RESERVE

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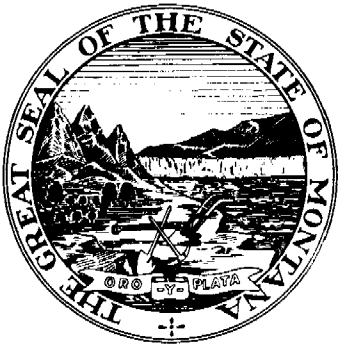

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 4

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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NOTICE SECTION

BEFORE THE CLASSIFICATION REVIEW COMMITTEE
OF THE STATE OF MONTANA

In the matter of the proposed 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 PROPOSED AMENDMENT OF RULE 6.6.8301 NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On March 27, 1997, the Montana Classification Review Committee proposes to amend rule 6.6.8301 updating references to the NCCI Basic Manual for Workers Compensation and Employers Liability, 1996 edition.

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

6.6.8301 ESTABLISHMENT OF CLASSIFICATION FOR COMPENSATION PLAN NO. 2 (1) The committee hereby adopts and incorporates by reference the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance, 1996 ed., as supplemented through ~~October 11, 1996~~March 12, 1997, which establishes classifications with respect to employers electing to be bound by compensation plan No. 2 as provided in Title 39, chapter 71, part 22, ~~Montana Code Annotated~~MCA. A copy of the Basic Manual for Workers Compensation and Employers Liability Insurance is available for public inspection at the Office of the Commissioner of Insurance, Room 270, Sam W. Mitchell Building, 126 North Sanders, P.O. Box 4009, Helena, MT 59620-4009. Copies of the Basic Manual for Workers Compensation and Employers Liability Insurance may be obtained by writing to the Montana Classification Review Committee in care of the National Council on Compensation Insurance, Inc., 7220 West Jefferson Avenue, Suite 310, Lakewood, Colorado 80235. Persons obtaining a copy of the Basic Manual for Workers Compensation and Employers Liability Insurance must pay the committee's cost of providing such copies.

(2) Remains the same.

AUTH: 33-16-1012, MCA
IMP: 33-16-1012, 2-4-103, MCA

3. The proposed amendments are necessary in order to update references to the NCCI Basic Manual for Workers Compensation and Employers Liability. Changes to the NCCI Basic Manual for Workers Compensation and Employers Liability affect classifications for those employers listed below:

01-MT-97 - Collapse Code 8861 - "Charitable or Welfare Organization- Professional Employees & Clerical" and Code 9110 - "Charitable or Welfare Organization--All Other Employees and Drivers" and to establish Code 8837 - "Charitable or Welfare

Organization--All Operations & Drivers" (Effective April 1, 1997.)

Purpose: To collapse the two codes which currently contemplate professional versus non-professional employees, and to establish a code, loss cost and rating values for charitable or welfare organizations that are engaged in, among other things, collecting and reconditioning used merchandise including the sales of such merchandise in stores operated by these organizations. This new code would contemplate both professional and non-professional employees.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Christy Weikart, Chairperson, Montana Classification Review Committee, c/o National Council on Compensation Insurance, Inc., 7220 West Jefferson Avenue, Suite 310, Lakewood, Colorado 80235, no later than March 24, 1997.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Christy Weikart, Chairperson, Montana Classification Review Committee, c/o National Council on Compensation Insurance, Inc., 7220 West Jefferson Avenue, Suite 310, Lakewood, Colorado 80235, no later than March 24, 1997.

6. If the classification review committee of the state of Montana receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the administrative code committee of the legislature; from a governmental agency or subdivision; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of the persons directly affected has been determined to be 10 based on 100 persons in the state whose classification is affected by the proposed amendment.

CLASSIFICATION AND
REVIEW COMMITTEE

By: Christy Weikart
Christy Weikart
Chairperson

By: Gary L. Spaeth
Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State on the 7th of February, 1997.

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

In the matter of the proposed amendment of Rule 6.6.4001 pertaining to the valuation of securities	))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 26, 1997, the State Auditor and Commissioner of Insurance proposes to amend Rule 6.6.4001 pertaining to the valuation of securities other than those specifically referred to in statutes.

2. The proposed rule amendments are as follows (new material is underlined; material to be deleted is interlined):

6.6.4001 VALUATION OF SECURITIES OTHER THAN THOSE SPECIFICALLY REFERRED TO IN STATUTES (1) Securities and assets must be valued in accordance with valuation standards of the NAIC published in its ~~1995~~1996 Accounting Practices and Procedures manual and its December 31, ~~1995~~1996 Valuation of Securities manual.

(2) The department hereby adopts and incorporates herein by reference the standards adopted by the NAIC for valuation of securities and other investments appearing in its ~~1995~~1996 Accounting Practices and Procedures manual and its December 31, ~~1995~~1996 Valuation of Securities manual. These are nationally-recognized models for such standards. Copies of the manuals are available for inspection at the office of the Commissioner of Insurance, Room 270, Sam W. Mitchell Building, Helena, Montana. Copies of the Accounting Practices and Procedures manual and the Valuation of Securities manual may be obtained by writing to the National Association of Insurance Commissioners, 120 West 12th Street, Suite 1100, Kansas City, MO 64105-1925. Persons obtaining copies of such manuals may be required to pay the NAIC's costs of providing such copies.

AUTH: 33-1-313, 33-2-533, and 33-2-1517, MCA
IMP: 33-2-533 and 33-2-1517, MCA

3. Rule 6.6.4001 is being amended because the manuals referenced are updated on an annual basis. The amendments incorporate the most current manual.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Jim Borchardt, Montana Insurance Department, P.O. Box 4009, Helena, Montana 59604, and must be received no later than March 24, 1997.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit this request along with any written comments he has to Jim Borchardt, Montana Insurance Department, P.O. Box 4009, Helena, Montana 59604. A written request for hearing must be received no later than March 24, 1997.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 30 persons based on the 300 persons who have indicated interest in the rules of this agency and who the agency has determined could be directly affected by these rules.

MARK O'KEEFE, State Auditor
and Commissioner of Insurance

By: _____
Frank Coté
Deputy Insurance Commissioner

By: _____
Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State this 7th day of February, 1997.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of rule relating to protection in evaluation procedures.	))))	NOTICE OF PUBLIC HEARING

TO: All interested persons.

1. On Wednesday, March 19, 1997, at 9:00 a.m., in the upstairs conference room, Office of Public Instruction, 1300 11th Avenue, Helena, Montana, a public hearing will be held to consider the proposed amendment of rule relating to protection in evaluation procedures.

2. The rule, as proposed to be amended, new material underlined, deleted material interlined, provides as follows.

10.16.1101 PROTECTION IN EVALUATION PROCEDURES (1) through (5) remain the same.

(6) A supplementary written report of individualized assessments is required in areas related to specific disabilities as follows:

(a) through (k) remain the same.

(l) Vision impairment: medical or optometric assessments, and a determination of the student's need for assistive technology including but not limited to braille instruction, braille reader textbooks, or large print or tape recorded instructional material.

(7) remains the same.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

3. Revision of the rule relating to protection in evaluation procedures is necessary to clarify that whenever a comprehensive educational evaluation is conducted for a student with a visual impairment, the evaluation includes a supplementary written report that considers whether assistive technology including but not limited to Braille is needed for the child.

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 Office of Public Instruction, Geralyn Driscoll, P.O. Box 202501, Helena, MT 59620-2501, no later than 5:00 p.m. on March 28, 1997.

5. An official of the Legal Services Unit, Office of Public Instruction, has been designated to preside over and conduct the hearing.

Geralyn Driscoll
Rule Reviewer
Office of Public Instruction

Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State February 10, 1997.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.36.303 relating to the authority of the department to allow use of alternate water systems in subdivisions.	)))))	NOTICE OF PROPOSED AMENDMENT OF RULES NO PUBLIC HEARING CONTEMPLATED (Subdivisions)

To: All Interested Persons

1. On April 4, 1997, the department proposes to amend ARM 17.36.303 relating to the authority of the Department of Environmental Quality to allow use of alternate water systems in subdivisions.

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

17.36.303 INDIVIDUAL WATER SUPPLY SYSTEMS (1)-(7) Remain the same.

(8) An alternate water source may be developed where it is shown to be not economically feasible to develop a well or where well water is unacceptable in terms of quantity, ~~or~~ quality, or dependability. Evidence that the alternate water supply is adequate shall be provided to the department.

(a)-(c) Remain the same.

(9)-(12) Remain the same.

AUTH: 76-4-104, MCA; IMP: 76-4-104, 76-4-125, MCA

3. Under 76-4-104(6), MCA, ARM 17.36.101(1) and 17.36.110, the department may not approve a subdivision plat if the domestic water supply is not adequate in terms of quality, quantity, and dependability. ARM 17.36.303(8) allows the department to approve an alternate water supply when the proposed water supply is from wells and the wells would be "unacceptable in terms of quantity or quality." Absent from the latter rule is the term "dependability." Because ARM 17.36.101(1) defines dependability as availability of quantity and quality "at all times," the department has interpreted ARM 17.36.303(8) since its adoption in 1967 to allow approval of an alternate water source when wells are unacceptable because they would not be dependable--i.e., that they would provide adequate quality and quantity some of the time but not all of the time. However, at its February 23, 1996, meeting, the Administrative Code Committee, in reviewing the department's approval of an alternate water supply for a specific subdivision, expressed concern that the department's interpretation is not correct. The Committee requested that the department clarify the rule and make its terminology consistent with the rules on disapproval of water source. Under the Committee's interpretation, the department could not, in certain instances,

approve an alternate water source proposed by a developer, even though an acceptable one were available. This would require unnecessary and unjustifiable subdivision disapprovals. While the department believes that its interpretation would be upheld, the absence of the term "dependability" in ARM 17.36.303(8), does create an ambiguity. The amendment is therefore proposed to ensure that the department is not required to disapprove an alternate water supply proposed by a developer when there is no sufficient reason for the disapproval.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment, in writing, to Leona Holm at the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901, no later than March 26, 1997.

5. If a person who is directly affected by the proposed amendment wishes to express his/her data, views, and arguments orally or in writing at a public hearing, he/she must make written request for a hearing and submit this request along with any written comments he/she has to Leona Holm at the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901. A written request for a hearing must be received no later than March 26, 1997.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be one person, based on an average of five persons who propose alternate water supplies for subdivisions each year.

DEPARTMENT OF ENVIRONMENTAL QUALITY

by Mark A. Simonich
MARK A. SIMONICH, Director

Reviewed by

John F. North
John F. North, Rule Reviewer

Certified to the Secretary of State February 10, 1997.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of rules 17.50.530 and 17.50.540, amending Class II landfill requirements.	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULES

(Solid Waste Management)

To: All Interested Persons

1. On March 19, 1997, at 10:30 a.m., the department will hold a public hearing in Room 111 of the Metcalf Building, 1520 E. 6th Ave., Helena, Montana, to consider the 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):

17.50.530 CLOSURE REQUIREMENTS FOR LANDFILLS

(1) Closure criteria for Class II landfills are as follows:

(a) and (b) Remain the same.

(c) The owner or operator must prepare a written closure plan that describes the steps necessary to close all landfill units at any point during their active life in accordance with the cover design requirements in (1)(a) or (b) of this rule, as applicable. The closure plan, at a minimum, must include the following information:

(i) Remains the same.

(ii) an estimate of the ~~largest area of the~~ Class II landfill unit ~~ever~~ that the department determines to be the largest unit in the facility requiring a final cover as required under (1)(a) of this rule ~~at any time~~ during the active life of the facility;

(iii) and (iv) Remain the same.

(d)-(j) Remain the same.

(2) Remains the same.

AUTH: 75-10-204, MCA; IMP: 75-10-204, MCA

17.50.540 FINANCIAL ASSURANCE REQUIREMENTS FOR CLASS II LANDFILLS (1)~~(a)~~ The requirements of this rule apply to owners and operators of all Class II landfill units, except owners or operators who are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States. Subdivisions of state government, such as counties, cities or towns, whose debts and liabilities are not directly the debts and liabilities of the state, are subject to this rule.

~~(a)~~(b) The requirements of this rule are effective April 9, 1997, except:

(i) small, dry or remote landfills which meet the "small

community exemption" criteria set forth in ARM 17.50.506, have until October 9, 1997, to comply; and

(ii) the department may waive financial assurance requirements for up to 1 year until April 9, 1998, for cause, if the owner or operator demonstrates to the department's satisfaction:

(A) that the April 9, 1997, effective date does not provide sufficient time to comply with the requirements of this rule; and

(B) that such a waiver will not adversely affect human health and the environment.

(2) The following fFinancial assurance for closure is required:

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party to close the ~~largest area of all~~ Class II landfill ~~units ever~~ unit that the department determines to be the largest unit in the facility requiring a final cover as required under ARM 17.50.530 ~~at any time~~ during the active life of the facility in accordance with the closure plan. The owner or operator must submit a copy to the department and place the estimate in the operating record.

(i) The cost estimate must equal the cost of closing the ~~largest area of all Class II landfill units ever requiring a final cover at any time~~ unit during the active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see ARM 17.50.530(1)(c)(ii)).

(ii)-(iv) Remain the same.

(b) Remains the same.

(3) and (4) Remain the same.

(5) The mechanisms used to demonstrate financial assurance under this rule must ensure that the funds necessary to meet the costs of closure, post-closure care, and corrective action for known releases will be available whenever they are needed. Owners and operators must choose from the options specified in (a)-(g) below.

(a)(i) An owner or operator may satisfy the requirements of this rule by establishing a trust fund which conforms to the requirements of this rule. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. A copy of the trust agreement must be placed in the facility's operating record.

(ii) Payments into the trust fund must be made annually by the owner or operator ~~or~~ over the remaining life of the Class II landfill ~~unit, whichever is shorter~~ facility, in the case of a trust fund for closure or post-closure care, or over one-half of the estimated length of the corrective action program in the case of corrective action for known releases. ~~This~~ These periods ~~is~~ are referred to as the pay-in periods.

(iii)-(viii) Remain the same.

(b)-(h) Remain the same.

AUTH: 75-10-204, MCA; IMP: 75-10-204, MCA

3. The proposed amendments to ARM 17.50.540(1)(b) allow the small landfills that may have the most difficulty in obtaining financial assurance additional time to commence

submittal of the assurance.

The amendments to ARM 17.50.530 and 17.50.540, pertaining to the pay-in period and the amount of financial assurance, modify those requirements to reflect recent Environmental Protection Agency clarification of the comparable federal regulations. The amendments provide the lowest allowable level of financial assurance and the longest allowable pay-in period. This is proposed because the financial assurance mechanism requirement is costly to landfill operators, most of whom are local governments, and the Department has determined that the likelihood that it will need to draw on a final assurance mechanism in the future is remote.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Jon Dillard, Department of Environmental Quality, Metcalf Building, PO Box 200901, Helena, MT 59620-0901, no later than March 24, 1997.

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

DEPARTMENT OF ENVIRONMENTAL QUALITY

Reviewed by: MARK A. SIMONICH, Director

JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State February 10, 1997.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the proposed adoption of 11 new rules related to the workers' compensation administrative assessment	) NOTICE OF PUBLIC HEARING ON) THE PROPOSED ADOPTION OF ELEVEN) NEW RULES))

TO ALL INTERESTED PERSONS:

1. On March 21, 1997, at 10:00 a.m., a public hearing will be held in the first floor conference room, Room No. 104 of the Walt Sullivan Building (Dept. of Labor Building), 1327 Lockey, Helena, Montana, to consider the adoption of rules related to the workers' compensation administrative assessment.

The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 4:00 p.m., March 17, 1997, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Attn: Ms. Linda Wilson, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-6531; TTD (406) 444-5549; fax (406) 444-4140. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Ms. Wilson.

2. The Department of Labor and Industry proposes to adopt new rules as follows:

RULE I DEFINITIONS For the purpose of this subchapter, the following definitions apply, unless the context of the rule clearly indicates otherwise:

(1) "Allocation" means the manner in which direct and indirect costs are distributed to an individual plan.

(2) "Administrative assessment" means the workers' compensation administrative assessment provided for by 39-71-201, MCA.

(3) "Associated entity" means a governmental body, other than the department, which has statutory duties related to workers' compensation and occupational disease matters, occupational safety acts, and boiler inspections, and which is funded by the administrative assessment. The Workers' Compensation Court is an example of an "associated entity". The term does not include the state fund or the self-insurers guaranty fund, or any other entity not funded in whole or in part by the administrative assessment.

(4) "Cost object" means any activity for which a separate measurement of costs is desired for distribution to the plans.

(5) "Department" means the department of labor and industry.

(6) "Direct costs identifiable to a plan" means those costs that can be identified specifically with a particular program and also identified with an individual plan without further allocation.

(7) "Direct costs identifiable to a program" means those costs that can be identified specifically with a particular program, and which are allocated to the plans.

(8) "Indirect costs" means those costs incurred for a common or joint purpose benefiting more than one program, and which are not readily assignable to the program specifically benefited without effort disproportionate to the results achieved.

(9) "Plans" or "the plans" means Plan No. 1, Plan No. 2, and Plan No. 3, under which workers' compensation insurance is to be provided in accordance with Title 39, chapter 71, MCA. It is distinguished from the phrase "individual plan", which means a particular plan, such as Plan No. 1, Plan No. 2, or Plan No. 3.

