity is not in place prior to receipt of a bona fide request for intraLATA equal access presubscription, balloting for both interLATA and intraLATA equal access presubscription shall be conducted concurrently. The balloting shall be carried out in accordance with the requirements for interLATA equal access presubscription established by the federal communications commission in CC Docket 83-1145, Phase I.

(3) Interexchange carriers intending to be included in all informational materials of ballots furnished to customers in advance of initial implementation of intraLATA and interLATA equal access presubscription to be implemented concurrently in any exchange shall advise the local exchange carrier or primary toll carrier in writing at least 90 days prior to the scheduled implementation date. The local exchange carrier or primary toll carrier shall then include the interexchange carrier in all materials and forms listing providers. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE VII. CHARGES (1) No charge shall be imposed for a customer's initial selection of a primary intraLATA carrier. Each local exchange carrier shall allow customers to change their selection of a primary intraLATA carrier one time only at no charge within 90 days following implementation of intraLATA dialing parity in an exchange. Any charges for subsequent changes shall be the same as those imposed for changing interLATA carriers.

(2) In cases in which customers change both their intraLATA PIC and their interLATA PIC at the same time to either the same carrier or to separate carriers, a single PIC change charge shall apply.

(3) No PIC change order shall be submitted to a local exchange carrier unless and until the order has been confirmed in accordance with 69-3-1303, MCA and the rules adopted by the commission in ARM 38.5.3801 through 38.5.3810. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE VIII. SCOPE OF INTRALATA EQUAL ACCESS PRESUBSCRIPTION (1) 0-, N11 type calls (e.g. 411, 611 and 911), and 976 calling will continue to be processed by the local exchange carrier following the implementation of intraLATA equal access presubscription in any exchange. IntraLATA 0+ and 1+ calls will be routed to the customer's primary intraLATA carrier. Calls using dialing protocols such

as 500, 700, 800 or 900 to route them to the appropriate carrier are not subject to intraLATA presubscription.

(2) Customers' intraLATA calling shall continue to be provided by their current primary intraLATA carrier until the customer selects a different primary intraLATA carrier.

(3) The application of intraLATA equal access presubscription shall extend to semi-public and public payphones within the converting exchanges and the premises owner or lessee shall be responsible for the selection of the intraLATA PIC(s) for payphones. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE IX. EQUAL ACCESS PRESUBSCRIPTION COST RECOVERY

(1) Each local exchange carrier may recover through its switched access rates the additional costs it incurs to provide intraLATA equal access presubscription. Such charge shall be calculated on an annual basis by dividing the intraLATA equal access presubscription costs incurred by the local exchange carrier by the projected annual total of all switched intraLATA originating minutes of use (including the local exchange carrier's) to arrive at a per minute of use rate. The per minute of use rate can be recovered on switched intraLATA minutes carried by interexchange carriers through the local exchange carrier's switched access rates. Local exchange carriers must impute the equal access implementation costs attributable to its own intraLATA minutes of use in its end user rates. Costs recoverable by the local exchange carrier for the implementation of intraLATA equal access presubscription include initial incremental expenditures for hardware and software related to the provision of equal access presubscription that would not be required to upgrade the switching capabilities of the office absent the provision of equal access presubscription. Those costs also may include administrative costs incurred in the approved customer education and presubscription efforts, training costs related to intraLATA dialing parity, modifications to information billing systems to accomplish intraLATA dialing parity, and the cost of capital for the duration of the recovery period.

(2) The costs of intraLATA equal access presubscription implementation shall be recovered over a three-year period, or at the option of the local exchange carrier and approval of the commission, some costs may be recovered over the three-year period and some costs may be expensed in the current year if they can be reasonably expected to occur only in the first year.

(3) The costs of intraLATA equal access presubscription implementation shall be recovered from all providers of intraLATA toll service in the exchange(s) through a charge and imputation of such charge applicable to all switched intraLATA minutes of use originating in the exchange(s) which are subject to intraLATA presubscription.

(4) The cost recovery process shall use periodic true-ups, based upon actual local exchange carrier incurred

presubscription implementation costs and actual traffic volumes subject to the presubscription surcharge, to ensure against either overcollection or undercollection of recoverable costs. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE X. SAFEGUARDS (1) In order to insure that the development of intraLATA competition will not be impeded following intraLATA equal access presubscription the following practices shall be observed by the local exchange carrier toll service provider:

(a) Customers who initiate service in an exchange following the implementation of presubscription should be provided with information concerning their carrier selection options at the time they sign up for service. The material and procedures employed in this process must be competitively neutral and approved by the commission prior to their use.

(b) When handling customer-initiated contacts regarding local service matters such as a change in service, local exchange carrier business office personnel may not engage in promotional efforts for the local exchange carrier's toll service offerings.

(c) When a customer contacts a local exchange carrier's business office to change their PIC from the local exchange carrier to a competitor, the transaction must be handled in a neutral manner (i.e., in the same manner as a PIC change from one competitor to another).

(d) Bills rendered to the customer shall identify the customer's presubscribed carrier(s) in a neutral manner.

(e) Letters of authorization (LOAs) submitted by a competitor prior to intraLATA presubscription implementation shall be accepted no earlier than 60 days prior to implementation. In case of multiple submission of LOAs, the last dated LOA shall be processed. LOAs must conform to ARM 38.5.3801 through 38.5.3810 and 69-3-1304, MCA.

(f) The local exchange carrier shall not assume that customers who have an interLATA PIC freeze on their account prior to implementation of intraLATA presubscription wish to have the freeze extend to intraLATA toll service following intraLATA presubscription implementation. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE XI. DIALING PARITY PLANS (1) Local exchange carriers shall file their toll dialing parity plans carrying out the intraLATA equal access presubscription implementation rules set forth in Rules I through X, within 120 days of the effective date of these rules. Interested parties who wish to comment upon a local exchange carrier's toll dialing parity plan may file comments within 30 days thereafter, and the local exchange carrier may file a reply within 14 days of the filing of such comments.

(2) The local exchange carrier's toll dialing parity plan must describe how Rules I through X will be carried out and include the following:

(a) detailed information explaining how and when carriers will be notified of the local exchange carrier's implementation schedule;

(b) include the language to be used in, and the manner of distribution of, the customer notification letter;

(c) describe the local exchange carrier's anticipated cost of implementation, including the local exchange carrier's specific intraLATA presubscription costs, the vehicle that the local exchange carrier intends to use to recover implementation costs, and the cost recovery time frame; and

(d) describe the proposed incumbent local exchange carrier business office practices and sample scripts that demonstrate how local exchange carrier business office personnel will handle customer-initiated business office contacts with the incumbent local exchange carrier in its role as a local exchange service provider in a competitively neutral manner following implementation.

(3) The implementation plan must provide notice to registered interexchange carriers operating in Montana of the implementation schedule no less than 120 days prior to the actual implementation date. The notice must include the implementation schedule, terms and conditions of participation, and ordering procedures. Following such notification, carriers wishing to participate in the process must respond to the local exchange carrier within 30 days. Only registered telecommunications providers may participate in the implementation.

(4) If the local exchange carrier is seeking a waiver from implementing presubscription in a particular end office in accordance with Rule III(2)(c) and (d), the local exchange carrier is not required to file a toll dialing parity plan. If the waiver is requested based on technical grounds, the local exchange carrier must set forth in such waiver request the nature of the difficulty, the local exchange carrier's plans for resolving the problem, and a statement specifying when the difficulty will be resolved and presubscription implemented. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

4. Rationale: AT&T Communications of the Mountain States, Inc. proposed on April 21, 1995, rules that would require intraLATA equal access in Montana. The Montana Public Service Commission did not act to implement the request due to pending legislation at the federal level which could impact state implementation of equal access in intraLATA toll markets.

Following the adoption of the Telecommunications Act of 1996, the Montana Public Service Commission voted to proceed with the request that it adopt rules for intraLATA equal access (dialing parity) in order to have the appropriate rules in place when federal law permits U S WEST Communications, Inc. (a Regional Bell Operating Company (RBOC) under the 1996 Act) to enter its in-region interLATA toll market. Section

251(b)(3) of the 1996 Act places a duty on all local exchange carriers to provide dialing parity to competing providers of telephone exchange service and telephone toll service. Therefore, the Commission considers it appropriate that rules be adopted which will establish guidelines and procedures for all local exchange carriers when implementing intraLATA dialing parity.

On November 16, 1996 AT&T updated its request for intra-LATA equal access rules to accommodate the changes required from the 1996 federal Act and requested further that its new proposal be formally submitted for rulemaking. The Commission published notice of the proposed rules on February 10, 1997 at pages 299 through 304, issue number 3 of the 1997 Montana Administrative Register. The Commission did not adopt the rules as proposed during the six months following notice, deciding rather to solicit additional comments, republish notice of proposed intraLATA equal access presubscription rules, and conduct a rulemaking hearing prior to adopting such rules. These proposed rules attempt to address all the concerns expressed by the parties throughout this rulemaking proceeding and have been amended to reflect the many comments received from a broad spectrum of industry participants.

5. Interested parties may submit their data, views or arguments concerning the proposed adoption in writing (original and 10 copies) to:

Karen Hammel
Public Service Commission
1701 Prospect Avenue
P.O. Box 202601
Helena, Montana 59620-2601

no later than December 16, 1997. Post-hearing comments will be accepted no later than December 22, 1997.

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.

7. The Public Service Commission maintains a list of persons interested in Commission rulemaking proceedings and the subject or subjects in which each person on the list is interested. Any person wishing to be on the list must make a written request to the Commission, providing a name, address and description of the subject or subjects which the person is interested. Direct the request to the Public Service Commission, Legal Division, 1701 Prospect Avenue, PO Box 202601, Helena, MT 59620-2601.

Dave Fisher
DAVE FISHER, Chairman

CERTIFIED TO THE SECRETARY OF STATE NOVEMBER 3, 1997.

Robin A. McHugh
Reviewed by Robin A. McHugh

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.21.123 related to sick leave	)))	CORRECTED NOTICE OF AMENDMENT

TO: All Interested Persons.

1. On August 18, 1997, the department published a notice at page 1440 of the 1997 Montana Administrative Register, Issue No. 16, of the proposed amendment of the above-captioned rule.

2. The proposal notice incorrectly omitted (3) in rule 2.21.123. The corrected rule amendment reads as follows:

2.21.123 POLICY AND OBJECTIVES (1) Same as proposed.
(2) - (3) Remain the same.
(Auth. 2-18-604, MCA; Imp. 2-18-618, MCA)

3. Replacement pages for the corrected notice of amendment will be submitted to the Secretary of State on December 31, 1997.

BY:

Dal Smilie
Rule Reviewer

Lois Menzies
Director

Certified to the Secretary of State November 3, 1997.

BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 6.6.4101 pertaining to accreditation fees.	)))))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On September 22, 1997, the state auditor and commissioner of insurance of the state of Montana published notice of public hearing on the proposed amendment of Rule 6.6.4101 pertaining to accreditation fees. The notice was published at page 1623 of the 1997 Montana Administrative Register, issue number 18.

2. The agency has amended Rule 6.6.4101 exactly as proposed.

3. No comments or testimony were received.

MARK O'KEEFE
STATE AUDITOR AND
COMMISSIONER OF INSURANCE

By: _____
David L. Hunter
Deputy State Auditor

By: _____
Russell B. Hill
Rules Reviewer

Certified to the Secretary of State on this 31st day of October, 1997.

BEFORE THE CLASSIFICATION REVIEW COMMITTEE
OF THE STATE OF MONTANA

In the matter of the amendment of rule 6.6.8301, concerning updating references to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance, 1996 ed.	)))))	NOTICE OF AMENDMENT

TO: All Interested Persons.

1. On August 18, 1997, the classification review committee published a notice of proposed amendment to rule 6.6.8301 concerning updating references to the NCCI Basic Manual for Workers Compensation and Employers Liability. The notice was published at page 1419, of the 1997 Montana Administrative Register, issue number 16.

2. The classification review committee has amended the rule as proposed.

3. No comments or requests for hearing were received regarding the proposed amendment.

4. The proposed changes to the NCCI Basic Manual for Workers Compensation and Employers Liability become effective as follows:

Item filing B-1345 Automobile Parts and Accessories Store Operation, effective October 1, 1997.

Unnumbered item filed to allow counter employees of Hay, Grain and Feed dealers to be included in the store code of that operation, effective January 1, 1998.

CHRISTY WEIKART, CHAIRPERSON
CLASSIFICATION REVIEW COMMITTEE

By: _____
Christy Weikart
Chairperson

By: _____
Russell B. Hill
Rules Reviewer

Certified to the Secretary of State on the 31st of October, 1997.

BEFORE THE BOARD OF PHARMACY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to fees, internship regulations and pharmacy technicians	))))	NOTICE OF AMENDMENT OF RULES PERTAINING TO FEES, INTERNSHIP REGULATIONS AND PHARMACY TECHNICIANS

TO: All Interested Persons:

1. On September 22, 1997, the Board of Pharmacy published a notice of proposed amendment of rules pertaining to fees, internship regulations and pharmacy technicians at page 1628, 1997 Montana Administrative Register, issue number 18.

2. The Board has amended ARM 8.40.404, 8.40.901 through 8.40.904, 8.40.906, 8.40.1303 and 8.40.1308 exactly as proposed.

3. No comments or testimony were received.

BOARD OF PHARMACY
ANN PASHA, PRESIDENT

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

Ann M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 3, 1997.

BEFORE THE BUILDING CODES BUREAU
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment, repeal and adoption of rules pertaining to the Building Codes Bureau	))))	NOTICE OF AMENDMENT, REPEAL AND ADOPTION OF RULES PERTAINING TO THE BUILDING CODES BUREAU

TO: All Interested Persons:

1. On September 8, 1997, the Building Codes Bureau of the Department of Commerce published a notice of public hearing on the proposed amendment, repeal and adoption of rules pertaining to the Building Codes Bureau, at page 1509, 1997 Montana Administrative Register, issue number 17.

2. The Department has adopted Rules I (8.70.1501)and II (8.70.1502), amended and repealed the rules as proposed except for 8.70.101, and Rules III (8.70.1503) through V (8.70.1505) which are amended and adopted as proposed with the following changes: (authority and implementing sections will remain the same as proposed)

"8.70.101 INCORPORATION BY REFERENCE OF UNIFORM BUILDING CODE (1) through (40) will remain the same as proposed.

~~(41) A copy of the Uniform Building Code, 1994 Edition, as well as the Appendixes incorporated by reference are available from the Building Codes Bureau, Capitol Station, Helena, Montana 59620 or by writing to CABO, 5203 Leesburg Pike, Falls Church, Virginia 22041.~~"

"8.70.1503 BUILDING ACCESSIBILITY (1) will remain the same as proposed.

