MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 9

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Administrative Rules Bureau at (406) 444-2055.

Page Number

TABLE OF CONTENTS

NOTICE SECTION

JUSTICE, Department of, Title 23

23-15-134 Notice of Proposed Amendment - Creating the Office of Victims Services and Restorative Justice. No Public Hearing Contemplated. 1382-1385

23-17-132 Notice of Proposed Amendment - Montana Law Enforcement Academy Student Academic Performance Requirements for the Basic Course. No Public Hearing Contemplated. 1386-1387

LABOR AND INDUSTRY, Department of, Title 24

8-61-16 (Board of Social Work Examiners and Professional Counselors) Notice of Proposed Amendment - Licensure Requirements. No Public Hearing Contemplated. 1388-1390

24-16-158 Notice of Public Hearing on Proposed Amendment - Prevailing Wage Rates. 1391-1396

24-16-159 Notice of Public Meeting on Occupations Surveyed for Prevailing Wage Rate Purposes. 1397-1399

24-21-160 Notice of Public Hearing on Proposed Amendment - Adoption of Wage Rates for Certain Apprenticeship Programs. 1400-1402

Page Number

LABOR AND INDUSTRY, Continued

24-29-161 Notice of Public Hearing on Proposed Adoption, Amendment and Repeal. Chiropractic, Occupational Therapy and Physical Therapy Services and Fees in Workers' Compensation Matters. 1403-1419

24-29-162 Notice of Public Hearing on Proposed Repeal and Amendment - Uninsured Employers' Fund. 1420-1423

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-237 Notice of Public Hearing on Proposed Amendment - Mental Health Center Services. 1424-1429

REVENUE, Department of, Title 42

42-2-691 Notice of Public Hearing on Proposed Amendment and Adoption - Taxpayer Appeals. 1430-1437

42-2-692 Notice of Proposed Amendment - Filing and Remittance Requirements for Electronic Fund Transfers. No Public Hearing Contemplated. 1438-1439

SECRETARY OF STATE, Title 44

44-2-117 (Commissioner of Political Practices) Notice of Public Hearing on Proposed Amendment, Adoption and Repeal - Lobbying - Regulation of Lobbying. 1440-1462

RULE SECTION

EDUCATION, Title 10

NEW REP (Board of Public Education) Model Rules - Teacher Certification - Testing for Certification - Minimum Scores. 1463-1464

ENVIRONMENTAL QUALITY, Department of, Title 17

AMD REP NEW (Subdivisions) Subdivision Review Under the Sanitation and Subdivisions Act. 1465-1476

AMD (Underground Storage Tanks) Variances - Issuance of Compliance Tags and Certificates. 1477-1481

JUSTICE, Department of, Title 23

AMD Field Certification of Associated Equipment. 1482-1483

Page Number

JUSTICE, Continued

NEW (Board of Crime Control) Reimbursement to Counties for Detention of Indian Youth. 1484

LABOR AND INDUSTRY, Department of, Title 24

TRANS (Board of Clinical Laboratory Science Practitioners) Board of Clinical Laboratory Science Practitioners. 1485

AMD NEW (Board of Clinical Laboratory Science Practitioners) Application - Fees - Minimum Standards for Licensure - Continuing Education - Inactive Status - Reactivation of License - Notification of Denial or Disciplinary Action - Supervision. 1486-1487

AMD REP (Board of Dentistry) Licensure of Dentists and Dental Hygienists - Application Requirements for Dentists and Dental Hygienists. 1488-1497

TRANS (Board of Landscape Architects) Board of Landscape Architects. 1498

TRANS (Board of Sanitarians) Board of Sanitarians. 1499

LIVESTOCK, Department of, Title 32

TRANS AMD REP (Board of Horse Racing) Horse Racing. 1500-1509

AMD (Board of Livestock) Fees Charged by the Department of Livestock for Inspecting Livestock. 1510

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

REP Communicable Disease Control. 1511

PUBLIC SERVICE REGULATION, Department of, Title 38

NEW General Requirement to Obtain License to Supply Electricity. 1512-1514

SPECIAL NOTICE AND TABLE SECTION

Function of Administrative Rule Review Committee. 1515-1516

How to Use ARM and MAR. 1517

Accumulative Table. 1518-1529

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 23.15.101, 23.15.102, 23.15.201, 23.15.202, 23.15.203, 23.15.205, 23.15.301, and 23.15.310, creating the office of victims services and restorative justice	)	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On June 17, 2002, the Department of Justice proposes to amend ARM 23.15.101, 23.15.102, 23.15.201, 23.15.202, 23.15.203, 23.15.205, 23.15.301, and 23.15.310 to reflect the creation of the office of victims services and restorative justice.

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 of Justice no later than 5:00 p.m. on May 31, 2002, to advise us of the nature of the accommodation that you need. Please contact Ali Sheppard, Department of Justice, Office of Attorney General, P.O. Box 201401, Helena, MT 59620-1401; (406) 444-2026; FAX 406-444-3549.

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

23.15.101 FUNCTION OF THE ~~DIVISION~~ OFFICE OF VICTIMS SERVICES AND RESTORATIVE JUSTICE (1) The ~~division of crime control~~ office of victims services and restorative justice administers the Crime Victims Compensation Act, Title 53, chapter 9, ~~sections~~ part ~~101 to 133~~ 1, MCA, through the crime victims unit.

AUTH: 53-9-104, MCA
IMP: 53-9-103, MCA

23.15.102 GENERAL DEFINITIONS ~~(1) "Division"~~ (5) "Office" is the ~~division of crime control~~ office of victims services and restorative justice.

(2) remains the same but is renumbered (7).
(3) remains the same but is renumbered (2).
(4) remains the same but is renumbered (6).
(5) through (5)(b) remain the same but are renumbered (1) through (1)(b).
(6) remains the same but is renumbered (4).
(3) "Deputy director" is the deputy director/chief of

staff of the department of justice.

AUTH: 53-9-104, MCA
IMP: 53-9-103, 53-9-125, 53-9-127, 53-9-128, MCA

23.15.201 CLAIM AND INITIAL DETERMINATION (1) through (4) remain the same.

(5) The ~~division~~ office will issue its initial determination accepting, denying, or reconsidering claims for compensation benefits.

AUTH: 53-9-104, MCA
IMP: 53-9-122, 53-9-124, 53-9-127, 53-9-128, MCA

23.15.202 REQUEST FOR HEARING (1) remains the same.

(2) The claimant's request must be in writing and state the action the claimant wishes the ~~division~~ office to take and the reasons the ~~division~~ office should take such action.

(3) The ~~unit's administrative officer~~ office administrator will review the request and all relevant evidence provided by the claimant~~, and~~ . After review, the office administrator will recommend whether a hearing should be held or a revised order issued.

AUTH: 53-9-104, MCA
IMP: 53-9-122, 53-9-130, 53-9-131, MCA

23.15.203 HEARING (1) The ~~administrator may act as the hearing examiner or appoint a hearing examiner.~~ office administrator will refer the claim to a hearing examiner.

(2) through (4) remain the same.

(5) Within 20 days of the issuance of the proposed order, either party may file written exceptions to the order and request a review by the ~~division administrator if the division administrator did not act as hearing examiner, or a reconsideration by the division administrator if the division administrator acted as hearing examiner.~~ deputy director or the deputy director's designee.

(6) The ~~division~~ deputy director will issue a final order which is a final determination ~~by the division~~ as set forth in 53-9-131, MCA. This order is final for purposes of judicial review only if a review under (5) has been held.

AUTH: 53-9-104, MCA
IMP: 53-9-122, 53-9-130, 53-9-131, MCA

23.15.205 RECONSIDERATION OF CLAIMS UNDER 53-9-130, MCA

(1) The ~~division~~ office may reconsider a claim at the request of the claimant when no informal hearing under 53-9-122, MCA, was held, and when the time for requesting such hearing has expired.

(2) remains the same.

(3) and (3)(a) remain the same.

(b) state the reason why the ~~division's~~ office's prior

decision should be reconsidered; and

(c) remains the same.

(4) The ~~unit's administrative officer~~ office administrator will review the request and all relevant evidence provided by the claimant and recommend whether the request should be granted or denied.

(5) The recommendation will be reviewed by the ~~division administrator~~ deputy director who may concur, reject, or modify the recommendation.

(6) A reconsideration may be done at any time if requested by the crime victims unit. The request will be reviewed by the ~~division administrator~~ deputy director who may grant, deny, or modify the determination requested as provided in (5).

AUTH: 53-9-104, MCA
IMP: 53-9-130, MCA

23.15.301 ATTORNEY FEES (1) The time, effort, involvement, and complexity of a claim are considered in determining whether or not attorney fees will be granted for attorneys representing claimants before the unit or ~~division~~ office.

(2) remains the same.

AUTH: 53-9-104, MCA
IMP: 53-9-106, MCA

23.15.310 SUBROGATION AND ATTORNEY FEES (1) remains the same.

(2) The claimant or his or her attorney must provide a copy of the fee agreement between the claimant and attorney to the unit. The unit will provide a copy of the ~~division's~~ office's determination or order awarding or denying compensation benefits and any necessary documents to the attorney.

(3) At the conclusion of the civil action, if the ~~division~~ office recovers under its subrogation interest and the claimant wishes to recover a proportional share of costs and attorney fees from the ~~division~~ office, the claimant or his or her attorney must provide an itemized list of the litigation costs and attorney fees to the ~~division~~ office.

(a) After receiving its subrogation interest, the ~~division~~ office will authorize payment of its share of costs and attorney fees to the claimant as reimbursement if the claimant has properly paid all fees and costs, or to the attorney if the claimant has not paid such fees and costs.

AUTH: 53-9-104, MCA
IMP: 53-9-132, MCA

4. The above amendments are necessary to reflect the organizational changes that have occurred in the administration of the Crime Victims Compensation Act due to the passage of House Bill 637 and the creation of the office of victims services and restorative justice. The amendments also clarify

the functions of the office administrator and the deputy director regarding claims under the Act.

5. If persons who are directly affected by the proposed amendments wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Ali Sheppard, Assistant Attorney General, Attorney General's Office, P.O. Box 201401, Helena, MT 59620-1401. A written request for a hearing must be received no later than June 14, 2002.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25 whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review 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 65 based upon the approximately 650 claims dealt with per year.

7. The department 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 regarding crime victims compensation. Such written request may be mailed or delivered to the Attorney General's Office, Attn: Interested Party List, P.O. Box 201401, Helena, MT 59620-1401, faxed to the office at (406) 444-3549, e-mailed to asheppard@state.mt.us, or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

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

/s/ ALI SHEPPARD
ALI SHEPPARD, Rule Reviewer

Certified to the Secretary of State May 6, 2002.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 23.17.311 regarding Montana Law Enforcement Academy student academic performance requirements for the the basic course	)))))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

To: All Concerned Persons

1. On June 17, 2002, the Department of Justice proposes to amend ARM 23.17.311 which sets forth the Montana Law Enforcement Academy student academic performance requirements for the basic course.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Justice no later than 5:00 p.m. on May 31, 2002, to advise us of the nature of the accommodation that you need. Please contact Ali Sheppard, Department of Justice, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401; (406) 444-2026; FAX (406) 444-3549.

3. The rule as proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

23.17.311 STUDENT ACADEMIC PERFORMANCE REQUIREMENTS FOR THE BASIC COURSE (1) A student must achieve a final grade score of ~~seventy (70) percent~~ 75% of a total possible 100 ~~percent~~ % as required by ARM 23.14.~~3~~413 to pass the course. The total possible score is based on the following criteria:
(a) through (e) remain the same.

AUTH: 44-10-202, MCA
IMP: 44-10-202, MCA

4. The amendment is necessary to clarify that a final grade score of 75% is required in order for a student to successfully complete the performance requirements for the basic course. ARM 23.14.413 states that a student must achieve a score of 75%, while ARM 23.17.311 currently states that a student must achieve a score of 70%. This amendment eliminates the inconsistency between the two rules and clarifies the intent that a student achieve a score of 75% in order to pass.