(10) "Program" means one or more regulatory, adjudicatory, informational, or service functions performed by the department or an associated entity in carrying out statutory directives related to workers' compensation and occupational safety matters. The term does not include the uninsured employers' fund, established by 39-71-502, MCA, the subsequent injury fund, as defined in 39-71-901, MCA, or any other function which is not funded by the administrative assessment.

(11) "Year" means a fiscal year, beginning July 1 and ending the following June 30 of the year indicated.

AUTH: 39-71-203, MCA IMP: 39-71-201, MCA

RULE II ADMINISTRATIVE ASSESSMENT METHODOLOGY IN GENERAL

(1) The administrative assessment is calculated annually, and is based on the current year's budget for all programs funded by the administrative assessment. The budgeted costs are allocated to each individual plan on the same basis as actual costs were allocated that plan in the previous year.

(2) The previous year's administrative assessment income, on a plan-by-plan basis, is compared to the total actual plan-by-plan costs of the previous year. Any difference between the income from an individual plan's administrative assessment and the actual costs for the plan in the previous year is carried forward as an adjustment to the administrative assessment in the current year.

(3) Other income from the previous year is credited to the program from which the income was generated. An example of "other income" is revenue generated by the sale of the workers' compensation "blue book" compilation of statutes and rules.

(4) Following calculation of the administrative assessment by plan, the department individually bills each plan member that is liable for a share of the administrative assessment. The bill is the greater of:

(a) the proportionate share of the administrative assessment that is attributable to the individual plan member, based on the plan member's participation in a particular plan

during the year; or

(b) the statutory minimum for an individual plan member.

(5) Plan No. 1 members' share shall be based on the preceding calendar year's gross annual payroll. Plan No. 2 members' share shall be based on the preceding calendar year gross annual direct premiums collected in Montana on workers' compensation policies of Plan No. 2 insurers. Plan No. 3 is one member. Therefore the amount calculated is the amount due from Plan No. 3.

(6) Payment of the bill for the administrative assessment is due 30 days from the date of the bill.

AUTH: 39-71-203, MCA IMP: 39-71-201, MCA

RULE III RECALCULATION OF ADMINISTRATIVE ASSESSMENTS MADE IN FISCAL YEARS 1992 - 1995 (1) In response to the decision of the Workers' Compensation Court in WCC No. 9309-6893, Montana Schools Group v. Department of Labor and Industry (decided June 16, 1995), the department will recalculate the administrative assessment for the years 1992 through 1995, inclusive, using the general methodology contained in [RULE II] and the year-specific methodologies contained in [RULE IV, RULE V, RULE VI and RULE VII].

(2) In the event a plan's administrative assessment is changed as a result of the recalculation for years 1992 through 1995, only those plan members that paid a given year's administrative assessment under protest and exercised the appropriate administrative remedies will have their bill for that year recalculated.

(3) An individual plan member that has its assessment recalculated will be billed for any net increase in the assessment due for years 1992 through 1995. If there is a net decrease in the assessment due, the plan member may choose to apply the net decrease as a credit toward a future administrative assessment or ask for a refund. A refund will be paid as soon as practicable, from whatever funds the department can properly use to pay such a refund.

AUTH: 39-71-203, MCA IMP: 39-71-201, MCA

RULE IV ADMINISTRATIVE ASSESSMENT METHODOLOGY FOR FISCAL YEAR 1992 (1) This rule provides for a methodology of allocating the actual 1991 costs and 1992 budgeted direct costs identifiable to a plan, direct costs identifiable to a program, and the allocation of indirect costs to programs, in order to calculate the administrative assessment for 1992.

(2) The department did not collect data on the number of hours worked on matters on a plan-by-plan basis in 1991 for any of the programs or cost objects identified in (4), (5), (6), (7), or (8), except for (7)(c) and (7)(e). Accordingly, the department does not have any basis other than the indicators identified in this rule upon which to determine the cost allocations.

(3) During 1992, there were no direct costs identifiable to a plan.

(4) The department uses the following indicators as cost

objects for allocating to each individual plan indirect costs and direct costs identifiable to legal programs:

(a) the number of petitions filed with the Workers' Compensation Court, for the Workers' Compensation Court program; and

(b) the number of workers' compensation and occupational disease case hearings held by the department, for the hearings program.

(5) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to insurance compliance programs:

(a) the number of orders processed and files reviewed, for the claims management program;

(b) the number of reports reviewed, for the files management program;

(c) the number of reports received, for the accident cataloging program;

(d) the number of panels and reviews held, for the department's rehabilitation program;

(e) the number of rehabilitation panels convened, for the department's rehabilitation panel program;

(f) the number of rehabilitation panels convened, for the department of social and rehabilitation services' rehabilitation panel program;

(g) the number of orders processed and files reviewed for file management purposes, for the medical regulation program;

(h) the number of Plan No. 2 private insurers and the number of Plan No. 1 self-insured entities, for the policy compliance program;

(i) the number of cases processed, for the mediation program; and

(j) the total amount of compensation paid during 1991 by each individual plan, for administration of the subsequent injury fund program.

(6) The department uses the weighted average of the expenditures in (5), except for (5)(f), expressed as the percentage an individual plan has of the total expenditures for insurance compliance functions, for allocating the indirect costs of providing administration and clerical support for insurance compliance programs.

(7) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to safety programs:

(a) the number of employers enrolled in 1991, for the occupational safety statistics program;

(b) the number of claims processed (except for Plan No. 3, using data generated over a seven month period only), for the supplemental data system program;

(c) the number of hours worked (tracked by plan), for the loss control program;

(d) the number of mines inspected, for the mining inspection program; and

(e) the number of hours worked (tracked by plan), for the boiler and crane inspection program.

(8) The department uses the weighted average of the expenditures in (7), expressed as the percentage an individual plan has of the total expenditures for safety functions, for allocating the indirect costs of providing administration for safety programs.

AUTH: 39-71-203, MCA IMP: 39-71-201, MCA

RULE V. ADMINISTRATIVE ASSESSMENT METHODOLOGY FOR FISCAL YEAR 1993 (1) This rule provides for a methodology of allocating the actual 1992 costs and 1993 budgeted direct costs identifiable to a plan, direct costs identifiable to a program, and the allocation of indirect costs to programs in order to calculate the administrative assessment for 1993.

(2) The department did not collect data on the number of hours worked on matters on a plan-by-plan basis in 1992 for any of the programs or cost objects identified in (4), (5), (6), (7), or (8), except for (7)(c) and (7)(e). Accordingly, the department does not have any basis other than the indicators upon which to determine the cost allocations.

(3) During 1993, there were no direct costs identifiable to a plan.

(4) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to legal programs:

(a) The number of petitions filed with the Workers' Compensation Court, for the Workers' Compensation Court program; and

(b) The number of workers' compensation and occupational disease case hearings held by the department, for the hearings program.

(5) The department uses the following indicators for allocating to each individual plan indirect costs and direct costs identifiable to insurance compliance programs:

(a) the number of orders processed and files reviewed, for the claims management program;

(b) the number of reports reviewed, for the files management program;

(c) the number of new claim files created, for the accident cataloging program;

(d) the number of rehabilitation panels convened, for the department's rehabilitation panel program;

(e) the number of rehabilitation panels convened, for the department of social and rehabilitation services' rehabilitation panel program;

(f) the same allocation as provided by (5), for the special projects program;

(g) the number of orders processed and files reviewed for file management purposes, for the medical regulation program;

(h) the number of Plan No. 2 private insurers and the number of Plan No. 1 self-insured entities, for the policy compliance program;

(i) the number of cases processed, for the mediation program;

(j) the total amount of compensation paid in 1991, for

administration of the subsequent injury fund program; and

(k) the number of active employers in 1992, for administration of the independent contractor program.

(6) The department uses the weighted average of the expenditures in (5), except for (5)(e) and (5)(f), expressed as the percentage an individual plan has of the total expenditures for insurance compliance functions, for allocating the indirect costs of providing administration and clerical support to the insurance compliance programs.

(7) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable for safety programs:

(a) the number of employers enrolled in 1992, for the occupational safety statistics program;

(b) the number of claims, for the supplemental data system program;

(c) the number of hours worked (tracked by plan), for the loss control program;

(d) the number of mines inspected, for the mining inspection program; and

(e) the number of hours worked (tracked by plan) for the boiler and crane inspection program.

(8) The department uses the weighted average of the expenditures in (7), expressed as the percentage an individual plan has of the total expenditures for safety functions, for allocating the indirect costs of providing administration for safety programs.

AUTH: 39-71-203, MCA IMP: 39-71-201, MCA

RULE VI ADMINISTRATIVE ASSESSMENT METHODOLOGY FOR FISCAL YEAR 1994 (1) This rule provides for a methodology of allocating the actual 1993 costs and 1994 budgeted direct costs identifiable to a plan, direct costs identifiable to a program, and the allocation of indirect costs to programs, in order to calculate the administrative assessment for 1994.

(2) The department did not collect data on the number of hours worked on matters on a plan-by-plan basis in 1993 for any of the programs or cost objects identified in (4), (5), (6), (7) or (8), except (7)(b) and (7)(d). Accordingly, the department does not have any basis other than the indicators upon which to determine the cost allocations.

(3) During 1994, the following programs had direct costs identifiable to a plan, as well as indirect costs associated with that program:

(a) the Plan No. 1 policy compliance program, identifiable to Plan No. 1; and

(b) the Plan No. 2 policy compliance program, identifiable to Plan No. 2.

(4) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to legal programs:

(a) the number of petitions filed with the Workers' Compensation Court, for the Workers' Compensation Court program; and

(b) the number of workers' compensation and occupational disease case hearings held by the department, for the hearings program.

(5) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to insurance compliance programs:

(a) the same allocation as in (6)(a) for actual costs, and in (6)(b) for budgeted costs, for the special projects program;

(b) the number of orders processed and files reviewed, for the claims management program;

(c) the number of reports reviewed, for the files management program;

(d) the number of new claim files created, for the data analysis program;

(e) the number of rehabilitation panels convened, for the department's rehabilitation panel program;

(f) the number of rehabilitation panels convened, for the department of social and rehabilitations' rehabilitation panel program;

(g) the number of orders processed and files reviewed for file management purposes, for the medical regulation program;

(h) the number of cases processed, for the mediation program;

(i) the total amount of compensation paid in 1992, for administration of the subsequent injury fund program;

(j) the number of active employers insured in 1993, for administration of the independent contractor exemption program;

(k) the amount of premium written during calendar year 1992 for Plan No. 2 and the amount of premium written during 1993 for Plan No. 3, by plan, for the trade group determination program;

(l) the number of active employers insured during 1993, for the underinsured employers' fund program; and

(m) the same allocation as in (6)(a) for actual costs and in (6)(b) for budgeted costs, for the management information system program.

(6) In 1994, because of internal reorganization of the department, the department made a distinction between actual 1993 expenditures and budgeted 1994 expenditures for administration and clerical support for the insurance compliance programs.

(a) The department uses the weighted average of the expenditures in (3)(a), (3)(b), and (5)(b) through (5)(i), except for (5)(f), expressed as the percentage an individual plan has of the total actual expenditures, for allocating the indirect costs of providing administration and clerical support for insurance compliance programs.

(b) The department uses the weighted average of the expenditures in (3)(a), (3)(b), (5)(b) through (5)(l) and (7)(b) through (7)(d), except for (5)(f), expressed as the percentage an individual plan had of the total budgeted expenditures for the administration and clerical support for the insurance compliance programs.

(7) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to safety programs:

(a) the number of employers enrolled in 1993, for the occupational safety statistics program;

(b) the number of hours worked (tracked by plan), for the loss control and on-site consultation program;

(c) the number of mines inspected, for the mining inspection program;

(d) the number of hours worked (tracked by plan), for the boiler and crane inspection program;

(e) the same allocation as in (6)(a) for actual costs and in (6)(b) for budgeted costs, for the Safety Culture Act implementation program; and

(f) the number of new claim files created, for the supplemental data system program.

(8) The department uses the weighted average of the expenditures in (7)(a) through (7)(d) and (7)(f), expressed as the percentage an individual plan has of the total actual expenditures, for administration for safety programs.

AUTH: 39-71-203, MCA IMP: 39-71-201, MCA

RULE VII ADMINISTRATIVE ASSESSMENT METHODOLOGY FOR FISCAL YEAR 1995 (1) This rule provides for a methodology of allocating the 1994 actual costs and 1995 budgeted direct costs identifiable to a plan, direct costs identifiable to a program, and the allocation of indirect costs to programs, in order to calculate the administrative assessment for 1995.

(2) The department did not collect data on the number of hours worked on matters on a plan-by-plan basis in 1994 for any of the programs or cost objects identified in (4), (5), (6), or (7), except (7)(b) through (7)(d). Accordingly, the department does not have any basis other than the indicators upon which to determine the cost allocations.

(3) The following programs had direct costs identifiable to a plan, as well as indirect costs associated with that program:

(a) the Plan No. 1 policy compliance program, identifiable to Plan No. 1; and

(b) the Plan No. 2 policy compliance program, identifiable to Plan No. 2.

(4) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to legal programs:

(a) the number of petitions filed with the Workers' Compensation Court, for the Workers' Compensation Court program; and

(b) the number of workers' compensation and occupational disease case hearings held by the department, for the hearings program.

(5) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to insurance compliance programs:

(a) the same allocation as in (6), for the special

projects program;

(b) the number of orders processed and files reviewed, for the claims management program;

(c) the number of files reviewed, for the files management program;

(d) the number of new claim files created, for the data analysis program;

(e) the number of rehabilitation panels convened, for the department's rehabilitation panel program;

(f) the number of rehabilitation panels convened, for the department of public health and human services' rehabilitation panel program;

(g) the number of orders processed and files reviewed for file management purposes, for the medical regulation program;

(h) the number of cases processed, for the mediation program;

(i) the number of active employers insured in 1994, for the independent contractor exemption program;

(j) the amount of premium written during calendar year 1993 for Plan No. 2 and the amount of premium written during 1994 for Plan No. 3, for the trade group determination program;

(k) the number of active employers insured by plan in 1994, for the administration of the underinsured employer's fund program; and

(l) the same allocation as in (6), for the management information systems program.

(6) The department uses a weighted average of certain specified expenditures, expressed as the percentage an individual plan has of the total expenditures for all of those functions, for administration and clerical support of all of the programs funded by the administrative assessment. The following expenditures are used in creating the weighted average:

(a) (3)(a) and (3)(b);

(b) (5)(b) through (5)(k), except for (5)(f); and

(c) (7)(b) through (7)(d).

(7) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to safety programs:

(a) the number of employers enrolled in 1994, for the occupational safety statistics program;

(b) the number of field hours worked, for the occupational safety and on-site safety consultation program;

(c) the number of field hours worked, for the mining inspection program;

(d) the number of field hours worked, for the boiler and crane inspection program; and

(e) the same allocation as in (6), for the Safety Culture Act implementation program.

AUTH: 39-71-203, MCA IMP: 39-71-201, MCA

RULE VIII ADMINISTRATIVE ASSESSMENT METHODOLOGY FOR FISCAL YEAR 1996 (1) This rule provides for a methodology of allocating the actual 1995 costs and budgeted 1996 direct costs identifiable to a plan, direct costs identifiable to a program,

and the allocation of indirect costs to programs, in order to calculate the administrative assessment for 1996.

(2) The department did not collect data on the number of hours worked on matters on a plan-by-plan basis in 1995 for any of the programs or cost objects identified in (4), (5), (6), (7), (8)(a), or (8)(e). Accordingly, the department does not have any basis other than the indicators upon which to determine the cost allocations.

(3) The following programs had direct costs identifiable to a plan, as well as indirect costs associated with that program:

(a) the Plan No. 1 policy compliance program, identifiable to Plan No. 1; and

(b) the Plan No. 2 policy compliance program, identifiable to Plan No. 2.

(4) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to legal programs:

(a) the number of petitions filed with the Workers' Compensation Court, for the Workers' Compensation Court program; and

(b) the number of workers' compensation and occupational disease case hearings held by the department, for the hearings program.

(5) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to claims assistance programs:

(a) the same allocation as in (6), for the special projects program;

(b) the number of orders processed and files reviewed, for the claims management program;

(c) the number of new claim files created, for the data analysis program;

(d) the number of rehabilitation panels convened, for the department's rehabilitation panel program;

(e) the number of rehabilitation panels convened, for the department of public health and human services' rehabilitation panel program;

(f) the number of cases processed, for the mediation program;

(g) the same allocation as in (6), for the management information systems program; and

(h) the weighted average of the expenditures in (5)(b) through (5)(d), (5)(f) and (5)(g), expressed as the percentage an individual plan has of the total expenditures, for administration of the claims assistance program.

(6) The department uses a weighted average of certain specified expenditures, expressed as the percentage an individual plan has of the total expenditures for all of those functions, for administration and clerical support of all of the programs funded by the administrative assessment. The following expenditures are used in creating the weighted average:

(a) (3)(a) and (3)(b);

(b) (5)(b) through (5)(d) and (5)(f);

(c) (7)(a) through (7)(d); and

(d) (8)(b) through (8)(d), except (8)(d) only for 1995 actual costs, not 1996 budgeted costs, because the program was transferred to the department of commerce.