(a) Subsection 1105.1 General. The first paragraph is amended to read as follows: "When buildings or portions of buildings are required to be accessible, required building facilities shall be accessible as provided in this section. A person or entity may not be required to meet fully the accessibility requirements for buildings, in those rare circumstances where the person or entity can demonstrate that it is structurally impracticable, due to unique characteristics of terrain and/or not practicable in relation to the proposed usage of the building, as determined on a case-by-case basis, at the discretion of the building official."

(b) will remain the same as proposed.

~~(i) Exception: "A required toilet facility for a single occupant and not for the common or public use may be adaptable."~~

(b)(ii) will remain the same as proposed, but will be renumbered (b)(i).

(c) through (f) will remain the same as proposed."

"8.70.1504 SITE ACCESSIBILITY (1) through (4) will remain the same as proposed.

(5) During an alteration to a primary function area of a building or structure, a person or entity is not required to make fully complying alterations to the accessible path of

the cost of the alterations to the primary function area. Disproportionate costs are considered to be an amount that exceeds 20% of the cost of the alteration being performed to the primary function area. If the cost of altering a path of travel is disproportionate as referenced above, the path of travel must be made accessible to the extent possible without incurring disproportionate costs, utilizing the order of priority established in 50-6-214(2)(b), MCA.

(6) Each new building or alteration to an existing building which provides off street parking shall provide at least one accessible parking space with required additional parking spaces as established in Table A-11-A and Section 1107 of Appendix Chapter 11, UBC. One van accessible parking space shall be provided for every eight accessible parking spaces, or fraction thereof. If only one accessible parking space is required, the space shall be a van accessible parking space."

"8.70.1505 GUIDELINES FOR COMPLIANCE WITH REQUIREMENTS OF EXTERIOR ACCESSIBLE ROUTE AND PARKING SPACE (1) through (1)(c) will remain the same as proposed.

(d) Surface material: Surface texture of a route shall be stable, firm and slip-resistant, with all surface coverings securely attached. If carpet is used on the route it must have a firm cushion if a cushion is provided, and a maximum pile thickness of ½ inch. Other acceptable surface materials may include concrete, asphalt, wood and 3/8 inch minus crushed aggregate, with an acceptable bonding agent, compacted to a field density of 95 ~~percent~~% maximum dry density, which can be shown to be sufficiently durable to allow for snow removal and other maintenance activities without affecting surface stability, firmness or slip-resistance. The building official may approve alternate surface materials for accessible routes which will provide compliance with the requirements for surface texture.

(e) Vehicle parking space size per vehicle: 108 inches minimum wide by 216 inches long and shall include 60 inches minimum access aisle. A van accessible parking space shall have a minimum of 96 inches access aisle width. Two accessible parking spaces may share a common access aisle.

(f) will remain the same as proposed.

(g) Signage requirements: Parking spaces shall be designated as reserved by a post or wall mounted sign showing the symbol of accessibility. Such signs shall be located so they cannot be obscured by a vehicle parked in the space and the sign shall be preferably located immediately adjacent to the designated space but no more than 10 feet from the designated space. The sign shall also indicate that a permit is required and state the penalty for a violation as established in 49-4-302 and 49-4-307, MCA.

3. A public hearing was held on October 15, 1997. Oral and written testimony was received. Written comments were also accepted until 5:00 p.m., October 16, 1997. Not all proposals received comment. However, the Department has thoroughly

considered all comments received. Those comments, and the Department's responses thereto, are as follows:

COMMENT NO. 1: This comment pertains to 8.70.101(26), sprinkler systems with inadequate water supplies. Dick Grover, R.H. Grover, Inc., suggested that the four most hydraulically remote heads be utilized for the design area when determining water supply requirements.

RESPONSE: The inclusion of 8.70.101(26) in the notice was a clerical error as no amendments or changes to 8.70.101(26) were proposed. Therefore, since Mr. Grover's comments exceed the scope of the proposal, a modification of 8.70.101(26) as suggested would require separate specific public notice and therefore cannot be included as part of this proposed action.

After considering the comment the Department concludes it does not have the authority to amend this rule as part of this proposal.

COMMENT NO. 2: This comment pertains to 8.70.101(37) and 8.70.101(38) relating to the 18-2-122, MCA, requirement for plans and specifications for public buildings to bear the stamp of a design professional. The Board of Architects objects to a limited authority of the building official to waive the requirement for the design professional seal for minor public building projects as such decisions would amount to the practices of architecture and proper limitations cannot be established. The Board also objects to the definition of public building as being inconsistent with 47 AG Op. 5 (1997) and 50-60-101, MCA.

RESPONSE: Section 18-2-122, MCA, is a statute limited to public contracts. The definition of a public building as used in this limited area of law was clarified by 36 AG Op. 52 (1976) which established that the term public building, as used in this particular law, is a "publicly owned building." With the recent inclusion of a definition of public building in 50-60-101, MCA, which defined a public building as the term is used in the state building code, as "owned or operated by a governmental entity...or a private sector building or facility that is open to members of the public" the distinction between the two entirely different and separate uses of the term needs to be clarified.

The requirement in 18-2-122, MCA, that the state and its political subdivisions only accept plans for public buildings bearing the seal of a design professional is modified by the provision that the project "have a direct bearing on the public health and safety." There are de minimis public building projects which require a building permit and plan review which do not have a bearing on public health and safety. This rule does not require the building official or county attorney to make a judgment as to whether or not a project has a direct bearing on the public health and safety as the waiver is clarified to be discretionary. The rule only clarifies the option is available by statute in those obvious situations where public heath and safety are not an issue.

This issue raises the questions of whether or not a building official should ever reject plans not bearing the seal of a design professional, if not specifically otherwise required by statute, on the basis that the submission of such plans would be the non-licensed practice of architecture or engineering. Such action would place the issue of what constitutes the practice of architecture or engineering before the building official rather than before the appropriate professional board. If the Board of Architects wishes to litigate whether the submission of certain plans not bearing the seal of a licensed architect constitutes the non-licensed practice of architecture, a complaint should be brought through the Board's administrative procedures relating to licensing.

After considering the comments the Department has decided to adopt the amendments of 8.70.101(37) and (38) as proposed.

COMMENT NO. 3: This comment pertains to 8.70.101(41) providing where a copy of the Uniform Building Code can be obtained.

RESPONSE: The Department disclosed at the hearing that this amendment duplicated an existing rule and should not have been included in this notice. Section 8.70.101(22) already provides where copies of the Uniform Building Code can be obtained. The Department has decided not to adopt 8.70.101(41).

COMMENT NO.4: This comment pertains to 8.70.104(3) relating to where a copy of the Model Energy Code may be obtained. Dick Grover, R.H. Grover, Inc., commented that the Department should be responsible for stocking and being able to provide copies of all uniform codes it has adopted. Mr. Grover complains that the Uniform Plumbing Code is out of print and nearly impossible to obtain. Requiring the Bureau to maintain a stock of codes would encourage the adoption of the most recent version of the codes.

RESPONSE: The Model Energy Code, like all other codes adopted by the Department including the 1991 Uniform Plumbing Code, is available directly from the publisher. Publishers will take orders over the telephone utilizing credit cards allowing for immediate shipping, a service the Bureau cannot provide. Mandating the Bureau stock copies of all model codes would result in increased costs and added work load for the Bureau while providing no advantage to the person interested in obtaining a model code book.

After considering the comments, the Department has decided to adopt the amendment to 8.70.104(3) as proposed.

COMMENT NO. 5: This comment pertains to 8.70.105(1)(d)(vi) and 8.70.302(1)(a)(xviii)(F) deleting the requirement for a LPG detection/shutoff valve system. Comments in opposition were received from: Big Sky Chapter of IAPMO of Montana; Duane Steinmetz, Billings Piping Industry JATC; Jo Hawkins, Board of Plumbers; Kevin Augustine, ABCO Supply, Inc.; Dan Mahaffie, CCI Controls; Larry Peg, Mid America Monitor Co.;

Bruce Suenram, Fire Logistics, Inc.; Dennis Gifford, Safe Codes, IHSCC; Marc Rogelstad, Broadwater County Rural Fire District and Montana Fire Chief's Association; Libby Volunteer Fire Department; Lincoln County Rural Fire District 1 Fire Department; City of Helena Fire Department; Sidney Volunteer Fire Department; Kalispell Fire Department; Belgrade Rural Fire Marshal; Billings Fire Department; Frenchtown Rural Fire District; Polson Volunteer Fire Department; and Lake County Fire Association.

The comments in opposition pointed out the dangers associated with below grade LPG appliances. LPG, which is heavier than air, tends to sink into low lying spots and therefore a leaking LPG line or appliance may produce dangerous accumulations of LPG in a basement or other low spot which could result in explosion if accidentally ignited. LPG detection and shutoff valve systems sense LPG leaks and shut off the gas source before dangerous amounts of gas can accumulate. The opponents consider the detection/shut off valve system to be an important and effective safety device which saves lives and protects property and which the Department should continue to require in below grade LPG installations.

Comments in support were received from: Bruce Swieciki, National Propane Gas Association; Baron Glassgow, Montana/Wyoming Propane Association and National Propane Gas Association; Jim Krusemark, Montana Power Co.; Larry Thatcher, Dick Thatcher & Assoc.; and Chris Bowers, Northern Energy.

The comments in support pointed out a high degree of unreliability of the detector/shutoff valve systems currently on the market. There is little industry consistency and many products are either defective out of the box, improperly installed or improperly maintained. The result is extensive customer dissatisfaction and frustration when false alarms shut off gas systems. Many detection/shutoff valve systems are disconnected after repeated false alarms. The potential for property damage arising from the failure of LPG heating systems shut down by a false alarm is especially significant in the winter months. The proponents also presented testimony and evidence that statistics do not support a conclusion that LPG is more dangerous than natural gas and that LPG dissipates more readily than commonly believed. The proponents suggest that special rules relating to LPG installations are not warranted.

RESPONSE: The Department has required detection/shutoff valve systems for below grade LPG installations in single family dwellings since 1992. The popular consensus was this requirement appeared to be a reasonable safety precaution for below grade LPG installations. Evidence and experience now indicate otherwise.

Statistical evidence indicates that LPG is not any more dangerous than natural gas thus special safety devices are not called for. The Montana State Fire Marshal's office in documenting 47 LPG fires, during the years 1988 through 1994, established only 1 as being a below-grade LPG fire for a rate of 2.13%. Natural gas fires for the same period totaled 77,

with 18 of the 77 natural gas fires being below-grade installations for a rate of 23.44%. An April 19, 1995, letter from Don Switzer of the U.S. Consumer Product Safety Commission (CSPS) to the National Propane Gas Association (NPGA) stated that the CSPS Commission "...cannot substantiate a greater risk of accidents with below-grade, compared to above-grade, installation of propane appliances." In 1986, both NPGA and NFPA conducted separate studies of the public's safety experience with below-grade propane gas appliances. Both surveys showed that the actual rate of fires per million installation units is lower for propane (5.7) than for natural gas (6.8).

The general prohibition on the installation of below-grade LPG, found in the UMC and UPC, has been a western regional "pet" code requirement. The Montana Legislature has addressed the below-grade LPG issue in both the 1991 and 1997 sessions, first approving its use in single family dwellings (1991) and then in all occupancies (1997). The National Fuel Gas Code (NFPA 54), the Standard for the Storage and Handling of Liquefied Petroleum Gases (NFPA 58) and the International Mechanical Code do not place any further restriction on below-grade LPG installations than are imposed on above-grade fuel gas and appliance installations, including natural gas installations.

Proponents' written documentation and testimony during the public hearing illustrated that the LPG detectors available on the market today have questionable reliability and their performance has caused the consumer and the installer difficulties. A LPG detector/shutoff valve system creates the potential for frozen water lines by shutting off the heat to the dwelling during a false alarm or power outage.

There does not appear to be substantiating evidence to support that leak detector systems, for below-grade LPG systems, have made enough of a contribution toward the protection and safety of the consumer to warrant the Department requiring their continued installation. The Building Codes Advisory Council, voted unanimously during their July 31, 1997, meeting to support the Department's rules proposals regarding below-grade LPG.

After considering the comments, the Department has decided to adopt 8.70.105(1)(d)(vi) and 8.70.302(1)(a)(xviii)(F) as proposed.

COMMENT NO. 6: This comment pertains to 8.70.302(1)(a)(xviii) deleting the reference to Chapter 12, Uniform Plumbing Code and replacing it with Appendix B, Chapter 13, Uniform Mechanical Code relating to fuel gas piping. Comments in opposition were received from Big Sky Chapter of IAPMO of Montana; Jo Hawkins, Board of Plumbers; John Halliwill, IAPMO; and Duane Steinmetz, Billings Piping Industry JATC. One reason presented for the opposition was that many plumbers installed fuel gas piping as part of their business. For convenience of these plumbers the fuel gas piping section of the Uniform Plumbing Code should continue to be utilized.

The other reason presented is that the Uniform Plumbing Code defines the plumbing system as including the fuel gas piping so that the deletion of the fuel gas piping section in the Uniform Plumbing Code is not warranted.

RESPONSE: Section 37-69-101(7), MCA, defines "plumbing system" to mean "all potable water supply and distribution pipes, plumbing fixtures and traps, drainage and vent pipes and building drains....." By state law fuel gas piping is not part of the field of plumbing. How the Uniform Plumbing Code defines plumbing is irrelevant. The fact that the Uniform Plumbing Code is in conflict with Montana law on this point is sufficient basis to mandate this change.

The standard for fuel gas piping adopted by the Department is found in the Uniform Mechanical Code. At one time the Uniform Plumbing Code standards for fuel gas piping correlated with the standards found in the Uniform Mechanical Code. However, this correlation no longer exists and the two codes have diverged. In order to bring the Uniform Plumbing Code up to the standards of the Uniform Mechanical Code, the Department would have to maintain an awkward and often confusing amendment process by which the Uniform Plumbing Code is amended. This amendment process can be simply avoided by utilizing the Uniform Mechanical Code as the standard on the subject. Plumbers are not the only group of professionals who install fuel gas piping. Fuel gas piping is also installed by propane and utility companies, and HVAC installers. The convenience of plumbers not to have to buy the Uniform Mechanical Code for the non-plumbing aspects of their business does not justify the use of a code which does not meet the standards required by the Department for fuel gas piping.

After considering the comments, the Department has decided to adopt the amendment of 8.70.302(1)(a)(xviii) as proposed.

COMMENT NO. 7: This comment pertains to 8.70.1503 relating to building accessibility. Comments regarding improvement to the proposed new rule were received from Michael Regnier, Coalition of Montanans Concerned with Disabilities; Bob Maffit; and Vicki Turner, Montana Statewide Independent Living Council. Concern was expressed with the provisions that allowed for less than full compliance with accessibility requirements depending on impracticality, usage or unique characteristics of the terrain. It was suggested that these exceptions could be abused to avoid compliance. A comment was made to define the term "adaptable" as used in (1)(b)(i). Comment was made questioning the need for requiring urinals as referenced in (1)(d) and (e). Comment was made that non-required fixtures should be accessible as provided in the ADA Accessibility Guidelines.