5. Concerned persons may submit their data, views or arguments concerning the proposed amendment in writing to Ali

Sheppard, Assistant Attorney General, Attorney General's Office, P.O. Box 201401, Helena, MT 59620-1401, FAX (406) 444-3549, by surface mail, or electronically to asheppard@state.mt.us. Comments must be received no later than June 17, 2002.

6. If persons who are directly affected by the proposed amendment wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Ali Sheppard, Assistant Attorney General, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401. A written request for hearing must be received no later than June 14, 2002.

7. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review 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 13 persons based on the 130 students per year who attend the basic course.

8. 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 regarding Montana peace officer's standards and training. Such written request may be mailed or delivered to the Office of the Attorney General, Attn: Interested Party List, P.O. Box 201401, Helena, MT 59620-1401, faxed to the office at (406) 444-3549, e-mailed to asheppard@state.mt.us, or may be made by completing a request form at any rules hearing held by the Department.

9. The bill sponsor notice requirements of 2-4-302, MCA do not apply.

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

/s/ ALI SHEPPARD
ALI SHEPPARD, Rule Reviewer

Certified to the Secretary of State May 6, 2002.

BEFORE THE BOARD OF SOCIAL WORK EXAMINERS AND PROFESSIONAL COUNSELORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment of ARM 8.61.1201, pertaining to licensure requirements	) NOTICE OF PROPOSED) AMENDMENT))

NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On September 5, 2002, the Board of Social Work Examiners and Professional Counselors proposes to amend the above-stated rule pertaining to licensure requirements.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Social Work Examiners and Professional Counselors no later than 5:00 p.m., August 19, 2002, to advise us of the nature of the accommodation that you need. Please contact Mary Hainlin, Board of Social Work Examiners and Professional Counselors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2369; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdswp@state.mt.us.

3. The rule proposed to be amended provides as follows: (new matter underlined, deleted matter interlined)

8.61.1201 LICENSURE REQUIREMENTS (1) through (4) remain the same.

(5) Notwithstanding the above 60 semester hour requirement, an applicant otherwise qualified for licensure, may apply for licensure if they possess a minimum 45 semester hour graduate degree that is primarily related to counseling and is from an institution accredited to offer a graduate program in counseling, if they complete such additional graduate hours approved by this board as necessary to fulfill the requirements of (1)(a) within five years from the date of review by this board.

AUTH: 37-23-101, 37-23-103, MCA
IMP: 37-23-202, MCA

REASON: The Board finds there is reasonable necessity to amend this rule to comply with 37-23-202(2), MCA. A legislative auditor noted that the Board was not in compliance with the statute. The Board is submitting this proposal to comply with the auditor's recommendation.

4. Concerned persons may submit their data, views or arguments concerning the proposed action in writing to the Board of Social Work Examiners and Professional Counselors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdswp@state.mt.us to be received no later than 5:00 p.m, June 17, 2002.

5. If persons who are directly affected by the proposed action wish to express their data, views or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit the request along with any comments they have to the Board of Social Work Examiners and Professional Counselors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdswp@state.mt.us to be received no later than 5:00 p.m., June 17, 2002.

6. An electronic copy of this Notice of Proposed Amendment is available through the Department's and Board's site on the World Wide Web at http://discoveringmontana.com/dli/swp. The Department strives to make the electronic copy of this Notice of Proposed Amendment conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered.

7. If the Board receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed action, from the appropriate administrative rule review committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 113 based on the 372 licensed clinical social workers and 763 licensed clinical counselors in Montana.

8. The Board of Social Work Examiners and Professional Counselors maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. 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 regarding all Board of Social Work Examiners and Professional Counselors administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Social Work Examiners and Professional

Counselors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdswp@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

9. The Board of Social Work Examiners and Professional Counselors will meet on September 5 and 6, 2002, in Bozeman to consider the comments made by the public, the Board's responses to those comments, and take final action on the proposed amendment. The meeting will be held in conjunction with the Board's regular meeting. Members of the public are welcome to attend the meeting and listen to the Board's deliberations, but the Board cannot accept any comments concerning the proposed amendment beyond the June 17, 2002, deadline.

10. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS
RICHARD SIMONTON, PRESIDENT

By: /s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ KEVIN BRAUN
Kevin Braun,
Rule Reviewer

Certified to the Secretary of State, May 6, 2002.

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

In the matter of the proposed amendment of ARM 24.16.9003 and ARM 24.16.9007, pertaining to prevailing wage rates)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On June 7, 2002, at 10:00 a.m., a public hearing will be held in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider proposed amendments to ARM 24.16.9003, pertaining to prevailing wage rate surveys and to ARM 24.16.9007, establishing the prevailing wage rates. The Department proposes to incorporate by reference the 2002 building construction services rates and the heavy and highway construction services rates.

2. The Department of Labor and Industry 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 by not later than 5:00 p.m., June 3, 2002, to advise us of the nature of the accommodation that you need. Please contact the Research and Analysis Bureau, Workforce Services Division, Attn: Bob Schleicher, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-2992; TTY (406) 444-0532; fax (406) 444-2638; or e-mail bschleicher@state.mt.us.

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

<u>24.16.9003 ESTABLISHING THE STANDARD PREVAILING RATE OF WAGES AND FRINGE BENEFITS</u> (1) ~~When deemed necessary, the~~ <u>The</u> commissioner shall establish the standard prevailing rate of wages and fringe benefits for the various occupations in each district. Except as used in (2) and (3), the term "prevailing rate of wages" includes both wages and fringe benefits.

(2) Based on survey data collected by the department for each district, the commissioner will compile wage rate information for a given occupation that reflects wage rates actually paid to workers engaged in public works ~~and in private~~ or commercial projects. <u>The department will survey those construction contractors who appear on a list of contractors registered pursuant to Title 39, chapter 9, MCA, as of October 22 of that year, with respect to those workers performing work according to commercial building codes.</u> Wage rates for each occupation will be set using the following procedure:

(a) If a minimum of ~~5,000 reported hours exists~~ <u>five or more workers is reported</u> for the occupation within the district, ~~a weighted average of the wages based on the number of hours reported will be used to calculate~~ <u>and 50% or more of those</u>

workers receive the same wage, that rate is the district prevailing wage rate, provided that the rate does not exceed the collectively bargained rate for that occupation in that district. As provided by 18-2-402, MCA, the prevailing wage rate cannot exceed the collectively bargained wage rate.

(b) ~~If less than 5,000 hours for the occupation is reported, the commissioner will use collective bargaining agreement wage rates in the district for the occupation.~~ If five or more workers are reported for the occupation within the district, but 50% of those workers are not paid the same rate, the weighted average wage rate, weighted by the number of workers, is the district prevailing wage rate, provided that the rate does not exceed the collectively bargained rate for that occupation in that district. As provided by 18-2-402, MCA, the prevailing wage rate cannot exceed the collectively bargained wage rate.

(c) If less than five workers are reported for the occupation within the district, the district prevailing wage rate is the collectively bargained rate for that occupation in that district.

~~(c)~~(d) If a collective bargaining agreement does not exist for the occupation in that district, ~~and a minimum of 5,000 hours are reported in the combined contiguous districts,~~ a weighted average wage rate for the district ~~based on hours~~ weighted by number of workers will be computed using data submitted from all contiguous districts. Districts and their contiguous districts are as follows:

(i) through (x) Remain the same.

~~(d)~~(e) If contiguous district data doe~~s~~ not sum to a minimum of ~~5,000 hours~~ five workers, a statewide weighted average wage rate will be calculated for the occupation.

~~(e)~~(f) If a minimum of ~~5,000 hours~~ five workers is not reported for the occupation in the entire state, no rate will be established for that occupation.~~, then other information which the commissioner deems applicable will be used to establish the prevailing wage rate for the occupation. The commissioner shall consider:~~

~~(i) the established and special project rates of the previous year;~~

~~(ii) wage rates determined by the federal government under the Davis-Bacon Act and the Federal Service Contract Act;~~

~~(iii) wage rate information compiled on a regular basis by the department;~~

~~(iv) appropriate information from such wage surveys as may be conducted by the department; and~~

~~(v) other pertinent information.~~

(3) Based on survey data collected by the department of labor and industry, for each district, the commissioner will compile fringe benefit information for a given occupation by district that reflects fringe benefits actually paid to workers engaged in public works ~~and in private~~ or commercial projects. The department will survey those construction contractors who appear on a list of contractors registered pursuant to Title 39, chapter 9, MCA, as of October 22 of that year, with respect to

those workers performing work according to commercial building codes. ~~Fringe benefit rates~~ A single fringe benefit rate for each occupation will be set for ~~health and welfare, pension, vacation, and training~~ bona fide benefits paid or contributed to approved plans, funds or programs for health insurance, life insurance, pension or retirement, vacations, holidays and sick leave, using the following procedure:

(a) If a minimum of ~~5,000 reported hours exists~~ five or more workers is reported for the occupation within the district, ~~and each fringe benefit reported for a given occupation has at least 50% of the total number of hours submitted for that occupation, a weighted average of the fringe benefits based on the number of hours reported will be used to calculate~~ and 50% or more of those workers receive the same dollar value of fringe benefits, that rate is the district prevailing fringe benefit ~~rates~~ rate, provided that the rate does not exceed the collectively bargained rate for that occupation in that district. As provided by 18-2-402, MCA, the prevailing fringe benefit rate cannot exceed the collectively bargained rate.

(b) ~~If less than 5,000 hours for the occupation is reported, or a given fringe benefit for the occupation does not have at least 50% of the total number of hours submitted for that occupation, the commissioner will use existing collective bargaining agreements for the district that were effective during the survey period to determine fringe benefit rates for the occupation.~~ If five or more workers are reported for the occupation within the district, but 50% of those workers are not paid the same fringe benefit rate, the weighted average fringe benefit rate, weighted by the number of workers, is the district prevailing fringe benefit rate, provided that the rate does not exceed the collectively bargained rate for that occupation in that district. As provided by 18-2-402, MCA, the prevailing fringe benefit rate cannot exceed the collectively bargained rate.

(c) If less than five workers are reported for the occupation within the district, the district prevailing fringe benefit rate is the collectively bargained fringe benefit rate for that occupation in that district.

~~(c)~~(d) If a collective bargaining agreement does not exist for the occupation in that district, ~~and~~ but a minimum of ~~5,000 hours~~ five workers are reported in the combined contiguous districts, ~~hours will be totaled for contiguous district fringe benefits. Each fringe benefit must be represented by at least 50% of the total number of hours submitted in contiguous districts for that occupation for fringe benefit rates to be set. A~~ a weighted average fringe benefit rate for the district ~~based on hours~~, weighted by the number of workers, will be computed using data submitted from all contiguous districts. Districts and their contiguous districts are the same as provided by (2)~~(c)~~(d) of this rule.

~~(d)~~(e) If contiguous district fringe benefit data does not sum to a minimum of ~~5,000 hours, or does not have 50% of the total number of hours in contiguous districts submitted for that occupation~~ five workers, statewide weighted average fringe

benefit rates will be calculated for the occupation.

~~(e)~~(f) If a minimum of ~~5,000 hours is~~ five workers are not reported for the occupation in the entire state, no fringe benefit rate will be established for that occupation.~~, then other information which the commissioner deems applicable will be used to establish the prevailing fringe benefit rates for the occupation. The commissioner shall consider:~~

~~(i) the established and special project rates of the previous year;~~

~~(ii) rates determined by the federal government under the Davis-Bacon Act and the Federal Service Contract Act;~~

~~(iii) rate information compiled on a regular basis by the department;~~

~~(iv) appropriate information from such surveys as may be conducted by the department; and~~

~~(v) other pertinent information.~~

(4) Remains the same.

(5) The commissioner will annually incorporate the federal Davis-Bacon Act wage rates established for Montana as the state heavy and highway construction rates. Building construction services prevailing wage rates will be updated ~~in even-numbered years~~ annually, and nonconstruction services will be updated in odd-numbered years.

(6) and (7) Remain the same.

(8) Wage information may be considered by the commissioner only if such information is delivered ~~at the Office of the Commissioner,~~ to the Department of Labor and Industry, ~~Walt Sullivan Building, corner of Roberts and Lockey,~~ P.O. Box 1728, Helena, Montana 59624-1728, within the time set by the commissioner.