(7) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to regulations bureau programs:

(a) the number of orders processed and files reviewed for file management purposes, for the medical regulation program;

(b) the number of active employers in 1995, for the independent contractor exemption program;

(c) the amount of premium written during calendar year 1994 for Plan No. 2 and the amount of premium written during 1995 for Plan No. 3, for the trade group determination program;

(d) the number of active employers in 1995, for administration of the underinsured employers' fund program; and

(e) the weighted average of the expenditures in (3)(a), (3)(b), and (7)(a) through (7)(d), expressed as the percentage an individual plan has of the total expenditures, for administration of the regulations bureau programs.

(8) The department uses the following indicators as cost objects for allocating to each plan indirect costs and direct costs identifiable to safety programs:

(a) the number of employers enrolled in 1995, for the occupational safety statistics program;

(b) the number of field hours worked, for the mandatory inspection and on-site consultation program;

(c) the number of field hours worked, for the mining inspection program;

(d) the number of hours worked, for the boiler inspection program; and

(e) the same allocation as in (6), for the Safety Culture Act implementation program.

AUTH: 39-71-203, MCA IMP: 39-71-201, MCA

RULE IX ADMINISTRATIVE ASSESSMENT METHODOLOGY FOR FISCAL YEAR 1997 (1) This rule provides for a methodology of allocating the 1996 actual costs and 1997 budgeted direct costs identifiable to a plan, direct costs identifiable to a program, and the allocation of indirect costs to programs, in order to calculate the administrative assessment for 1997.

(2) The department did not collect data on the number of hours worked on matters on a plan-by-plan basis in 1996 for any of the programs or cost objects identified in (4), (5), (6), (7)(a), or (7)(e). Accordingly, the department does not have any basis other than the indicators upon which to determine the cost allocations.

(3) The following programs had direct costs identifiable to a plan, as well as indirect costs associated with that program:

(a) the Plan No. 1 policy compliance program, identifiable to Plan No. 1; and

(b) the Plan No. 2 policy compliance program, identifiable to Plan No. 2.

(4) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to legal programs:

(a) the number of petitions filed with the Workers' Compensation Court, for the Workers' Compensation Court program; and

(b) the number of workers' compensation and occupational disease case hearings held by the department, for the hearings program.

(5) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to claims assistance programs:

(a) the same allocation as in (8), for the special projects program;

(b) the number of orders, 14 day notices, and claim denials reviewed, plus the number of occupational disease panels convened, for the claims management program;

(c) the number of first reports of injury processed, for the data analysis program;

(d) the number of rehabilitation panels convened, for the department's rehabilitation panel program;

(e) the number of cases processed, for the mediation program;

(f) the same allocation as in (8), for the management information systems program; and

(g) the weighted average of the indicators in (5)(b) through (f), expressed as the percentage an individual plan has of the total expenditures, for administration of the claims assistance programs.

(6) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to regulations bureau programs:

(a) the number of orders processed and files reviewed for file management purposes, for the medical regulation program;

(b) the number of active employers in 1996, for the independent contractor exemption program;

(c) the amount of premium written during calendar year 1995 for Plan No. 2 and the amount of premium written during 1996 for Plan No. 3, for the trade group determination program;

(d) the number of active employers in 1996, for administration of the underinsured employers' fund program; and

(e) the weighted average of the expenditures in (3)(a), (3)(b) and (6)(a) through (6)(d), expressed as the percentage an individual plan has of the total expenditures, for administration of the regulations bureau programs.

(7) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to safety bureau programs:

(a) the number of employers enrolled in 1996, for the occupational safety statistics program;

(b) the number of field hours worked, for the mandatory inspection and on-site consultation program;

(c) the number of field hours worked, for the mining inspection program;

(d) the number of hours worked, for the boiler inspection program administered by the department of commerce; and

(e) the same allocation as in (8), for the Safety Culture Act implementation program.

(8) The department uses a weighted average of certain specified expenditures, expressed as the percentage an individual plan has of the total expenditures for all of those functions, for administration and clerical support of all of the programs funded by the administrative assessment. The following expenditures are used in creating the weighted average:

(a) (3)(a) and (3)(b);

(b) (5)(b) through (5)(e);

(c) (6)(a) through (6)(d); and

(d) (7)(b) and (7)(c).

AUTH: 39-71-203, MCA IMP: 39-71-201, MCA

RULE X ASSESSMENT METHODOLOGY FOR FISCAL YEARS BEGINNING 1998 (1) This rule provides for a methodology of allocating direct costs identifiable to a plan, direct costs identifiable to a program, and the allocation of indirect costs to programs, in order to calculate the administrative assessment for fiscal years beginning 1998.

(2) The following programs have direct costs identifiable to a plan, as well as indirect costs associated with that program:

(a) the Plan No. 1 policy compliance program, identifiable to Plan No. 1; and

(b) the Plan No. 2 policy compliance program, identifiable to Plan No. 2.

(3) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to legal programs:

(a) the number of petitions filed with the Workers' Compensation Court, for the Workers' Compensation Court program; and

(b) the number of workers' compensation and occupational disease case hearings held by the department, for the hearings program.

(4) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to claims assistance programs:

(a) the same allocation as in (7), for the special projects program;

(b) the number of orders, 14 day notices, and claim denials reviewed, plus the number of occupational disease panels convened, for the claims management program;

(c) the number of first reports of injury processed, for the data analysis program;

(d) the number of rehabilitation panels convened, for the department's rehabilitation panel program;

(e) the number of cases processed, for the mediation program;

(f) the same allocation as in (7), for the management information systems program; and

(g) the weighted average of the indicators in (4)(b) through (f), expressed as the percentage an individual plan has of the total expenditures, for administration of the claims assistance programs.

(5) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to regulations bureau programs:

(a) the number of orders processed and files reviewed for file management purposes, for the medical regulation program;

(b) the number of active employers in the previous year, for the independent contractor exemption program;

(c) the amount of premium written during the previous calendar year for Plan No. 2 and the amount of premium written during the previous fiscal year for Plan No. 3, for the trade group determination program;

(d) the number of active employers in the previous year, for administration of the underinsured employers' fund program; and

(e) the weighted average of the expenditures in (5)(a) through (5)(d), expressed as the percentage an individual plan has of the total expenditures, for administration of the regulations bureau programs.

(6) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to safety programs:

(a) the number of employers enrolled in the previous year, for the occupational safety statistics program;

(b) the number of field hours worked, for the mandatory inspection and on-site consultation program;

(c) the number of field hours worked, for the mining inspection program;

(d) the number of hours worked, for the boiler inspection program administered by the department of commerce; and

(e) the same allocation as in (7), for the Safety Culture Act implementation program.

(7) The department uses a weighted average of certain specified expenditures, expressed as the percentage an individual plan has of the total expenditures for all of those functions, for administration and clerical support of all of the programs funded by the administrative assessment. The following expenditures are used in creating the weighted average:

(a) (2)(a) and (2)(b);

(b) (4)(b) through (4)(e);

(c) (5)(a) through (5)(d); and

(d) (6)(b) and (6)(c).

AUTH: 39-71-203, MCA IMP: 39-71-201, MCA

RULE XI ASSESSMENTS OTHER THAN ADMINISTRATIVE ASSESSMENT

(1) In addition to the administrative assessment, the department may levy other assessments on the plans as permitted by law.

(a) As provided by 39-71-902, MCA, the department may assess each insurer an amount not to exceed 5% of compensation paid in the preceding fiscal year by each Plan No. 1 self-

insurer, Plan No. 2 private insurer, or Plan No. 3, the state fund, for the purpose of funding the subsequent injury fund. The assessment will not be made when there is a surplus above and beyond projected liabilities and administrative costs necessary to fund the liabilities and administrative costs of the subsequent injury fund based on the most current actuarial study.

(b) As provided by 39-71-1004, MCA, the department may make an assessment of not more than 1% of compensation paid by each Plan No. 1 self-insurer, Plan No. 2 private insurer, or Plan No. 3, the state fund, for the purpose of funding the industrial accident rehabilitation account.

(2) The department may combine the billing for any or all of the other assessments described in this rule with the billing for the administrative assessment.

(3) Payment of the bill for the assessments described in (1) is due 30 days from the date of the bill.

AUTH: 39-71-203, MCA IMP: 39-71-902 and 39-71-1004, MCA

REASON: There is reasonable necessity to adopt the proposed rules in response to the decision of the Workers' Compensation Court in WCC No. 9309-6893, *Montana Schools Group v. Department of Labor and Industry* (decided June 16, 1995). In that case, the Court ruled that the Department needed to adopt administrative rules in order to prepare and make the assessment required by 39-71-201, MCA.

On July 11, 1996, the Department held a public hearing concerning MAR Notice No. 24-29-95 (published on June 20, 1996, at pages 1609 through 1613), regarding five proposed rules on the administrative assessment. As a result of the public comment on those rules, the Department decided not to adopt those five rules. The Department has endeavored to be cognizant of the comments made on the earlier rules while it drafted the rules contained in this notice, and incorporated many of the suggestions contained in those earlier comments in the revised rules.

3. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to:

Jim Hill, Bureau Chief
Workers' Compensation Regulations Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 8011
Helena, Montana 59604-8011

and must be received by not later than 5:00 p.m., March 28, 1997.

4. The Department proposes to make the new rules effective as soon as feasible. The Department reserves the right to adopt only portions of the rules, or to adopt some or all of the rules at a later date.

5. The Hearing Bureau of the Legal/Centralized Services Division of the Department has been designated to preside over and conduct the hearing.

David A. Scott
Rule Reviewer

Patricia Haffey, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: February 10, 1997.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 24.30.102, related to occupational safety and health standards for public sector employment	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 24.30.102

TO ALL INTERESTED PERSONS:

1. On March 21, 1997, at 1:30 p.m., a public hearing will be held in the first floor conference room at the Walt Sullivan Building (Dept. of Labor Building), 1327 Lockey Street, Helena, Montana, to consider the amendment of ARM 24.30.102, to generally incorporate by reference the current version of federal health and safety regulations.

The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., March 17, 1997, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Safety Bureau, Attn: Mr. Dave Folsom, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-6418; TTD (406) 444-5549; fax (406) 444-4140. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Mr. Folsom.

2. The Department of Labor and Industry proposes to amend the rule as follows: (new matter underlined, deleted matter interlined)

24.30.102 OCCUPATIONAL SAFETY AND HEALTH CODE FOR PUBLIC SECTOR EMPLOYMENT (1) Section 50-71-311 MCA, of the Montana Safety Act provides that the department of labor and industry may adopt, amend, repeal and enforce rules for the prevention of accidents to be known as "safety codes" in every employment and place of employment, including the repair and maintenance of such places of employment to render them safe. The federal Occupational Safety and Health Act of 1970 does not include safety standards coverage for employees of this state or political subdivisions of this state. It is the intent of this rule that public sector employees of this state and political subdivisions of this state shall be protected to the greatest extent possible by the same safety standards for employments covered by the federal Occupational Safety and Health Act of 1970. The department is therefore adopting by reference certain occupational safety and health standards, adopted by the United States Secretary of Labor under the Occupational Safety and Health Act of 1970. The department has determined, with the assent of the secretary of state, that publication of the rules

would be unduly cumbersome and expensive. Copies of the rules adopted by reference are available and may be obtained at cost from the Montana Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624, or the Superintendent of Documents, United States Government Printing Office, 941 North Capitol Street, Washington, D.C. 20401.

(2) As used in the rules adopted by reference in subsection (3) below, unless the context clearly requires otherwise, the following definitions apply:

(a) "Act" means the Montana Safety Act (50-71-101 through 50-71-334, MCA).

(b) "Assistant secretary of labor" or "secretary" means the commissioner of the Montana department of labor and industry.

(c) "Employee" or "public sector employee" means every person in this state, including a contractor other than an independent contractor, who is in the service of a public sector employer, as defined below, under any appointment or contract of hire, expressed or implied, oral or written.

(d) "Employer" or "public sector employer" means this state and each county, city and county, city school district, irrigation district, all other districts established by law and all public corporations and quasi public corporations and public agencies therein who have any person in service under any appointment or contract of hire, expressed or implied, oral or written.

(3) The department of labor and industry hereby adopts a safety code for every place of employment conducted by a public sector employer. This safety code adopts by reference the following occupational safety and health standards found in the Code of Federal Regulations, as of July 1, ~~1995~~ 1996:

(a) Title 29, Part 1910;

(b) the provisions of 29 CFR 1910.146 appendix C, example 1, part A, as mandatory provisions that are applicable to all confined spaces; and

(c) Title 29, Part 1926.

(4) All sections adopted by reference are binding on every public sector employer even though the sections are not separately printed in a separate state pamphlet and even though they are omitted from publication in the Montana Administrative Register and the Administrative Rules of Montana. The safety standards adopted above and printed in the Code of Federal Regulations, Title 29, as of July 1, ~~1995~~ 1996, are considered under this rule as the printed form of the safety code adopted under this subsection, and shall be used by the department and all public sector employers, employees, and other persons when referring to the provisions of the safety code adopted under this subsection. All the provisions, remedies, and penalties found in the Montana Safety Act (50-71-101 through 50-71-334, MCA) apply to the administration of the provisions of the safety code adopted by this rule.

(5) For convenience, the federal number of a particular section found in the code of federal regulations should be used when referring to a section in the safety code adopted in

subsection (3) above. The federal number is to be preceded by the term (5). Thus, when section 1910.27 of the Code of Federal Regulations pertaining to fixed ladders is to be referred to or cited, the correct cite would be "subsection (5) 1910.27 of section 24.30.102 ARM" or "ARM 24.30.102 (5) 1910.27".
AUTH: 50-71-311, MCA IMP: 50-71-311 and 50-71-312, MCA

REASON: The proposed amendments to this rule are reasonably necessary to incorporate by reference the current federal rules promulgated by the Occupational Health and Safety Administration (OSHA). The current version of the state rule incorporates the 1995 version of the federal rules, which has been updated in the last year. The July 1, 1996, version is proposed for incorporation by reference because that is the most recent version generally available in printed form.

3. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to:

John Maloney, Bureau Chief
Safety Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

and must be received by no later than 5:00 p.m., March 28, 1997.

4. In addition to the publication of this notice in the Montana Administrative Register, an abbreviated Notice of Public Hearing is being published in one or more daily newspapers of general circulation in this state, as required by 50-71-302, MCA. Persons interested in viewing or obtaining a copy of the abbreviated Notice of Public Hearing published in a newspaper should contact Mr. Folsom at the address listed in paragraph 1 of this Notice.

5. The Department proposes to make these amendments and repeals effective May 1, 1997; however, the Department reserves the right to make the amendments effective at a later date, or not at all.

6. The Hearings Bureau of the Legal/Centralized Services Division of the Department has been designated to preside over and conduct the hearing.

David A. Scott
Rule Reviewer

Patricia Haffey, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: February 10, 1997.

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of a rule pertaining to unprofessional conduct	)	NOTICE OF AMENDMENT OF 8.58.419 GROUNDS FOR LICENSE DISCIPLINE - GENERAL PROVISIONS - UNPROFESSIONAL CONDUCT

TO: All Interested Persons:

1. On December 5, 1996, the Board of Realty Regulation published a notice of proposed amendment of the above-stated rule at page 3101 of the 1996 Montana Administrative Register, issue number 23.

2. The Board has amended the rule as proposed, but with the following changes:

"8.58.419 GROUNDS FOR LICENSE DISCIPLINE - GENERAL PROVISIONS - UNPROFESSIONAL CONDUCT (1) through (3)(af) will remain the same as proposed.

(ag) Licensees ~~or agencies~~, when advertising, shall ~~be especially careful to~~ present a true picture, ~~and~~ Licensees shall not advertise without disclosing ~~his or her~~ the licensee's name and identity as a real estate licensee ~~or real estate agency~~. ~~Such disclosure shall be required~~ Licensees shall disclose their identity as a real estate licensee whenever the licensee ~~or agency~~ negotiates or attempts to negotiate the listing, sale, purchase or exchange of real estate ~~which belongs to the licensee, the agency or the principal~~.

(4) will remain the same as proposed."

3. The Board has thoroughly considered all comments and testimony received. Those comments, and the Board's responses thereto, are as follows:

COMMENT: One comment was received from Ted Topolski concerning the requirement of a licensee disclosing, in real estate ads, when they had a financial interest in the property being advertised.

RESPONSE: It was the consensus of the Board that this comment was outside the scope of the rule notice and, therefore, did not accept the proposed amendment.

COMMENT: One comment was received from John Tabaracci on behalf of the Montana Association of Realtors suggesting language changes for the proposed amendment.

RESPONSE: The Board concurred with Mr. Tabaracci and has amended the rule as shown above.

BOARD OF REALTY REGULATION
JACK K. MOORE, CHAIRMAN

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


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 10, 1997.

BEFORE THE BOARD OF PASSENGER TRAMWAY SAFETY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment, repeal and adoption of rules pertaining to the passenger tramway safety industry	)))	NOTICE OF AMENDMENT, REPEAL AND ADOPTION OF RULES PERTAINING TO THE PASSENGER TRAMWAY SAFETY INDUSTRY

TO: All Interested Persons:

1. On November 7, 1996, the Board of Passenger Tramway Safety published a notice of proposed amendment, repeal and adoption of rules at page 2952, 1996 Montana Administrative Register, issue number 21.

2. The Board has amended ARM 8.63.503, 8.63.504, 8.63.505, 8.63.509, 8.63.517 and 8.63.518, repealed ARM 8.63.507, and adopted new rule I (8.63.520) exactly as proposed.