RESPONSE: The Department recognizes the concern that allowing building official discretion can result in avoidance of statutory requirements. This concern is not limited to handicap access issues but is found throughout the code. The Department is very familiar with the reality of applying a "one size fits all" rule. In a state as big and varied as Montana a

regulatory agency simply cannot anticipate all the potential special and unique circumstances which will arise. Throughout the code, building officials are generally allowed a limited degree of discretion to review unique situations and make adjustments which might not comply with the letter of the code but are certainly within the overall intent of the code. In response to the concern expressed, (1)(a) will be amended to clarify that less than full compliance would be a unique circumstance thus giving direction to the building official to be conservative in the analysis of what constitutes a basis to allow less than full compliance.

In reviewing (1)(b)(i) the Department concludes that the whole sentence is too vague, is not necessary and therefore will not be adopted.

The reference to the requirement of a urinal is a health rather than convenience issue and the Department believes it is important to retain. Subsection (1)(d) and (e) will not be modified.

As to whether non-required facilities should be accessible, the Department believes its authority to enforce accessibility rules is limited to only those facilities for which it has the statutory authority to require in the first place. The disclaimer in 50-60-212, MCA, clearly points out the distinction between minimum building code accessibility requirements enforced by the Department and ADA compliance. The example of the non-accessible shower in a required accessible bathroom may not pass ADA muster but does nonetheless meet building code accessibility requirements. Subsection (1)(c) will not be modified.

COMMENT NO. 8: This comment pertains to 8.70.1504 relating to site accessability. Comments suggesting improvement to the proposed new rule were received from Michael Regnier, Coalition of Montanans Concerned with Disabilites. Concern was expressed that subparagraph (5) did not fully reflect the provisions of 50-60-214(2)(b), MCA, relating to disproportionate costs of providing for site accessability and that subparagraph (6) did not fully clarify Table A-11-A and Section 1107, Appendix Chapter 11, UBC regarding the number of regular and van accessible parking spaces.

RESPONSE: The lack of clarity is recognized and the proposed subsections are modified accordingly.

COMMENT NO. 9: This comment pertains to 8.70.1505 relating to site accessiblity guidelines. Comments suggesting improvement of the proposed new rule were received from Michael Regnier, Coalition of Montanans Concerned with Disabilities, Bob Maffit, and Vicki Turner, Montana Statewide Independent Living Council. Concern was expressed that the guidelines listed may be misconstrued to be an all inclusive list of site accessability requirements. Concern was also expressed that crushed aggregate surfaces could not withstand snow removal and weathering and would loose their surface integrity and usefulness for access. A comment was also made that the rule

appeared to require carpet pads if carpet was used. It was also pointed out there was no parking space dimension provided for vans. Finally, accessible parking signage problems were raised.

RESPONSE: The Department believes the specific reference that "the following guidelines...are not inclusive of all means for achieving compliance" is sufficiently clear to avoid confusion over the intent of the guidelines and will not modify the language. The Department recognizes the concern with the use of aggregate surfaces but also believes certain aggregate materials can be sufficiently durable to withstand weathering and snow removal and could play an important role in providing for cost efficient accessible surface. Subparagraph (1)(d) is modified to clarify the requirement that the aggregate must be properly designed to withstand snow removal and maintenance. Subparagraph (1)(d) is modified to clarify padding is not required for carpet. Subparagraph (1)(e) is modified to provide for a dimension for a van parking place. Finally subparagraph (1)(g) is modified to clarify signage requirements.

BUILDING CODES BUREAU OF THE
DEPARTMENT OF COMMERCE

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 3, 1997.

BEFORE THE HARD-ROCK MINING IMPACT BOARD
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of a rule pertaining to the administration of the Hard-Rock Mining Impact Act	)))	NOTICE OF AMENDMENT OF ARM 8.104.203A PERTAINING TO THE ADMINISTRATION OF THE HARD-ROCK MINING IMPACT ACT

TO: All Interested Persons:

1. On August 4, 1997, the Hard-Rock Mining Impact Board published a notice of proposed amendment of the above-stated rule at page 1337, 1997 Montana Administrative Register, issue number 15.

2. The Board has amended the rule exactly as proposed.

3. No comments or testimony were received.

HARD-ROCK MINING IMPACT BOARD

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

Ann M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 3, 1997.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of rule 17.30.716 to simplify review of individual sewage systems under the nondegradation policy.	)))))	NOTICE OF AMENDMENT OF RULE

(Water Quality)

To: All Interested Persons

1. On July 7, 1997, the Board published notice of proposed amendment of ARM 17.30.716, at page 1133 of the 1997 Montana Administrative Register, Issue No. 13.

2. The Board amended the rule as proposed with the following changes (new material is underlined; material to be deleted is interlined):

17.30.716 CATEGORIES OF ACTIVITIES THAT CAUSE NONSIGNIFICANT CHANGES IN WATER QUALITY (1) In addition to the activities listed in 75-5-317, MCA, the following categories or classes of activities have been determined by the department to cause changes in water quality that are nonsignificant due to their low potential for harm to human health or the environment and their conformance with the guidance found in 75-5-301, MCA:

(a) a change in water quality resulting from the use of an individual sewage system if:

(i)-(ii) Same as proposed.

(iii) for a sewage system located on a lot that is less than 20 acres in area, the existing concentration of nitrate as nitrogen in the ground water in the uppermost aquifer beneath the lot is less than 2.0 mg/L and there is no evidence of nitrate concentrations above 2.0 mg/L in ground water in the same aquifer within 1320 feet of the exterior boundaries of the lot;

(iv) Same as proposed.

(v) ~~bedrock units, if present above the uppermost aquifer, are not fractured;~~

~~(vi)~~ the system serves only a single domestic living unit that is not within a major subdivision; and

(vii) the system meets the following criteria:

(A) for a system located on an individual lot that is 1 acre in area or larger:

(I) the depth to the uppermost aquifer or fractured bedrock unit beneath the site is greater than 100 feet; and

(II) Same as proposed.

(B) for a system located on an individual lot 2 acres in area or larger:

(I) the depth to the uppermost aquifer or fractured bedrock unit beneath the site is greater than 50 feet; and

(II) Same as proposed.

(C) for a system located on an individual lot 5 acres in

area or larger:

(I) the depth to the uppermost aquifer or fractured bedrock unit beneath the site is greater than 30 feet; and

(II) Same as proposed.

(D) for a system located on an individual lot that is 20 acres in area or larger:

(I) the depth to the uppermost aquifer or fractured bedrock unit beneath the site is greater than 20 feet; and

(II) Same as proposed.

(2) Same as proposed.

3. The "Notice of Public Hearing" specified the reasons for adoption and the Board received the following comments concerning the amendment. Board responses follow:

Comment 1: A commentor stated that he and his wife own a 1.6 acre parcel of land near Billings. He believes that the current regulations for individual sewage systems make it cost prohibitive for him and his wife to build a home on their property. He believes that the proposed categorical exemptions would make it financially feasible for him to build a home on this land.

Response: Comment noted.

Comment 2: Lewis & Clark County Water Quality District testified in opposition to the proposed rule amendments. The district's testimony indicated that there is evidence of significant water quality degradation due to elevated nitrate levels in the Helena valley aquifer and surrounding bedrock aquifers. The district is concerned that the categorical exemptions in the proposed rule amendment will increase degradation to these aquifers.

Response: On the basis of the comment, it appears that data collected by Lewis & Clark County indicate that the Helena aquifer is being impacted by increasing levels of nitrate. Although specific concentrations are not cited, the nitrate concentrations are likely above 2.0 mg/L to be considered "...continued degradation of the Helena valley and surrounding bedrock aquifers". Under the proposed rule at ARM 17.30.716 (1)(a)(iii), lots that are less than 20 acres would not qualify for the exemption where nitrate levels are greater than or equal to 2.0 mg/L. For this reason, the categorical exclusions will not apply to aquifers that are already impacted by significant levels of nitrate. Therefore, adopting the exclusions will not result in an increase in nitrate in impacted aquifers. In order to address this concern and ensure that the categories will not be applied in impacted aquifers, the Board is modifying the proposed rule to require evidence that nitrate levels do not exceed 2.0 mg/L within 1320 feet of the proposed site in order to qualify for the exemption. The Board will adopt the following language

in the final rule modifying ARM 17.30.716(1)(a)(iii), as follows:

> (1)(a)(iii) for a sewage system located on a lot that is less than 20 acres in area, the existing concentration of nitrate as nitrogen in the ground water in the uppermost aquifer beneath the lot is less than 2.0 mg/L~~;~~ and there is no evidence of nitrate concentrations above 2.0 mg/L in ground water in the same aquifer within 1320 feet of the exterior boundaries of the lot;

In addition, because most of the Helena valley is underlain by a shallow alluvial aquifer, many sites will not qualify for the categorical exemptions due to the depth to aquifer requirements. In order to qualify for the exemption, the site must be a particular distance from the uppermost aquifer. The least restrictive depth requirement is 20 feet for lots that are 20 acres or larger. The depth requirements become more restrictive for smaller size lots up to a minimum depth of 100 feet [See, ARM 17.30.716(1)(a)(viii)(A)(I), (B)(I), (C)(I), (D)(I)].

Finally, the proposed rules will be amended to correct a technical error and to clarify that a minimum distance between ground surface and fractured bedrock is required as a condition for each categorical exemption. As written, ARM 17.30.716 (1)(a)(v) would not allow a categorical exemption for a site where the aquifer was located at a depth of 300 feet and where the top of the fractured bedrock is only a few feet above at 298 feet. In order to preclude this absurd result and yet ensure that the categories address the issue of fractured bedrock, a minimum distance identical to the depth-to-aquifer requirements will be adopted. Since part of the Helena area has a bedrock aquifer, the amendment would ensure that there is a minimum distance below ground surface to fractured bedrock that must be met in order to qualify for any one of the categorical exemptions. If adopted, the categorical exemptions may be more protective than the complete nondegradation criteria, because there is no minimum distance to fractured bedrock in the existing nondegradation rules. The language clarifying the minimum depth requirements for fractured bedrock that will be adopted in the final rule is the following:

> (1)(a) ~~(v) bedrock units, if present above the uppermost aquifer, are not fractured;~~
>
> .....
>
> (vii)(A)(I) the depth to the uppermost aquifer or fractured bedrock unit beneath the site is greater than 100 feet;
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> .....
>
> (B)(I) the depth to the uppermost aquifer or fractured bedrock unit beneath the site is greater than 50 feet;
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> ....
>
> (C)(I) the depth to the uppermost aquifer or fractured

bedrock unit beneath the site is greater than 30 feet;

....

(D)(I) the depth to the uppermost aquifer or fractured bedrock unit beneath the site is greater than 20 feet;

Comment 3: Lewis & Clark County Water Quality District testified that there are many examples of sites in Lewis & Clark County which would be exempt from nondegradation review under the proposed amendments. The district recommended that the Board adopt a quantitative definition of an aquifer based on hydrologic properties. A quantitative definition will assist the reviewing authorities in assessing the vulnerability of an aquifer to pollution by sewage systems.

Response: The Board requested comment on whether the definition of aquifer should be changed to a quantitative definition based on hydrologic properties. Since specific language amending the proposed definition has not been publicly noticed for comment, the Board will defer adopting amendatory language to the proposed definition at this time. The Board intends to initiate a rulemaking at a later date to address this issue and provide an opportunity for adequate public comment.

Comment 4: Lewis & Clark County Water Quality District commented that the categorical exemptions should not be extended to minor subdivisions consisting of 5 or fewer lots. They commented that such an extension would lead to attempts to circumvent the nondegradation review. Missoula County health officials recommended that the categorical exemptions be limited to minor subdivisions.

Response: Minor subdivisions are generally referred to as subdivisions containing 5 or fewer lots. Allowing the categorical exemptions for minor subdivisions and installations on single lots that are not within a subdivision, as opposed to limiting the exemptions to single lot subdivisions as recommended by Lewis & Clark County, will not create a greater potential for water quality degradation. The categories contain site specific criteria that are protective of existing ground water quality for each of the proposed categories, regardless of the size of the subdivision. Therefore, extending the categorical exclusions to subdivisions of as many as 5 lots and installations on single lots that are not within a subdivision does not circumvent the intent of the nondegradation law.

The Board accepts the recommendation from the Missoula County Health Department because limiting the categorical exemptions to minor subdivisions and installations on single lots that are not within a subdivision will provide additional protection of water quality. For example, although the proposed categorical exemptions require existing nitrate levels to be below 2.0 mg/L for lots less than 20 acres, there is no provision to account for cumulative effects within a major subdivision. Allowing categorical exemptions to be applied to a 50-lot subdivision of 1 acre parcels, for example, would allow approval

of all the lots based only on current background nitrate values. This would limit the department's ability to determine the quantitative effects on the underlying aquifer(s) as the subdivision is built out. In comparison, approving 10 5-lot subdivisions would allow the department to require new background nitrate samples for each subdivision. Such a scenario would allow the department to determine the cumulative effects of multiple lots through time, and restrict the use of categorical exemptions if degradation of the aquifer is documented.

Comment 5: Comments from Lewis & Clark and Missoula County officials in opposition to the exemptions stated that the categorical exemptions should not be allowed in circumstances where there is evidence that the uppermost aquifer or adjacent surface water bodies are vulnerable to contamination from individual septic systems.

Response: As discussed in responses No. 2 through 4, adoption of the categorical exemptions will not cause significant water quality degradation due to the specific site conditions that must be met to qualify for the exemption. In the vulnerable areas of high density development with documented water quality degradation, shallow aquifers in high density development, or shallow fractured bedrock, the categorical exemptions may be more protective than the current method of determining nonsignificance due to the specific site criteria.

Comment 6: Missoula County health officials commented that aquifers located within Tertiary sediments and Glacial Lake Missoula silts and clays have low conductivities and, as a result, are sensitive to contamination from septic systems. An example is the Linda Vista area which had wells that had been contaminated from septic systems. An order issued by the former Department of Health and Environmental Sciences required the Missoula County Commissioners and the Missoula City/County Health Board to install a sewer system in the Linda Vista area, at a cost of over $2.5 million, to remediate the aquifer. Even today, levels of nitrate in the Linda Vista area exceed the drinking water standard of 10.0 mg/L.

In addition, there is evidence of nitrate levels approaching the standard of 10.0 mg/L in the Wye area northwest of Missoula. Some of the wells in that area are over 300 ft. deep with ground water approaching 200 ft. The proposed rule changes allowing categorical determinations of nonsignificance would allow subdivisions in this area without review of their impacts to ground water. Basing categorical exemptions on depth to ground water and slow percolation rates seems to ensure that these exemptions will be used in precisely the areas of Missoula County that experience has shown are most sensitive to contamination as measured by nitrate levels. The categorical determinations of nonsignificance are not based on factors that actually best predict nitrate contamination.

