BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of NEW RULE I-identification decal for video gambling machines; NEW RULE II-define system availability; and the proposed amendment of ARM 23.16.1802, 23.16.1803, 23.16.1807, 23.16.1823, 23.16.1826, 23.16.1916A, and 23.16.2101 concerning definitions, online permitting for video gambling machines, issuance of updated gambling operator licenses after permitting, renewal of gambling operator licenses, quarterly reporting requirements, accounting system vendor license fee, and requirement for parties to multi-game agreements to connect to an approved system	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On August 31, 2006, at 10:00 a.m., the Montana Department of Justice will hold a public hearing in the conference room at the Gambling Control Division, 2550 Prospect Avenue, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on August 24, 2006, to advise us of the nature of the accommodation that you need. Please contact Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; (406) 444-1971; Fax (406) 444-9157; Montana Relay Service 711; or e-mail rask@mt.gov.

3. The proposed new rules provide as follows:

NEW RULE I IDENTIFICATION DECAL REQUIRED ON ALL VIDEO GAMBLING MACHINES (1) Upon request from a licensed video gambling machine manufacturer or its designated representative, the department will issue identification decals to be placed upon new video gambling machines prior to their distribution or sale.

(2) The identification decal must be affixed to a machine before a machine is placed in service.

(3) The identification decal must be placed on the machine in such a manner that the identification decal is not obstructed from view and can be permanently maintained.

(4) Upon the request of a licensed manufacturer, distributor, operator, or route operator, the department will provide replacement identification decals for decals that have been destroyed or removed.

(5) For all video gambling machines validly permitted at the time this rule becomes effective, identification decals may be placed on the machines:

(a) by an employee of the department; or

(b) by a route operator who shall submit audit tapes and documents verifying the placement on the proper machine.

AUTH: 23-5-621, MCA
IMP: 23-5-621, 23-5-637, MCA

RATIONALE AND JUSTIFICATION: New Rule I establishes procedure for placing a permanent decal on all video gambling machines. Every machine will have a permanent, unique identification number assigned. These decals will replace the annual permit decals. The replacement of the permit decals is necessary to implement electronic issuance of video gambling machine permits provided for in 23-5-621 and 23-5-637, MCA. The use of a permanent decal will affect approximately 1,600 video gambling machine owners. The use of a permanent decal should result in cost savings for both the department and licensees.

NEW RULE II APPROVED ACCOUNTING AND REPORTING SYSTEM AVAILABILITY IN RELATION TO MULTI-GAME AGREEMENTS (1) For purposes of determining when an approved automated accounting system is available under the terms of multi-game video gambling machine agreements, the availability date shall be a date no sooner than 180 days after the department has approved at least two commercially available systems under ARM 23.16.2105 for tier II systems, and when tax reporting is available through the department's internet web site.

AUTH: 23-5-621, MCA
IMP: 23-5-637, MCA

RATIONALE AND JUSTIFICATION: New Rule II defines when an automated accounting and reporting system will be considered available for connection. The rule allows operators who have signed multi-game video gambling machine agreements the option to utilize an approved automated accounting and reporting system or the department's internet web site, and gives them adequate time to determine which system they want to use. This rule provides that at least three alternative systems will be available before any machine owner is required to select a system. At this time, over 1,000 operators have entered into multi-game agreements. In most cases, the accounting system will be an expense to the route operator serving the operator. At this time, no systems are commercially available and the price cannot be estimated. The state web site system will be available to any operator at no cost.

4. The rules as proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

23.16.1802 DEFINITIONS (1) through (3) remain the same.

(4) "Designated representative" means a person designated on forms provided by the department to be a representative of the licensed machine owner. This designation is made for the purposes of filing quarterly reporting documents, applying for permits, receiving of forms, etc. ~~It does not include applications for a permit or relieve~~ However, the permit holder or machine owner ~~of responsibilities~~ remains responsible for maintaining accurate records, filing reports in a timely manner, and paying machine taxes due.

(5) through (7) remain the same.

(8) "Identification decal" means a decal permanently affixed to a video gambling machine and bears its unique identification number issued by the department.

(8) through (25) remain the same but are renumbered (9) through (26).

AUTH: 23-5-115, 23-5-621, MCA
IMP: 23-5-111, 23-5-112, 23-5-115, 23-5-151, 23-5-602, 23-5-603, 23-5-607, 23-5-610, 23-5-612, 23-5-621, 23-5-637, MCA

RATIONALE AND JUSTIFICATION: The definitions are amended to provide for changes in the manner in which video gambling machine permits will be issued. Currently, video gambling machine permit decals are issued annually and must be affixed to the machines prior to operation. With the proposed changes, permits will be printed on the gambling operator's license and can be transmitted to the operator through the mail or e-mail. Because route operators often obtain permits for the location operator to whom they lease machines, this process will allow route operators to obtain permits on behalf of the location operator. In place of annual decals affixed to the video gambling machine, the department will issue an identification decal that will permanently identify the machine. The new definitions will distinguish this permanent identification decal from the current annual permit decal. These changes will affect most of the 1,600 locations operating video gambling machines, and should result in substantial cost savings to operators who will no longer need to wait for permits to arrive by mail or be required to travel to Helena to pick up permits.