3. The Board has thoroughly considered all comments and testimony received. Those comments, and the Board's responses thereto, are as follows:

COMMENT: Mr. Souder wrote the Board concerning the proposed new rule requiring an engineer to certify that he is qualified to perform the service for which he has been employed. He stated the rule is redundant and a waste of paper to require an engineer to attest to his quaifications as they attest to their qualifications when they receive their sign and seal from the Montana Board of Professional Engineers and Land Surveyors.

RESONSE: The Board stated that this is a small amount of paperwork to aid the board in protecting and ensuring public safety.

BOARD OF PASSENGER TRAMWAY SAFETY
LYLE MEEKS, CHAIRMAN

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 10, 1997.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the repeal of Title 17, Chapter 30, Subchapter 15, and the amendment of 17.30.1001 and 17.30.1022 concerning permitting of in-situ uranium mining.	NOTICE OF AMENDMENT AND REPEAL OF RULES

(Water Quality)

To: All Interested Persons

1. On December 19, 1996, the board published notice of the proposed amendment and repeal of the above-captioned rules at page 3199 of the Montana Administrative Register, Issue No. 24.

2. The rules were amended and repealed as proposed with no changes.

3. No comments were received.

BOARD OF ENVIRONMENTAL REVIEW

By _____
CINDY E. YOUNKIN, Chairperson

Reviewed by

_____
John F. North, Rule Reviewer

Certified to the Secretary of State February 10, 1997.

BEFORE THE PETROLEUM TANK RELEASE COMPENSATION BOARD
DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of rule 17.58.333 pertaining to designating a representative for reimbursement.	NOTICE OF AMENDMENT OF RULE

(Petroleum Board)

To: All Interested Persons

1. On December 19, 1996, the board published notice of proposed amendment to the above-captioned rule, at page 3197 of the Montana Administrative Register, Issue No. 24.

2. The rule was amended as proposed with no changes.

3. No comments were received.

PETROLEUM TANK RELEASE COMPENSATION BOARD
GARY TSCHACHE, PRESIDING OFFICER

BY: JEAN A. RILEY, Executive Director

Reviewed by:

JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State February 10, 1997.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION, AMENDMENT AND REPEAL OF RULES REGULATING PUBLIC GAMBLING	))))	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL OF RULES REGULATING PUBLIC GAMBLING

TO: All Interested Persons

1. On October 3, 1996, the Department of Justice published a notice of public hearing on the proposed adoption, amendment, and repeal of rules regulating public gambling at page 2504 of the 1996 Montana Administrative Register, issue no. 19. The hearing was held on October 29, 1996, at 9:00 a.m. in the auditorium of the Scott Hart Building, 1st Floor, 303 N. Roberts, Helena, Montana.

2. The department has adopted rule I (23.16.122); amended ARM 23.16.102, 23.16.103, 23.16.109, 23.16.117, 23.16.119, 23.16.203, 23.16.407, 23.16.1201, 23.16.1719, 23.16.1822, 23.16.1826, 23.16.1827, 23.16.1901, 23.16.1913, 23.16.1914, 23.16.1915, 23.16.1916, 23.16.2001, 23.16.2004, 23.16.2302, 23.16.2305, 23.16.2306, 23.16.3102; and repealed ARM 23.16.111, 23.16.115, and 23.16.501 as proposed.

3. ARM 23.16.1716 will not be amended as proposed.

4. ARM 23.16.1917 has been amended as proposed but has been transferred to ARM 23.16.1828.

5. The department adopts the remaining rules with the following changes (text of rule with stricken matter interlined, new matter underlined):

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

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

(2) and (3) remain as proposed.

(4) "Financing" means investments, ~~gifts,~~ loans, ~~or~~ deferred payment agreements for the purchase of real property~~,~~ (or tangible ~~or~~ and intangible personal property~~,~~ or past or prospective services), and gifts, except tangible personal property intended and used for decoration or display on the premises.

(5) through (7) remain as proposed.

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

(9) "Manager" means a person employed or authorized by the licensee to ~~whom overall management responsibilities have been assigned~~ supervise personnel and business functions of the licensed operation.

(10) through (14)(a) remain as proposed.

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

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

(d) remains as proposed but is renumbered (c).

(15) through (19) remain as proposed.

23.16.105 WITHDRAWAL OF APPLICATION (1) An applicant may request withdrawal of an application at any time prior to final action upon the application by filing a written request to withdraw. The department will respond within 30 days of receipt of the applicant's request for withdrawal.

(2) and (3) remain as proposed.

23.16.107 GROUNDS FOR DENIAL OF GAMBLING LICENSE, PERMIT OR AUTHORIZATION (1) through (1)(k) remain as proposed.

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

23.16.116 TRANSFER OF INTEREST AMONG LICENSEES

(1) remains as proposed.

(2) The department may conduct an investigation to determine whether the proposed transfer meets the licensure requirements in 23-5-176, MCA, and department rules. In any case of the transfer of an ownership interest among existing owners, before approving the transfer, the department must determine that the transferred ownership interest is independently exercised by the new owner and does not remain under the control of the transferor ~~before approving the transfer~~.

(3) through (5) remain as proposed.

23.16.120 LOANS (1) remains as proposed.

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

(3) through (3)(d) remain as proposed.

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

(4) through (6) remain as proposed.

(a) the payable does not require the transfer of a security interest in any assets of the licensed operation other than the product(s) purchased;

(b) ~~repayment term does not extend beyond the seller's normal repayment term or 90 days which ever is less~~ the terms of repayment are of a short term nature, less than 1 year;

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

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

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

(f) all such financing must be disclosed at the time of license renewal.

(7) Prior department approval is not required for "cash equivalent sales" payables incurred for the purpose of acquiring video gambling machines under the following conditions:

(a) the seller of the machines is a licensed video gambling machine manufacturer or distributor;

(b) the payable does not require the transfer of a security interest in any assets of the licensed gambling operation other than the video gambling machines purchased;

(c) repayment is due the licensed seller of the machines; and

(d) the term of repayment does not exceed 180 days.

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

(7) remains as proposed but is renumbered (8).

23.16.202 CREDIT PLAY PROHIBITED (1) remains as proposed.

(2) No operator may grant a loan of any kind at any time to a player or permit a deferred payment including post-dated checks or engage in any similar practice. A check used to obtain cash on the premises of a licensed operator must be

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

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

(3) remains as proposed.

23.16.502 APPLICATION FOR OPERATOR LICENSE (1) remains as proposed.

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

(b) through (d)(iv) remain as proposed.

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

(vi) and (vii) remain as proposed.

(e) the full name and address of every ~~person~~ manager employed ~~in a management capacity~~ by the applicant in a gambling-related activity in Montana.

(2) remains as proposed.

23.16.1101 CARD GAME TOURNAMENTS (1) and (2) remain as proposed.

(3) The card game tournament application ~~must~~ should be received by the department at least 10 working days before the start of the tournament. The department may process an application received by FAX but shall not issue a permit on such an application until the fee is received by the department. An application may not receive approval if received by the department with less than 10 working days before the start of the tournament.

(4) through (7) remain as proposed.

(8) A tournament may not be conducted for more than 5 consecutive ~~working~~ days. Card games may not be conducted between the hours of 2 a.m. and 8 a.m. each day unless the hours for operating a live card game table have been extended by a city or county ordinance. An operator may conduct up to 12 card game tournaments per year.

(9) and (10) remain as proposed.

23.16.1802 DEFINITIONS (1) through (17) remain as proposed.

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

23.16.1906 GENERAL VIDEO GAMING MACHINE SOFTWARE SPECIFICATIONS (1) through (2)(b) remain as proposed.

(3) Notwithstanding any other rule to the contrary, on or after ~~January 31, 1997,~~ June 30, 1997, the image or images projected on each video gambling machine shall not simulate, in part or in whole, an illegal gambling device or enterprise.

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

23.16.1917 GENERAL REQUIREMENTS OF OPERATORS, MANUFACTURERS, DISTRIBUTORS AND ROUTE OPERATORS OF VIDEO GAMBLING MACHINES OR PRODUCERS OF ASSOCIATED EQUIPMENT has been adopted as proposed but has been transferred to ARM 23.16.1828.

23.16.2803 APPLICATION FOR AUTHORIZATION TO CONDUCT A CALCUTTA POOL (1) remains as proposed.

(2) All applications for authorization to conduct calcutta pools ~~must~~ should be received by the department at least 10 working days before the start of the auction. The department may process an application received by FAX ~~but shall not issue a permit on such an application until the fee is received by the department~~. An application may not receive approval if received by the department with less than 10 working days before the start of the tournament.

23.16.3501 DEPARTMENT APPROVAL OF PROMOTIONAL GAMES OF CHANCE, DEVICES OR ENTERPRISES (1) and (2) remain as proposed.

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

(b) through (3)(b) remain as proposed.

(c) sports betting other than horse racing, ~~or~~ sports pools as authorized by law, or as provided in (9) of this rule; or

(d) remains as proposed.

(4) Except as provided in (9) and (11) of this rule, ~~All~~ all schemes, activities or enterprises that are not prohibited by (3) of this rule and that are used in bona fide promotional games of chance do not require approval by the department before such activities or enterprises are played, displayed, operated,

or conducted in public so long as the game is conducted in compliance with these rules.

(5) through (7)(e) remain as proposed.

(f) The proposed device shall be labeled "No Purchase Required" which is printed in a clearly legible typeface ~~in a minimum of 20 point type size~~ and which is displayed in a prominent manner that is immediately obvious to the casual observer.

(g) through (8) remain as proposed.

(9) The department may, on a case-by-case basis, approve schemes, activities or enterprises that simulate the sport guessing game defined under this subsection as "pick-the-winners." "Pick-the-winners" is a bona fide promotional game of chance where participants choose one team to win a sports event from a predesignated number of sports events during a particular week, and where the participant who chooses the most winning teams wins a predesignated prize. In the event of a tie, there must be one additional tie-breaker contest for the participants to pick the winning team and guess the score of the contest. The tied participant who picks the winning team and whose guess is closest to the final score of the tie breaker contest shall be declared the winner. "Pick-the-winners" games using any form of written advertisements, promotional or informational material, or entry or application forms shall comply with (7)(f) of this rule. For purposes of this subsection, a "predesignated prize" shall not exceed the value of $100 and shall be either cash or tangible merchandise. "Pick-the-winners" games shall be conducted in compliance with these rules.

(9) through (11) remain as proposed but are renumbered (10) through (12).

6. The department thoroughly considered all oral and written comments received. For the sake of clarity and due to the volume of comments received, the department shows its responses to the comments, summarized below, by rule number and subsection.

COMMENT: 23.16.101(1): At the hearing, Town Pump, Inc., and Affiliates (after this "Town Pump") urged the department not to repeal the definition of applicant. Town Pump submitted written comment on the definition of "control." Town Pump stated that the phrase "or otherwise" is overly broad, ambiguous, and places too much discretionary authority in the Gambling Control Division. The phrase should either be stricken or better defined. The Montana Tavern Association ("MTA") basically concurred with Town Pump and asked that the phrase be stricken unless the department could specify examples of "otherwise."

RESPONSE: The department agrees with Town Pump and the MTA regarding the definition of control and strikes the entire phrase "through ownership, contract, or otherwise." Repeal of the "applicant" definition is reasonably necessary to reduce redundancy in the rules. Under 23-5-112(1), MCA, an "applicant"

is a person who has applied for a license or permit issued by the department pursuant to parts 1 through 8 of this chapter. Under 23-5-112(28), MCA, a "person" is both a natural and artificial person and includes all partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious and charitable organizations. The repeal of the definition of "applicant" previously found at ARM 23.16.101(1) neither adds nor detracts from these statutory provisions.

COMMENT: 23.16.101(4): Mr. Rich E. Miller of the Best Bet Casino, Missoula, provided written comment objecting that the department exceeds its statutory authority by including gifts in this definition of financing. The subject of gifts is adequately covered by IRS, UCC, and other regulations. Department review of gifts is duplicative, unnecessary, and would only further burden and create greater delay in an already slow licensing process.

RESPONSE: The department does not concur with Mr. Miller's objection. The gambling code charges the department to scrutinize all financing sources for gambling operations. The department must determine if the financing sources are suitable under statutory suitability determinants. See, e.g., 23-5-176(2)(c), MCA. Given this statutory duty, reasonable necessity exists to include gifts in the amendment to the definition of financing. The department adopts changes to subsection (4) that did not appear in the department's prior notice. This amendment is reasonably necessary to clarify those types of gifts that the department should except from its scrutiny of financing sources.

COMMENT: 23.16.101(7): Mr. Miller objected to the definition of "loan." Subsection (7) proposes one definition of a loan that conflicts with the loan definition in proposed Rule I. One or the other should be stricken.

RESPONSE: The department disagrees that proposed Rule I and the proposed definition of loan at ARM 23.16.101(7) conflict. Rule I does not contain a definition of loan. Rule I specifies the manner by which the department will evaluate the loan.

COMMENT: 23.16.101(8) and 23.16.101(9): The Gaming Industry Association ("GIA") submitted written comments asserting that the proposed definition of manager at ARM 23.16.101(9) is clear and concise. However, the proposed definition of management agreement is confusing and difficult for licensees to follow. GIA recommends that the department redraft the proposed definition of management agreement. The department should define management agreement as a contract between a licensee and a manager for overall management of the establishment excluding such incidental duties as bookkeeping. Another alternative would be to hinge the definition on "substantial" or "regularly performed" management duties. GIA also asserts that ARM 23.16.101(14) is irreconcilable with ARM 23.16.101(8). Subsection (8) allows performance-based bonus payments and subsection (14) disallows compensation based on the level of business; performance is most commonly measured by

business activity or gross or net profits and is at least in part always based on the level of proceeds. The department may resolve this conflict by inserting "except as provided in (8)" as a preamble to or at another appropriate spot in (14).

The MTA agrees with the GIA that proposed subsection (8) is confusing and inconsistent with the definition of "manager." The department should rewrite the definition of "management agreement" to include the overall management of the establishment. Alternatively, the MTA suggests that the department consider using some language found in the Liquor Division's definition of "management agreement" contained in ARM 42.13.132. This would ensure interdepartmental compatibility with the definition of "management agreement."

Mr. Miller, Best Bet Casino, also agrees that subsections (8) and (9) conflict. One criterion for management responsibilities should be used for clarity and consistency. The language of subsection (9) should be followed throughout the rules. Further, if the department intends to define agreements between licensees and those persons specified in newly proposed (9), the department should say so simply without extraneous qualifications. ARM 23.16.101 is for definitions, not requirements.

Town Pump specifically objects to the term "bookkeeping" in subsection (8). A management agreement should only apply in those situations where actual management responsibilities are contemplated, i.e., the service involves supervision and decision-making authority over the conduct of the business. The phrase in subsection (9) "overall management responsibilities" is vague and should be clarified.

RESPONSE: The department disagrees that the phrase "overall management" is acceptable but does agree with the GIA, Mr. Miller, and Town Pump that the department should clarify part of each subsection. Responding to the comments on (8), the department simplifies language regarding management duties by employing the term "manager" and by deleting language attempting to include such incidental duties as bookkeeping. The department leaves the remaining proposed language in subsection (8) unchanged as reasonably necessary conditions defining what the department will allow and disallow in a management agreement. The department rejects comments on (8), (9), and (14), regarding management bonuses because the comments misconstrue the plain wording of those provisions. The provisions do not prohibit a licensee from using sales or the growth in sales as a performance indicator. However, the provisions do prohibit the assignment of sales or profit or a percentage of sale or profit (an ownership interest) as the bonus. Regarding subsection (9), the department replaces the vague and confusing phrase "whom overall management responsibilities have been assigned" with the simpler phrase "supervise personnel and business functions of the licensed operation." The department adds the word "authorized" in response to Town Pump's recommendation to clarity the actual relationship between licensee and manager. All of the foregoing changes pretermit Mr. Miller's remaining comments on (9),

including that the prior language of subsection (9) should be followed throughout the rules. Lastly, the department declines the MTA's suggestion that the department use language found in liquor regulations. The Legislature's policy on gambling shows that the regulatory objectives of gambling and liquor are markedly different. See 23-5-110, MCA.

COMMENT: 23.16.101(13): Mr. Miller declared that the department's review of gifts is outside its statutory authority. Proposed subsection (13), referencing "supplies financing," is confusing when viewed with the definition of financing supplied in proposed subsection (4). Financing under subsection (4) includes "gifts" and subsection (13) then defines gift givers as noninstitutional lenders or sources, a concept incompatible with the Internal Revenue Code and the Uniform Commercial Code.

RESPONSE: The department disagrees that its review of gifts exceeds statutory authority. The gambling code charges the department to examine and scrutinize all sources of financing for gambling operations to determine if the financing sources are suitable under statutory determinants. See, e.g., 23-5-176(2)(c), MCA. Given this statutory duty, there is reasonable necessity to include gifts in the amendments to subsection (4) and (13) to investigate gift givers as non-institutional sources of financing. No conflict exists between the department's provision and the Internal Revenue Code or Uniform Commercial Code. The department is not attempting to define a gift as a loan. The department clarifies that a gift is a form of financing that by statute must be evaluated for suitability. The department disagrees with the suggestion that commercial law and tax law rules found in the Uniform Commercial Code or the Internal Revenue Code are necessarily controlling sources for all standards employed by the department in regulating gambling. The gambling code contains express and implicit legislative directives distinguishing gambling license regulation as a singular and strict environment. For example, the declared gambling policy of the State calls for, among other things, a proper gambling environment in Montana that protects the public from unscrupulous proprietors and operators of gambling establishments. See 23-5-110, MCA. As another example that gambling regulation is unique, gambling stands virtually alone among other regulated commercial industries in Montana in the statutorily sanctioned disregard of any rehabilitation by convicted criminals in the licensing process. See 23-5-176(3), MCA.