Response: The categorical exemptions require that background

nitrate concentrations are less than 2.0 mg/L for any lot that is less than 20 acres. From the information presented by Missoula County, the ground water in the Linda Vista has nitrate concentrations in the ground water that exceed the human health standard of 10.0 mg/L. Where standards are being exceeded, nondegradation does not apply, including the application of the nonsignificance criteria or categorical exemptions. Rather, the concern would be to remediate the ground water so that it meets applicable standards.

In the Wye area, ground water appears to have nitrate concentrations significantly above 2.0 mg/L. Therefore, the Wye area would fail to meet the conditions for qualifying for a categorical exemption for lots that are less than 20 acres. In locations such as the Wye area, which have elevated nitrate concentrations in the ground water, the categorical exemptions do not apply due to the background limit of 2.0 mg/L for nitrogen.

Finally, many of the wells installed at Linda Vista and the Wye area are more than 100 feet deep. The lithologic descriptions in a majority of these well logs indicate, however, that depth to an aquifer is actually less than 100 feet and in many cases less than 50 feet. In many cases the well logs noted water above 100 feet, other well logs in which water is not noted, contain lithologic descriptions consistent with water-bearing strata (e.g., sand and gravel above a clayey layer). Under the proposed categorical exemptions, most lots built in these areas would be restricted to lots larger than 2 acres and some would be restricted to lots larger than 5 acres, depending upon the exact depth to the uppermost aquifer. This would eliminate the potential for dense development, which may have been the primary factor for ground water contamination in Linda Vista.

In summary, since the categorical exclusions for all lots of less than 20 acres only apply to areas where the nitrate levels in ground water are less than 2.0 mg/L, the adoption of the proposed categories will not impact areas that do not qualify for the exemption, such as Linda Vista and the Wye area.

Comment 7: Missoula County health officials commented that the existing methods of evaluating impacts to ground water of on-site septic systems in subdivisions do not account for the cumulative impacts of development. Therefore, each incremental addition of nitrate load at the upper end of the valley contributes more pollution in the lower end. They recommended the language below, which would improve the department's ability to account for cumulative effects within the aquifer, rather than relying on background nitrate concentrations immediately below the aquifer. They recommended that ARM 17.30.716(a)(iii) be modified as follows:

> "for a sewage system located on a lot that is less than 20 acres in area, the existing concentration of nitrate as nitrogen in the ground water in the uppermost aquifer ~~beneath the lot~~ in an area 2 miles down gradient of the proposed system is less than 2.0 mg/L.

Response: The problem of cumulative impacts is not unique to these categorical exemptions. Cumulative impacts are minimized, however, by adopting nonsignificance criteria and categories that ensure that changes to ground water will have the least harmful effects to health and the environment while still allowing certain activities, such as development, to continue. The proposed categories will minimize cumulative impacts because they will apply only in minor subdivisions and would not contribute to cumulative impacts associated with large development. However, the Board is modifying the rules to require evidence that nitrate levels are below 2.0 mg/L within a 1/4 mile radius of the site. See, response to comment No. 2. Extending the radius for 2 miles, as recommended, would likely encompass areas not hydrologically related to the site in question or within a different aquifer entirely. The Board believes that a 1/4 mile radius will provide sufficient information on background levels within the aquifer to assess cumulative impacts.

Comment 8: Missoula County health officials oppose these categorical determinations of nonsignificance, particularly for the 1 and 2 acre categories. They believe that these exemptions would create a problem in densely developed areas such as Linda Vista and the Wye areas. They commented that surrounding density would be a more accurate predictor of nonsignificance than depth to ground water or percolation rates. Their specific recommendation is to eliminate the 1 acre exemption entirely. For the 2 acre exclusion, use the surrounding density of septic systems and the hydraulic conductivity of the underlying aquifer as the nonsignificance criteria, rather than requiring a depth to ground water of at least 200 feet.

Response: As discussed in previous responses, the areas cited as having deep ground water and documented high nitrate values in the Linda Vista and the Wye area would not qualify for the categorical exemptions for 1 to 2 acre lots. Although many wells are completed deeper than 100 feet, they actually have shallow aquifers above 50 feet, and therefore would not qualify for the 1 or 2 acre categorical exemptions. Including lots between 1 and 2 acres within the categorical exclusions will not increase the risk of environmental degradation because those lots are subject to a more stringent depth to aquifer requirement. (See, proposed amendment ARM 17.30.716(1)(a)(vii)(A)(I) and (B)(I)).

Lot density is more practically addressed by local planning than by nondegradation requirements. Density will not be used to modify the proposed rules as that particular condition for an exemption has not been subject to public notice and comment.

In addition, requiring hydraulic conductivity determinations as part of the categorical exemptions, as recommended, would defeat the purpose of the exemptions. The purpose of categorical exemptions is to provide a less burdensome way of determining nonsignificance than the current nondegradation analysis conducted under ARM 17.30.715, which generally includes an assessment of hydraulic conductivity. In order to provide a less burdensome method for determining nonsignificance, the categories

are limited to sites that do not present an imminent threat to environmental degradation and should not be required to provide the complete analysis required in ARM 17.30.715.

Comment 9: Missoula County health officials also commented that a process be created that allows a local health Board the option to petition DEQ to not allow categorical exemptions in aquifers already impacted or areas where, based on soils and geology, contamination is likely. They also recommended that categorical exclusions be prohibited in areas where the local government or DEQ determines that the uppermost aquifer or adjacent water bodies are vulnerable to contamination from septic systems based on documented impacts or areas with similar soils to documented impacted areas.

Response: The Board requested comment on the issue of whether the categories should apply in areas where there is evidence that the uppermost aquifer is vulnerable to contamination. In responding to comments on the proposed categories, the Board has previously noted that the categories do not apply where background nitrate levels are above 2.0 mg/L and the proposed lots are less than 20 acres. As a result, the categories for lots of less than 20 acres will only apply in relatively non-impacted areas. Furthermore, information regarding areas that are likely impacted by nitrate would not provide authority to DEQ to not apply a categorical exclusion to a particular site that qualifies under the Board's rules. Unless specific evidence is provided indicating that a particular site does not qualify, the department has no discretion but to allow the exemption.

In regard to the suggestion that local Boards be allowed to petition DEQ to not allow the exemptions in specific areas, the Board has determined not to provide a separate procedure in the rule for petitioning DEQ to designate area unsuitable for the exemption. However, under 2-4-315, MCA, a local Board may petition the Board to modify or change a categorical exemption so that it does not apply in a particular area.

Comment 10: Missoula County health officials are concerned about the effect the categorical exemptions might have on non-alluvial aquifers where there are documented nitrate problems. Nitrate levels in the alluvial aquifer are not a problem for public health, but the rapid transport of sewage effluent in the fast-moving shallow alluvial aquifer, and the resultant potential for pathogen contamination, is a potential problem. They also commented that the categorical exemptions will allow violations of the nondegradation standard (5 mg/L) or the water quality standard (10 mg/L) in the non-alluvial aquifers with ground water nitrate problems.

Response: The categorical exemptions may be more protective than the nonsignificance criteria with respect to pathogen transport, because the least stringent depth to aquifer requirement under the proposed amendment is 20 feet or greater. See e.g., proposed amendments ARM 17.30.716(1)(a)(vii)(A)(I), (B)(I), (C)(I), and

(D)(I). In contrast, the criteria for nitrate in ground water previously adopted under ARM 17.30.715(1)(d) allows 5.0 mg/L as the total concentration of nitrate from a conventional septic system and does not have a minimum depth to aquifer requirement. The thickness and character of materials above the aquifer is one of the most critical elements in the fate of pathogens below septic systems, because pathogens have a much higher mortality rate as they migrate through fine-grained geologic materials than in coarse-grained materials or fractured bedrock.

Comment 11: Missoula County health officials commented that the most important factor influencing the nitrate concentration in ground water appears to be the hydraulic conductivity of the aquifer material, which determines the capacity of the aquifer for nitrate dilution. The proposed categorical exclusions ignore this fact. Given this situation, the 1 and 2 acre exemptions are troublesome because it creates a categorical exclusion for lots in areas where nitrate problems already exist. They recommended that ARM 17.30.716(a)(iv) be modified as follows:

"(iv) ~~the soils in the drain field area are medium-textured (very fine sandy loam or finer) throughout The upper 8 feet~~ the hydraulic conductivity of the aquifer underlying the system is greater than 100;"

The officials stated that the proposed amendment would prevent exclusions for systems installed over aquifers such as those in Linda Vista and the Wye. It will allow exclusions, however, for systems built over aquifers with coarse soils and high hydraulic conductivity.

Response: Hydraulic conductivity, hydraulic gradient, and size of the mixing zone are the most important factors affecting nitrate dilution in an aquifer. The most important factors affecting nitrate movement to an aquifer are the thickness and character of materials above the aquifer. Since hydraulic conductivity is the most difficult and costly factor to determine, the proposed categorical exclusions focus on criteria which will limit movement to the aquifer. As noted in responses to similar comments regarding Linda Vista, problem areas with elevated nitrate levels above 2.0 mg/L will not qualify for categorical exemptions, regardless of whether the exemption is for a 1 or 2 acre lot.

The soil properties in the categorical exemptions are designed to ensure that the soil beneath the drain field will adequately adsorb the phosphorous in the effluent, not dilute nitrate as suggested by the comments. In general, soil texture has little relation to nitrate levels except to allow additional retention time for denitrification to occur if anaerobic conditions exist. For these reasons, the Board will not adopt the recommended changes.

Comment 12: Missoula County health officials disagree with the proposed condition at ARM 17.30.716(a)(iv) that would require

soils in the upper 8 feet to be medium textured (very fine sandy loam or finer). They stated that these soil types contribute to the problems with nitrate contamination of ground water in Missoula County. It is not the soils in the drain field, but the soils and the resultant hydraulic conductivity in the aquifer that determine whether nitrate is a problem and whether a categorical exclusion is warranted. Soils may be medium textured in the drainfield area, but consist of clay in the saturated aquifer. The proposed rules require percolation rates to exceed 30 minutes per inch below the drainfield on lots smaller than 5 acres. This would require the soils to be tight, such as clays or silt. These types of soils should not be a condition to qualify for an exemption, because in Missoula these soil types are in areas with documented problems. Therefore, Missoula County recommended that the conditions stated in ARM 17.30.716 (a)(vii)(A)(II), (B)(II), (C)(II), and (D)(II), be stricken or rewritten as follows:

> "the percolation rate of the soil beneath the drain field is between 6 and 30 minutes per inch."

Response: The percolation rate limits in the categorical exemptions are designed to ensure that the soil beneath the drain field will adequately adsorb the phosphorous in the effluent. Slower rates will also reduce pathogen transport. The slow percolation rates are not designed for nitrate dilution as indicated by the comments. The percolation rates have little relation to the nitrate levels except to allow additional retention time for denitrification to occur if anaerobic conditions exist. Therefore, since the proposed change to the rules would not affect nitrate dilution and will not ensure adequate adsorption of phosphorous, the Board has not amended the rules as suggested.

Comment 13: Missoula County health officials commented that septic systems excluded from nondegradation review under the proposed rules will discharge wastewater to ground water which recharges the Clark Fork River. The Clark Fork River has been designated by the department as a water quality limited stream in its 303(d) report. Major cities and industries have entered a voluntary nutrient reduction program to reduce nutrient loading in the Clark Fork River. Adopting these exclusions would result in an uncontrolled increased discharge of nitrogen from septic systems to a designated water quality limited stream. Missoula County believes that the department has not adequately considered the likely impact of the exclusions on the Clark Fork River.

Response: The voluntary nutrient reduction program referred to in the comment is in response to Section 303(d) of the federal Clean Water Act. That provision requires states to develop total maximum daily loads (TMDLs) for waters identified as water quality limited in the state's 303(d) report. The TMDLs developed under the voluntary nutrient reduction program will reduce nutrient loading from point source discharges to the Clark Fork

River. Although existing septic systems within Missoula valley may be a contributing factor to the nutrient problem in the Clark Fork, the proposed exclusions will not apply to lots that are less than 20 acres in areas where nitrate levels in ground water are above 2.0 mg/L. Finally, even if the proposed categorical exclusions were not adopted, this would not prevent new septic systems from being constructed according to the nonsignificance criteria in ARM 17.30.715.

Comment 14: Missoula County health officials suggested the following modification to the definition of aquifer in order to protect ground water that is not used for drinking water, but may recharge and have a significant impact on nearby surface waters:

"(a) "aquifer" means a saturated, permeable geologic material ~~that is capable of sustained ground water yield sufficient to meet domestic needs~~."

Response: The proposed definition of an aquifer would restrict nitrate in waters that have no potential for drinking water but may potentially recharge to surface waters. The recommended proposal, however, defeats the original intent of clarifying which ground waters can feasibly be used for domestic purposes. For this reason, the Board has not changed the proposed rule as requested. The Board does intend to propose modification of the definition, however, due to requests for modifications that include quantitative and qualitative requirements to classify geologic materials as an aquifer for purposes of this rule.

Comment 15: One commentor recommended that the depth to ground water below the septic system for lots of 5 acres or 20 acres or larger should be changed to a depth of 50 feet in order to protect the shallow aquifers on larger lots. He pointed out that development typically concentrates around water resources and lot lines are frequently arranged to take advantage of the aquifer, surface water bodies, or roads. He also stated that there are generally no requirements specifying where an individual may build on larger lots. As a result, even though lots may be large, buildings may still be concentrated in specific areas.

In addition, irrigation practices on large lots cause nitrate to move faster and concentrate in ground and surface waters. Therefore, there should be no difference in the depth to ground water between small and large lots. He recommended the following modification: change ARM 17.30.716(a)(vii) to read as follows:

(C) for a system located on an individual lot 5 acres in area or larger:

(I) the depth to the uppermost aquifer beneath the site is greater than ~~30~~ 50 feet; and

(D) for a system located on an individual lot 20 acres in area or larger:

(I) The depth to the uppermost aquifer beneath the site is greater than ~~20~~ 50 feet;

Response: Lots that meet the criteria for the categorical exemptions will also have to meet the standard setback requirements for water wells and sewage systems. Although buildings may be concentrated in specific areas, cumulative effects would only occur if the drain fields were aligned along a single ground water flow path. In addition, high levels of irrigation on a large lot will actually help to dilute the nitrate from a septic system and thereby lessen the impacts. The nitrate would move faster towards the ground water, but due to dilution the concentration will not increase as is suggested.

Although an increase in the depth to aquifer from 30 to 50 feet for lots >5 acres and from 20 to 50 feet for lots >20 acres may afford additional protection to the underlying aquifer, the department does not believe that it is necessary to ensure nonsignificant degradation of water quality.

Comment 16: A commentor suggests that the definition of aquifer be changed to protect smaller insignificant aquifers which have the potential of combining with other water sources to create a high quality water source. He also suggests that ARM 17.30.716(2)(a) be amended to read as follows:

> "(a) "Aquifer" means a saturated, permeable geologic material that is capable of sustained ground water flow ~~sufficient to meet domestic needs~~ in a direction other than vertical."