(9) Remains the same.

AUTH: 18-2-431, MCA
IMP: 18-2-401, 18-2-402, 18-2-403 and 18-2-411, MCA

REASON: There is reasonable necessity to amend ARM 24.16.9003 in response to the wage rate survey methodology changes contained in Chapter 517, Laws of 2001 (House Bill 500). The statutory changes shifted the survey from a weighted average of hours of work performed to a weighted average of wages for each craft (subject to certain conditions). In addition, because Chap. 517, L. of 2001 changed the survey frequency from biennial to annual for building construction services, there is reasonable necessity to amend the rule to reflect those changes.

24.16.9007 ADOPTION OF STANDARD PREVAILING RATE OF WAGES

(1) through (1)(d) Remain the same.

(e) The current building construction services rates are contained in the ~~2000~~ 2002 version of "The State of Montana Prevailing Wage Rates - Building Construction Services" publication.

(f) Remains the same.

(g) The current heavy and highway construction services rates are contained in the ~~2000~~ 2002 version of "The State of Montana Prevailing Wage Rates - Heavy and Highway Construction

Services" publication.

(2) and (3) Remain the same.

AUTH: 2-4-307 and 18-2-431, MCA
IMP: 18-2-401 through 18-2-432, MCA

REASON: There is reasonable necessity to amend ARM 24.16.9007 to update the building construction services rates and the heavy and highway construction services rates. Pursuant to Chapter 517, Laws of 2001 (House Bill 500), the Department is to conduct an annual survey of contractors engaged in construction services who are registered under Title 39, chapter 9, MCA, in order to set the standard prevailing rate of wages for construction services. Prior to the enactment of Chap. 517, L. of 2001, the Department conducted biennial surveys to establish the wage rates. There is reasonable necessity to amend the prevailing wages for building construction services, which were last updated in 2000. Use of prevailing wage rates is required in public contracts by 18-2-422, MCA. There is reasonable necessity to amend the rule to reference the 2002 heavy and highway rate publication. The wage rates being proposed for incorporation by reference were compiled using a new survey methodology, as required by statute, and which is described above in the proposed amendments to ARM 24.16.9003.

4. Interested parties may submit their data, views, or comments, either orally or in writing, at the hearing. Written data, views, or comments may also be submitted to:

Bob Schleicher
Research and Analysis Bureau
Workforce Services Division
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

so that they are received by not later than 5:00 p.m., June 14, 2002.

5. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at http://dli.state.mt.us/calendar.htm, under the Calendar of Events, Administrative Rule Hearings section. Interested persons may make comments on the proposed rules via the comment forum, http://forums.dli.state.mt.us, linked to the Notice of Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m., June 14, 2002. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's

technical difficulties in accessing or posting to the comment forum does not excuse late submission of comments.

6. The Department 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 mailing 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 regarding any specific topic or topics over which the Department has rulemaking authority. Such written request may be delivered to Mark Cadwallader, 1327 Lockey St., Room 412, Helena, Montana, mailed to Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728, faxed to the office at (406) 444-1394, or made by completing a request form at any rules hearing held by the Department.

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

8. The Department proposes to make the amendments effective August 1, 2002. The Department reserves the right to adopt only portions of the proposed amendments, or to adopt some or all of the proposed amendments at a later date.

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

/s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: May 6, 2002.

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

In the matter of the occupations surveyed for prevailing wage rate purposes	)))	NOTICE OF PUBLIC MEETING

TO: All Concerned Persons

1. On June 7, 2002, at 11:00 a.m., or as soon thereafter as feasible, a public meeting will be held in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider public comments regarding whether certain occupations should be surveyed in the future by the Department of Labor and Industry for prevailing wage rate purposes for building construction services. This public meeting is scheduled to start after the conclusion of a formal rule-making public hearing on setting prevailing wage rates, as the Department believes that persons interested in the prevailing wage rates for construction services may also be interested in the subject matter of the public meeting.

The public meeting will be conducted informally. The public meeting does not involve the proposed adoption, amendment or repeal of any administrative rule.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public meeting or need an alternative accessible format of this notice. If you require an accommodation, contact the Department by not later than 5:00 p.m., June 3, 2002, to advise us of the nature of the accommodation that you need. Please contact the Research and Analysis Bureau, Workforce Services Division, Attn: Bob Schleicher, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-2992; TTY (406) 444-0532; fax (406) 444-2638; or e-mail bschleicher@state.mt.us.

3. The Department advises interested persons that this public meeting is not a rule-making proceeding, and that the public meeting is not governed by the provisions of the Montana Administrative Procedure Act (Title 2, chapter 4, MCA). This public meeting and comment period is intended to comply with the public participation provisions of Title 2, chapter 3, part 1, MCA, regarding matters of significant interest to the public. The Department has determined that the impact of changing the construction service occupations surveyed for prevailing wage purposes is state-wide.

4. The Department of Labor and Industry is considering streamlining its annual survey process by reducing the number of occupational classifications surveyed for the building construction and heavy and highway construction trades. Presently, the Department surveys and sets a standard prevailing

rate of wages for 74 occupations in the construction trades. The Department is considering reducing the number of occupations classified for wage survey and rate setting purposes for future surveys. Specifically, the Department is weighing whether to bring its list of construction occupations surveyed more in line with the categories used for federal Davis-Bacon purposes.

The Department desires public comment on whether it should make the following changes from the occupations currently surveyed for wage rate settings during the next survey cycle:

Occupations to discontinue surveying for prevailing wage purposes:

Asbestos Removal Foreperson
Boilermaking Foreperson
Bricklayer Foreperson
Carpenter Foreperson
Drywall Applicator Foreperson
Concreting Foreperson
Electrician Foreperson
Ironworker Foreperson
Asphalt Paving Foreperson
Painting Foreperson
Plumber and Pipefitter Foreperson
Sprinkler Fitter Foreperson
Roofer Foreperson
Sheet Metal Foreperson
Cutoff Saw Operator
Sider
Crane Operator (re-classified under Operating Engineers)

Occupations to combine or add to wage survey and rate setting:

Operating Engineers
- Group 1- no occupations
- Group 2- Asphalt Tender, Back Hoe Operator, Bulldozer, Concrete Paving Machine Operator, Fork Truck Operator and Oiler.
- Group 3- Motor Grader Operator, Front End Loader, Road Roller Operator, Scraper, Truck Crane, Water Well Driller, and Cranes under 24 tons (added).
- Group 4- Asphalt Paving Machine Operator, Plant Operator and Cranes 25-44 tons (added)
- Group 5- Cranes 45-74 tons (added)
- Group 6- Cranes 75-149 tons (added)
- Group 7- Cranes 150+ tons (added)

Laborers
- Group 1- Flagperson
- Group 2- General Laborer, Fence Erector, Landscape Laborer, Lawn Sprinkler Installers, Asbestos Removal Worker, Burning Bar, Bucket Man, Carpenter Tender, Caisson Worker, Cement Mason Tender, Cement Handler (dry), Chuck Tender, Choker Setter, Concrete Worker,

Curb Machine-Lay Down, Crusher and Batch Worker, Form Setter, Form Stripper, Heater Tender, Landscaper, Pipe Wrapper, Pot Tender, Powderman Tender, Rail and Truck Loaders and Unloaders, Riprapper, Sign Erection, Guard Rail and Jersey Rail, Stake Jumper, Spike Driver, Signalman, Tail Hoseman, Tool Checker and Houseman and Traffic Control Worker.

Group 3- Concrete Vibrator, Dumpman (Grademan), Equipment Handler, Geotextile and Liners, High-Pressure Nozzleman, Jackhammer (Pavement Breaker), Non-Riding Rollers, Pipelayer, Posthole Digger (Power), Power Driven Wheelbarrow, Rigger, Sandblaster, Sod Cutter-Power and Tampers.

Group 4- Hod Carriers, Water Well Laborer, Blaster, Wagon Driller, Asphalt Raker, Cutting Torch, Grade Setter, High-Scaler, Power Saws (Faller & Concrete), Powderman, Rock & Core Drill, Track or Truck mounted Wagon Drill and Welder including Air Arc.

Teamsters

Group 1- no occupations

Group 2- Dump Truck Driver, Heavy Truck Driver, Light Truck Driver, Road Oiling Truck Driver, Tractor Trailer Truck Driver, Warehouse Worker and Water Truck Driver.

5. Interested parties may submit their data, views, or comments, either orally or in writing, at the meeting. Written data, views, or comments may also be submitted to:

Bob Schleicher
Research and Analysis Bureau
Workforce Services Division
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

or e-mailed to bschleicher@state.mt.us so that they are received by not later than 5:00 p.m., July 12, 2002.

6. The Department will not take final action on this matter prior to August 2002.

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: May 6, 2002.

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

In the matter of the proposed amendment of ARM 24.21.414 by the adoption of wage rates for certain apprenticeship programs	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On June 7, 2002, at 1:30 p.m. or as shortly as possible thereafter, a public hearing will be held in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the proposed amendment of ARM 24.21.414 by the adoption of wage rates related to certain apprenticeship programs in the building construction industry.

2. The Department of Labor and Industry 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 by not later than 5:00 p.m., June 3, 2002, to advise us of the nature of the accommodation that you need. Please contact the Apprenticeship Program, Workforce Services Division, Attn: Mark Maki, 1327 Lockey Street, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 447-3210; TTY (406) 444-0532; fax (406) 447-3224; or e-mail mmaki@state.mt.us.

3. The rule as proposed to be amended provides as follows: (stricken matter interlined, new matter underlined)

24.21.414 WAGE RATES TO BE PAID IN BUILDING CONSTRUCTION OCCUPATIONS (1) through (4) Remain the same.

(5) The department ~~will~~ publishes and incorporates by reference the ~~2000~~ 2002 edition of the publication entitled "State of Montana Base Journey-Level Rates for Apprentice Wages" which sets forth the building construction industry occupations journeyman wage rates in the five regions of Montana, excluding the seven largest counties, in order to set the apprentice wage rates provided by (3) and (4). A copy of the publication is available from Bob Schleicher, ~~office of~~ Research and Analysis Bureau, Department of Labor and Industry, 1327 Lockey Street, P.O. Box 1728, Helena, MT 59624-1728.

(6) and (7) Remain the same.

AUTH: 39-6-101, MCA
IMP: 39-6-101 and 39-6-106, MCA

REASON: There is reasonable necessity for amendment of this rule in order to update the base wage rates, as contemplated by this rule. The proposed amendments are being offered as part of the periodic updating of certain wage rates. In addition, there is reasonable necessity to amend the rates at this time because

of the relationship to the proposed changes to prevailing wage rates for building construction. Noticing this hearing in conjunction with the prevailing wage rate hearing is generally more convenient for the interested parties, and allows members of the public who wish to attend both public hearings to only make a single trip to Helena.

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

Mark Maki
Apprenticeship Program
Workforce Services 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., June 14, 2002.

5. ARM 24.21.414 makes reference to the construction services prevailing wage rates adopted in ARM 24.16.9007. Persons interested in those prevailing wage rates should take notice that the Department will be conducting a public hearing on the proposed 2002 version of those rates at 10:00 a.m. on June 7, 2002, in the same room as the apprenticeship rate hearing. Persons wishing to obtain a copy of the official Notice of Public Hearing for the prevailing wage rates and/or the proposed 2002 prevailing wage rates may contact Bob Schleicher, Research and Analysis Bureau, Workforce Services Division, Department of Labor and Industry, 1327 Lockey, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-2429; TTY (406) 444-0532; fax (406) 444-2638; or e-mail bschleicher@state.mt.us.

6. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at http://dli.state.mt.us/calendar.htm, under the Calendar of Events, Administrative Rule Hearings section. Interested persons may make comments on the proposed rules via the comment forum, http://forums.dli.state.mt.us, linked to the Notice of Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m., June 14, 2002. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the comment forum does not excuse late submission of comments.