COMMENT: 23.16.101(14)(a)-(d): The GIA opposed subsection (14)(a) asserting that it equates debt payment by a guarantor with transfer of an ownership interest. No legal authority exists allowing a person who is a guarantor but not an owner to be transformed into an owner. Simply making payments under guaranty contract alone cannot make a person an owner of a gaming establishment. Additionally, the GIA suggested that subsections (14)(a) through (d) constitute factors in an overall determination of whether an ownership interest has transferred

to allow more flexibility to the department. The MTA agrees with the GIA regarding the use of subsections (14)(a) through (d) as factors so that the department may approach each situation on a case-by-case basis. Mr. Miller objected to the reference to route operators as redundant in light of 23-5-130, MCA. Regarding subsection (14)(a), Mr. Miller concurred with the GIA's objection. By assuming the liability for one obligation, a guarantor does not assume general liability for the operation. Mr. Miller complains that subsection (14)(b) is overly broad, conflicts with the last sentence of (8) of this rule, and could conceivably include all persons employed by an operation. The language of subsection (14)(c), more directly than (b), conflicts with the final sentence of (8). The department must allow the industry to compensate personnel based on business performance and profitability. Subsection (14)(d) is vague and open ended.

Town Pump basically repeated Mr. Miller's objection to subsection (14)(b) in that the rule could conceivably include all persons employed by an operation. The definition also potentially covers any person or entity who provides a loan to the casino such as a vendor who supplies goods on an accounts payable basis. A similar problem exists with subsection (14)(c). The rule in effect nullifies the right to pay bonuses or bonus payments recognized in subsection (8). At the hearing, Town Pump objected to the prohibition of paying a bonus without transferring an ownership interest.

RESPONSE: The department rejects the arguments regarding subsections (8) and (14). The provisions do not prohibit a licensee from using sales or the growth in sales as a performance indicator. However, the provisions do prohibit the assignment of sales or profit or a percentage of sale or profit (an ownership interest) as the bonus. Agreeing with the GIA and MTA's comments regarding the vagueness of "ownership" determinants, the department substantially modifies subsection (14)(b) and deletes subsection (14)(c) entirely to define more narrowly what an owner means. The various comments calling for greater a definition of "ownership" outweigh the suggestion that department should have greater discretionary flexibility by allowing (14) (a) - (d) to be used as mere factors. Disagreeing with Mr. Miller's comment on route operators, the department asserts that the inclusion of the route operator exemption clarifies for the reader what is meant by the definition of an owner. The department disagrees with the claims it has no authority to examine the payment of debts by guarantors. The department repeats its previous response to the comments to ARM 23.16.101(13), incorporated herein by reference, that gambling regulation in Montana is unique. The department is not attempting to redefine Montana commercial law but define ownership interests for the unique purposes of gambling regulation. The department may legitimately examine persons who potentially or actually assume liabilities of the gambling operation. Finally, scrutiny of debt guarantors comports with the gambling regulatory definition of an owner.

COMMENT: 23.16.101(19): Mr. Miller expressed the need to use the general industry standard of working day as 8:00 A.M. to 2:00 A.M., seven days a week. The proposed definition may inadvertently lead to some confusion.

RESPONSE: The department disagrees with Mr. Miller's comment. Proposed subsection (19) is intended to refer to the department's, not the industry's, working days. The department cannot determine from Mr. Miller's comment what confusion the adopted wording would allegedly create.

COMMENT: 23.16.102: Mr. Miller opposed subsection (1) as confusing and overly complex. The department should strike the last sentence in subsection (1) as an overly broad expansion of department's regulatory power in light of the proposed definitions under ARM 23.16.101(14)(a)-(d). The investigative time implied by this rule would severely tax department resources and cause needless delays in the licensure process.

RESPONSE: The above-mentioned clarification changes to ARM 23.16.101 should address Mr. Miller's concerns. The department disagrees with Mr. Miller's other comment. This rule is reasonably necessary to administer 23-5-177, MCA, which governs operator applications. The gambling code requires the department to scrutinize ownership structures of gambling operations. Thus, the rule clarifies for the applicant what the department may consider relevant to ownership determinations in the processing of gambling operator applications.

COMMENT: 23.16.105: Town Pump reiterated its concern that the department has not sufficiently defined "applicant" by rule. If the "applicant" comprises more than one entity, e.g., A, B, and C, the "applicant" might ambiguously refer to A, B, and C, individually, and to the combination of all three to form a single "applicant." This distinction is important when the "applicant" faces the potential one-year moratorium set out in subsection (3). The GIA commented that proposed 23.16.105(3) should entail a 30 day limit in which the department can act. The failure to act should be deemed a withdrawal without prejudice. Mr. Miller concurred with GIA's comment and proposed similar language. The MTA also concurred with GIA's comment regarding a 30 day limit. The MTA commented further, stating that proposed subsection (3) does not limit the department's time in issuing a final department action. This has the potential of indefinitely prohibiting the time by which an applicant may reapply.

RESPONSE: Regarding Town Pump's comment, 23-5-112(1), MCA, defines an "applicant" as a person who has applied for a license or permit issued by the department pursuant to parts 1 through 8 of this chapter. 23-5-112(28), MCA, further defines a "person" as both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious and charitable organizations. The repeal of the definition of "applicant" previously found at ARM 23.16.101(1) neither adds to nor detracts from these clear statutory provisions. The repeal of

the applicant definition removes redundancy in the rules. Further, since the proposed ARM 23.16.105 specifies that the applicant has rights under the Montana Administrative Procedure Act, the concern Town Pump raises may be addressed in the contested case forum. Additional clarification of "applicant" is not reasonably required by rule.

The department agrees with the comments regarding the need for a time limit and adds a thirty day limit at ARM 23.16.105(1). The department does not concur with the suggestion that the department's failure to act within the time limit should automatically result in a withdrawal without prejudice. The right of the department to declare a withdrawal with prejudice is sufficiently specified under the rule. An applicant has the right under the Montana Administrative Procedure Act to contest the department's action on the application. An applicant may contest other pertinent department actions affecting the status of withdrawal rights including the department's failure to act on the applicant's request for withdrawal. MTA's comment about an indefinite time period apparently overlooks other legal redress an applicant may have. See, e.g., 2-4-701, MCA (a preliminary or intermediate agency ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy). Additional limitation on the department's time to render a decision on the withdrawal is not reasonably necessary.

COMMENT: 23.16.107(1): Mr. Miller commented that the department should consider the accountability for the submissions of third parties under subsection (a). Town Pump concurred with this comment, adding that this provision makes the applicant responsible for the accuracy of information from a third-party source over whom the applicant may have no control. If the information is inaccurate, the applicant should not be held responsible for providing the information. The MTA echoed these comments and suggested, in fairness to the applicant, that the department strike the rule or amend it to read "intentional and purposeful failure to disclose. . .," or employ other similar language.

RESPONSE: The department does not concur with the requests for intent language. A plain reading of the rule as amended does not demonstrate that the rule automatically holds applicants or license holders responsible for the wrongful acts of third parties. The rule aims at holding applicants and license holders for acts they committed. Factual issues about who committed the acts proscribed by the rule and how much liability should attach to their conduct are best scrutinized on a case-by-case basis. Since Montana Administrative Procedure Act contested case rights apply to department decisions on this rule, factual and legal issues reflected in the comments may be more appropriately addressed in a contested case forum.

COMMENT: 23.16.107(2): The GIA stated that a definite time should govern when the department can act on an application. The failure of the department to act within 30

days of the submittal of an application should constitute approval of the application. Town Pump reiterated its previous comment regarding the need to define the term "applicant" to clarify its application in multiparty situations. Mr. Miller commented that the proposed second and third sentence of this rule duplicates the last two sentences of ARM 23.16.105 and should be stricken. The MTA reiterated its comments regarding ARM 23.16.105 about the indefinite time in which final department action could occur.

RESPONSE: The department deletes the phrase "grant a request to withdraw" in ARM 23.16.107(2) as a clerical error. The department adds the word "deny" to remedy the clerical error and bring the proposed rule in line with its original intent. The department's prior responses to the respective prior comments of Town Pump and MTA are incorporated herein by reference. Moreover, comments focussing on the purported need for a time limit appear to overlook ARM 23.16.117(4) which sets a 90 day deadline for the department to use its discretion to either issue a license, notify the applicant about denial, or take other action. Accordingly, an additional limitation on the time in which the department may use its discretion is not reasonably necessary. In any event, any rule this department would adopt that implements automatic licensure approval would contravene the Montana legislature's express policy on gambling and would specifically violate the licensure qualifications statute. An applicant for a Montana license or for other department approval under the gambling code does not have a right to the issuance of a license, a permit, or a grant of the approval sought. 23-5-110(2), MCA. Similarly, a license holder acquires no vested right in the license or permit issued or other department approval granted. Id. The department has sole authority to grant a Montana gambling license, and the department's determinations of licensure suitability are discretionary. See 23-5-115, MCA; 23-5-176(1), MCA (a person whom the department determines is qualified to receive a license under the gambling code provisions may be issued a state gambling license); see also 23-5-137(2)(b)(vi), MCA (standards of review during judicial appeal of administrative action include "abuse of discretion" or "clearly unwarranted exercise of discretion"). A rule cannot deprive the department of this discretion. The department rejects Mr. Miller's comment regarding duplication in the rule. Employment of similar language found at ARM 23.16.105(3) is required to give the reader clear indication of its rights in a licensure denial action.

COMMENT: RULE I (23.16.122): Mr. Miller stated that the second sentence of this rule is redundant to the first and adds no clarity. The department should substitute the language of the first sentence of Rule I with 23.16.101(7) because the language in (7) is lifted nearly verbatim from the UCC. Town Pump agrees the department should delete the second sentence. Allowing the department to go beyond the criteria recognized in the first sentence would result in ambiguity, possible

arbitrariness, and unregulated discretionary authority. The second sentence gives an applicant or licensee no identifiable standard to judge whether their conduct is permissible. The Montana Coin Machine Operators Association made similar comments. The GIA also stated that the second sentence is unnecessary. The same evaluation is allowed under the first sentence which requires evaluation under the Uniform Commercial Code, the Internal Revenue Code, and generally accepted lending practices.

RESPONSE: The department disagrees with any suggestion that it must be limited to the criteria established by the Uniform Commercial Code, the Internal Revenue Service, or generally accepted commercial lending practices. For the same reason the department responded above to comments to ARM 23.16.101(13), the department has authority to exceed the standards set by nongambling sources. The second sentence is reasonably necessary to administer and implement 23-5-118, MCA, regarding ownership transfers and 23-5-176, MCA, regarding effective control of gambling and suitable sources of financing. No ambiguity or redundancy exists. Separate rules or subsections of rules define several integral terms in the second sentence, such as "loan," "financing," "ownership interest," "control," and to some extent "lender." Given these definitions and the existence of parallel rule references to similar requirements, the second sentence gives applicants and licensees reasonable notice about which conduct conforms to the requirements of the rule.

COMMENT: 23.16.116(2): Town Pump alleged that the proposed second sentence of this regulation is poorly worded, confusing, and should be reworded to state: "In any case of the transfer of an ownership interest among existing owners, before approving the transfer, the department must determine that the transferred ownership interest is independently exercised by the new owner and does not remain under the control of the transferor."

RESPONSE: Town Pump's comment and suggested language have merit. The department adopts the suggested language in this Notice of Adoption.

COMMENT: 23.16.120(1) - (5): The MTA expressed concerns about conditions on nongambling inventories, supplies, and other material or equipment. Such conditions undermine the rule's intent in allowing licensees to purchase nongambling related business equipment without seeking prior approval from the department. The Montana Coin Machine Operators Association submitted written comments that the proposed amendments go beyond what is reasonably necessary to achieve goals intended by the rule. If adopted, the rule would cause undue hardship on operators in the ordinary course of their business. The proposed amendments appear to extend the NIL approval process to purchases of video gaming machines by licensed route operators from licensed manufacturers on standard installment contracts. Given that the proposed rule contains no schedule in which the department must decide suitability, this rule complicates new

equipment purchases. The proposed adoption of Rule I compounds the foregoing concerns. The Montana Coin Machine Operators Association requested an exception to the requirement for prior approval in instances where the transfer of a security interest results from the sale of video gaming machines by a licensed manufacturer to a licensed route operator on a standard installment contract. Alternatively, the department should create a blanket prior approval process for sales under an installment contract where a licensed manufacturer could submit its standard installment agreement and a list of prospective purchasers to the department. Regarding 23.16.120(1), Mr. Miller stated that specifying the "security interest" pledged must be the liquor license or the gambling equipment to invoke this requirement would eliminate the need for (6) of this rule and clarify this section. The means for department approval should be specified as "written confirmation of approval to the licensee" to remain consistent with the wording in (2) specifying the approval confirmation requirement. On 23.16.120(2), Mr. Miller stated that this section would appear to require the same process as (1) except from another licensee. The result would be two nearly identical submissions from two different licensees involving the same process. The department should change ". . . licensee must receive confirmation of department . . . " to "licensee must receive written confirmation of department" and strike everything within the parenthesis.

RESPONSE: The department disagrees with Mr. Miller's suggestion to limit applicability of the prior approval of security interest transfers to those involving a liquor license or gambling equipment. Subsection (6) is reasonably necessary to define those circumstances narrowly which exempt prior approval. The alternative, a blanket exemption, increases the risks of transfers to unsuitable interests. The department also disagrees with the Montana Coin Machine Operators Association that the proposed amendments to 23.16.120 unnecessarily extend the NIL approval process. The department has always required prior approval of installment sales of video gambling machines if the contracts involved the transfer of a security interest. However, the department agrees with comments regarding the purchase of new equipment, nongambling materials, and cash equivalent purchases of video gambling machines. The department amends subsection (6) and adds subsection (7) to exempt cash equivalent sales of video gambling machines from prior approval under certain circumstances. Mr. Miller's comments on 23.16.120(2) are well taken. The department changes 23.16.120(2) by adding the word "written" before the phrase "confirmation of department." The department deletes the following sentence from the same subsection: "As it is used in this rule, confirmation of approval means a copy of the department's letter approving the loan or transfer of the security interest."

COMMENT: 23.16.120(6) - (7): The GIA commented that the department, without authority to do so, has proposed burdensome conditions on business purchases. Mr. Miller repeated comments

he made to subsection (1). At the hearing, the MTA asserted that proposed subsections (6)(a) and (b) diminish the intent of the rule. The intent of the rule is to allow licensees the ability to buy nongambling related equipment on installments without prior approval by the department. Town Pump commented on subsection (7) that the use of the undefined phrase "unsuitable source of financing" is too broad and ambiguous. The use of this type of terminology does not give an applicant adequate notice about what is an "unsuitable" source of funding. If the department intends to rely upon this type of terminology, it should also define what is an "unsuitable" source of funding.

RESPONSE: In response to Mr. Miller and the MTA's comments regarding 23.16.120(6), the department changes subsection (6)(a) by adding the phrase "in any assets of the licensed operation other than the product(s) purchased." The department partially deletes subsection (6)(b) and specifies the application of the rule to repayments within a year. The department creates the following phrase, denominated as new subsection (6)(e): "all such financing must be disclosed at the time of license renewal." In response to Town Pump's comment, the department refers Town Pump to 23-5-176(2)(c), MCA, that adequately defines unsuitable sources of financing. No reasonable necessity exists to give that statutory provision further definition.

COMMENT: 23.16.202: Don't Gamble with the Future submitted written comment addressing the issue of credit play and its prohibition. Don't Gamble with the Future called for a complete ban on the buying back of checks. Alternatively, absent a ban, Don't Gamble with the Future urged using noon of the following day as the period under which a check could be retrieved. For example, this would mean if a check was cashed (at 10:30 p.m. Thursday) and the casino/bar closed (at 2:00 a.m. Friday), the individual would have until noon Friday to appear. Noon Saturday would not be construed as the next business day. Mr. Miller stated that most licensees agree with the purpose of this rule and support it. However, Mr. Miller urged the department to extend the time to the day following the date on the check. Licensees want to satisfy their customers who call at 8:00 a.m. and legitimately desire to buy back a check they wrote the previous night. This suggested change would address the interests of licensees, the department, and the public. The GIA suggested that the department amend the third sentence of subsection (2) by striking "within normal business hours on the date written on the check" and inserting after the word "tendered" the phrase "by twelve o'clock noon on the day following the date written on the check."

RESPONSE: The department does not concur with Don't Gamble with the Future's call for a total ban on check buy backs. A complete ban on the buying back of checks would be impractical and may run afoul of one or more well-established provisions of Montana law governing negotiable instruments. However, the department believes the comments of Mr. Miller, the GIA, and Don't Gamble with the Future's remaining comments, have merit. The department adopts the GIA's suggested change. The

department rewrites subsection (2)(a) to provide clearer wording that the time-limit requirements of the subsection do not apply to NSF checks. This change does not amend the substance of the subsection.