Response: Ground water flow in almost all aquifers contains both horizontal and vertical components. If the commentor is referring to flow in vertical fractures within bedrock, the Board's proposed changes in language clarifying the minimum depth requirements for fractured bedrock address this issue. [See, ARM 17.30.716(1)(a)(vii)(A)(I), (B)(I), (C)(I), and (D)(I).] For this reason, the Board has not changed the proposed rule as requested. The Board does intend to propose modification of the definition, however, due to requests for modifications that include quantitative and qualitative requirements to classify geologic materials as an aquifer for purposes of this rule.

The Board will address the comment regarding thin, discontinuous layers when it prepares a proposal to modify the definition of an aquifer.

Comment 17: Several commentors stated that there appeared to be some confusion as to a community's ability to petition the department or the Board for denial of a specific categorical exemption request, and as to the amount of discretion, if any, the Department has to waive the applicability of exemptions. One commentor recommended that the comment period for this rule amendment be extended to allow time for the department to address the procedures, if any, for requests that an area be exempt from the categorical exemptions, or for requests that a specific categorical exemption be denied. She stated that it appears to be clear that a categorical exemption must be granted under the rule

if an applicant meets the rule's requirements, and that there is no discretion for the department to deny a categorical exclusion based on factors other than those listed in the proposed rule. She requested that the eventual notice of amendment of rules issued by the Board provide a statement concerning: (1) the procedure, if any, for a community to request that an area be exempt from the application of the categorical exemptions from nondegradation review, and, (2) the amount of discretion, if any, of the department had to deny a request for a categorical exemption from nondegradation review if the rule criteria are otherwise met.

Response: As noted earlier in the response to comments requesting a process to petition the department not to allow categorical exemptions in areas known to be impacted, the Board responded that there is no legal process to accommodate this request. Once the categories have been adopted as rule, those exemptions will have the effect of law and bind the department. The department would have no discretion but to allow the exemption for all lots that qualify for the exemption.

As noted in the previous response, there is a process where a person may petition the Board for rulemaking under 2-4-315, MCA, of MAPA. This provision provides the opportunity for local communities to request the Board to modify the categories by proposing the adoption of specific language precluding the use of the categories in a specific area.

Comment 18: One commentor requested whether a local government would have the opportunity to question a request for a categorical exclusion, or to present evidence in opposition to the grant of a categorical exemption on a case-by-case basis. If there is such an opportunity, what is the procedure?

Response: There is no procedure in the proposed rule for local governments to be notified of every lot being reviewed by the Department for purposes of providing this type of information. The Board notes, however, that about 80% of the minor subdivisions are reviewed by local health departments under contracts with the department. Furthermore, local governments also review plats under the Subdivision and Platting Act. Under the proposed rule, a local government could provide evidence that the proposed site does not meet the qualifying criteria under a specific category.

BOARD OF ENVIRONMENTAL REVIEW

CINDY E. YOUNKIN, Chairperson

Reviewed by:

JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State November 3, 1997 .

BEFORE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the adoption of new rules for extensions of time to complete a water use permit or change authorization and amendment of application fee	NOTICE OF ADOPTION AND AMENDMENT

TO: All Interested Persons.

1. On September 22, 1997, the Department of Natural Resources and Conservation published notice of the proposed adoption of new Rule I (ARM 36.12.501), new Rule II (ARM 36.12.502) and new rule III (ARM 36.12.503) concerning extensions of time to complete a water use permit or change authorization, and the proposed amendment of rule 36.12.103(1) pertaining to application fee at page 1643, of the 1997 Montana Administrative Register, issue number 18.

2. The agency has adopted new Rule I (ARM 36.12.501), new Rule II (ARM 36.12.502) and new rule III (ARM 36.12.503) as proposed.
AUTH: 85-2-312(3), MCA
IMP: 85-2-312(3) and 85-2-314, MCA

3. The agency has amended rule 36.12.103(1) as proposed.
AUTH: 85-2-113, MCA
IMP: 85-2-113, MCA

4. No comments were received.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

RANDY MOSLEY, SPECIAL ASSISTANT

DONALD D. MACINTYRE, RULE REVIEWER

Certified to the Secretary of State on November 3, 1997.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of rules 46.12.5003, 46.12.5004 and 46.12.5007 pertaining to the passport to health program	))))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On August 4, 1997, the Department of Public Health and Human Services published notice of the proposed amendment of rules 46.12.5003, 46.12.5004 and 46.12.5007 pertaining to the passport to health program at page 1350 of the 1997 Montana Administrative Register, issue number 15.

2. The Department has amended rules 46.12.5003, 46.12.5004 and 46.12.5007 as proposed.

3. In the notice of proposed rulemaking, the Department stated its intention to request the rule be applied retroactive to August 1, 1997. An extension of the current waiver period has resulted in the start of the new waiver period being postponed to October 26, 1997. As a result, these rules will be applied retroactively to November 1, 1997.

4. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: The disabled community has not been given an adequate opportunity to provide public comment to the third waiver request submitted for the period July 29, 1997 through July 28, 1999.

RESPONSE: In August of 1996, the Department began a process of soliciting input from interested parties on the changes the Department proposed to include in its third waiver renewal request. The first step was a survey of interested parties asking them what worked and what could be improved in PASSPORT. After compiling and analyzing the results, the Department developed a list of 14 strategies to improve PASSPORT. This list was disseminated for comment to the same list of interested parties in January, 1997. The list of interested parties did include organizations with interests in services for persons with disabilities.

COMMENT #2: The second notification in the mandatory assignment process should not be eliminated. Many of the people that Medicaid serves are poor and uneducated and cannot even read or understand the notices sent to them. Further, it is unclear whether those notices are accessible in alternative formats for disabled individuals who cannot read the first notice. Failure

to comply with Title II of the ADA would have the effect of denying visually impaired and learning disabled individuals their right to choose a provider by only providing them with one written notice and not allowing the individual to have program access.

RESPONSE: While there may be recipients who are not be able to read and understand the notification letters, dropping the interim reminder notice should not adversely affect those recipients. They will still get an initial notice as well as a mandatory assignment letter which is mailed in time for them to change their primary care provider prior to assignment taking effect.

The letters do refer recipients to the toll-free hotline if they have questions. The initial notification and assignment letter will be changed to provide notice that the letter is available in alternative formats, i.e. on diskette or that a hotline staff person can read it to them over the phone.

COMMENT #3: When the Department designates a provider for an SSI recipient, what steps has it taken to ensure that the provider's office is accessible under Titles II and III of the ADA and Section 504 of the Rehabilitation Act of 1973?

RESPONSE: The Department will include in its notification letter the information that recipients having problems obtaining reasonable access to a provider may call the hotline for assistance in resolving the problem or switching to a provider who is more accessible.

COMMENT #4: The additional services should not be included within the list of services requiring the PASSPORT provider's authorization. Such an inclusion of services will lead to a reduction in the amount and scope of coverage for medically necessary services.

RESPONSE: The experience of the past four years, has shown that while PASSPORT reduces the incidence of medically unnecessary services, there have been few complaints about denial of needed care. The Department fully expects this to be the case with the four new services. The Department will continue to publicize the availability of the informal as well as formal grievance process for denial of needed services.

COMMENT #5: What steps has the Department taken in ensuring that there are an adequate number of providers to provide the newly included services?

RESPONSE: All providers currently enrolled in Medicaid are eligible to provide services under PASSPORT; they just need the authorization of the patient's PASSPORT provider.

COMMENT #6: Does the inclusion of the services include adequate geographical access to the newly included services? If so, how has the Department guaranteed that Montana citizens in rural communities will have the same access to the newly included services as those in more populated regions?

RESPONSE: The same providers available under fee-for-service are available under PASSPORT; the only difference is the need to get the PASSPORT provider's authorization. The three therapies can be provided by hospitals as well as independent practitioners, and these therapists can even make home visits.

Dawn Sliva
Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State November 3, 1997.

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

In the Matter of Adoption of Rules Pertaining to Unauthorized Changes of Primary Interexchange Carrier or Local Exchange Carrier ("Slamming").	NOTICE OF ADOPTION OF RULES PERTAINING TO "SLAMMING"

TO: All Interested Persons

1. On July 21, 1997 the Department of Public Service Regulation published notice of the proposed adoption of rules relating to unauthorized changes of a subscriber's primary interexchange carrier or local exchange carrier at pages 1259 through 1263, issue number 14 of the 1997 Montana Administrative Register.

2. The Department has adopted the following rule as proposed:

RULE V. 38.5.3805 REFUND OF CHARGES AUTH: Sec. 69-3-1304, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

3. The Department has amended and adopted the following rules:

RULE I. 38.5.3801 CHANGE IN TELECOMMUNICATIONS PROVIDER

(1) through (c)(iii) Remains as Proposed.

(iv) The name~~, address,~~ and toll free telephone number of the newly requested telecommunications carrier.

(d) When the customer affected by the change initiates the contact with the carrier in order to request the change.

(2) Any letter of agency, electronic authorization or verbal authorization verified by an independent third party that does not conform with this rule is invalid. Documentation of valid verbal authorization must demonstrate compliance with each element required by (c) above. AUTH: Sec. 69-3-1304, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE II. 38.5.3802 LETTER OF AGENCY FORM AND CONTENT

(1) Remains as Proposed.

(2) The letter of agency shall be a separate document (or an easily separable document) containing only the authorizing language described in (5) of this rule~~) whose~~ the sole purpose of which is to authorize a telecommunications carrier to initiate a primary interexchange carrier or local exchange carrier change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the change in carrier.

(3) through (5)(b) Remain as Proposed.

(c) That the subscriber designates the ~~interexchange~~ carrier to act as the subscriber's agent for the primary interexchange carrier or local exchange carrier change;

(d) That the subscriber understands that only one interexchange carrier may be designated as the subscriber's ~~interstate~~ primary interLATA interexchange carrier and that only one local exchange carrier may be designated as the subscriber's local telecommunication provider for any one telephone number. To the extent that a jurisdiction allows the selection of additional primary interexchange carriers (e.g., for intraLATA, intrastate or international calling), the letter of agency must contain separate statements regarding those choices. Any carrier designated as a primary interexchange carrier or local exchange carrier must be the carrier directly setting the rates for the subscriber. One carrier can be a subscriber's interLATA primary interexchange carrier, a subscriber's intraLATA primary interexchange carrier, and a subscriber's local carrier; and

(e) through (7) Remain as Proposed. AUTH: Sec. 69-3-1304, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE III. 38.5.3803 COMPLAINTS OF UNAUTHORIZED SWITCH IN CARRIERS (1) Upon receipt of a complaint alleging an unauthorized switch in a customer's telecommunications carrier, either orally or in writing, from the customer, the customer's original pre-subscribed telecommunications carrier, the customer's local exchange company, or from the commission or its staff on behalf of a customer or applicant, the telecommunications carrier that initiated the change shall make a suitable investigation and advise the party requesting the investigation of the results. When advising the customer or party requesting the investigation of the results, the carrier that initiated the change shall provide documentation in accordance with ~~these rules~~ ARM 38.5.3801 and 38.5.3802 that confirms the customer's valid authorization to switch telecommunications carriers. The burden is on the carrier that initiated the change to produce documentation that valid authorization was obtained from the customer. If a carrier fails to provide the documentation, the carrier change will be deemed invalid. A telecommunications carrier, upon receipt of a complaint from the commission or its staff alleging unauthorized switching, shall issue an initial response within five working days. AUTH: Sec. 69-3-1304, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE IV. 38.5.3804 TELECOMMUNICATIONS CARRIER LIABILITY (1) Remains as Proposed.

(a) to the customer for all intrastate long distance charges, interstate long distance charges, monthly service charges, carrier switching fees, and other relevant charges billed by the unauthorized carrier or its agent to the customer ~~incurred by the customer~~ during the period of the unauthorized change; and

(b) Remains as Proposed. AUTH: Sec. 69-3-1304, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

RULE VI. 38.5.3810 VIOLATIONS (1) The commission may refer violations of the prohibition against unauthorized change of a customer's telecommunications carrier to the appropriate law enforcement authority for prosecution ~~office of the Montana attorney general~~. AUTH: Sec. 69-3-1304, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

4. Written comments were accepted through August 22, 1997. The Department has thoroughly considered all comments received. The comments received and the Department's response to each follow.

General comments:

Comment 1: AT&T Communications of the Mountain States, Inc. (AT&T) commented that Montana should mirror the Federal Communications Commission's (FCC's) regulations to ensure consistency in operation, implementation and enforcement. AT&T argued that the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (February 1996) (the "1996 Act") preempts both House Bill 431 (HB 431 has been codified in §§ 69-3-1301 - 1305, MCA) and the Commission's proposed rules because it only allows states to enforce the FCC's rules. AT&T argued that the Commission's proposed rules will only burden providers and consumers who are attempting to play by the rules.

Response: The Commission proposed rules to implement Montana's "slamming" statutes. Section 69-3-103(1), MCA, specifically states that nothing in Chapter 3 of Title 69 shall be construed as vesting judicial powers in the Commission. Therefore, the Commission must act pursuant to the statutes enacted by the Montana Legislature as long as they have not been declared unconstitutional or otherwise contrary to law by a court or other body with competent jurisdiction to so act.

Comment 2: Mid-Rivers Telephone Cooperative, Inc. (Mid-Rivers) commented that carriers that do not properly and timely switch customers when change requests have been made should be penalized. This would include timely intercept recordings on a customer's line when local exchange service changes are made.

Response: HB 431 is primarily a consumer-protection bill and did not address this issue. Slamming has increased tremendously over the past few years. In the expected competitive local exchange market, other problems may arise such as the examples cited by Mid-Rivers. Because these rules address the statutes as enacted, the Commission did not address the problems that might arise with local competition in these rules. The Commission notes, however, that its complaint process is available for such actions.

Comment 3: Sprint Communications (Sprint) suggested the Commission add a section on "Applicability," stating that the

rules apply to all carriers and must be followed each time a customer changes carriers. Sprint's concern relates to the original carrier's win-back efforts not being verified.

Response: Section 69-3-1302(5), MCA, defines telecommunications carrier as "any provider of telecommunications services." That clearly applies to all carriers, including the original carrier when attempting to regain the customer's business. However, the proposed rules exclude customer-initiated carrier changes.

Rule I: Comment 4: AT&T, the Montana Telephone Association (MTA), Mid-Rivers and Sprint all commented that clarification is needed to distinguish between customer-initiated carrier changes and changes initiated by a carrier.

Response: Even though § 69-3-1303(1) states that the statutes apply to carrier changes requested "by any person other than the customer," the Commission agrees that clarification might be helpful. The language proposed by Sprint is inserted as subsection (1)(d).

Comment 5: AT&T commented that elimination of the "welcome package" option is preempted by FCC rules.