7. The Department maintains a list of interested persons who wish to receive notices of rule-making actions proposed by this agency. Persons who wish to have their name added to the mailing 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 regarding any specific topic or topics over which the Department has rule-making authority. Such written request may be delivered to Mark Cadwallader, 1327 Lockey St., Room 412, Helena, Montana, mailed to Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728, faxed to the office at (406) 444-1394, or made by completing a request form at any rules hearing held by the Department.

8. The bill sponsor notice provisions of 2-4-302, MCA, do not apply.

9. The Department proposes to make the amendments effective August 1, 2002. The Department reserves the right to adopt only portions of the proposed amendments, or to adopt some or all of the proposed amendments at a later date.

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

/s/ KEVIN BRAUN	/s/ WENDY J. KEATING
Kevin Braun	Wendy J. Keating, Commissioner
Rule Reviewer	DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: May 6, 2002.

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

In the matter of the proposed adoption of new rules, the proposed amendment of ARM 24.29.1504, 24.29.1517, 24.29.1531, 24.29.1536, 24.29.1571, and 24.29.1581, and the proposed repeal of 24.29.2004 all related to chiropractic, occupational therapy and physical therapy services and fees in workers' compensation matters	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On June 7, 2002, at 10:00 a.m., a public hearing will be held in the second floor conference room of the Employment Relations Division, Department of Labor and Industry Building, 1805 Prospect Avenue, Helena, Montana, to consider the proposed adoption of new rules, the proposed amendment of existing rules and the proposed repeal of an existing rule, all related to chiropractic, occupational therpay and physical therapy services and fees in workers' compensation matters.

2. The Department of Labor and Industry 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 by not later than 5:00 p.m., June 1, 2002, 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; TTY (406) 444-5549; fax (406) 444-3465; or e-mail liwilson@state.mt.us.

3. GENERAL STATEMENT REGARDING THE REASONABLE NECESSITY FOR THE PROPOSED RULE CHANGES: On September 7, 2001, the Economic Affairs Interim Committee directed the Department of Labor and Industry to convene a Physical Medicine Task Force to reach consensus on a new physical medicine fee schedule to resolve problems in the current physical medicine fee schedule for workers' compensation cases. The Department notes that it had previously proposed changes in July 2001 to amend the physical medicine fee schedules in order to address a number of these same general concerns. The Department acknowledges that the proposed July 2001 rule changes were widely criticized, and were not adopted. The following proposed new and amended rules are the result of the discussion of that Task Force and represent the general consensus solution of the Task Force. Based on the recommendations of the Task Force, the Department believes there is reasonable necessity for adopting the

following methodology for adjusting the fee schedule to provide the Department the ability to implement the new fee schedule to meet the average cost-per-visit criteria agreed to by the Task Force members.

Additionally, there is reasonable necessity to adopt proposed NEW RULES I through V and amend rules 24.29.1504, 24.29.1531, 24.29.1536, 24.29.1571, and 24.29.1581 in response to recent requests of various workers' compensation insurers to eliminate the special "Montana-only" procedure codes for chiropractic services and "Montana-only" descriptions and unit values for physical therapist and occupational therapist services. The Department has also received requests from a number of chiropractors and the Montana Chiropractic Association to revise the fee schedule which is being used to reimburse chiropractors for services provided to workers' compensation claimants, and to bring those fees more into line with other medical specialties. Workers' compensation insurers providing coverage in Montana have stated that the special "Montana-only" procedure codes increase the insurer's costs by requiring special handling and payment for non-standard procedure codes. The insurers have also stated that costs associated with auditing and review of claims is higher because of the use of "Montana-only" codes.

In addition, there is reasonable necessity for the elimination of "Montana-only" medical procedure codes because it will likely make installation of the medical reporting module [software] in the Department's workers' compensation database system simpler and less costly due to elimination of special software requirements to handle the Montana-only codes. The Department, in consultation with the International Association of Industrial Accident Boards and Commissions ("the IAIABC") (an organization of workers' compensation regulatory authorities, of which the Department is a member), also believes that elimination of the "Montana-only" codes will make it easier to make appropriate comparisons between Montana and other state's workers' compensation systems. The Department plans on implementing the medical reporting module as soon as feasible; it is currently awaiting the overdue release of the IAIABC standards manual before completing the final design and implementation of the medical reporting module. Elimination of "Montana-only" codes will also make it easier for insurers to timely meet Montana's electronic reporting requirements using industry-standard software.

4. The proposed new rules provide as follows:

NEW RULE I USE OF FEE SCHEDULES FOR SERVICES PROVIDED ON OR AFTER JULY 1, 2002 (1) The department's schedule of fees for medical non-hospital services is known as the Montana Workers' Compensation Medical Fee Schedule. Effective July 1, 2002, the fee schedule in this rule is hereby adopted. The fee schedule is comprised of the following:

(a) The relative value scales given in the most current

edition of the Relative Values for Physicians (RVP), published by ingenix inc. to be used by doctors of medicine, doctors of podiatry, doctors of osteopathy, doctors of chiropractic, and practitioners licensed as occupational therapists and physical therapists for the following specialty areas:

(i) surgery;

(ii) anesthesia;

(iii) radiology;

(iv) pathology;

(v) medicine;

(vi) chiropractic;

(vii) occupational therapy; and

(viii) physical therapy.

(b) The relative unit values provided by the department in separate fee schedules developed for medical non-hospital services provided by the following health care providers:

(i) acupuncture; and

(ii) dental.

(c) The conversion factors as established by the department.

(2) Relative values have not been developed for nurse specialists, physicians assistants-certified, optometrists, psychologists, licensed social workers, or licensed professional counselors.

(3) Copies of Relative Values for Physicians are available from the publisher. Ordering information may be obtained from the department.

(4) Relative Values for Physicians uses procedure codes listed in the copyrighted publication known as Current Procedure Terminology, or CPT, published by the American medical association. The edition in effect at the time the medical service is furnished shall be used to determine the proper procedure code, unless a special code or description is provided by rule.

(5) Interim unit values given in Relative Values for Physicians (designated by a box and the letter "I") are included in the fee schedule and are used to calculate maximum fees payable.

(6) Unit values given in the Relative Values for Physicians section titled "HCPCS Codes" are not included in the fee schedule; services listed in this section are considered to have unit values of "RNE" (relativity not established) for purposes of maximum fee calculation.

(7) All instructions, definitions, guidelines, and other explanations given in the most current edition including updates of the RVP, affecting the determination of individual fees, except as specifically revised or deleted by the department, apply.

(8) Revisions to the conversion factors contained in the Medical Fee Schedule become effective January 1 except as otherwise provided for in these rules. An insurer is not obligated to pay more than the fee provided by the Medical Fee Schedule for a service provided within the state of Montana. The conversion factor in effect on the date the service is

provided must be used to calculate the fee.

(9) The maximum fee that an insurer is required to pay for a particular procedure is computed by the unit value times the conversion factor except as otherwise provided for in these rules. Use the conversion factor approved by the department for each specialty area. For example, if the conversion factor is $5.00, and a procedure has a unit value of 3.0, the most that the insurer is required to pay the provider for that procedure is $15.00.

(10) Where a procedure is not covered by these rules, the insurer must pay a reasonable fee, not to exceed the usual and customary fee charged by the provider to non-workers' compensation patients unless the procedure is not allowed by these rules.

(11) Where a unit value is listed as "BR", it means that the fee is calculated on a "by report" basis. The fee charged is to be reasonable, and may not exceed the usual and customary fee charged by the provider to non-workers' compensation patients.

(12) It is the responsibility of the provider to use the proper procedure code(s) on any bills submitted for payment. The failure of a provider to do so, however, does not relieve the insurer's obligation to pay the bill, but it may justify delays in payment.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to adopt proposed NEW RULE I in order to implement new fee schedules for doctors of chiropractic, occupational therapy and physical therapy providers. The fee schedules currently in place for these providers contain procedure codes that were developed in Montana and thus are not consistent with codes used nationally. These "Montana-only" codes are inconvenient and costly for insurers who do business nationally.

NEW RULE II CHIROPRACTIC FEES FOR SERVICES PROVIDED ON OR AFTER JULY 1, 2002 (1) Beginning July 1, 2002, fees for services rendered by doctors of chiropractic are payable only for the procedure codes listed below and unless otherwise specified, are payable according to the unit values listed in the RVP. The procedure codes, descriptions, and unit values in the RVP apply to diagnostic x-rays for services provided by doctors of chiropractic.

(2) Nothing in this rule is to be construed so as to broaden the scope of a provider's practice. Each provider is to limit services to those which can be performed within the limits and restrictions of the provider's professional licensure. Providers may only charge for services performed that are consistent with the scope of their practice and licensure.

(3) Except as provided by (6), the conversion factor used depends on the date the service was rendered:

(a) Effective July 1, 2002, the conversion factor for services performed by a doctor of chiropractic (other than

diagnostic x-rays) within their scope of practice is set at $4.25 for services provided under (4)(a) and (b) below.

(b) Effective July 1, 2002, the conversion factor for services performed by a doctor of chiropractic (other than diagnostic x-rays) within their scope of practice is set at $4.25 for services provided under (4)(c) and (d) below.

(c) Effective July 1, 2002, the conversion factor for diagnostic x-rays performed by a doctor of chiropractic is set at $20.23.

(d) Beginning January 1, 2003, the conversion factor will be adjusted in the manner specified by ARM 24.29.1536.

(4) Only the following codes found in the RVP may be billed for chiropractic services:

(a) All physical medicine and rehabilitation codes except 97001 through 97006, 97033, and 97770 through 97781. Code 97799 may be billed only for providing the following services and requires a separate written report describing the service provided when billing for this code:

(i) face-to-face conferences with payor representative(s) to update the status of a patient upon request of the payor;

(ii) a report associated with non-physician conferences required by the payor; or

(iii) completion of a job description or job analysis form requested by the payor.

(b) Special services, procedures and report codes 99070 and 99080. A separate written report must be submitted describing the service provided when billing for these codes.

(c) Chiropractic manipulative treatment codes 98940 through 98943.

(d) Evaluation and management codes 99201 through 99204 and 99211 through 99214.

(e) All diagnostic x-ray codes. The provider must furnish to the insurer documentation of the reasons justifying the use of the diagnostic x-ray procedure(s) employed.

(5) The explanations, protocols, comments and directions for use contained in both the CPT manual and the RVP to be applied to the procedure codes contained in this rule.

(6) Effective July 1, 2002, code 97750 is payable at $26.50 per 15-minute unit for a maximum of 24 15-minute increments of service per day. Beginning January 1, 2003, and each year annually thereafter, the amount payable per 15-minute unit for code 97750 shall increase by the percentage increase in the state's annual average weekly wage. If for any year the state's average weekly wage does not increase, the rate will be held at the existing level until there is a net increase in the state's average weekly wage.

(7) When chiropractors are performing orthotics fitting and training (code 97504) or checking for orthotic/prosthetic use (code 97703), supplies and materials provided may be billed separately for each visit using CPT code 99070.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to adopt proposed NEW RULE II to provide a consistent application of the Relative Values for Physicians procedure codes, CPT codes and unit values. The Montana Workers' Compensation Medical Fee Schedule currently contains unique "Montana-only" codes for chiropractors, physical therapists and occupational therapists. These unique "Montana-only" codes create problems and added cost for both the providers and the insurers because they are outside of the nationally accepted CPT codes and unit values for these medical services.

NEW RULE III PROVIDER FEES--OCCUPATIONAL AND PHYSICAL THERAPY SPECIALTY AREA FOR SERVICES PROVIDED ON OR AFTER JULY 1, 2002 (1) Fees for services provided by occupational therapists and physical therapists are payable only for the procedure codes listed below and unless otherwise specified, are payable according to the unit values listed in the RVP.

(2) Nothing in this rule is to be construed so as to broaden the scope of a provider's practice. Each provider is to limit services to those which can be performed within the limits and restrictions of the provider's professional licensure. Providers may only charge for services performed that are consistent with the scope of their practice and licensure.

(3) Except as provided by (6), the conversion factor used depends on the date the service was rendered:

(a) Effective July 1, 2002, the conversion factor for services performed by a licensed occupational therapist, or a licensed physical therapist within their scope of practice is set at $4.25.