COMMENT: 23.16.203: The GIA noted that the proposed rule would strike from a temporary dealer's ability to appeal the confiscation of license. This affects an aggrieved party's right to appeal an administrative action under the Montana Administrative Procedure Act. Similarly, the change to 23.16.203 would exclude cease and desist orders from the operation of the department's Administrative Procedure Rule. This change is necessary because the rule, if applied to temporary cease and desist orders, would require prior notice, an unworkable circumstance in a cease and desist situation. However, the language proposed should not preclude an aggrieved person from appealing a temporary cease and desist order under the Montana Administrative Procedure Act.

RESPONSE: The department agrees with the comment regarding the impracticalities posed by the former rule. However, the main intent of the amendment is to harmonize the non-availability of procedural rights relating to the issuance of temporary cease and desist orders with 23-5-136(1)(a), MCA. A plain reading of 23-5-136(1), MCA, demonstrates that the legislature did not intend those affected by the issuance of temporary cease and desist orders to have contested case rights under the Montana Administrative Procedure Act. Adopted changes to all rules referring to the issuance of temporary cease and desist orders now congruously express the same statutory interpretation. To the extent prior department rules were erroneously read to provide rights under the Act to contest temporary cease and desist orders, such rules were inconsistent with 23-5-136(1), MCA, and unlawful. For the all of the foregoing reasons, the amendment is reasonably necessary.

COMMENT: 23.16.407: The GIA commented that the amendment to this and other rules gave the department the ability to issue temporary cease and desist orders for violations of quarterly reporting and record keeping requirements. The GIA understands that the ability to issue cease and desist orders is already implied under these rules and these amendments are simply clarifications. If this is the case, the GIA requests that the department say so in its Notice of Adoption. Mr. Miller asked that subsection (2) be reinstated on his belief that the department cannot limit an applicant's access to the appeals process granted by the Montana Administrative Procedure Act.

RESPONSE: 23-5-136(1), MCA, gives authority to the department to issue temporary cease and desist orders for violations of any department rule. This amendment and other similar amendments adopted herein are consonant with this statutory authority and are reasonably necessary to avoid the confusion and error caused by the wording of prior rules. The rule change removes the redundant reference to the non-availability of remedial rights relating to temporary cease and

desist orders as now set forth in the amended ARM 23.16.203. Accordingly, the department disagrees with GIA's comment and declines the suggestion that the department state in its Notice of Adoption that this rule change intends to clarify the department's ability to issue temporary cease and desist orders by rule. The department also rejects the claims that the change to ARM 23.16.407 limits an applicant's access to the appeals process granted by the Montana Administrative Procedure Act. The adopted change to ARM 23.16.407 harmonized the non-availability of procedural rights relating to issuance of temporary cease and desist orders with 23-5-136(1)(a), MCA. A plain reading of 23-5-136(1), MCA, demonstrates that the legislature did not intend those affected by the issuance of temporary cease and desist orders to have contested case rights under the Montana Administrative Procedure Act. Adopted changes to all newly amended rules referring to the issuance of temporary cease and desist orders now congruously express this statutory interpretation. To the extent prior department rules were erroneously read to provide rights to contest temporary cease and desist orders, such rules were inconsistent with 23-5-136(1), MCA, and unlawful. Assuming, for the sake of argument, that the right to appeal applied to confiscations under the rule, the former ARM 23.16.407 created absurd results. The department's confiscation of temporary dealer licenses could never be immediate. The department would first have to allow licensees to exhaust their notice and hearing rights, which would involve several appeal stages including state supreme court review. In effect, a temporary licensee who contests a confiscation could have a term of licensure far exceeding the length of their temporary license. The old rule rendered any notion of a temporary license or immediate confiscation meaningless.

COMMENT: 23.16.502: Don't Gamble with the Future urged that the department hold applicants totally responsible for information given on gambling applications. If an application contains incorrect information given by a party other than the applicant, the applicant is legally responsible and at fault. The GIA commented that the proposed new language in subsection (1) (a) is completely unnecessary. The present rule clearly states that "all applicants" are included in the submission of information. Therefore, the language "any person with an ownership interest in the applicant entity" is redundant. Further, the department does not need a list of those who had an option to purchase a share of the business over the last ten years. The department has no legitimate interest in the disclosures of persons with unexercised options. The exercise of an option would trigger an application to transfer, in turn triggering a detailed review of the transferee. Disclosure before that is premature. Initial disclosure may allow a transfer applicant to argue that the department waived its right to review the transfer. The applicant would argue the department had the opportunity to investigate the transfer when previously notified. Mr. Miller and the MTA concurred with

these comments. The GIA, commenting on subsection (1)(e), and referring to its previous comments on management agreements, urged the department to clarify that management agreements exclude persons with incidental management functions. For greater clarity the department should strike the requirement of disclosing "every person employed in a management capacity" and inserting "every person employed as a manager." Regarding subsection (1)(e), Mr. Miller stated that this section suffers from the confusing definitions involving "managers" and their "duties" and "responsibilities" in ARM 23.16.101. Adopting the language of 23.16.101(9) consistently throughout these rules would make this rule less open-ended and better serve the goals of the department. Town Pump stated that subsection (1)(a) requires the identity of many people with an ownership interest in the applicant entity. Depending upon how broadly the department ultimately defines "ownership interest," as discussed above, it potentially could require disclosure information for multiple parties. The rule is too broad and the department should clarify. Regarding subsection (1)(d)(v), Town Pump stated that the provision referring to "managers in the company" is confusing. Town Pump commented that subsection (1)(e) is broad and burdensome. The rule would require disclosure of information on all persons in a "management" position even if these persons have little connection to "gambling-related activity."

RESPONSE: Don't Gamble with the Future's comment is inapposite to the intent of the proposed changes to ARM 23.16.502. Regarding GIA's claim of redundancy, an applicant's name may be dissimilar to those persons holding an ownership interest in the applicant entity. The language to which GIA objects is therefore not redundant but is reasonably necessary. The department disagrees with the claim it has no authority to examine persons with options to purchase and that such an examination is premature. In fulfillment of the department's various regulatory duties relating to ownership interests and financing sources, the department may legitimately scrutinize persons holding ownership interests in gambling operations. Statutory authority supports the department's examination of potential ownership interests. See 23-5-118(2), MCA (preapproval required before a licensee may transfer ownership interest in a gambling operation). However, the department agrees it does not need a list of persons who once had an option to buy shares in the business years ago. The department changes ARM 23.16.502(1)(a) accordingly. Arguments that claim the department may waive an investigation of option transfers are rebutted by reference to separate existing rules governing the department's investigative authority. The department understands the complaint regarding managers. Regarding Mr. Miller's concerns about confusing definitions, the department changes subsections (1)(d)(v) and (1)(e) to reduce vagueness and overbreadth. Town Pump's remaining comment on the reference in subsection (1)(e) to ownership interest is rejected. Ownership interest is a term sufficiently defined elsewhere in the rules.

COMMENT: 23.16.1101: Mr. Miller stated that any requirement greater than five (5) days processing time is excessive and ignores the prerogatives of business owners. Regarding subsection (8), Mr. Miller commented that the intent of this section is unclear considering the "working day" definition in 23.16.101(19). The new wording would allow a tournament to run seven days, a conflict with the present rule unless the intent is to ban weekend or holiday tournaments. Mr. John MacMaster, Administrative Code Committee, also complained about the use of the phrase "working day." The phrase conflicts with the statute and unwarrantably inserts a requirement not envisioned by the legislature. Lastly, no statement of reasonable necessity reflects what the amendment accomplishes.

RESPONSE: The department disagrees that ten days is too long. The department requires ten days to address the problem of an original application that contains errors. Five days is an inadequate time for the department to review the information requested from the applicant on follow up. The department agrees "working" should be deleted and changes ARM 23.16.1101 accordingly. In response to Mr. MacMaster's comment, as adopted, ARM 23.16.1101 is reasonably necessary to eliminate the table restriction, a limitation that serves no regulatory purpose. The amended ARM 23.16.1101 is also reasonably necessary to extend the time required to process applications based on practical need; to allow for fax filing of an application for convenience to applicants; to clarify that applications received before ten days from the start of the tournament may not receive approval.

COMMENT: 23.16.1201: Mr. Miller commented that the department's authority references, mentioned in subsection (2), are overly restrictive, outdated, and limit the ability to incorporate changes in the industry.

RESPONSE: The industry has not presented specific alternative references to the department. The department is unaware of the existence of more suitable references. No evidence has been presented supporting Mr. Miller's claims. Absent such evidence and absent a suggestion for more suitable authority references, the department declines the request to repeal the current authority references.

COMMENT: 23.16.1716: Mr. John MacMaster, Administrative Code Committee, commented that no specific statute granted the department authority to require licensure of sports tab card manufacturers and therefore no authority exists to amend the rule. For the department to interpret present statutory references to sports tab card manufacturer licenses to justify this amendment is overreaching. The department cannot rely upon such statutory references because the statutory references are poorly worded.

RESPONSE: The department does not concur with Mr. MacMaster's comment. A cursory reading of the statutes shows

that the legislature intended the licensure of sports tab card manufacturers. Under 23-5-502(2), MCA, the legislature expressly referred to sports tab card manufacturer licensure and the department's enabling statute (23-5-115, MCA). In uniting these references, the legislature did not intend to create a nullity. The department's enabling statute is broad enough to carry out the legislature's clear intent. See, e.g., 23-5-115(3), MCA (department shall provide licensing procedures). The department has a duty, not just the authority, to make rules defining sports tab card manufacturer licensure. 23-5-115(2), MCA. However, the department notes that both houses of the current legislature have passed House Bill 16 relating to the licensing of sports tab card manufacturers. It appears that the governor will sign this bill into law. The new law would make much of the language of the current rule, including the proposed changes, obsolete or inapposite. For these reasons, the department withdraws its proposed changes to 23.16.1716.

COMMENT: 23.16.1802(5), (15), and (17) and 23.16.1906(3): International Game Technology of Montana provided several written comments objecting to the proposed amendments to ARM 23.16.1802(5) and ARM 23.16.1906(3). The proposed rule retaliates against IGT-Montana and attempts to accomplish what the department failed to achieve in the district court action that concluded last year, International Game Technology - Montana (IGT) vs. Gambling Control Division, Cause No. ADV-95-926, First Judicial District Court, Lewis & Clark County. The suit declared that IGT-Montana's "Reel Joker Poker" software program simulated the game of draw poker as set forth in the applicable laws. The department wants to nullify and render moot the court's decision that ruled for IGT-Montana and punish IGT-Montana for winning its suit. The department should drop the proposed amendments, or in the alternative, provide a grandfather provision exempting IGT-Montana's Reel Joker Poker program. In support of this request, IGT-Montana gave the following grounds. The legislature, not this department, has the powers to make laws. The department's proposed amendments exceed or contravene the statutes and in effect would be unlawful legislation of a statute by administrative rulemaking. The department lacks the power or authority to adopt the rules enumerated above. In Montana, administrative regulation cannot change a statute. Any rule promulgated by an administrative agency that is "out of harmony" with the enabling statute will be void. IGT-Montana, citing case precedent, essentially argued that the department's proposed rules unlawfully engraft additional and contradictory requirements on the statute that the legislature did not envision. Specifically, the rules go further than the statute by precluding any draw poker machine that simulates an illegal gambling device such as a slot machine. Substantive due process and equal protection of the laws dictate that IGT-Montana should not bear the injury caused by the outlawing of its program due to the problem created by unrelated third parties. For example, the department has mentioned its relationship with various Montana Tribes over

gambling compact negotiations. IGT-Montana has no voice on such issues, and the department should not penalize an innocent bystander. The doctrine of res judicata applies to the court's decision approving IGT-Montana's program. The doctrine of collateral estoppel will preclude the department in any subsequent litigation, should this rule be adopted, from arguing against the conclusion of the district court that existing statutes duly authorize IGT-Montana's reel poker machine. Consequently, the department changes, if adopted, would be unenforceable. Further, the district court did not mandate amendment of either rule. Lastly, adoption of these proposed rules would only invite additional litigation and expense. The department should either discard the proposed amendments to ARM 23.16.1802 and ARM 23.16.1906 or grant IGT-Montana a grandfathered exemption.

The GIA submits the proposed changes to ARM 23.16.1802 do not reflect good government. These rule changes respond to the judicial proceedings against the department advanced by IGT-Montana. Since both an independent hearing officer and a district court judge approved IGT-Montana's program, the adoption of these changes would unfairly override these approvals. Some have argued that allowing IGT-Montana to continue its "reel poker" program while other manufacturers could not develop similar programs after a certain date, would be unfair to IGT-Montana's competitors. Perhaps, but that is nothing compared with the wrong that would occur if the department adopts the proposed language of ARM 23.16.1906. GIA takes no position on whether the department has the authority to adopt the changes to ARM 23.16.1906. However, the GIA urges the department to write this proposal so that it is not retroactive which would be unfair.

Mr. Miller argued that the department lacks authority over screen displays. The legislature has provided game definitions in 23-5-602, MCA. The department must comply with those statutes when determining the legality of a submitted program. A video gaming machine program either does or does not comply with the statutory definition of an authorized game. If the software operates according to rules of play and accurately rewards wins by random chance, it is simply the game it purports to be. The display is irrelevant to the operation of the game software and is therefore outside the regulation permitted by 23-5-602(2) - (5), MCA. The department lacks authority to declare images a material component of the game. The department should not adopt the new language in these three sections but instead seek legislative action to effectuate this change.

Don't Gamble with the Future commented that changes to ARM 23.16.1802 and ARM 23.16.1906 attempt to tighten the rules by being explicit about slot machines and other illegal games. While it is shameful that the gambling industry uses any loophole it can find in statute and rule, Don't Gamble with the Future appreciates the efforts by the department to close those loopholes and prevent gambling expansion by default. Don't Gamble with the Future urges the department to stick to the January 31, 1997, time under which "reel or wheel or slots" must

be eliminated. Don't Gamble with the Future opposes legalization of slot machines and any more grandfathering of gambling activities. As was proven in the stacking and clustering circumventions of the law, grandfathering creates a monopoly to those who knowingly get into gray area activities then cry foul when the law is enforced. A level playing field should mean that the department treat all parties equally. Even more repugnant is the expansion of gambling through a backdoor method. As stated in public testimony, the Montana Constitution allows expansion of gambling by public vote or legislation. It is also clear that unless a gambling activity is stated to be legal, then it is illegal.

Concerning specific changes to ARM 23.16.1906, John MacMaster, Administrative Code Committee, stated that the proposed language "Notwithstanding any other rule to the contrary" shows poor draftsmanship, should be stricken or the rules to which they refer should be specifically listed.

RESPONSE: The department's enabling statute (23-5-115, MCA) gives the department the obligation to adopt rules to administer the provisions of the gambling code. A more specific enabling statute, 23-5-621, MCA, charges the department to adopt rules describing the video gambling machines authorized by the Video Game Machine Control Law (23-5-602, MCA, through 23-5-646, MCA). These enabling provisions and the legislature's multiple references to video displays rebut the commenters' claims that the department lacks or exceeds its authority over screen displays, that the department is unlawfully attempting to change the statutes or any court ruling, or that the department must seek legislative change. See 23-5-602(1), MCA (associated equipment includes video display monitors); 23-5-602(2), MCA (bingo machine defined as utilizing a video display); 23-5-602(5), MCA (use of video display in keno machine a distinct component). Under 23-5-602(3), MCA, all Montana draw poker machines must, upon insertion of cash, play or simulate the play of the game of draw poker as defined by department rules. The department has the duty under 23-5-115(2), MCA, to adopt rules implementing the entire gambling code. Accordingly, not only does the department have the statutory authority to make rules that clarify authorized simulations of draw poker play, the department has the duty to carry out those rules. The department's duties include carrying out the strict construction and specific authority doctrines of the state constitution as codified by 23-5-111, MCA. Changes to ARM 23.16.1802 and ARM 23.16.1906 strengthen the specific authority doctrine by expressly declaring that simulation of illegal games is not specifically authorized.

The department rejects the arguments regarding video display images. These arguments essentially equate video poker displays as mere "window dressing" to computer programs and are hence exempted from regulation as a component of "gambling activity." A plain reading of the statutory definition of a draw poker machine at 23-5-602(3), MCA, shows that the legislature distinctly mentioned the use of the video display as well as distinctly mentioning "microprocessors" or the software

programs that operate the game. Electronic draw poker display on a video monitor is not a mere incidental or trivial component subordinated to the software program. Accordingly, the department rejects the contentions that the rule changes would be "out of harmony" with all of the implementing authorities the department cited.

Other arguments and objections by IGT-Montana, Mr. Miller, or the GIA are either unsupported, inapposite, or misinterpret the district court decision about IGT-Montana's "Reel Joker Poker" software program. IGT-Montana's program displays slot machine reels presenting poker hands. Neither the court's decision nor the department's approval granted IGT-Montana an absolute, immutable, and indefinite right to the continued use of this program. IGT-Montana appears to argue it has a vested right in the continued licensure of its program even when the law governing that activity changes or becomes better defined. The legislature specifically declared, at 23-5-110(2), MCA, that an applicant for a gambling license, permit, or other department approval under the gambling code has no right to the granting of the approval sought. The issuance of that approval is a privilege for which the holder can acquire no vested right. 23-5-110(2), MCA. Apparently trying to overcome these express legislative pronouncements, IGT-Montana argues irrelevancies or red herrings such as their third party (tribal) claims, res judicata and collateral estoppel assertions. The department rejects these unfounded arguments along with IGT-Montana's litigation threats and unsupported accusations that the department is retaliating against or punishing them. Finally, the department does not concur with the GIA's groundless objections of "bad government," unfairness, and retroactivity. The gambling law reasonably gives fair notice to all present and prospective gambling licensees that grantees of department approval can expect no permanent right to continued approval.