Response: Section 69-3-1303 sets forth limited exceptions and does not include the "welcome package" option. The Montana Legislature did not see fit to include this exception in the statute. Section 69-3-103(1), MCA, specifically states that nothing in Title 69 Chapter 3 shall be construed as vesting judicial powers in the Commission. Therefore, the Commission must act pursuant to the statutes enacted by the Montana Legislature as long as they have not been declared unconstitutional or otherwise contrary to law by a court or other body with competent jurisdiction to so act.

Comment 6: MCI Telecommunications Corporation (MCI) commented that subsection (1)(c)(iv), requiring the verifier to provide to the customer the name, address and toll-free number of the newly requested carrier, is unnecessary, redundant, and not required by any other state. MTA and Sprint agree and suggest this information be offered to the customer and then provided only upon request.

Response: The Commission does not agree that this requirement is unnecessary. The Commission receives numerous consumer complaints that the slamming company misrepresented itself. Thus, the requirement in subsection (1)(c)(iv) should and is designed to require companies to adequately identify themselves, thereby offering some degree of consumer protection from such representations. However, the Commission agrees that the address of the verifying carrier need not be provided and will delete this part of the requirement.

Comment 7: Sprint comments that subsection (1)(d) should be renumbered as subsection (2) because this provision should be in a separate subsection.

Response: The suggested change has been made.

Rule II: Comment 8: Montana Independent Telecommunications Systems (MITS) comments that Rule II(1) is unclear and that it is unable to determine whether, if electronic verifi-

cation is used, a follow-up Letter of Authority (LOA) also must be signed by the customer.

Response: As referenced in proposed Rule I(1)(a), the LOA form and content requirements included in Rule II apply only to carrier-initiated changes using written authorization from the customer. Electronic verification does not require a LOA.

Comment 9: MTA comments that the parenthetical in the first sentence of Rule II(2) should read "(or an easily separable document)." The parenthetical after the word "rule" in the third line should then be removed.

Response: The Commission agrees that the suggested change will provide clarification and has been made.

Comment 10: AT&T comments that the provision in proposed Rule II(3) that states a LOA shall not be part of any promotion conflicts with FCC rule which provides that the LOA shall not be combined with inducements of any kind on the same document. The proposed rule prevents promotional material from accompanying the LOA and this would conflict with the custom of including promotional material in the same envelope as the LOA. AT&T asserted that this rule would constitute a barrier to entry. AT&T also stated that Rule II(3) is preempted by federal law and rule. Mid-Rivers commented that subsection (3) needs clarification as it is unclear whether the rule prohibits the use of promotional mechanisms or merely states that the LOA form shall not be part of a promotional form. Mid-Rivers asserts that promotional mechanisms that are separate from the LOA should be allowed, especially since Rule II(4) allows cash inducements.

Response: The language in the proposed Rule II(3) mirrors § 69-3-1303(2). The Commission interprets this section as prohibiting the combining of contests, sweepstakes, or similar promotions on the same document as the LOA. Proposed Rule II(3) is consistent with this interpretation.

Comment 11: Mid-Rivers commented that proposed Rule II(5)(a) requires the customer's billing address, which may not be needed in all circumstances because a local exchange carrier can access the address if it knows the phone number.

Response: The Commission concludes that this information appropriately is included in the LOA.

Comment 12: AT&T and MTA recommend deleting "interexchange" from the first line of proposed Rule II(5)(c) because the reference should be to the carrier initiating the change.

Response: The Commission agrees and the suggested change has been made.

Comment 13: MTA comments that the reference in proposed Rule II(5)(d) to "interstate primary interexchange carrier" should be changed to "primary interLATA interexchange carrier."

Response: The Commission agrees and the suggested change has been made.

Comment 14: Concerning proposed Rule II(5)(e), MTA and Mid-Rivers commented that the applicability of a charge to the subscriber for changing the carrier should only be required in

the LOA if the initiating carrier intends to assess such a charge. Mid-Rivers assesses no change charge and asserts that referencing such unnecessarily confuses the customer with language that does not apply.

Response: When customers change long-distance carriers, the change charge is assessed by the local exchange carrier that actually makes the change at the switch. Thus, even though the carrier initiating the carrier change may not assess a change fee, it is important that consumers are informed there may be such a fee for switching carriers. The Commission understands that Mid-Rivers, unlike most local exchange carriers, may not charge a change fee, but its concern that customers would be confused by a statement that such a fee may be assessed when there is no fee could easily be addressed and still be in compliance with the proposed rule with a statement such as: "Customers who switch carriers are usually charged a fee for the switch, but Mid-Rivers does not charge such a fee."

Rule III: Comment 15: AT&T commented that proposed Rule III is drafted too broadly, invites harassment from rival carriers, is not consistent with verification procedures in the rules and does not permit informal dispute resolution. AT&T further claimed that proposed Rule III permits the original carrier or local exchange carrier to allege a slam without any evidence of complaint being made by a customer and then would require the alleged slammer to provide documentation to a competitor. AT&T suggested amending this rule to require a carrier to show that it followed the verification procedures in the rule. AT&T further commented that the term "documentation" is not defined and that the Commission should amend the rule to permit carriers to rely on business records that document the verification procedures were complied with, and not require actual records of an individual transaction. AT&T further commented that proposed Rule III makes no provision for resolving a dispute directly with the customer.

Response: The proposed rule was drafted to ensure that either the consumer who was slammed, or any entity likely to be contacted by the consumer to complain about a slam, can request an investigation of the carrier change. If a carrier that is asked to investigate a carrier change by another carrier doubts that the other carrier is working on behalf of the consumer, the rule does not prevent the carrier from contacting the consumer. If the consumer directly contacts the carrier that initiated the change, the carrier can resolve the complaint directly with the consumer.

The Commission does not believe the term "documentation" needs definition. It includes written documents in the case of the carrier's use of LOAs and, if a carrier has used either the verbal or electronic authorization methods, it could include other material such as the tape recordings often supplied now in response to slamming complaints. The Commission has revised the language to refer back to the verification procedures contained in Rules I and II.

Comment 16: MTA and Sprint both commented that the response period for providing information to the Commission should be extended to 10 days.

Response: The five-day initial response time is consistent with the complaint response time found elsewhere in Commission service rules. "Initial" response does not mean the final response after the carrier has completed its investigation of the complaint. Rather, it provides an indication that the carrier is working on the complaint and it should be sufficient in most instances to advise the Commission when the final response can be expected.

Rule IV: Comment 17: MITS commented that honest clerical errors by carriers could result in thousands of dollars of lost revenue. While MITS does not want carriers to profit from slamming by claiming clerical error, it believes some allowance is necessary to protect reputable providers from losses due to honest error. The Telephone Resellers Association (TRA) commented that it is unfair to penalize carriers who initiate unauthorized carrier changes by honest mistake. TRA further commented that the rules create a loophole for dishonest end-users to run up phone bills and then not pay them. TRA suggested the Commission adopt something closer to what the FCC is proposing. TRA suggests insertion of the words "knowingly and willingly."

Response: The Commission concludes that if an exception were made in the rule for clerical errors, it would open a loophole for slamming carriers to escape liability, contrary to the purpose of the legislation adopted by the 1997 Montana Legislature. The Commission believes the incidence of clerical error causing unwanted carrier changes is negligible and notes that the slamming legislation codified at §§ 69-3-1301 - 1305, MCA, makes no exception for clerical error. Further, the principle that the consumer should not pay for services he or she did not request holds true even if the unauthorized switch resulted from a clerical error.

Comment 18: AT&T commented that the Montana "slamming" statutes adopted by the 1997 Montana Legislature and this rule are preempted by the 1996 Act. AT&T argued that this rule says the slamming carrier is liable to the customer for all charges incurred during the period of the unauthorized change and to the customer's original carrier for all charges related to reinstating service to the customer. However, the 1996 Act provides that the slamming carrier is liable to the original carrier for all charges paid by the customer. AT&T further argued that this rule would provide a windfall to the customer because it provides that if there is a slam, the carrier is liable for all intrastate long distance charges, interstate long distance charges, monthly service charges, switching fees, etc. during the period of the slam. An example of this is that a slam in local service would result in the slamming carrier being liable for all local and long distance charges. AT&T asserted that proposed Rule IV provides incentive for customers to fraudulently allege they have been slammed.

Sprint asserted that although the proposed Rule IV follows the language in HB 431, the Commission has no authority to order refund of interstate charges. Sprint further commented that Rule IV conflicts with the 1996 Act and with FCC practice and provides incentive for consumer fraud. Sprint asserted that the Commission should adopt rules consistent with the 1996 Act.

Response: In enacting HB 431, the Montana Legislature gave the Commission authority to adopt rules to implement the new state law. These rules implement HB 431. AT&T did not oppose HB 431 during the legislative process. As to whether the law and rule provide an incentive for consumers to fraudulently allege they have been slammed, the Commission emphasizes that if the carrier proves it complied with the verification procedures, a consumer's fraudulent claim will come to naught.

Rule V: Comment 19: TRA provided the same comments as set forth in Rule IV, above. The Commission's response in Rule IV is equally applicable here.

MTA and MCI commented that six months is too long for refund of charges to the customer. MCI suggests two months.

Response: HB 431 includes no limitation on the time for refund of charges to the customer. However, the Commission concludes that six months is a reasonable period of time during which the customer should be able to determine that he or she has been slammed. Six months provides adequate time for the consumer to notice there's a new carrier on the phone bill. The Commission believes two months is too short a time because it may take that long for the carrier to send the customer its first bill.

Comment 20: MTA commented that proposed Rule V only references refunds to customers; it should also specifically refer to slamming carrier directly reimbursing original carrier for costs to reinstate service.

Response: Proposed rule IV(1)(b) provides for such reimbursement.

Rule VI: Comment 21: The Attorney General commented that the rule is not necessary, that it is not allowed by the enabling legislation and confuses consumers on how unauthorized practices are to be addressed. MTA commented that proposed Rule VI also should authorize referrals to any other appropriate prosecutorial office, such as county attorneys.

Response: Section 69-3-110, MCA, provides that "Upon request of the commission, it is the duty of the attorney general or the prosecuting attorney of any county to aid in any investigation, prosecution, hearing, or trial had under the provisions of [Title 69 chapter 3] and to institute and prosecute all actions or proceedings necessary for the enforcement of this chapter." The "slamming" rules were enacted as part of chapter 3. *See* §§ 69-3-1301, MCA, *et. seq.* Although the rule is not necessary, as the AG states, its purpose is to alert potential slammers that they may be prosecuted. Better

language would be as MTA has suggested that referrals may be made to any appropriate governmental agency for prosecution. With this change in wording, any reference to the Attorney General can be deleted and the intended purpose of this rule is preserved.

NANCY McCAFFREE, Vice Chair

CERTIFIED TO THE SECRETARY OF STATE NOVEMBER 3, 1997.

Reviewed By Robin A. McHugh

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of NEW RULE I(ARM 42.12.401), RULE II (ARM 42.12.404), RULE III (ARM 42.12.406), RULE IV (ARM 42.12.408), RULE V (ARM 42.12.410), RULE VI (ARM 42.12.412), RULE VII (ARM 42.12.414), and RULE VIII (ARM 42.12.416) relating to Restaurant Beer/Wine License Lottery Process	NOTICE OF ADOPTION

TO: All Interested Persons:

1. On September 22, 1997, the department published notice of the proposed adoption of new rules I (ARM 42.12.401), II (ARM 42.12.404), III (ARM 42.12.406), IV (ARM 42.12.408), V (ARM 42.12.410), VI (ARM 42.12.412), VII (ARM 42.12.414), and VIII (ARM 42.12.416) relating to restaurant beer/wine license lottery process at page 1654 of the 1997 Montana Administrative Register, issue no. 18.

2. A public hearing was held on October 15, 1997, to consider the proposed adoption where written and oral comments were received. Additional written comments were received subsequent to the hearing. Those comments and the Department's responses are summarized as follows:

COMMENT NO. 1: Kati Kintli, attorney representing the Montana Tavern Association (MTA), concurred with the department's amendments to RULE I(3) and (4) which were introduced at the hearing and are reflected in this notice.

RESPONSE: None.

COMMENT NO. 2: Kati Kintli, stated the MTA objects to the language in RULE I(6), lines 5 and 6, requesting the language "or waiting to be seated to eat" be stricken as it is inconsistent and in conflict with 16-4-420(1)(d)(I), MCA, and if the department is resolved to keep this phrase in the rule, that it be modified as follows: "or for table service delivery to those who are eating while waiting to be seated."

RESPONSE: The department does not believe the alternative language will resolve the MTA's concerns. The statute is clear in its prohibition on the development of lounge settings within a restaurant beer and wine licensed premises. A restaurant beer and wine licensee risks revocation of the license if the 75%/25% ratio of food sales to alcoholic beverages sales is not maintained. Further, the law is explicit in prohibiting a restaurant from conveying to any person by any means that a person can purchase beer or wine without being required to purchase food.

COMMENT NO. 3: Jon Ellingson, Missoula attorney representing C & M Enterprises in Missoula, requested an amendment to RULE I (3) to clarify absolute preference will be given those applicants with preference over non-preference applicants.

RESPONSE: The department disagrees that the rule is unclear. The applicant with a preference will retain preference in the final ranking over a non-preference applicant. However, the preference applicant will be passed over in favor of the next ranking applicant who may not have preference, if the preference applicant has seating for 101 or more and the percentage of licenses for restaurants with seating of 101 has already been filled within the quota area.

COMMENT NO. 4: Jon Ellingson suggested that RULE I(3) and (4) should be consistent with the statute which provides preference to an applicant who operates a restaurant twelve months prior to filing an application.

RESPONSE: The department provided amendments which make the deadline for filing lottery applications consistent within (3) and (4). The filing deadline is consistent with other license application deadlines. Using the filing deadline to determine the 12 month period for applying preference should not prejudice any applicant who files prior to the published deadline.

COMMENT NO. 5: Jon Ellingson suggested the rule elaborate on the definition of full service restaurant with an evening dinner menu, distinguishing an evening dinner menu as different from the establishment's lunch menu, offering items considered evening meals.

RESPONSE: The department agrees to amend RULE I to include the definition as shown in this notice.

COMMENT NO. 6: Jon Ellingson stated a further definition of "operating" a restaurant is needed to clarify what constitutes operation of a restaurant, suggesting language that the restaurant has been continuously open and serving meals constitutes an "operating" restaurant.

RESPONSE: The department believes 16-4-420(6), MCA, clearly defines a restaurant as a "public eating place where individually priced meals, including meals from an evening dinner menu, are prepared and served for on-premises consumption." Thus "operating" a restaurant means being open to the public, preparing and serving meals, including meals from an evening dinner menu. However, to avoid any misunderstanding, RULE I(4), will be amended deleting the words "in existence and running" on lines 2 and 7 and adding "open to the public as a full service restaurant, preparing and serving individually priced meals, including meals from an evening dinner menu, for on premises consumption."

COMMENT NO. 7: Jon Ellingson stated that he believes there is a need to create a rule to address investigating the accuracy of a party's claim of preference.