(b) Beginning January 1, 2003, the conversion factor will be adjusted in the manner specified by ARM 24.29.1536.

(4) Only the following codes found in the RVP may be billed for services provided by occupational therapists and physical therapists:

(a) All physical medicine and rehabilitation codes except 97033, and 97770 through 97781. Code 97033 may be billed only by physical therapists. Code 97799 may be billed only for providing the following services and requires a separate written report describing the service provided when billing for this code:

(i) face-to-face conferences with payor representative(s) to update the status of a patient upon request of the payor;

(ii) a report associated with non-physician conferences required by the payor; or

(iii) completion of a job description or job analysis form requested by the payor.

(b) Special services, procedures and report codes 99070 and 99080. A separate written report must be submitted describing the service provided when billing for these codes.

(5) The explanations, protocols, comments and directions for use contained in both the CPT manual and the RVP are to be applied to the procedure codes contained in this rule.

(6) Effective July 1, 2002, code 97750 is payable at $26.50 per 15-minute unit for a maximum of 24 15-minute

increments of service per day. Beginning January 1, 2003, and each year annually thereafter, the amount payable per 15-minute unit for code 97750 shall increase by the percentage increase in the state's annual average weekly wage. If for any year the state's average weekly wage does not increase, the rate will be held at the existing level until there is a net increase in the state's average weekly wage.

(7) When physical therapists are billing code 97033 (iontophoresis), medication charges and electrode charges will each be billed separately for each visit using CPT code 99070.

(8) When occupational therapists or physical therapists are performing orthotics fitting and training (code 97504) or checking for orthotic/prosthetic use (code 97703), supplies and materials provided may be billed separately for each visit using CPT code 99070.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to adopt proposed NEW RULE III to provide a consistent application of the Relative Values for Physicians procedure codes, CPT codes and unit values. The Montana Workers' Compensation Medical Fee Schedule currently contains unique "Montana-only" codes for chiropractors, physical therapists and occupational therapists. These unique "Montana-only" codes create problems and added cost for both the providers and the insurers because they are outside of the nationally accepted CPT codes and unit values for these medical services.

NEW RULE IV PRIOR AUTHORIZATION AND BILLING LIMITATIONS FOR CHIROPRACTIC SERVICES PROVIDED ON OR AFTER JULY 1, 2002

(1) Evaluations and re-evaluations may not be billed more than once every 30 days without prior authorization. For the first visit and for each 30-day evaluation, the chiropractor may charge for an office call in addition to treatment codes. For all other visits, the provider may charge only treatment codes without prior authorization.

(2) Prior authorization is required before performing the procedures identified by codes 97535, 97537, 97545, 97546, and 97750.

(3) No more than two 15-minute units per day may be billed for each CPT code 97032, 97034, and 97035 without prior authorization. When ultrasound (CPT code 97035) and electrical stimulation (CPT code 97032) are used simultaneously in treatment, only the higher unit value of the two may be billed without prior authorization.

(4) Procedure codes 97110, 97112, 97113, 97116, 97140, 97530, 97532, 97533, and 97542, when billed alone, can be billed for no more than four 15-minute units in one day without prior authorization.

(5) Procedure code 97124, when billed alone, can be billed for no more than three 15-minute units in one day without prior authorization.

(6) No more than three unattended modality codes (97010

through 97028) may be billed each visit without prior authorization.

(7) If the patient's condition requires the use of unattended modalities only, no more than three unattended modalities (codes 97010 through 97028) may be billed per visit. Unattended modalities in the absence of any other treatment may not be billed for a period exceeding two calendar weeks without prior authorization.

(8) No more than a total of five codes may be billed per visit without prior authorization. With the exception of codes 97535, 97537, 97545, 97546, and 97750, each 15 minutes of a timed code is equivalent to the billing of one code for purposes of this rule.

(9) When billing for a manipulative treatment using codes 98940, 98941, 98942 or 98943, no office visit may be charged unless a modifier 25 is used for a specific evaluation and management code without prior authorization.

(10) Code 97535 is to be used when training is conducted in the injured worker's home or at some other location outside of the chiropractor's office. Mileage and travel expenses shall be established with the insurer during prior authorization.

(11) Code 97150 is to be used when two or more injured workers are being treated in a group setting and all participants are engaged in the same therapeutic procedures under the direct supervision of a chiropractor. Documentation indicating the type of treatment and the number of participants in each session must be provided along with each bill.

(12) See ARM 24.29.1517 for additional prior authorization requirements concerning medical services provided by chiropractors.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to adopt proposed NEW RULE IV to specify that beginning July 1, 2002, specific services provided by chiropractors require prior authorization and specify other limitations concerning billing for services.

NEW RULE V PRIOR AUTHORIZATION AND BILLING LIMITATIONS FOR SERVICES PROVIDED BY OCCUPATIONAL THERAPISTS AND PHYSICAL THERAPISTS ON OR AFTER JULY 1, 2002 (1) Examinations and re-examinations may not be billed more than once every 30 days without prior authorization unless physician ordered. For the first visit and for each 30-day examination, the occupational therapist and physical therapist may charge for an office call in addition to treatment codes. For all other visits, the occupational therapist and physical therapist may charge only treatment codes without prior authorization. All examinations and re-examinations require a written report separate from the daily treatment note that reflects the claimant's functional status.

(2) Prior authorization is required before performing the procedures identified by codes 97535, 97537, 97545, 97546, and 97750.

(3) No more than two 15-minute units per day may be billed for each CPT code 97032, 97034, and 97035 without prior authorization. When ultrasound (CPT code 97035) and electrical stimulation (CPT code 97032) are used simultaneously in treatment, only the higher unit value of the two may be billed without prior authorization.

(4) Procedure codes 97110, 97112, 97113, 97116, 97140, 97530, 97532, 97533, and 97542, when billed alone, can be billed for no more than four 15-minute units in one day without prior authorization.

(5) Procedure code 97124, when billed alone, can be billed for no more than three 15-minute units in one day without prior authorization.

(6) No more than three unattended modality codes (97010 through 97028) may be billed each visit without prior authorization.

(7) If the patient's condition requires the use of unattended modalities only, no more than three unattended modalities (codes 97010 through 97028) may be billed per visit. Unattended modalities in the absence of any other treatment may not be billed for a period exceeding two calendar weeks without prior authorization.

(8) No more than a total of five codes may be billed per visit without prior authorization. With the exception of codes 97535, 97537, 97545, 97546, and 97750, each 15 minutes of a timed code is equivalent to the billing of one code for purposes of this rule.

(9) Code 97535 is to be used when training is conducted in the injured worker's home or at some other location outside of the therapist's office. Mileage and travel expenses shall be established with the insurer during prior authorization.

(10) Code 97150 is to be used when two or more injured workers are being treated in a group setting and all participants are engaged in the same therapeutic procedures under the direct supervision of the treating therapist. Documentation indicating the type of treatment and the number of participants in each session must be provided along with each bill.

(11) See ARM 24.29.1517 for additional prior authorization requirements concerning medical services provided by chiropractors, occupational therapists, and physical therapists.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to adopt proposed NEW RULE V to specify that beginning July 1, 2002, specific services provided by practitioners licensed as occupational therapists and physical therapists require prior authorization and specify other limitations concerning billing for services.

NEW RULE VI SPECIAL MONITORING AND ADJUSTMENT OF PHYSICAL MEDICINE FEES DURING THE PERIOD JULY 1, 2002, THROUGH DECEMBER 31, 2003 (1) During the period from July 1, 2002 through December 31, 2003, the physical medicine conversion

factor will be adjusted on January 1, March 1, June 1, and September 1, 2003, as needed to keep the average cost-per-visit for physical medicine services in line with expected costs. The expected average cost-per-visit amount for the July 1, 2002 through December 31, 2003, period has been determined using state compensation insurance fund data. State compensation insurance fund data will continue to be used to monitor the actual average cost-per-visit during the period.

(2) If after July 1, 2002, the average cost-per-visit for physical and occupational therapy services varies more than 1% from the average cost-per-visit of $77.74, the conversion factor will be adjusted according to the following process:

(a) An adjustment to the conversion factor for the physical and occupational therapy specialties will be made on January 1, 2003, using the actual average cost-per-visit for the period of July 1, 2002, through September 30, 2002. A second adjustment may be made on March 1, 2003, using the actual average cost-per-visit for the period of July 1, 2002, through December 31, 2002. Subsequent adjustments may be made every three months using three additional months of data to determine the actual average cost-per-visit. If the average cost-per-visit remains between $76.96 and $78.52 during 2002 and $76.96 and $78.52 (plus any percentage increase in the 2003 average weekly wage), then no adjustment will be made to the conversion factor. If an adjustment is necessary, the new conversion factor will be calculated by determining the actual average cost-per-visit for the period and dividing it by the conversion factor in effect for the period to arrive at the average RVP units per visit. Dividing the target average cost-per-visit by the average RVP units per visit determines the adjusted conversion factor.

(i) As an example, assume an actual average cost-per-visit for the period of July 1, 2002 through September 30, 2002 to be $70.75. The actual average cost-per-visit amount of $70.75 is divided by $4.25 (the conversion factor in effect for the period) to arrive at a quotient of 16.65 (average RVP units per visit). The target average cost-per-visit of $77.74 is divided by 16.65 units to generate the new conversion factor of $4.67 for the period beginning January 1, 2003. That new conversion factor would also be increased by the percentage increase in the state's average weekly wage for 2003, if any, and would be adopted effective January 1, 2003.

(ii) As another example, if the actual average cost-per-visit for the period of January 1, 2003, through October 31, 2003, remains between $76.96 and $78.52 (as increased by the percentage increase in the state's average weekly wage for 2003), then no additional adjustments will be made until January 1, 2004.

(b) On or after January 1, 2004, the conversion factors for occupational and physical therapy services will increase as provided by ARM 24.29.1536.

(3) If after July 1, 2002, the average cost-per-visit for chiropractic services exceeds the 2002 average cost-per-visit target of $62.90, or the 2003 average cost-per-visit target of

$62.90 plus any percentage increase in the 2003 average weekly wage, the conversion factor for specialty codes 98940 through 98943, 99201 through 99204, and 99211 through 99214 will be adjusted according to the following process:

(a) An adjustment to the conversion factor for the chiropractic specialty area will be made on January 1, 2003 using the actual average cost-per-visit for the period of July 1, 2002 through September 30, 2002. A second adjustment may be made on March 1, 2003, using the actual average cost-per-visit for the period of July 1, 2002, through December 31, 2002. Subsequent adjustments may be made every three months using three additional months of data to determine the actual average cost-per-visit. If the average cost-per-visit remains below $62.90 during 2002, or below $62.90 (plus the percentage increase in the 2003 average weekly wage) for 2003, then no adjustment will be made to the conversion factor. If an adjustment is necessary, the new conversion factor will be calculated by determining the actual average cost-per-visit for the period and dividing it by the conversion factor in effect for the period to arrive at the average RVP units per visit. The percentage of the RVP units attributable to usage of the codes specified in (3) and all other CPT codes utilized during the period must then be determined. The percentage of the units other than those specified in (3) is multiplied by the average RVP units per visit and the product multiplied by the conversion factor in effect for those codes and subtracted from the target average cost-per-visit. The difference is then divided by the remaining average RVP units per visit attributable to the codes specified in (3). The quotient is the adjusted conversion factor.

(i) As an example, assume an average cost-per-visit for the period of July 1, 2002, through September 30, 2002, to be $69.60. Also assume a distribution of 91.59% for the codes specified in (3) and 8.41% for all others. Actual average cost-per-visit amount of $69.60 is divided by $4.25 (the conversion factor in effect for the period) to arrive at a quotient of 16.38 (average RVP units per visit). The 16.38 units are multiplied by 8.4%, resulting in a product of 1.38 units, which are then multiplied by $4.25 (the conversion factor in effect), resulting in a second product of $5.87. The $5.87 is then subtracted from the target average cost-per-visit of $62.90, yielding a difference of $57.03. The $57.03 is then divided by the remaining 15.00 units (16.38 units minus 1.38 units) to arrive at the adjusted conversion factor of $3.80 for the period beginning January 1, 2003. That new conversion factor of $3.80 would also be increased by the percentage increase in the state's annual average weekly wage for 2003, if any, and would be adopted effective January 1, 2003.