The department agrees with Don't Gamble with the Future comments to the extent that grandfathering might create specialized treatment to one or more licensees whom the adoption of these changes may effect. To ensure a level playing field among all licensees, the department agrees it should deny the requests for grandfathering. The authority references to 23.16.1802 and 23.16.1906 are each amended to include direct reference to 23-5-621, MCA, not mentioned in the department's earlier notice by oversight or pure error. The department does not concur with Don't Gamble With the Future's request to keep the January 31, 1997, start date in ARM 23.16.1906. This date was reasonably necessary to provide those licensees who may be affected by the adoption of the rule reasonable and adequate time to begin compliance. However, because of unforeseen delays in the rulemaking process beyond the department's control all of the department's rules will be adopted later than planned. By the date of adoption, the January 31 date will have expired. Accordingly, the department replaces that date with June 30, 1997, providing reasonable time to licensees to begin compliance. The department does not concur with Mr. MacMaster's comment concerning ARM 23.16.1906. The proposed language

"notwithstanding any other rule to the contrary" is unique in the gambling rules. Including this phrase will not conflict with identical language found elsewhere in the rules. The phrase is reasonably necessary to convey correctly the meaning intended. No other rule will oppose or prevent the application of ARM 23.16.1906's proscription. Specifically listing all rules which may affect the application of ARM 23.16.1906 would be cumbersome.

COMMENT: 23.16.1826 and 23.16.1827: Regarding proposed changes to these rules, the GIA repeated its comment to the proposed change to ARM 23.16.407 regarding GIA's understanding that the ability to issue cease and desist orders is already at least implied under these rules and these amendments are simply clarifications. The GIA requests that the department state this rationale in the department's Notice of Adoption.

RESPONSE: The department's rationale for proposing changes regarding cease and desist orders was adequately stated in the rationale for proposed changes published in the department's notice of public hearing on the proposed adoption, amendment, and repeal of rules regulating public gambling, at paragraph 5 (v) and 5 (w). The intent of these changes was to clarify that the availability of department remedies for late tax filing, reporting, and record retention violations are governed by statute, specifically 23-5-136(1), MCA. The ability to issue temporary cease and desist orders is governed by 23-5-136(1)(a), MCA. To the extent this was not otherwise made clear in the previously published rationale, the department, in compliance with GIA's request, states so now.

COMMENT: 23.16.1901: Mr. Miller stated that all references to "credits" should be reinstated and made conjunctive with the "dollar and cents" insertions. Eliminating the allowance would make thousands of programs illegal. The economic burden on the industry would be heavy and there is no clear benefit to the department. The GIA basically restated Mr. Miller's comment. A time will come when all machines will record machine activity in dollars and cents. For the present, the department should amend the rules to allow for the recording of credits OR dollars and credits OR cents.

RESPONSE: The department denies the request to amend this rule to allow for the recording of credits or dollars and credits or cents. The adoption of these changes will not affect machines and modifications that the department has already approved. The department interprets ARM 23.16.1901(1)(a) - (d) as applying to new machines and substantial modifications or a series of minor modifications whose total result is substantial that have been submitted to the department for approval and licensure. The plain intent of the rule is to compel operators to comply with statutes and rules governing electronic video gambling machines in effect at the time of approval of their machine or substantial modification. The rule is prospective in nature. Accordingly, the new adopted requirements regarding dollars and cents are prospective. The amended rule affects new

machines, or substantial modifications or a series of minor modifications whose total result is substantial that have not been approved by the department.

COMMENT: 23.16.1917: Mr. Miller stated that several references to operators in the rule would be better placed in Subsection Chapter 18. Inclusion of requirements for operators in this section is confusing. Subsection Chapter 19 is titled "Video Gambling Machine Specifications" and many operators would look to Subsection Chapter 18 for reporting or record keeping requirements. Regarding the amendment to subsection (2), Mr. Miller stated that the changed language in this section may bring some unintended results. By Mr. Miller's calculation, roughly four thousand reports a year will be filed, ninety-nine percent of which will report the same information. This requirement will unnecessarily burden operators and the department. ARM 23.16.1917, the letter of withdrawal, and the permitting system adequately provide for the department's need to track retired operator-owned equipment. This proposed rule change is redundant and excessive.

RESPONSE: The department agrees with Mr. Miller's comment and suggestion that this rule would be better placed in Subsection Chapter 18 with other reporting requirements. Accordingly, the department renumbers ARM 23.16.1917 as ARM 23.16.1828. The department disagrees with Mr. Miller's comment that the changed language in subsection (2) would bring the unintended results he mentions. In response to the comment on the annual turnover of licenses, this rule would not impact these transfers for which all ownership information is handled at the time of the transfer. Therefore, duplication of reporting requirements will not be caused by this rule.

COMMENT: 23.16.2803: The GIA commented that an oversight needed to be corrected in that the proposed new language states, in part, "the department may process an application received by FAX but shall not issue a permit on such an application until the fee is received." Since there is no fee for Calcutta pools, the language after the letters "FAX" should be deleted. Regarding subsection (2), Mr. Miller commented that ten days are too long to process a Calcutta application. The law is clear, and the department is already processing such applications in one or two days. The department should specify the application form and identify the form in this rule.

RESPONSE: The department agrees with the GIA's comment and suggested language change. The department adopts the language as cited in this Notice of Adoption. In response to Mr. Miller's comments on fees, the department deletes the reference to a fee. Mr. Miller does not support the claim regarding the department's current processing ability with any evidence. The department disagrees that ten days is too long. The problem is that if the original application has errors, five days do not give the department sufficient time to process the information received from the applicant on follow up.

COMMENT: 23.16.3501: Regarding subsection (2), Mr. Miller declared that restating the language found at 23-5-112(30), MCA, is unnecessary and the added qualification does not enhance the clarity of the statute or the rules and may have the opposite effect. The addition of the qualifier "bona fide" is redundant. If a promotional game of chance meets the definition provided in 23-5-112(30) it is bona fide. The words "bona fide" should be stricken throughout this rule whenever they are used to qualify "promotional game of chance." Regarding subsection (7)(a), Mr. Miller urged the department to specify the pertinent application form to maintain consistency with the existing and proposed body of rules. Subsection (7)(a)(iv) changes the intent and construction of 23-5-112, MCA, and violates the provisions of 23-5-111, MCA, calling for strict construction. The first sentence of the proposal does not provide for "intent," something the statutory language dictates. The department's rule would essentially eliminate any device not newly manufactured from new parts. The statutory language clearly does not contemplate only new devices. It allows existing devices based on the "intent" of the use of the device by the licensee. The entirety of subsection (iv) should be stricken.

Regarding subsection (3) Don't Gamble with the Future stated that the proposed changes to subsubsections (a)-(d) all appear to be an attempt by the department to tighten the rules by being explicit about slot machines and other illegal games. Don't Gamble With The Future appreciates the efforts by the department to close the loopholes holes and to prevent gambling expansion by default.

Regarding subsection (7)(b), Mr. Miller notes that submission of prototype devices at the same time they request conceptual approval would be an unfair and unnecessary burden on the developers of promotional games of chance. The department should provide conceptual approval, then require a prototype device. It is unfair of the department to cause a developer to incur the financial burden of producing a prototype if the department will not approve the underlying concept of the promotional game of chance operated by the device. Without this modification to the process the department could conceivable review several prototype devices for each application. Mr. Miller suggests the proposed rule should read: "(b) After conceptual approval of the proposed device, submission of a prototype to the department, may be required before final approval of the device will be granted by the department."

Mr. Miller stated that subsection (7)(d) and subsection (7)(e), particularly the requirement in the latter subsubsection of "free play," conflicts with 23-5-110, MCA. Validation on promotional devices is the only means to "protect legal public gaming activities from unscrupulous players and vendors and detrimental influences." Without validation there is no security. The security exposure created by this rule will leave all promotional devices vulnerable to fraudulent manipulation. To be consistent with the letter and intent of 23-5-110, the department should propose the validation of all promotional devices as well as prohibit free play on any promotional

devices. In the preceding two sections the intent of the department, ensuring access to all customers, is understood and appreciated by the industry. However, the security of the device against manipulation should be the primary focus in this case. Businesses want their customers to have access to all promotions. The competitive nature of the industry, in making and keeping customers, is assurance enough that access will not be infringed. Finally, under subsection (7)(f), Mr. Miller commented that the language of this rule does not provide the department enough flexibility to accomplish the intent of the rule. Mr. Miller suggests the size of the notice should be related to the largest printing on the device.

Regarding subsection (10), Mr. Dennis Leidholt, Western Gaming, Inc., commented that this proposed subsection is unnecessary and prevents bona fide promotional games of chance to use a telephone line in the dispersal of prizes. If the department is concerned about Native American bingo games (such as Mega-Bingo) being played over phone lines, satellite, etc. the department should specifically write a proposed rule dealing with this rather than a "blanket" rule dealing with all promotional games of chance.

RESPONSE: The department deletes two commas in the second sentence of subsection (2)(a) for clerical purposes. The change does not affect the substance of the subsection. The department adopts changes to subsections (3), (4), and (9) which did not appear in the department's prior notice. The adopted changes allow a promotional sport guessing game defined as "pick-the-winners." Members of the public have requested that the department legalize promotional "pick-the-winners" games. The department has not had an adequate opportunity to conclude public discussions and consider comment on the advisability of regulating this specific activity or arrive at a final policy position. Changes to subsections (3), (4), and (9) are reasonably necessary to effectuate the department's interim position, based on statutory authority, that promotional "pick-the-winners" games are allowed. Further formal or informal public comment and rulemaking procedures may be initiated that may affect the future of such games. In the meantime, the department has retained approval authority to examine each "pick-the-winners" scheme to foster the department's policy review. The change to (4) is reasonably necessary to identify more clearly the areas of promotional activity that require department approval.

The department disagrees with Mr. Miller's comments regarding the added qualification to the promotional game of chance definition. The added qualification clarifies the statutory provision at 23-5-112(30), MCA, prohibiting promotional devices that are not manufactured or intended for purposes of gambling. Also, the department notes that the term "promotional game" has a wide and varied use among many retail, entertainment, restaurant, tavern and other service-oriented industries. The use of the term "bona fide" distinguishes sanctioned promotional games of chance from the commonly accepted trade term "promotional game" and thus avoids

confusion. The department also rejects the suggestion for an application form. It has been the department's experience that promotional devices and schemes involve unique and individual attributes. Thus, the nature of processing applications for promotional devices and schemes does not lend itself to standardization.

The department's interpretations of how a promotional scheme or device is "intended" under the statute does not rest solely on applicants' prospective subjective intent in how they plan to operate their promotional games. This department may broadly construe "intent" found at 23-5-112(30), MCA, to include the intent of the manufacturer at the time of manufacture. In other words, the department may construe how a scheme is "intended" by examining the scheme's original source and actual design. For example, under a "source" analysis, the department could examine direct or circumstantial evidence on whether the proposed scheme was and is presently used in gambling schemes outside Montana. If the scheme is essentially used, in part or in whole, for gambling, the department could render a "source-determinative" decision that the proposed promotional scheme was "intended for use [in] . . . gambling." The foregoing analysis plainly comports with the intent of the entire gambling code, especially the strict construction and specific authority statute as interpreted by the Montana supreme court. The department's analysis would bar, for example, Blackjack or Twenty-One promotional games. A look today at several jurisdictions around the country reveals that Blackjack, or Twenty-One, is intended for use in gambling. Blackjack is not specifically authorized as gambling in Montana. Therefore, in view of all of the foregoing, Blackjack cannot be authorized as a promotional game in Montana. This would be true even if promotion applicants would aver that they would never intend to operate the game for actual gambling purposes (that is, accept wagers). The department rejects the request to strike the "intent" provisions of the rule.

The request for conceptual preapproval must be rejected because of the misunderstandings that could occur because of the vagueness of a concept. Also, conceptual preapproval would be impractical because of the wide variances that could occur between the completed device and the original design concept. As a result, the financial burden complained of would be just as great, if not greater, because of the number of devices that could be incorrectly produced. The provision that promotional devices allow free play is reasonably necessary to distinguish the device from devices manufactured with an input mechanism, an essential attribute of a gambling device. A sharp demarcation between a bona fide nongambling device and a device that could be easily converted into a gambling device is necessary to protect the gambling industry from those who might use promotional devices for gambling activity. Without a sharp distinction, the greater danger exists that promotional devices become gray area machines which pose a threat to the entire gambling industry.

Mr. Miller's comment on subsection (7)(f) has some merit.

The department, however, rewrites (7)(f), as shown in this Notice, in response to the need to provide operators with greater flexibility in determining the size of the notice.

The department agrees with Don't Gamble with the Future's comments in so far as they are construed to mean that the department's intent in amending ARM 23.16.3501 includes the need to fulfill the department's obligation under statute and the state constitution to distinguish legal from illegal gambling related activity.

The department asserts that Mr. Leidholt's objection is misplaced. Subsection (10) does not prevent promotional games of chance to use a telephone line in the dispersal of prizes but rather requires specific approval from the department.

By: Chris D. Tweeten, Chief Deputy
JOSEPH P. MAZUREK
Attorney General

By: R.F.W. Smith
ROBERT F.W. SMITH
(Rule Reviewer)

Certified to the Secretary of State February 10, 1997.

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

In the matter of amendments of rule 32.24.301 as it relates to producer class I pricing.	))))	NOTICE OF AMENDMENT DOCKET #5-96

TO: ALL INTERESTED PERSONS:

1. On December 19, 1996, the Montana board of milk control published notice of the proposed amendments of ARM 32.24.301 as it relates to producer class I pricing. Notice was published at page 3201 of the 1996 Administrative Register, issue no. 24, as MAR Notice No. 32-3-136.

2. The board has amended the rule with the following change: (text of rule with matter stricken interlined and new matter added, then underlined)

32.24.301 PRICING RULES

(1)-(3) Remain the same.

(a) The minimum class I price, which shall be paid to producers by distributors in the state of Montana, shall be ~~calculated by~~ the "basic formula price" as that price is determined pursuant to 7 C.F.R. 1124.51 plus $2.55. ~~plus two dollars and fifty five cents".~~

(3)(b)-(8)(b) Same as proposed.

AUTH: 81-23-104, MCA
IMP: 81-23-103, MCA

3. The board has amended the language to clarify how the basic formula price is determined.

4. No comments or testimony were received.

DEPARTMENT OF LIVESTOCK

By: _____
A. Laurence Petersen, Exec. Officer, Board of Livestock
Department of Livestock

By: _____
Lon Mitchell, Rule Reviewer
Livestock Chief Legal Counsel

Certified to the Secretary of State February 10, 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 September 30, 1996. This table includes those rules adopted during the period October 1, 1996 through December 31, 1996 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 1996, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1995 and 1996 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number. These will fall alphabetically after department rulemaking actions. Accumulative Table entries will be listed with the department name under which they were proposed, e.g., Department of Health and Environmental Sciences as opposed to Department of Environmental Quality.