RESPONSE: The applicant's claim of preference will be investigated during the license application process. The public will also have an opportunity to comment during the process. However, if the department received information that an applicant may be inappropriately claiming preference, the department will present the applicant with the information and require a response.

COMMENT NO. 8: Jon Ellingson suggested that a location proposed for a restaurant beer and wine license be further defined.

RESPONSE: The department disagrees. The location for a licensed premises is well established in the Montana Alcoholic Beverages Code and other department rules.

COMMENT NO. 9: Jon Ellingson suggested that the ratio of 75% food to 25% alcoholic beverages only include food sold and consumed within the restaurant premises and that any food taken out for consumption off the restaurant premises not count in the required ratio of food to alcohol sales.

RESPONSE: The department agrees. Section 16-4-420(6), MCA, clearly states that the meals are prepared and served for on-premises consumption. Therefore, the 75%/25% ratio of food to alcoholic beverage sales would include only those meals prepared and served on the premises.

COMMENT NO. 10: Jon Ellingson requested clarification on whether one entity is allowed to apply for more than one restaurant beer and wine license.

RESPONSE: The department responded yes, one entity can apply for more than one restaurant beer and wine license as long as the applications are for different locations.

COMMENT NO. 11: Rich Leitgeb, Helena, stated that RULE I(6) is intended to prevent large sales of alcohol and that non-alcoholic beverages are not to be included in the 25% ratio of alcoholic beverages to 75% food.

RESPONSE: The department agreed that nonalcoholic beverages are not to be included in the 25% alcoholic beverages component of the ratio, but can be included in the 75% food component of the ratio.

COMMENT NO. 12: Rich Leitgeb stated that RULE I(6) prohibits gambling on a restaurant beer and wine licensed premises.

RESPONSE: The department agrees.

COMMENT NO. 13: John Cook stated that some restaurants have one menu which includes both a lunch and a dinner

selection. A patron can order dinner at any time a patron wishes. A restaurant should not be required to have more than one menu, as the menu can specify that lunch is not served after perhaps 3 pm.

RESPONSE: The department agrees that an evening dinner menu can either be a separate section for dinner items or a separate dinner menu.

COMMENT NO. 14: Greg Smith, Great Falls attorney suggested amendment to RULE I(2) which defines an existing license to exclude licenses on nonuse status or licenses which have been sold. Mr. Smith believes the seller should be eligible to apply for a restaurant beer and wine license. Mr. Smith asserts that 16-4-420(1)(e), MCA, means a license could be issued at a location prior to the time a restaurant beer and wine license is to be issued to that location.

RESPONSE: The statute clearly states that a restaurant that has an existing retail license for the sale of any alcoholic beverage is not to be considered for a restaurant beer and wine license at that location. The department has long considered a license to be attached to a specific location until the transfer, lapse, or revocation of such license is final. Therefore, the department disagrees that a change to the proposed rule is appropriate.

COMMENT NO. 15: John East, Bozeman questioned how the ranking of applicants will work. He said that it needs to be made more clear.

RESPONSE: The department explained the initial ranking of the applicants is to determine the order in which the lottery application will be reviewed taking into consideration preference and the percentage of large restaurant applicants to select the successful lottery entrant who will move on in the process to apply for a restaurant beer and wine license.

COMMENT NO. 16: John East, stated that he felt there should be a time limit set on how long one can hold a beer and wine license and not use it.

RESPONSE: The department agrees. There are currently laws and rules in place that address the nonuse of a license. The restaurant beer and wine license is subject to those laws and rules.

COMMENT NO. 17: John East asked what "location" means? Does it mean an existing building or a piece of land which may be developed? An undeveloped lot could result in the abuse of the cabaret beer and wine license, and could take as much as a year to build and open a restaurant.

RESPONSE: The department considers the location for a restaurant beer and wine license to be the building or portion of the building within which area the restaurant beer and wine license is to be operated. At the time of application, the

location must be decided. However, the premises need not be built. Also, the law provides for a conditional letter of approval agreeing to grant a license when a premises is completed and found to be suitable. The department expects the completion of a premises to occur within a reasonable amount of time. The department, by rule, considers 180 days a reasonable time period within which to complete the construction of a premises and 90 days a reasonable time period within which to complete alteration of a premises.

COMMENT NO. 18: John East further stated that RULE III(5) states that there is to be no existing license on a location applying for a cabaret license. If a license exists, is the new owner eligible for the cabaret license under these rules?

RESPONSE: No, as explained previously, the law is clear on this point. An owner with an existing license cannot apply for a cabaret license.

COMMENT NO. 19: Bob Riso, owner of Dos Amigos, Whitefish suggested amendment to RULE I(2) to allow a person who has sold a license to be considered for a restaurant beer and wine license.

RESPONSE: The statute clearly states that a restaurant that has an existing retail license for the sale of any alcoholic beverage is not to be considered for a restaurant beer and wine license at that location. The department addressed this concern above as well.

COMMENT NO. 20: Karen Suennen, restaurant owner in Hamilton suggested amendment to RULE I(2), or alternatively an exception to the definition of existing license to allow an applicant to be considered for a restaurant beer and wine license if the applicant can prove that the applicant has no ownership interest in the existing retail license, that the license is on nonuse status, that the licensee does not own the premises, that the restaurant beer and wine applicant has an exclusive lease to the premises and that the applicant has not had any ownership of a retail license in the past five years.

RESPONSE: The department disagrees. The law does not provide for an exception to the existing license prohibition.

COMMENT NO. 21: Eric Kaplan, Columbia Falls attorney representing Cafe Max in Kalispell stated that the clear language of the statute requires only restaurants which meet the qualifications of 16-4-420(6), MCA, "full service" which includes an evening dinner menu and has operated for at least 12 months be given a preference. Mr. Kaplan asserted that many of the applications received for the Kalispell area do not meet the requirements of a full service restaurant and therefore should not have preference.

RESPONSE: The department agrees that preference is to be given to applicants who have operated a restaurant as defined in

16-4-420(6), MCA, for a period of 12 months prior to the deadline for filing an application. Those claiming preference who are later discovered during the application process to have improperly claimed preference will be disqualified. Based on earlier comments, the department has agreed to amend RULE I(4) to further define "existing restaurant" which will clarify the type of business operation for which a preference is granted.

COMMENT NO. 22: Eric Kaplan stated that the statute does not require an applicant to have operated a restaurant at the specific location for which the applicant is applying for a restaurant beer and wine license for a period of 12 months to have preference. Mr. Kaplan asserted that to obtain preference, the statute requires only that the applicant has operated a restaurant for a 12 month period prior to the filing of an application for a restaurant beer and wine license and that the location of that restaurant is not a factor.

RESPONSE: The department disagrees. The statute provides that an applicant who has been operating a restaurant for a period of 12 months received preference for a license at the location where the restaurant is operating.

COMMENT NO. 23: Eric Kaplan asserted that "operated" a restaurant includes more than serving meals and that the date a restaurant begins operation could be the date of the purchase of the restaurant and preference should be granted accordingly.

RESPONSE: The department disagrees. The intent of the statute is that the restaurant be open and operating as a full service restaurant serving evening meals to the public.

COMMENT NO. 24: Eric Kaplan suggests applicants be investigated prior to considering the application into the lottery process.

RESPONSE: The department disagrees. The lottery process will rank all applicants who meet the basic criteria to enter the lottery and which applicants will advance to the next process. The license application process includes an investigation of the applicant and the applicant's premises and will uncover any disqualifications. When an application is disqualified, the next ranking lottery applicant will be afforded the opportunity to apply.

3. As a result of the comments received the department has adopted Rules II, III, IV, V, VI and VIII (ARM 42.12.404, 42.12.406, 42.12.408, 42.12.410, 42.12.412, and 42.12.416) as proposed and amended rules I (ARM 42.12.401) and VII (ARM 42.12.414) as follows:

RULE I (ARM 42.12.401) DEFINITIONS (1) remains the same.

(2) "EVENING DINNER MENU" MEANS A MENU WITH A SEPARATE SECTION FOR DINNER ITEMS OR A SEPARATE DINNER MENU WITH THE MAJORITY OF ITEMS OFFERED IN THE DINNER MENU DISTINCT FROM MENU

OFFERINGS FOR BREAKFAST OR LUNCH AND AVAILABLE ONLY DURING DINNER HOURS.

(2) remains the same, but is renumbered (3).

~~(3)~~ (4) "Existing preference" means a preference that will be given to a restaurant that has existed for one year prior to ~~a lottery drawing~~ THE LOTTERY DEADLINE and which will give it a priority in the final ranking of restaurants over a new restaurant in the lottery procedures. However, an existing preference will not supersede the limits within any quota area on licenses of restaurants with a seating capacity of 101 or more persons.

~~(4)~~ (5) "Existing restaurant" means one that has been ~~in existence and running~~ OPEN TO THE PUBLIC AS A FULL SERVICE RESTAURANT, PREPARING AND SERVING INDIVIDUALLY PRICED MEALS, INCLUDING MEALS FROM AN EVENING DINNER MENU, FOR ON PREMISES CONSUMPTION continuously for one year before the deadline for filing of the lottery application for the restaurant beer/wine license. These restaurants will be given an existing preference in the final ranking. In the initial lottery to be held November 1997, an "existing restaurant" is one that has been ~~in existence and running continuously~~ OPEN TO THE PUBLIC AS A FULL SERVICE RESTAURANT, PREPARING AND SERVING INDIVIDUALLY PRICED MEALS, INCLUDING MEALS FROM AN EVENING DINNER MENU, FOR ON PREMISES CONSUMPTION since on or before October 1, 1996. Such restaurant will receive an existing preference.

(5) through (8) remain the same, but are renumbered (6) through (9).

RULE VII (ARM 42.12.414) HOW APPLICANTS WILL BE CHOSEN

(1) and (2) remain the same.

(3) The department will not issue to the restaurants shown in (1)(b)(iii) more than 25% of the ~~eligible~~ AVAILABLE restaurant beer/wine licenses in any given quota area. This may result in a quota area not being able to immediately award all of its available restaurant beer/wine licenses. This could also result in larger restaurants who have received a preference being unable to receive a restaurant beer/wine license if many larger restaurants apply to the initial lottery in a given area.

(4) remains the same.

4. Therefore, the department adopts the rules shown above with the amendments listed.

Cleo Anderson
CLEO ANDERSON
Rule Reviewer

for Laurence G. Alke
MARY BRYSON
Director of Revenue

Certified to Secretary of State November 3, 1997

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, 1997. This table includes those rules adopted during the period July 1, 1997 through September 30, 1997 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, 1997, 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 1996 and 1997 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.

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BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in October 1997, appear. Vacancies scheduled to appear from December 1, 1997, through February 28, 1998, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of November 4, 1997.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM OCTOBER, 1997

Appointee	Appointed by	Succeeds	Appointment/End Date
Alternative Health Care Board (Commerce)			
Ms. Dolly Browder Missoula Qualifications (if required): direct midwife	Governor	reappointed	10/21/1997 9/1/2001
Ms. Kathee Dunham Arlee Qualifications (if required): direct midwife	Governor	Hamilton	10/21/1997 9/1/1998
Dr. Nancy Dunne-Boggs Missoula Qualifications (if required): naturopath	Governor	reappointed	10/21/1997 9/1/1999
Board of Dentistry (Commerce)			
Ms. Julie Fullerton Lolo Qualifications (if required): dental hygienist	Governor	not listed	10/1/1997 3/29/2002
Board of Funeral Services (Commerce)			
Mr. Jered Scherer Billings Qualifications (if required): representative of a cemetery company	Governor	not listed	10/1/1997 7/1/2002
Board of Hearing Aid Dispensers (Commerce)			
Ms. Cindy Burk Helena Qualifications (if required): hearing aid dispenser without a master's degree	Governor	not listed	10/1/1997 7/1/2000
Ms. Marlene Tash Dillon Qualifications (if required): public member	Governor	not listed	10/1/1997 7/1/2000

BOARD AND COUNCIL APPOINTEES FROM OCTOBER, 1997

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Outfitters (Commerce)			
Mr. Robin Cunningham	Governor	reappointed	10/1/1997
Gallatin Gateway			10/1/2000
Qualifications (if required): licensed in fishing outfitting business and representing District 2			
Mr. Raymond Rugg	Governor	Roos	10/1/1997
Superior			10/1/2000
Qualifications (if required): licensed outfitter representing District 1			
Board of Psychologists (Commerce)			
Mr. Mike Mullowney	Governor	Olsgaard	10/9/1997
Absarokee			9/1/2002
Qualifications (if required): public member			
Board of Real Estate Appraisers (Commerce)			
Mr. William Northcutt	Governor	Davis	10/9/1997
Joliet			5/1/1998
Qualifications (if required): real estate appraiser			
Capitol Complex Advisory Council (Fish, Wildlife and Parks)			
Ms. Sarah Etchart	Governor	not listed	10/27/1997
Helena			0/0/0
Qualifications (if required): public member			
Concealed Weapon Advisory Council (Governor's Office)			
Mr. Mike Batista	Governor	not listed	10/21/1997
Helena			0/0/0
Qualifications (if required): representative of the Department of Justice			

BOARD AND COUNCIL APPOINTEES FROM OCTOBER, 1997

Appointee	Appointed by	Succeeds	Appointment/End Date
Developmental Disabilities Planning and Advisory Council (Public Health and Human Services)			
Ms. Jenny LaSalle Box Elder	Governor	Kaline	10/29/1997 1/1/2003
Qualifications (if required): Native American with family member who has a developmental disability			
Mr. Tom Lynaugh Billings	Governor	Harrington	10/29/1997 1/1/2002
Qualifications (if required): attorney with family member who has a developmental disability			
Mr. Charlie Rehbein Helena	Governor	not listed	10/29/1997 1/1/2001
Qualifications (if required): representative of program services of the Older Americans Act of 1965			
Ms. Vicki Turner Helena	Governor	not listed	10/29/1997 1/1/2001
Qualifications (if required): representative of program services of the Rehabilitation Act of 1973			
Historical Preservation Review Board (Historical Society)			
Ms. Gloria J. Weisgerber Missoula	Governor	reappointed	10/1/1997 10/1/2001
Qualifications (if required): public member			
Lewis and Clark Bicentennial Commission (Historical Society)			
Ms. Jeanne Eder Dillon	Governor	not listed	10/1/1997 10/1/2000
Qualifications (if required): enrolled member of a Montana Indian tribe			