(ii) As another example, if the actual average cost-per-visit remains below the target rate for the period of October 1, 2002 through October 31, 2003, then no additional adjustments will be made until January 1, 2004.

(b) On and after January 1, 2004, the conversion factors for chiropractic services will increase as provided by

ARM 24.29.1536.

(4) The conversion factor for all other codes that doctors of chiropractic are authorized to use under [NEW RULE II], with the exception of radiology codes, will remain at the rate received by providers licensed as occupational therapists and physical therapists.
AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to adopt NEW RULE VI in order to establish a special methodology for monitoring and setting reimbursement rates for physical medicine services rendered during the period July 1, 2002, through December 31, 2003. The methodology described in NEW RULE VI was agreed to by consensus of the members of the Task Force described in paragraph 3, above. The Department believes that given the September 7, 2001, directive of the Economic Affairs Interim Committee to address the concerns of both the physical medicine providers and payors (insurers) via a consensus process, NEW RULE VI (together with the other proposed rule changes) represents a reasonable interpretation and implementation of the statutory requirement that the Department make annual rate adjustments for non-hospital medical fee reimbursements. The Department further believes that in light of the Economic Affairs Interim Committee's directive, the special monitoring and adjustment of physical medicine rates provided by NEW RULE VI (together with the other proposed rule changes) represent a reasonable interpretation and implementation of the statutory requirement that overall medical service fees do not increase by more than the annual percentage increase in the state's average weekly wage.

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

24.29.1504 DEFINITIONS (1) Remains the same.

(2) "Functional status" means written information that is complete, clear, and legible, that identifies objective findings indicating the claimant's physical capabilities and provides information about the change in the status as a result of treatment.

~~(2)~~(3) "Improvement status" means written information that is complete, clear, and legible, which identifies objective medical findings of the claimant's medical status with respect to the treatment plan.

~~(3)~~(4) "Medical equipment and supplies" means durable medical appliances or devices used in the treatment or management of a condition or complaint, along with associated non-durable materials required for use in conjunction with the device or appliance.

~~(4)~~(5) "Objective medical findings" means medical evidence that is substantiated by clinical findings. Clinical findings include, but are not limited to, range of motion, atrophy, muscle strength, muscle spasm, and diagnostic evidence.

Complaints of pain in the absence of clinical findings are not considered objective medical findings.

~~(5)~~(7) "Prior authorization" means that for those matters identified by ARM 24.29.1517 the provider receives (either verbally or in writing) authorization from the insurer to perform a specific procedure or series of related procedures, prior to performing that procedure.

(6) "Physician" means those persons identified by 33-22-111, MCA, practicing within the scope of the providers' license.

~~(7)~~(8) "Provider" means any health care provider, unless the context in another rule clearly indicates otherwise. "Provider" does not include pharmacists nor does it include a supplier of medical equipment who is not a health care provider.

~~(8)~~(9) "Treating physician" has the meaning provided by ARM 24.29.1511 for claims arising before July 1, 1993, and the meaning provided by 39-71-116(29), MCA (1993) for claims arising on or after July 1, 1993.

~~(9)~~(10) "Treatment plan" means a written outline of how the provider intends to treat a specific condition or complaint. The treatment plan must include a diagnosis of the condition, the specific type(s) of treatment, procedure, or modalities that will be employed, a timetable for the implementation and duration of the treatment, and the goal(s) or expected outcome of the treatment. Treatment, as used in this definition, may consist of diagnostic procedures that are reasonably necessary to refine or confirm a diagnosis. The treating physician may indicate that treatment is to be performed by a provider in a different field or specialty, and defer to the professional judgment of that provider in the selection of the most appropriate method of treatment; however, the treating physician must identify the scope of the referral in the treatment plan and provide guidance to the provider concerning the nature of the injury or occupational disease.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1504 to add a definition for a term used in NEW RULE I. Defining functional status appropriately describes the testing and measurement conducted in the practice of physical and occupational therapists and gives insurers and treating physicians information necessary to evaluate the effectiveness of the treatment plan.

24.29.1517 PRIOR AUTHORIZATION (1) through (4)(e)(vii) Remain the same.

(viii) a permanent change from one provider's specialty practice to the specialty practice of a different provider, for treatment of the same injury. The occasional and temporary change of provider due to illness, vacation, or emergency, does not require prior authorization; or

~~(ix) any physical rehabilitation program involving work hardening, physical restoration, or similar programs; or~~

(ix) for any other procedure that by rule specifically requires prior authorization.

(5) and (6) Remain the same.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1517 because separate prior authorization rules have been developed concerning how the medical specialty areas of chiropractic and occupational and physical therapy may bill for physical rehabilitation programs involving work hardening, physical restoration, or similar programs in NEW RULE IV for chiropractic services and NEW RULE V for services provided by occupational therapists and physical therapists.

24.29.1531 USE OF FEE SCHEDULES FOR SERVICES PROVIDED FROM APRIL 1, 1993 THROUGH JUNE 30, 2002 (1) The department's annual schedule of fees for medical non-hospital services is known as the Montana Workers' Compensation Medical Fee Schedule and is effective ~~January 1, of each year~~ for services provided from April 1, 1993 through June 30, 2002. ~~Effective April 1, 1993, the fee schedule in this rule is hereby adopted.~~ The ~~annual~~ fee schedule is comprised of the following:

(a) through (11) Remain the same.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1531 to designate that this rule applies to fee schedules for services provided from April 1, 1993 through June 30, 2002. Fee Schedules for services provided beginning July 1, 2002 have been developed in NEW RULE I.

24.29.1536 CONVERSION FACTORS--METHODOLOGY

(1) ~~Conversion~~ Except as provided by [NEW RULE VI], conversion factors shall be established annually by the department ~~beginning January 1, 1994,~~ by increasing the conversion factors from the preceding year by the percentage increase in the state's average weekly wage. If for any year the state's average weekly wage does not increase, the rates will be held at the existing level until there is a net increase in the state's average weekly wage.

(2) Remains the same.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1536 to provide for a cross-reference to NEW RULE VI.

24.29.1571 CHIROPRACTIC FEES FOR SERVICES PROVIDED FROM APRIL 1, 1993 THROUGH JUNE 30, 2002 (1) Except as otherwise provided by this rule, fees for medical specialty area services rendered by chiropractors from April 1, 1993 through June 30, 2002 are payable only for the procedure codes listed below,

according to the unit values listed. None of the procedure codes, descriptions, or unit values in Relative Values for Physicians apply to chiropractic services other than diagnostic x-rays.

(2) through (8) Remain the same.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1571 to designate this rule only applies to chiropractic fees schedules for services provided from April 1, 1993 through June 30, 2002.

24.29.1581 PROVIDER FEES--OCCUPATIONAL AND PHYSICAL THERAPY SPECIALTY AREA FOR SERVICES PROVIDED FROM APRIL 1, 1993 THROUGH JUNE 30, 2002 (1) Services rendered by occupational therapists and physical therapists from April 1, 1993 through June 30, 2002 are payable only for the procedure codes listed in (7) of this rule. None of the procedure codes, descriptions, or unit values in Relative Values for Physicians apply to occupational therapy and physical therapy services.

(2) through (7) Remain the same.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1581 to designate this rule only applies to fee schedules for services provided by practitioners licensed as occupational therapists and physical therapists from April 1, 1993 through June 30, 2002.

6. The Department proposes to repeal the following rule:

24.29.2004 WORKERS' COMPENSATION DOES NOT PAY found at page 24-2249, Administrative Rules of Montana.

AUTH: 39-71-203, MCA
IMP: 39-71-203 and 39-71-704, MCA

REASON: There is a reasonable necessity to repeal ARM 24.29.2004 because the Department believes the rule to be unnecessary and its repeal eliminates any possible conflict with 39-71-704(1)(f), MCA (1999). The Department believes there is reasonable necessity to propose this repeal at the same time as the physical medicine rule changes are being proposed in order to clarify medical service rules.

7. 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:

Keith Messmer
Workers' Compensation Regulation Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 8011

Helena, Montana 59604-8011

and must be received by no later than 5:00 p.m., June 14, 2002. Comments may also be submitted electronically as noted in the following paragraph.

8. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at http://dli.state.mt.us/calendar.htm, under the Calendar of Events, Administrative Rules Hearings section. Interested persons may make comments on the proposed rules via the comment forum, http://forums.dli.state.mt.us, linked to the Notice of Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m. June 14, 2002. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the comment forum does not excuse late submission of comments.

9. The Department maintains a list of interested persons who wish to receive notices of rule-making actions proposed by this agency. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and any specific topic or topics over which the Department has rule-making authority. Such written request may be delivered to Mark Cadwallader, 1327 Lockey St., Room 412, Helena, Montana, mailed to Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728, faxed to the office at (406) 444-1394, e-mailed to mcadwallader@state.mt.us, or made by completing a request form at any rules hearing held by the Department.

10. The bill sponsor notice provisions of 2-4-302, MCA, do not apply.

11. The Department proposes to make the new rules, amendments, and repeal effective on July 1, 2002. The Department reserves the right to make only a portion of the proposed rule changes, or to make some or all of the rule changes effective on a different date.

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

/s/ KEVIN BRAUN	/s/ WENDY J. KEATING
Kevin Braun	Wendy J. Keating, Commissioner
Rule Reviewer	DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: May 6, 2002.

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

In the matter of the proposed repeal of ARM 24.29.2803, and 24.29.2814 and 24.29.2817 and amendment of ARM 24.29.2811 pertaining to the Uninsured Employers' Fund	) NOTICE OF PUBLIC HEARING ON PROPOSED REPEAL AND AMENDMENT

TO: All Concerned Persons

1. On June 7, 2002, at 9:30 a.m., a public hearing will be held in the second floor conference room of the Employment Relations Division, Department of Labor and Industry Building, 1805 Prospect Avenue, Helena, Montana, to consider the proposed repeal of ARM 24.29.2803, 24.29.2814 and 24.29.2817 and the proposed amendment of ARM 24.29.2811, pertaining to the Uninsured Employers' Fund.

2. The Department of Labor and Industry 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 by not later than 5:00 p.m., June 1, 2002, 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; TTY (406) 444-5549; fax (406) 444-3465; or e-mail liwilson@state.mt.us.

3. The Department proposes to repeal the following rules:

24.29.2803 DEFINITIONS found at page 24-2293, Administrative Rules of Montana.
AUTH: 39-71-203, MCA
IMP: 39-71-503 and 39-71-504, MCA

24.29.2814 DETERMINING THE AMOUNT OF THE ADMINISTRATIVE COSTS BALANCE--UEF found at page 24-2294, Administrative Rules of Montana.
AUTH: 39-71-203, MCA
IMP: 39-71-503, MCA

24.29.2817 DETERMINING WHETHER THERE IS A POSITIVE FUND BALANCE--UEF found at page 24-2294, Administrative Rules of Montana.
AUTH: 39-71-203, MCA
IMP: 39-71-503, MCA

REASON: ARM 24.29.2814 was the subject of an emergency amendment on March 18, 2002, reducing the administrative costs balance from a 12 month balance to a 6 month balance. An independent actuarial study of the Uninsured Employers' Fund

("the UEF") now finds that assuming collection rates from uninsured employers and payments made on claims continue at the present rate, and assuming that program operating costs do not increase faster than the growth of costs in state government generally, the UEF cannot operate on an actuarially sound basis.

In response to that emergency rule amendment, staff of the Legislature concluded that the subject matter of ARM 24.29.2814 only concerned matters of internal agency operations, and thus was not a proper subject of rule-making. In addition, staff of the Legislature concluded that the Legislature, by providing for a proportionate reduction in benefits and by providing that there is no vested right to benefits from the UEF, had already contemplated that the UEF might become insolvent and unable to pay benefits. Legislative staff therefore concluded that neither an emergency existed nor was there a need for the rule.