23.16.1803 APPLICATION FOR PERMIT, FEE AND PERMIT REQUIREMENTS (1) through (3) remain the same.

(4) A machine owner who utilizes an approved accounting and reporting system may submit permit applications through an internet web site provided by the department.

AUTH: 23-5-115, 23-5-621, MCA
IMP: 23-5-602, 23-5-611, 23-5-612, 23-5-621, 23-5-637, MCA

RATIONALE AND JUSTIFICATION: This amendment provides specific authorization for operators using an approved accounting and reporting system to obtain permits through the department's web site. This change will affect most of

the 1,600 locations operating video gambling machines and should result in substantial cost savings to operators who will no longer need to wait for permits in the mail or be required to travel to Helena to pick up permits.

23.16.1807 ISSUANCE OF VIDEO GAMBLING MACHINE PERMIT

(1) Upon approval of an application and payment of a permit fee, the department will ~~issue a permit decal~~ update and issue to the location a new gambling operator license listing all renewed or newly permitted machines.

(2) ~~The licensee must affix the permit decal to the machine cabinet as instructed by the department so that the decal is visible and easily read.~~ The gambling operator must receive the updated operator's license listing all renewed or newly permitted video gambling machines before the video gambling machines may be placed in service.

~~(3) the permit decal must be affixed to a machine before a machine is placed in service.~~

~~(4)~~(3) A new permit ~~decal~~ will not be required after renewal when a machine owner converts a keno, poker, or bingo to a multi-game and commits the machine to connect to the automated accounting and reporting system.

AUTH: 23-5-115, 23-5-605, 23-5-621, MCA
IMP: 23-5-603, 23-5-605, 23-5-611, 23-5-612, 23-5-621, 23-5-637, MCA

RATIONALE AND JUSTIFICATION: This amendment establishes that the form of the permit is no longer a decal but is rather a listing of permitted machines upon the operator license. These changes in definitions will affect most of the 1,600 locations operating video gambling machines. The changes should result in substantial cost savings to operators who will no longer need to wait for permits to arrive by mail or be required to travel to Helena to pick up permits.

23.16.1823 PRORATION OF PERMIT FEE – RENEWAL (1) and (2) remain the same.

(3) An application for renewing a permit must be submitted to the Gambling Control Division of the department upon forms prescribed by the department, the permit fee paid, ~~a new permit issued, and the permit affixed to the machine~~ and a new gambling operator license issued which lists the machine for which the permit is issued before a previously permitted machine may be operated after midnight on June 30.

(4) through (6) remain the same.

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

RATIONALE AND JUSTIFICATION: This amendment is needed because the permit will no longer be a decal but is rather a listing of permitted machines upon the operator license. These changes will affect most of the 1,600 locations operating video gambling machines and should result in substantial cost savings to operators

who will no longer need to wait for permits to arrive by mail or be required to travel to Helena to pick up permits.

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

(a) For each machine not utilizing an approved automated accounting and reporting system, the machine owner or his designated representative must file with the department a quarterly tax report signed by the machine owner or his designated representative. The forms prescribed and supplied by the department require readings from the mechanical and electronic meters as required by the act. The report will be used by the department to verify payment of all taxes and the winning percentage of the machine as required by the act. The following requirements apply:

(i) through (iii) remain the same.

(b) For each machine utilizing an approved automated accounting and reporting system, the machine owner or his designated representative shall transmit files to the department with the following information:

(i) for tier I systems, all electronic meter readings and all events set out in ARM 23.16.2105 for each week the machine is in operation, and the last set of meter readings received before the end of the quarter (meter readings received no more than seven days before the end of the quarter) will be used as quarter end readings for purpose of calculating a tax advisory to be sent to machine owners;

(ii) for tier II systems, all electronic meter readings for each week or two week period for which the machine is approved to report, and within seven days of the last day of each quarter, all electronic and mechanical meter readings, along with an indication that it is the last reading to be reported in the quarter; and

(iii) for tier II systems, before- and after-service electronic and mechanical meter readings must be submitted in a format prescribed by the department, if meters are reset or malfunction.