BOARD AND COUNCIL APPOINTEES FROM OCTOBER, 1997

Appointee	Appointed by	Succeeds	Appointment/End Date
Lewis and Clark Bicentennial Commission (Historical Society) Cont.			
Mr. Leif Johnson West Yellowstone Qualifications (if required): public member	Governor	not listed	10/1/1997 10/1/1998
Mr. Darrell Kipp Browning Qualifications (if required): enrolled member of a Montana Indian tribe	Governor	not listed	10/1/1997 10/1/1999
Ms. Teresa Korpela Great Falls Qualifications (if required): public member	Governor	not listed	10/1/1997 10/1/1999
Mr. John G. Lepley Fort Benton Qualifications (if required): public member	Governor	not listed	10/1/1997 10/1/2000
Ms. Edythe McCleary Hardin Qualifications (if required): public member	Governor	not listed	10/1/1997 10/1/2000
Ms. Betty Stone Glasgow Qualifications (if required): public member	Governor	not listed	10/1/1997 10/1/1999
Mr. Curley Youpee Poplar Qualifications (if required): enrolled member of a Montana Indian tribe	Governor	not listed	10/1/1997 10/1/1998
Mr. Hal G. Stearns Missoula Qualifications (if required): public member	Governor	not listed	10/1/1997 10/1/1998

BOARD AND COUNCIL APPOINTEES FROM OCTOBER, 1997

Appointee	Appointed by	Succeeds	Appointment/End Date
Martin Luther King, Jr. Holiday Commemorative Commission (Office of Indian Affairs)			
Ms. Betty McCoy	Governor	Caldwell	10/21/1997
Bozeman			1/12/1998
Qualifications (if required): public member			
Montana Mint Committee (Agriculture)			
Mr. Clyde Fisher	Governor	not listed	10/2/1997
Columbia Falls			7/1/2000
Qualifications (if required): representing the Mint Industry Research Council			
Rangeland Resources Committee (Natural Resources and Conservation)			
Mr. Mark Davies	Governor	Veseth	10/14/1997
Chinook			0/0/0
Qualifications (if required): rancher from the northern area of the state			
Mr. Les Gilman	Governor	Smith	10/14/1997
Alder			0/0/0
Qualifications (if required): rancher from the western area of the state			

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 1997 through FEBRUARY 28, 1998

Board/current position holder	Appointed by	Term end
Alfalfa Seed Committee (Agriculture)		
Mr. Thomas Matchett, Billings	Governor	12/21/1997
Qualifications (if required): public member		
Mr. Gayle Patrick, Malta	Governor	12/21/1997
Qualifications (if required): public member		
Appellate Defender Commission (Administration)		
Ms. Beverly Kolar, Geyser	Governor	1/1/1998
Qualifications (if required): public member		
Board of Chiropractors (Commerce)		
Dr. Marvin S. Harris, Great Falls	Governor	1/1/1998
Qualifications (if required): practicing chiropractor		
Board of Horse Racing (Commerce)		
Mr. Joe Erickson, Cascade	Governor	1/20/1998
Qualifications (if required): horse racing industry in District 3		
Board of Occupational Therapy Practice (Commerce)		
Ms. Alice O'Donnell, Anaconda	Governor	12/31/1997
Qualifications (if required): public member		
Board of Public Education (Education)		
Ms. Sarah Listerud, Wolf Point	Governor	2/1/1998
Qualifications (if required): member		
Board of Regents of Higher Education (Education)		
Mr. Paul F. Boylan, Bozeman	Governor	2/1/1998
Qualifications (if required): democrat residing in First Congressional District		

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 1997 through FEBRUARY 28, 1998

Board/current position holder	Appointed by	Term end
Board of Speech Pathologists and Audiologists (Commerce)		
Ms. Rosemary Reynolds, Absarokee	Governor	12/31/1997
Qualifications (if required): speech-language pathologist		
Mr. Jeffrey Griffin, Great Falls	Governor	12/31/1997
Qualifications (if required): audiologist		
Capital Finance Advisory Council (Administration)		
Mr. Marvin Dye, Helena	Governor	2/27/1998
Qualifications (if required): director of the Department of Transportation		
Mr. W. Ralph Peck, Helena	Governor	2/27/1998
Qualifications (if required): director of the Department of Agriculture		
Mr. Jim Kaze, Havre	Governor	2/27/1998
Qualifications (if required): member of the Board of Regents		
Mr. Dave Lewis, Helena	Governor	2/27/1998
Qualifications (if required): director of the Office of Budget and Program Planning		
Dr. Amos R. Little, Jr., Helena	Governor	2/27/1998
Qualifications (if required): member of the Montana Health Facilities Authority		
Mr. Bob Thomas, Stevensville	Governor	2/27/1998
Qualifications (if required): member of the Montana Board of Housing		
Ms. Lois A. Menzies, Helena	Governor	2/27/1998
Qualifications (if required): director of the Department of Administration		
Rep. Ray Peck, Havre	Governor	2/27/1998
Qualifications (if required): state representative		

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 1997 through FEBRUARY 28, 1998

Board/current position holder	Appointed by	Term end
Capitol Advisory Council (Administration)		
Mr. Allan Mathews, Missoula	Director	1/25/1998
Qualifications (if required): none specified		
Ms. Madalyn Quinlan, Helena	Director	1/25/1998
Qualifications (if required): none specified		
Mr. Fredric L. Quivik, Froid	Director	1/25/1998
Qualifications (if required): none specified		
Mr. Mark Reavis, Butte	Director	1/25/1998
Qualifications (if required): none specified		
Mr. Bob Frazier, Missoula	Director	1/25/1998
Qualifications (if required): none specified		
Capitol Restoration Commission (Administration)		
Ms. Marilyn Miller, Helena	Speaker	12/20/1997
Qualifications (if required): none specified		
Children's Trust Fund Board (Family Services)		
Ms. Judy Garrity, Helena	Governor	1/1/1998
Qualifications (if required): representative of Department of Family Services		
Ms. Barbara Campbell, Deer Lodge	Governor	1/1/1998
Qualifications (if required): public member		
Judge Gary Acevedo, Pablo	Governor	1/1/1998
Qualifications (if required): public member		
Mr. Kirk Astroth, Bozeman	Governor	1/1/1998
Qualifications (if required): public member		

Board/current position holder	Appointed by	Term end
Children's Trust Fund Board (Family Services) Cont.		
Ms. Judy Birch, Helena	Governor	1/1/1998
Qualifications (if required): representative of Office of Public Instruction		
Department of Corrections Advisory Council (Corrections)		
Mr. T. Larson Medicine Horse, Hardin	Governor	12/11/1997
Qualifications (if required): sheriff and Native American representative		
Judge Marge Johnson, Great Falls	Governor	12/11/1997
Qualifications (if required): district court judge		
Mr. Jim Reno, Billings	Governor	12/11/1997
Qualifications (if required): representing education programs		
Mr. Paul Stengel, Miles City	Governor	12/11/1997
Qualifications (if required): public member		
Sen. Bob Hockett, Havre	Governor	12/11/1997
Qualifications (if required): representing education/vocational education		
Mr. Tom Esch, Kalispell	Governor	12/11/1997
Qualifications (if required): county attorney		
Ms. Nancy Brosten, Swan Lake	Governor	12/11/1997
Qualifications (if required): member of the Swan River Correctional Training Center Advisory Council		
Rep. Bob Keenan, Bigfork	Governor	12/11/1997
Qualifications (if required): representative of the Swan River Correctional Training Center Subcommittee		
Rep. Royal C. Johnson, Billings	Governor	12/11/1997
Qualifications (if required): legislator		

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 1997 through FEBRUARY 28, 1998

Board/current position holder	Appointed by	Term end
Department of Corrections Advisory Council (Corrections) Cont.		
Commissioner Doug Barone, Glendive	Governor	12/11/1997
Qualifications (if required): county commissioner		
Ms. Candy Wimmer, Helena	Governor	12/11/1997
Qualifications (if required): representing the Board of Crime Control and the Youth Justice Council		
Sen. Ethel Harding, Polson	Governor	12/11/1997
Qualifications (if required): legislator and a victim representative		
Judge Ted Mizner, Anaconda	Governor	12/11/1997
Qualifications (if required): district court judge		
Sen. Vivian M. Brooke, Missoula	Governor	12/11/1997
Qualifications (if required): legislator and active in women's issues		
Mr. Steve Rice, Miles City	Governor	12/11/1997
Qualifications (if required): representing Juvenile Justice		
Mr. John Strandell, Great Falls	Governor	12/11/1997
Qualifications (if required): member of the Regional Correctional Facility		
Ms. Anita Richards, Seeley Lake	Governor	12/11/1997
Qualifications (if required): member of the Montana Sentencing Commission and a victim representative		
Ms. Kathy Ogren, Missoula	Governor	12/11/1997
Qualifications (if required): representing business/vocational education		
Sen. Sharon Estrada, Billings	Governor	1/1/1998
Qualifications (if required): state senator		

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 1997 through FEBRUARY 28, 1998

Board/current position holder	Appointed by	Term end
Judicial Nomination Commission (Justice)		
Judge Diana Barz, Billings	Governor	1/1/1998
Qualifications (if required): district judge		
Ms. Pam Rein, Big Timber	Governor	1/1/1998
Qualifications (if required): public member		
Low Income Energy Advisory Council (Public Health and Human Services)		
Mr. Peter Blouke, Helena	Governor	2/13/1998
Qualifications (if required): representing the Department of Public Health and Human Services		
Mr. Jay T. Downen, Great Falls	Governor	2/13/1998
Qualifications (if required): representing an energy-related enterprise		
Mr. Jack Haffey, Anaconda	Governor	2/13/1998
Qualifications (if required): representing an energy-related enterprise		
Ms. Nancy McCaffree, Helena	Governor	2/13/1998
Qualifications (if required): representing the Montana Public Service Commission		
Rep. Sheila Rice, Great Falls	Governor	2/13/1998
Qualifications (if required): representing an energy-related enterprise		
Mr. Wayne Fox, Bismark	Governor	2/13/1998
Qualifications (if required): representing an energy-related enterprise		
Mr. Mark A. Simonich, Helena	Governor	2/13/1998
Qualifications (if required): representing the Department of Environmental Quality		
Mr. Carl Visser, Billings	Governor	2/13/1998
Qualifications (if required): representing non-energy-related enterprises		

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 1997 through FEBRUARY 28, 1998

Board/current position holder	Appointed by	Term end
Martin Luther King, Jr., Holiday Commemorative Commission (Commerce)		
Ms. Angelina Vallejo Cormier, Billings	Governor	1/12/1998
Qualifications (if required): representing ethnic and business groups		
Mr. Robert Fourstar, Wolf Point	Governor	1/12/1998
Qualifications (if required): representing ethnic groups		
Reverend Bob Freeman, Billings	Governor	1/12/1998
Qualifications (if required): representing ethnic and religious groups		
Dr. Frederick Gilliard, Great Falls	Governor	1/12/1998
Qualifications (if required): representing education groups		
Mr. Anthony Caldwell, Great Falls	Governor	1/12/1998
Qualifications (if required): public member		
Ms. Carol Murray, Browning	Governor	1/12/1998
Qualifications (if required): public member		
Mr. Bill Jones, Great Falls	Governor	1/12/1998
Qualifications (if required): representing human rights groups		
Ms. Kay Maloney, Great Falls	Governor	1/12/1998
Qualifications (if required): representing human rights groups		
Ms. Cristina Medina, Helena	Governor	1/12/1998
Qualifications (if required): representing ethnic and human rights groups		
Mr. Benjamin Pease, Jr., Billings	Governor	1/12/1998
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 1997 through FEBRUARY 28, 1998

Board/current position holder	Appointed by	Term end
Martin Luther King, Jr., Holiday Commemorative Commission (Commerce) Cont.		
Mr. Brian Schnitzer, Billings	Governor	1/12/1998
Qualifications (if required): representing religious and business groups		
Ms. Michelle Wilkerson, Great Falls	Governor	1/12/1998
Qualifications (if required): representing ethnic and human rights groups		
Ms. Bonnie Craig, Missoula	Governor	1/12/1998
Qualifications (if required): representing ethnic and education groups		
Mrs. Pat Ojo, Missoula	Governor	1/12/1998
Qualifications (if required): public member		
Ms. Donna Ruff, Fairview	Governor	1/12/1998
Qualifications (if required): representing labor and ethnic groups		
Montana Arts Council (Education)		
Ms. Diane M. Davies, Polson	Governor	2/1/1998
Qualifications (if required): public member		
Ms. Ann Cogswell, Great Falls	Governor	2/1/1998
Qualifications (if required): public member		
Ms. Sody Jones, Billings	Governor	2/1/1998
Qualifications (if required): public member		
Ms. Jackie Parsons, Browning	Governor	2/1/1998
Qualifications (if required): public member		
Mr. Rick Halmes, Great Falls	Governor	2/1/1998
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 1997 through FEBRUARY 28, 1998

Board/current position holder	Appointed by	Term end
Montana State Lottery Commission (Commerce)		
Mr. Larry O'Toole II, Plentywood	Governor	1/1/1998
Qualifications (if required): attorney		
Ms. Carol Thomas, Great Falls	Governor	1/1/1998
Qualifications (if required): public member		
Old West Trail Association (Commerce)		
Mr. John Rabenberg, Fort Peck	Governor	1/1/1998
Qualifications (if required): public member		
Peace Officers Standards and Training Advisory Council (Justice)		
Mr. Gary Boyer, Great Falls	Governor	2/15/1998
Qualifications (if required): educator		
Mr. Thomas Blivins, Helena	Governor	2/15/1998
Qualifications (if required): representative of Department of Fish, Wildlife and Parks		
Sen. Delwyn Gage, Cut Bank	Governor	2/15/1998
Qualifications (if required): member of the Crime Control Board		
Mr. Dennis McCave, Billings	Governor	2/15/1998
Qualifications (if required): jail administrator		
Mr. Greg Noose, Bozeman	Governor	2/15/1998
Qualifications (if required): administrator of the Law Enforcement Academy		
Sheriff Lee Edmisten, Virginia City	Governor	2/15/1998
Qualifications (if required): sheriff		
Ms. Surry Latham, Missoula	Governor	2/15/1998
Qualifications (if required): dispatcher		

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 1997 through FEBRUARY 28, 1998

Board/current position holder	Appointed by	Term end
Peace Officers Standards and Training Advisory Council (Justice) Cont.		
Mr. Jack Lynch, Butte Qualifications (if required): mayor	Governor	2/15/1998
Mr. Christopher Miller, Deer Lodge Qualifications (if required): county attorney	Governor	2/15/1998
Chief Robert Jones, Great Falls Qualifications (if required): police chief	Governor	2/15/1998
Commissioner Mike Mathew, Billings Qualifications (if required): county commissioner	Governor	2/15/1998
Mr. Donald R. Houghton, Bozeman Qualifications (if required): deputy sheriff	Governor	2/15/1998
Colonel Craig Reap, Helena Qualifications (if required): Montana Highway Patrol representative	Governor	2/15/1998
Private Land-Public Wildlife Advisory Council (Fish, Wildlife and Parks)		
Mr. Russ Smith, Philipsburg Qualifications (if required): outfitter	Governor	1/18/1998
Mr. Steve Christensen, Corvallis Qualifications (if required): landowner	Governor	1/18/1998
Mr. Alan Charles, Miles City Qualifications (if required): hunter	Governor	1/18/1998