In light of the comments made by staff of the Legislature, the Department now believes there is reasonable necessity to repeal ARM 24.29.2814, as the rule is unnecessary. Likewise, if ARM 24.29.2814 is repealed, ARM 24.29.2803 and 24.29.2817 are also unnecessary and should also be repealed. The Department intends to address the questions of whether the UEF should maintain an administrative costs balance, and the appropriate level of such a balance, by proposing legislation on the subject during the next legislative session.

4. The rule as proposed to be amended provides as follows: (stricken matter interlined, new matter underlined)

24.29.2811 MONTHLY ~~CALCULATIONS OF FUND BALANCES AND~~ PAYMENTS--UEF ~~(1) The UEF calculates fund balances on a monthly basis.~~

~~(2) The UEF allocates its annual budget expenses on a monthly basis, and projects its annual budgeted costs in 12 equal portions.~~

(3) Remains the same, but is renumbered (1).

AUTH: 39-71-203, MCA
IMP: 39-71-503, MCA

REASON: There is reasonable necessity to amend ARM 24.29.2811 to delete language that references terms and calculations which are proposed for repeal, above. Subsection (3) is not being deleted because the UEF's budget and staffing level for the 2002-2003 fiscal biennium were based on the workload associated with monthly claim benefit payments. The UEF's workload will not decrease with the deletion of (1), because it will still be necessary to determine whether the UEF has sufficient funds to pay benefits without reduction, or to determine the level of reduction needed if claims costs exceed available funds.

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

Keith Messmer
Workers' Compensation Regulation Bureau
Employment Relations Division -
Department of Labor and Industry
P.O. Box 8011
Helena, Montana 59604-8011

and must be received by no later than 5:00 p.m., June 14, 2002. Comments may also be submitted electronically as noted in the following paragraph.

6. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at http://dli.state.mt.us/calendar.htm, under the Calendar of Events, Administrative Rules Hearings section. Interested persons may make comments on the proposed rules via the comment forum, http://forums.dli.state.mt.us, linked to the Notice of Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m. June 14, 2002. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the comment forum does not excuse late submission of comments.

7. The Department maintains a list of interested persons who wish to receive notices of rule-making actions proposed by this agency. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and any specific topic or topics over which the Department has rule-making authority. Such written request may be delivered to Mark Cadwallader, 1327 Lockey St., Room 412, Helena, Montana, mailed to Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728, faxed to the office at (406) 444-1394, e-mailed to mcadwallader@state.mt.us, or made by completing a request form at any rules hearing held by the Department.

8. The bill sponsor notice provisions of 2-4-302, MCA, do not apply.

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

/s/ KEVIN BRAUN	/s/ WENDY J. KEATING
Kevin Braun,	Wendy J. Keating, Commissioner
Rule Reviewer	DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: May 6, 2002.

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

In the matter of the proposed amendment of ARM 37.88.901, 37.88.905 and 37.88.906 pertaining to mental health center services	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On June 5, 2002, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on May 28, 2002, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

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

37.88.901 MENTAL HEALTH CENTER SERVICES, DEFINITIONS
(1) through (10) remain the same.
(11) "Mental health center services" means child and adolescent day treatment services, adult day treatment services, community-based psychiatric rehabilitation and support respite care, ~~comprehensive school and community treatment,~~ in-training practitioner services and the therapeutic component of crisis intervention services, foster care for mentally ill adults and mental health group home services and programs of assertive community treatment, as defined in these rules.
(12) through (16) remain the same.
~~(17) Comprehensive school and community treatment means a comprehensive, planned course of outpatient treatment provided primarily in the school to a child or adolescent with a serious emotional disturbance, as defined in ARM 37.89.103(14), through a program operated by a mental health center and approved by the department. To be approved a program must provide the department with a satisfactory written description of the program at least 3 months prior to beginning the service. The department must approve or deny a program within 30 days of receiving a complete application. An existing school-based mental health program shall be deemed to be a comprehensive~~

~~school and community treatment program until June 30, 2001. Approvals will be granted for a term not to exceed the school year. The program description, at a minimum, must document:~~

~~(a) how the program will meet each child's needs for treatment during and outside school hours, including:~~

~~(i) individual, family, and group therapy;~~

~~(ii) crisis intervention services;~~

~~(iii) case management;~~

~~(iv) continuing observation, support and behavioral intervention in the classroom and on the playground; and~~

~~(v) other services effective in the treatment of the child's emotional disturbance.~~

~~(b) how the mental health center will meet each child's needs for treatment during school vacations in a manner integrated in the individual's treatment plan;~~

~~(c) limited circumstances which would require a child in the program to access mental health services outside the program and how the program would minimize reliance on other service providers;~~

~~(d) admission and discharge criteria for the program; and~~

~~(e) how the program will accomplish and ensure:~~

~~(i) treatment, crisis and discharge planning and regular updates of such plans;~~

~~(ii) family involvement in treatment and discharge planning and in the course of treatment;~~

~~(iii) continuing contact and information exchange with persons and agencies significantly involved in the child's treatment;~~

~~(iv) coordination of all mental health services and treatments the child receives;~~

~~(v) continuing quality improvement including the regular measurement and reporting of program performance and individual outcomes to include comparison with baseline measurements and established benchmarks;~~

~~(vi) that all children within the school or the school district, as appropriate, who meet the described criteria for service are considered for admission to the program;~~

~~(vii) that all available financial resources for support of services including third party insurance and parent payment are utilized;~~

~~(viii) there is an appropriate level of direct or in-kind contributions by the school district; and~~

~~(ix) that services delivered are adequately documented to support the reimbursement received.~~

(18) remains the same but is renumbered (17).

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

37.88.905 MENTAL HEALTH CENTER SERVICES, REQUIREMENTS

(1) through (6) remain the same.

(7) For purposes of medicaid billing and reimbursement of day treatment services~~:~~,

~~(a) a full day requires that the recipient has attended the day treatment program for a minimum of 5 hours during the treatment day; and~~

~~(b)~~ a half day requires that the recipient has attended the day treatment program for a minimum of 2 hours during the treatment day.

(8) For purposes of meeting the minimum hours required in (7)~~(a) and (7)(b)~~, the provider may not include time during which the recipient is receiving practitioner services which are actually billed separately as practitioner services as permitted under ARM 37.88.906, up to a maximum of 4 hours during the treatment day.

~~(9) Comprehensive school and community treatment must be provided through a program of services staffed by at least 2 mental health workers who work exclusively in the school. At least 1 of the 2 mental health workers must be a licensed psychologist, licensed clinical social worker, or licensed professional counselor with a maximum case load of 12 school or preschool children.~~

~~(a) Comprehensive school and community treatment must be provided according to an individualized treatment plan designed by a licensed professional who is a staff member of the school-based mental health services program.~~

~~(b) In addition to any clinical records required by mental health center license rules, the provider must maintain for school-based mental health services the records required by ARM 37.85.414, which shall include but are not limited to:~~

~~(i) documentation of the client's attendance in school and in program services;~~

~~(ii) progress notes for each individual therapy session; and~~

~~(iii) weekly overall progress notes.~~

~~(c) Comprehensive school and community treatment must be prior authorized by the department or its designee. Comprehensive school and community treatment is not medically necessary when, in the determination of the department, the individual is receiving substantial mental health treatment outside the comprehensive school and community treatment program.~~

(10) remains the same but is renumbered (9).

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

37.88.906 MENTAL HEALTH CENTER SERVICES, COVERED SERVICES

(1) Mental health center services, covered by the medicaid program, include the following:

(a) adult half-day day treatment services;

(b) through (e) remain the same.

~~(f) comprehensive school and community treatment;~~

(g) through (h)(iii) remain the same but are renumbered (f) through (g)(iii).

(2) through (6)(c) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

3. The Department intends the proposed changes to be effective July 1, 2002.

4. The proposed amendments are necessary to address a continuing severe budget shortfall within the Medicaid mental health program and the mental health services plan. Under current rules, expenditures are projected to exceed appropriations in state fiscal year (SFY) 2003 unless additional cost saving measures are implemented to reduce expenditures. 17-8-104, MCA subjects public officials to civil penalties if they fail to keep expenditures, obligations and liabilities within the amount of the legislative appropriation as required by 17-8-103, MCA. Therefore, in addition to other cost saving measures, the Department proposes to eliminate Comprehensive School and Community Treatment and to limit Adult Day Treatment to a half day program as mental health center services.

ARM 37.88.901

The Department proposes to eliminate reimbursement of bundled Comprehensive School and Community Treatment (CSCT) services. CSCT services were first reimbursed by the Department in July 1999 as school-based mental health services. Reimbursement has been paid ever since as a bundled daily rate. The Department expected that this service would meet the needs of many youths in need of intensive mental health treatment and that there would be a simultaneous reduction in the utilization of the more costly out-of-home mental health services. The expectation was that the availability of comprehensive school and community treatment services would save money by reducing the number of out-of-home placements or by allowing a shorter length of stay in the event out-of-home placement was necessary. It was further expected that the savings would be sufficient to fund CSCT services. In fact, the program has never generated sufficient savings from other services to offset its costs.

The Department believes that CSCT provides many beneficial services to seriously emotionally disturbed (SED) children and adolescents. Therefore, it will continue to reimburse, individually, medically necessary mental health services provided to SED youths within the school setting such as outpatient therapy or community-based psychiatric rehabilitation and support services. The Department also intends to continue exploring the possibility of refinancing CSCT through local school districts. Budget constraints, however, do not permit the Department to continue reimbursement of CSCT as a bundled service through its general fund appropriation.

The Department has encouraged mental health centers to provide mental health services to individual youths in the school setting when there are an insufficient number of students to

justify the staffing requirements of CSCT. This has proven effective in many locations across the state.

The Department considered the alternative of continuing to offer CSCT under the current reimbursement model. The Department rejected that alternative because it would have required the elimination of other services or the limitation of eligibility for public mental health programs in order to ensure that expenditures do not exceed the legislative appropriation. Because the existing program rules allow for continuation of medically necessary services to eligible youth in the schools, the Department views its proposal for the elimination of CSCT bundled services as having fewer harmful effects than other potential cuts.

ARM 37.88.906

The proposed amendments would limit adult day treatment services to a half-day program. Adults with severe disabling mental illness who currently receive five or more hours of adult day treatment services each day would be restricted to no more than four hours per day. The proposed change is necessary to reduce expenditures during state fiscal year 2003 for mental health services.

The Department considered the alternative of not making this program change. The Department rejected this alternative as requiring it to identify alternative savings within the mental health budget or risk expenditure of funds that would exceed the legislative appropriation. This program modification is one of several that has been proposed in order to bring projected expenditures into alignment with appropriations.

Fiscal impact and persons affected

The elimination of CSCT services and the reduction of adult day treatment services to a half-day program is expected to produce a cumulative reduction in the cost of providing benefits for all persons affected of $4,107,000, including $1,030,000 state general fund savings and $3,077,000 federal financial participation savings. The number of persons affected by the proposed amendments include 672 youths who receive CSCT services annually, 2338 adults who receive day treatment annually, 7 mental health centers that provide CST services in 51 schools and 4 community mental health centers that provide adult day treatment services in 10 programs across the state.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on June 13, 2002. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail

via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

Dawn Sliva	/s/ Gail Gray
Rule Reviewer	Director, Public Health and Human Services

Certified to the Secretary of State April 29, 2002.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 42.2.613, 42.2.614, and 42.2.619 and adoption of new rule I relating to taxpayer appeals	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On June 6, 2002, at 9:00 a.m., a public hearing will be held in the Director's Office Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of ARM 42.2.613, 42.2.614, and 42.2.619 and adoption of new rule I, relating to taxpayer appeals.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Room 455, Helena, Montana.

2. The Department of Revenue 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 of Revenue not later than 5:00 p.m., May 22, 2002, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax (406) 444-3696; or e-mail canderson@state.mt.us.

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

42.2.613 DEFINITIONS The following definitions apply to rules found in this sub-chapter.

(1) "AB-26" is the form which may be used by the customer to notify the department of a dispute concerning an amount shown on a property tax bill or statement of account (SOA) for those items described in (17). This form is available on the department's internet homepage, http://www.state.mt.us/revenue.