(c) For machines utilizing an approved automated accounting and reporting system, after the final set of meter readings for the quarter is received, the department will electronically transmit a machine income and tax advisory by machine and location to the machine owner. Upon receipt of the machine income and tax advisory, the owner must contact the department within seven days in order to dispute the machine income and tax advisory.

(d) The machine owner will have until midnight of the 15th day of the month following the quarters ending March 31, June 30, September 30, and December 31 to confirm and pay any tax due by electronic check or credit/debit card.

(2) through (6) remain the same.

AUTH: 23-5-115, 23-5-605, 23-5-621, MCA
IMP: 23-5-115, 23-5-136, 23-5-605, 23-5-610, 23-5-621, 23-5-637, MCA

RATIONALE AND JUSTIFICATION: This amendment leaves intact the requirements for filing manual reports and sets out the requirements for automated accounting and reporting systems. This amendment reflects a change from relying

on the reconciliation of electronic and mechanical meter readings to validate tax reports, to utilizing the accounting records of the route operator or the operator which will be electronically available to the division. For tier I systems, the department will rely on data recorded and transmitted in electronic form from the video gambling machine to the tier I system. For tier II systems, the department will look to the accounting records of the operator or information entered through the department's web site. The changes to the rule also provide for the department to calculate the tax for users of approved systems and a process for the operator to review and pay the tax. It is anticipated that a majority of the 1,600 operators will utilize an automated accounting and reporting system. At this time the department cannot estimate the cost of a system. Every operator will have the option to enter tax reports through the department's web site at no cost. The use of an automated accounting system is expected to provide operators with greater efficiency and accuracy in reporting video gambling machine taxes, resulting in fewer tax and record keeping penalties.

23.16.1916A ACCOUNTING SYSTEM VENDOR LICENSE (1) through (1)(d) remain the same.

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

(i) through (3) remain the same.

AUTH: 23-5-115, 23-5-621, MCA
IMP: 23-5-110, 23-5-637, MCA

RATIONALE AND JUSTIFICATION: The amendment adjusts the amount due for the accounting system license which inadvertently was not adjusted when this rule was last amended.

23.16.2101 COMBINATION OF POKER, KENO, AND BINGO (1) and (2) remain the same.

(3) The department shall provide notice to the video gambling machine owner and the video gambling machine lessee not less than 90 days before the date that the video gambling machine ~~is~~ owner is required to submit an application to be connected to the automated accounting and reporting system. The notice shall include a general description of the installation and an estimated cost for connection to the automated accounting and reporting system. Cost estimates for components of the system to be provided by manufacturers will only be included in the notice if available from manufacturers on a timely basis. A video gambling machine shall be committed unless the owner has submitted a Gambling Control Division Form 31(c), (Notice of Movement or Removal of Multi-Game) with the form required by ARM 23.16.1929 (service report) to the Gambling Control Division at least 60 days prior to the date for which the owner has been provided notice that the video gambling machine is to be connected to the automated accounting and reporting system.

(4) and (5) remain the same.

AUTH: 23-5-115, 23-5-612, 23-5-621, MCA

IMP: 23-5-621, 23-5-637, MCA

RATIONALE AND JUSTIFICATION: The amendment provides for coordination between the requirement for parties to multi-game agreements to connect to an approved accounting and reporting system and the process for applying to utilize an approved system. This amendment coordinates the notice process for multi-game agreements with recently adopted rule ARM 23.16.2107. The operator will be provided 90 days notice before the application is required; the operator will then have 60 days between the time the application is made and the time tax reporting begins. It is anticipated that the majority of locations will voluntarily apply to utilize an approved system. At this time the department cannot estimate how many operators will ever be required to utilize an approved system by enforcement of the multi-game agreements. The department will make an effort to educate and encourage operators to voluntarily utilize an approved system or the department's web site.

5. Concerned 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 Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; Fax (406) 444-9157; or e-mail rask@mt.gov, and must be received no later than September 7, 2006.

6. Cregg Coughlin, Assistant Attorney General, Gambling Control Division, has been designated to preside over and conduct the hearing.

7. The Department of Justice maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices of rules regarding the Crime Control Division, the Central Services Division, the Forensic Sciences Division, the Gambling Control Division, the Highway Patrol Division, the Law Enforcement Academy, the Division of Criminal Investigation, the Legal Services Division, the Consumer Protection Division, the Motor Vehicle Division, the Justice Information Systems Division, or any combination thereof. Such written request may be mailed or delivered to Rick Ask, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; Fax (406) 444-9157; or e-mail rask@mt.gov, or may be made by completing a request form at any rules hearing held by the Department of Justice.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

By: /s/ Mike McGrath
MIKE McGRATH
Attorney General, Department of Justice

/s/ Jon Ellingson
JON ELLINGSON
Rule Reviewer

Certified to the Secretary of State July 31, 2006.