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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 January 1997, appear. Vacancies scheduled to appear from March 1, 1997, through May 31, 1997, 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 February 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 JANUARY, 1997

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Aeronautics (Transportation)			
Mr. Byron Bayers Twin Bridges	Governor	reappointed	1/28/1997 1/1/2001
Qualifications (if required): member of the Montana Chamber of Commerce			
Mr. Fred Booth Highwood	Governor	reappointed	1/28/1997 1/1/2001
Qualifications (if required): member of the Montana Pilots' Association			
Mr. Douglas Freeman Hardin	Governor	reappointed	1/28/1997 1/1/2001
Qualifications (if required): member of the Montana League of Cities and Towns and an attorney			
Mr. Ronald S. Mercer Helena	Governor	reappointed	1/28/1997 1/1/2001
Qualifications (if required): representative of the Montana Airport Management Association			
Mr. William Metz Laurel	Governor	Fenger	1/28/1997 1/1/2001
Qualifications (if required): member of the Montana Aerial Applicators			
Board of Hearing Aid Dispensers (Commerce)			
Dr. Steven Butler Billings	Governor	Richter	1/17/1997 7/1/1997
Qualifications (if required): otolaryngologist			
Board of Horse Racing (Commerce)			
Ms. Isabelle Devlin Terry	Governor	reappointed	1/20/1997 1/20/2000
Qualifications (if required): resident of District 1			

BOARD AND COUNCIL APPOINTEES FROM JANUARY, 1997

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Horse Racing (Commerce) Cont.			
Dr. James A. Scott Great Falls Qualifications (if required): resident of District 3	Governor	reappointed	1/20/1997 1/20/2000
Board of Pardons (Corrections)			
Mr. Gary Weer Deer Lodge Qualifications (if required): public member	Governor	Thomas	1/28/1997 1/1/2001
Ms. Roxanne Wilson Busby Qualifications (if required): auxiliary member and Native American	Governor	Kennerly	1/28/1997 1/1/2001
Board of Passenger Tramway Safety (Commerce)			
Ms. Sherry Lersbak Troy Qualifications (if required): public member	Governor	Nelson	1/13/1997 1/1/2001
Mr. Randy Schilling Polaris Qualifications (if required): ski area operator	Governor	Taylor	1/13/1997 1/1/2001
Board of Personnel Appeals (Labor and Industry)			
Mr. Leo Perkins Deer Lodge Qualifications (if required): representing labor unions	Governor	Henry	1/29/1997 1/1/2001
Mr. Thomas Schneider Helena Qualifications (if required): representing labor unions	Governor	reappointed	1/29/1997 1/1/2001

BOARD AND COUNCIL APPOINTEES FROM JANUARY, 1997

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Personnel Appeals (Labor and Industry) Cont.			
Mr. Brad Talcott	Governor	reappointed	1/29/1997
Great Falls			1/1/2001
Qualifications (if required): representing management			
Board of Psychologists (Commerce)			
Dr. Dawn Birk	Governor	Lewis	1/17/1997
Miles City			9/1/2001
Qualifications (if required): psychologist			
Board of Science and Technology Development (Commerce)			
Mr. Will Brooke	Governor	reappointed	1/17/1997
Bozeman			1/1/2001
Qualifications (if required): representing the private sector and an attorney			
Mr. Monte Giese	Governor	reappointed	1/17/1997
Great Falls			1/1/2001
Qualifications (if required): representing early stage financing of private businesses			
Mr. Haven Holsapple	Governor	reappointed	1/17/1997
Hamilton			1/1/2001
Qualifications (if required): representing early stage financing of private businesses			
Mr. Doug Lair	Governor	reappointed	1/17/1997
Big Timber			1/1/2001
Qualifications (if required): representing the private sector			
Mr. Loren Smith	Governor	reappointed	1/17/1997
Great Falls			1/1/2001
Qualifications (if required): representing the private sector and expertise in applied technology			

BOARD AND COUNCIL APPOINTEES FROM JANUARY, 1997

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Social Work Examiners (Commerce)			
Mr. James Armstrong	Governor	reappointed	1/28/1997
Fort Harrison			1/1/2001
Qualifications (if required): social worker			
Mr. Ervin Booth	Governor	reappointed	1/28/1997
Roundup			1/1/2001
Qualifications (if required): professional counselor			
Ms. Mary Meis	Governor	reappointed	1/28/1997
Conrad			1/1/2001
Qualifications (if required): social worker			
Mr. Patrick Wolberd	Governor	reappointed	1/28/1997
Billings			1/1/2001
Qualifications (if required): social worker			
Coal Board (Commerce)			
Mr. Alan Evans	Governor	reappointed	1/17/1997
Roundup			1/1/2001
Qualifications (if required): residing in an impact area and District 4			
Mr. Gerald Feda	Governor	reappointed	1/17/1997
Glasgow			1/1/2001
Qualifications (if required): public member residing in District 3			
Mr. Roger Knapp	Governor	reappointed	1/17/1997
Hysham			1/1/2001
Qualifications (if required): residing in an impact area and District 4			
Mr. James W. Royan	Governor	reappointed	1/17/1997
Missoula			1/1/2001
Qualifications (if required): public member residing in District 1			

BOARD AND COUNCIL APPOINTEES FROM JANUARY, 1997

Appointee	Appointed by	Succeeds	Appointment/End Date
Coal Board (Commerce) Cont.			
Mr. John Sutton	Governor	not listed	1/17/1997
Butte			1/1/1999
Qualifications (if required): residing in District 4 and having engineering experience			
Concealed Weapon Advisory Council (Justice)			
Ms. Melissa Tuemmler	Governor	Wooley	1/30/1997
Ulm			11/13/1997
Qualifications (if required): gun owner			
Developmental Disabilities Planning and Advisory Council (Public Health and Human Services)			
Mr. DuWyne Geist	Governor	reappointed	1/1/1997
Rexford			1/1/2002
Qualifications (if required): representing consumers			
Fish, Wildlife and Parks Commission (Fish, Wildlife and Parks)			
Mr. Charles R. Decker	Governor	reappointed	1/13/1997
Libby			1/1/2001
Qualifications (if required): resident of District I			
Mr. Stanley F. Meyer	Governor	reappointed	1/13/1997
Great Falls			1/1/2001
Qualifications (if required): resident of District III			
Mr. David Simpson	Governor	reappointed	1/13/1997
Hardin			1/1/2001
Qualifications (if required): resident of District V			
Hard Rock Mining Impact Board (Commerce)			
Ms. Tammy Johnson	Governor	McCauley	1/29/1997
Whitehall			1/1/2001
Qualifications (if required): residing in an impact area and representing District 2			

BOARD AND COUNCIL APPOINTEES FROM JANUARY, 1997

Appointee	Appointed by	Succeeds	Appointment/End Date
Hard Rock Mining Impact Board (Commerce) Cont.			
Ms. Carol Kienenberger Malta Qualifications (if required): county commissioner residing in an impact area and representing District 3	Governor	reappointed	1/29/1997 1/1/2001
Mr. Roger W. Kornder Lincoln Qualifications (if required): representing a major financial institution and residing in an impact area	Governor	reappointed	1/29/1997 1/1/2001
Historical Society Board of Trustees (Historical Society)			
Mr. Ed Henrich Anaconda Qualifications (if required): public member	Governor	King	1/13/1997 7/1/1999
Human Rights Commission (Labor and Industry)			
Ms. Gloria "Patt" Etchart Glasgow Qualifications (if required): public member	Governor	reappointed	1/30/1997 1/1/2001
Ms. S. Jane Lopp Kalispell Qualifications (if required): public member	Governor	reappointed	1/30/1997 1/1/2001
Ms. Evelyn Stevenson Pablo Qualifications (if required): public member	Governor	reappointed	1/30/1997 1/1/2001
Judicial Nomination Commission (Justice)			
Mr. David Bliss Conrad Qualifications (if required): public member	Governor	reappointed	1/21/1997 1/1/2001

BOARD AND COUNCIL APPOINTEES FROM JANUARY, 1997

Appointee	Appointed by	Succeeds	Appointment/End Date
Milk Control Board (Livestock)			
Mr. Jesse Russell Gleason Fairfield Qualifications (if required): republican	Governor	reappointed	1/17/1997 1/1/2001
Ms. Dixie S. Hertel Moore Qualifications (if required): republican	Governor	reappointed	1/17/1997 1/1/2001
Mr. Milton "Swede" Olson Whitewater Qualifications (if required): republican	Governor	reappointed	1/17/1997 1/1/2001
Montana Health Facility Authority Board (Commerce)			
Ms. Joyce Asay Forsyth Qualifications (if required): public member	Governor	reappointed	1/17/1997 1/1/2001
Ms. Gayle Carpenter Helena Qualifications (if required): public member	Governor	reappointed	1/17/1997 1/1/2001
Dr. Amos R. Little, Jr. Helena Qualifications (if required): public member	Governor	reappointed	1/17/1997 1/1/2001
Mr. Michael P. Varone Helena Qualifications (if required): public member	Governor	reappointed	1/17/1997 1/1/2001

BOARD AND COUNCIL APPOINTEES FROM JANUARY, 1997

Appointee	Appointed by	Succeeds	Appointment/End Date
Montana State Lottery Commission (Commerce)			
Sheriff Cliff Brophy Columbus Qualifications (if required): law enforcement officer	Governor	reappointed	1/1/1997 1/1/2001
Ms. Becky Erickson Glasgow Qualifications (if required): public member	Governor	reappointed	1/1/1997 1/1/2001
Northwest Power Planning Council (Governor)			
Mr. John N. Etchart Fort Worth, TX Qualifications (if required): none specified	Governor	not listed	1/6/1997 1/1/2001
Mr. Stan Grace Helena Qualifications (if required): none specified	Governor	not listed	1/6/1997 1/1/2001
State Tax Appeal Board (Administration)			
Mr. Gregory Thornquist Billings Qualifications (if required): public member	Governor	reappointed	1/28/1997 1/1/2003
Transportation Commission (Transportation)			
Ms. Patricia Abelin Bozeman Qualifications (if required): republican from District 2	Governor	reappointed	1/30/1997 1/1/2001
Mr. Thorm R. Forseth Billings Qualifications (if required): independent from District 5	Governor	reappointed	1/30/1997 1/1/2001

BOARD AND COUNCIL APPOINTEES FROM JANUARY, 1997

Appointee	Appointed by	Succeeds	Appointment/End Date
Transportation Commission (Transportation) (Cont.)			
Mr. Robert C. McKenna Helena	Governor	Bell	1/30/1997 1/1/2001
Qualifications (if required): democrat from District 3			
Youth Justice Advisory Council (Justice)			
Judge Gary Acevedo Ronan	Governor	Dominguez	1/15/1997 6/16/1997
Qualifications (if required): Native American			

VACANCIES ON BOARDS AND COUNCILS -- March 1, 1997 through May 31, 1997

Board/current position holder	Appointed by	Term end
Board of Architects (Commerce)		
Mr. John W. Peterson, Kalispell	Governor	3/27/1997
Qualifications (if required): registered architect		
Board of Athletics (Commerce)		
Dr. Andrew Vandolah, Conrad	Governor	4/25/1997
Qualifications (if required): public member		
Board of Clinical Laboratory Science Practitioners (Commerce)		
Dr. J. David Walker, Kalispell	Governor	4/16/1997
Qualifications (if required): physician qualified to direct a high complexity laboratory		
Ms. Loraine Kay Crull, Missoula	Governor	4/16/1997
Qualifications (if required): clinical laboratory science practitioner		
Ms. Sonja Bennett, Billings	Governor	4/16/1997
Qualifications (if required): clinical laboratory science practitioner		
Board of County Printing (Commerce)		
Mr. Roy Aafedt, Great Falls	Governor	4/1/1997
Qualifications (if required): county commissioner		
Ms. Nancy Clark, Ryegate	Governor	4/1/1997
Qualifications (if required): public member		
Mr. Curtis Starr, Malta	Governor	4/1/1997
Qualifications (if required): representing the printing industry		
Ms. Fern Hart, Missoula	Governor	4/1/1997
Qualifications (if required): county commissioner		

VACANCIES ON BOARDS AND COUNCILS -- March 1, 1997 through May 31, 1997

Board/current position holder	Appointed by	Term end
Board of County Printing (Commerce) Cont.		
Mr. Verle Rademacher, White Sulphur Springs	Governor	4/1/1997
Qualifications (if required): representing the printing industry		
Board of Dentistry (Commerce)		
Ms. Lisa J. Hinebauch, Chinook	Governor	3/29/1997
Qualifications (if required): public member		
Mr. Clifford Christenot, Libby	Governor	3/29/1997
Qualifications (if required): denturist		
Ms. Carol Ann Scranton, Kalispell	Governor	3/29/1997
Qualifications (if required): dentist		
Board of Hail Insurance (Agriculture)		
Mr. Vince Schmoeckel, Malta	Governor	4/18/1997
Qualifications (if required): public member		
Board of Livestock (Livestock)		
Ms. Nancy Espy, Broadus	Governor	3/1/1997
Qualifications (if required): cattle producer from Eastern District		
Mr. James F. Hagenbarth, Dillon	Governor	3/1/1997
Qualifications (if required): cattle producer from Western District		
Board of Nursing Home Administrators (Commerce)		
Ms. Leona Petro, Bigfork	Governor	5/28/1997
Qualifications (if required): professional concerned with the care for chronically ill and aged		
Board of Optometry (Commerce)		
Dr. Cynthia Kinna Johnson, Wolf Point	Governor	4/3/1997
Qualifications (if required): optometrist		

VACANCIES ON BOARDS AND COUNCILS -- March 1, 1997 through May 31, 1997

Board/current position holder	Appointed by	Term end
Board of Plumbers (Commerce)		
Mr. Vernon E. (Gene) Mahn, Lincoln	Governor	5/4/1997
Qualifications (if required): public member		
Board of Professional Engineers and Land Surveyors (Commerce)		
Mr. Dennis F. Carver, Kalispell	Governor	4/23/1997
Qualifications (if required): professional engineer		
Mr. David M. Hummel, Jr., Billings	Governor	4/23/1997
Qualifications (if required): civil engineer		
Board of Real Estate Appraisers (Commerce)		
Mr. A. Farrell Rose, Helena	Governor	5/1/1997
Qualifications (if required): licensed appraiser		
Ms. Jeannie Flechsenhar, Cascade	Governor	5/1/1997
Qualifications (if required): public member		
Board of Realty Regulation (Commerce)		
Mr. Bruno Friia, Missoula	Governor	5/9/1997
Qualifications (if required): licensed real estate broker or salesman		
Board of Veterans' Affairs (Military Affairs)		
Mr. George G. Hageman, Jordan	Governor	5/18/1997
Qualifications (if required): honorably discharged from military services		
Executive Board of Montana College of Mineral Science and Technology (Education)		
Ms. Catherine Williams, Butte	Governor	4/15/1997
Qualifications (if required): public member		
Executive Board of Eastern Montana College (Education)		
Ms. Kelly Holmes, Bozeman	Governor	4/15/1997
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- March 1, 1997 through May 31, 1997

Board/current position holder	Appointed by	Term end
Executive Board of Montana State University (Education)		
Mrs. Virginia Martin, Bozeman Qualifications (if required): public member	Governor	4/15/1997
Executive Board of Northern Montana College (Education)		
Ms. Debbie Leeds, Havre Qualifications (if required): public member	Governor	4/15/1997
Executive Board of Western Montana College (Education)		
Mr. Joe Womack, Dillon Qualifications (if required): public member	Governor	4/15/1997
Executive Board of the University of Montana (Education)		
Mr. Leonard Landa, Missoula Qualifications (if required): public member	Governor	4/15/1997
Montana State Veterans Cemetery Advisory Council (Military Affairs)		
Mr. Jim Heffernan, Helena Qualifications (if required): none specified	Adjutant General	5/1/1997
Mr. Fred Olson, Fort Harrison Qualifications (if required): none specified	Adjutant General	5/1/1997
Mr. James F. Jacobsen, Helena Qualifications (if required): none specified	Adjutant General	5/1/1997
Ms. Irma Paul, Helena Qualifications (if required): none specified	Adjutant General	5/1/1997
Mr. Robert C. McKenna, Helena Qualifications (if required): none specified	Adjutant General	5/1/1997

VACANCIES ON BOARDS AND COUNCILS -- March 1, 1997 through May 31, 1997

Board/current position holder	Appointed by	Term end
Montana State Veterans Cemetery Advisory Council (Military Affairs) Cont.		
Mr. James W. Duffy, Helena Qualifications (if required): none specified	Adjutant General	5/1/1997
Major Joel Cusker, Helena Qualifications (if required): none specified	Adjutant General	5/1/1997
Mr. Ray Read, Helena Qualifications (if required): none specified	Adjutant General	5/1/1997
Ms. Alma Dickey, Helena Qualifications (if required): none specified	Adjutant General	5/1/1997
Mr. Herb Ballou, Helena Qualifications (if required): none specified	Adjutant General	5/1/1997
Mr. Carl L. Nordberg, Helena Qualifications (if required): none specified	Adjutant General	5/1/1997
Mr. Ruddy Reilly, Helena Qualifications (if required): none specified	Adjutant General	5/1/1997
Ms. Rose Marie Storey, Helena Qualifications (if required): none specified	Adjutant General	5/1/1997
Mr. Mickey Nelson, Helena Qualifications (if required): none specified	Adjutant General	5/1/1997
Mr. Lee Dickey, Helena Qualifications (if required): none specified	Adjutant General	5/1/1997
Mr. M. Herbert Goodwin, Helena Qualifications (if required): none specified	Adjutant General	5/1/1997

VACANCIES ON BOARDS AND COUNCILS -- March 1, 1997 through May 31, 1997

Board/current position holder	Appointed by	Term end
Montana State Veterans Cemetery Advisory Council (Military Affairs) Cont.		
Mr. Dick Baumberger, Helena	Adjutant General	5/1/1997
Qualifications (if required): none specified		
Mr. George Paul, Helena	Adjutant General	5/1/1997
Qualifications (if required): none specified		
Point of Sale Advisory Council (Fish, Wildlife and Parks)		
Mr. Bob LeFever, Butte	Director	5/22/1997
Qualifications (if required): none specified		
Public Employees' Retirement Board (Administration)		
Ms. Carole Carey, Ekalaka	Governor	4/1/1997
Qualifications (if required): member of public employees' retirement system		
State Compensation Mutual Insurance Fund (Administration)		
Mr. Rick Hill, Helena	Governor	4/28/1997
Qualifications (if required): private for profit representative		
Mr. James A. Brouelette, Stevensville	Governor	4/28/1997
Qualifications (if required): private for profit representative		
Ms. Sandra D. Reiter, Billings	Governor	4/28/1997
Qualifications (if required): private for profit representative		
State Library Commission (Education)		
Ms. Eleanor N. Gray, Miles City	Governor	5/22/1997
Qualifications (if required): public member		
Ms. Peggy Guthrie, Choteau	Governor	5/22/1997
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- March 1, 1997 through May 31, 1997

Board/current position holder	Appointed by	Term end
State Tax Appeal Board (Administration) Mr. Gregory Thornquist, Billings Qualifications (if required): public member	Governor	3/1/1997