(2) "Alternative dispute resolution (ADR)" means the option of a voluntary, confidential, and cooperative means of resolving disputes. One objective is to reduce costs and risks inherent in adjudication or litigation for either the person or other entity and the department. Alternative dispute resolution can include mediation.

~~(2)~~ (3) "Customer" means any person or other entity ~~doing business in~~ subject to a tax imposed by the state of Montana or liable for payment of a debt collected by the department.

(4) "DOR form 577" means the extension form used to request an extension of the dates referred to in [New Rule I].

(3) through (8) remain the same but are renumbered (5) through (10).

(11) "Mutually agree to extend" means extending a deadline based upon mutual agreement of the parties.

(12) "Notice of referral to the office of dispute resolution form (CVR-1)" is a form used by the department and customer to refer a disputed matter to the office of dispute resolution. This form is available on the department's internet homepage as stated in (1).

(13) "Office of dispute resolution (ODR)" means the department's dispute resolution office. This office handles disputes that cannot be resolved at a lower level within the department.

~~(9)~~ (14) "Other entity" means all businesses, corporations, or similar enterprises.

(15) "Party" means either the customer or the responsible department representative.

(16) "Request for informal review form (AB-26)" is a form used by the department and the customer to record changes, appeals and issues pertaining to a particular customer. This form is available on the department's internet homepage as stated in (1).

(17) "Settlement" means mutually agreed upon resolution of the disputed issues.

(18) "Statement of account (SOA)" means the first notice provided to the customer of an amount owed to the department or of a violation. It may include, but is not limited to, a notice of assessment, tax debt, fine or notice of a violation of the laws administered by the department. It does not include notices pertaining to inheritance taxes, estate taxes, non-centrally assessed property taxes, or liquor licensing matters.

(19) "Written objections" include objections submitted through electronic media or delivered by the U.S. postal service, federal express, or any other generally accepted delivery service.

AUTH: Sec. 15-1-201 and 15-1-211, MCA

IMP: Sec. 15-1-211, 15-1-406, 15-23-102, 15-23-107, 15-30-257, and 39-51-1109, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.2.613 to expand the definition of "customer" to make it consistent with the use of the word in other areas of the department rules. The newly added definitions are necessary to define terms used in new rule I which will be placed in chapter 2, sub-chapter 6 upon adoption.

42.2.614 PURPOSE (1) Section 15-1-211, MCA, ~~passed during the 1999 legislative session establishes new procedures for resolving disputes between the department and persons or other entities. Among other provisions, the bill~~ provides for the creation of an office of dispute resolution (ODR) within the department and requires ~~that~~ a ~~new~~ uniform dispute review process ~~be developed by rule~~. A primary objective of the resolution procedure is to make dispute resolution as unintimidating and inexpensive as possible to parties appearing before the department. The law exempts non-centrally assessed

property, inheritance, ~~and~~ estate taxes, and the issue of whether an employer-employee relationship existed between the person or other entity to the requirements of Title 15, chapter 30, part 2, MCA, or whether the employment relationship was that of an independent contractor, from the dispute resolution process.

(2) As shown in the flow chart in (3), a final agency decision must be issued within 180 days from the date notification of a dispute is received by the office of dispute resolution. Section 69-8-414, MCA, specifically requires the department to issue a final agency decision for uniform systems benefits (USB) matters within 60 days from the date the matter is submitted to ODR rather than the 180 days provided in 15-1-211, MCA.

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

AUTH: Sec. 15-1-201 and 15-1-211, MCA

IMP: Sec. 15-1-211 and 69-8-414, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.2.614(1) to further clarify which taxing areas administered by the department the dispute resolution process covers and which areas are not. It is necessary to propose the new (2) to clarify that 69-8-414, MCA, provides for a shortened time period to issue a final agency decision for matters that pertain to uniform systems benefits.

42.2.619 HEARING PROCEDURES (1) Except as provided herein, hearings shall be conducted in Helena, Montana.

(2) The location for hearings pertaining to liquor licensing matters are governed by ARM 42.12.108.

(3) Upon request by either party, ~~Hearings~~ hearings may be telephonic. Such requests will be granted unless the hearing examiner determines that telephonic participation may unfairly prejudice the rights of any party. If telephonic participation is requested, the hearing examiner will place the call at the designated time to whatever telephone number is provided by the person or other entity.

(4) Upon a showing of compelling circumstances by either party, the hearings officer may order a hearing to be conducted at a location other than Helena, Montana.

(2) through (5) remain the same but are renumbered (5) through (8).

AUTH: Sec. 15-1-201 and 15-1-211, MCA

IMP: Sec. 15-1-211, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.2.619 to clarify that most tax hearings will be conducted in Helena and may be performed telephonically. Also, the rule is amended to provide that hearings may be conducted at a location other than Helena, Montana. The rule further clarifies that this rule does not apply to hearing procedures for liquor licensing matters, which are governed by ARM Title 42, Chapter 12.

4. The proposed new rule does not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rule provides as follows:

NEW RULE I STATEMENT OF ACCOUNT (1) This rule applies to all department actions except the review of certain tax issues that involve unemployment benefit claims pursuant to 15-30-257, MCA, and where the department has made an adjustment or correction pursuant to 15-30-142, MCA.

(2) The department shall mail the statement of account (SOA) as defined in ARM 42.2.613, to the customer as prescribed in 15-1-211, MCA. The SOA shall advise the customer of the requirement to file a written objection to the SOA within 30 days of the date of the SOA; and that failure to file a written objection within the 30 days shall be deemed an admission that the customer agrees the debt stated in the SOA is due and owing.

(a) If the customer agrees with the SOA, the matter is resolved upon compliance with, or acceptance of, the terms set forth in the SOA.

(b) If the customer does not pay or respond to the SOA, a bill is generated and sent to the customer and payment shall be expected immediately.

(c) If payment is received, the matter is resolved.

(d) If payment is not received, the matter is forwarded to the department's accounts receivable and collection (ARC) process for handling.

(3) If the customer objects to the SOA, the customer shall respond to the SOA within 30 days of the date on the SOA. If the objection is sent by United States mail, the objection must be postmarked within 30 days of the date of the SOA. If it is sent by electronic mail, it must be sent within 30 days of the date of the SOA. Failure to respond within the 30 days shall be deemed an admission that the customer concurs that they owe the debt stated in the SOA.

(a) Objections may be submitted using the request for informal review form (AB-26) or by a detailed letter.

(b) Electronic objections will be accepted. The e-mail address, soaobjection.state.mt.us, is provided on the SOA in the appeal rights section.

(4) The parties may mutually agree to extend the time periods in this rule by completing an extension form (DOR form 577).

(5) The department shall review the objection and determine whether the department agrees or disagrees with the customer's objections. The department shall mail written notice to the customer advising the customer of the department's determination within 30 days after receipt of the objection.

(a) If the department concurs with the customer, the matter is resolved by withdrawing or revising the SOA.

(b) If the department disagrees with the customer, it shall explain the reasons for the disagreement, notify the customer of the dispute resolution procedures and provide a copy of notice of referral form (CVR-1). The department shall also notify the customer that the customer must submit a CVR-1 form

or detailed letter to the department within 15 days of the notice of determination from the department, and that the customer will forfeit the right to a hearing if the customer fails to submit the CVR-1 or detailed letter within the 15-day period.

(6) If the customer decides to appeal the department decision, the customer shall forward the matter to the office of dispute resolution (ODR), as required in 15-1-211, MCA. This may be done by completing the notice of referral form (CVR-01) or by providing a detailed letter and submitting either document to the department within 15 days of the date of the notice of determination from the department.

(a) Failure to file an appeal by the customer within 15 days of the date of the notice of determination by the department shall be deemed an admission that the customer concurs that the debt stated in the SOA is due and owing.

(b) If the customer pays the bill, the matter is resolved.

(c) If the customer does not pay the bill, the matter will be referred to ARC for collection.

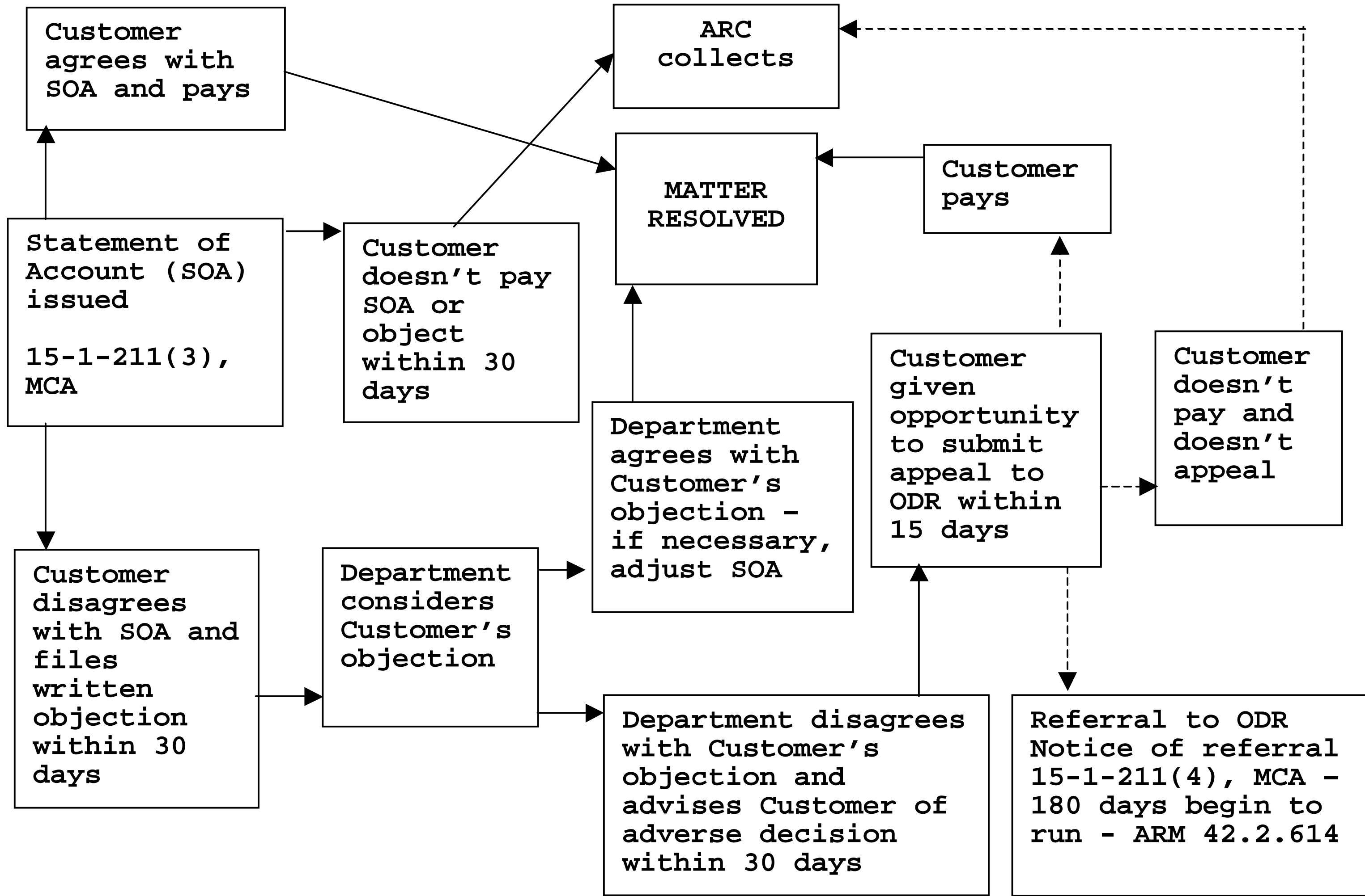
(7) Once the matter is submitted to ODR, ARM 42.2.613 through 42.2.621 apply. The department has 180 calendar days from the referral date to resolve the matter.

(8) The parties can agree to settle the dispute at any point during the process.

(9) If the department fails to comply with the deadlines in this rule, the customer may immediately refer the matter to the office of dispute resolution.

(10) The following flow chart shows the process beginning with the initial notice provided to the customer:

AUDIT – APPEAL PROCESS FLOW CHART



AUTH: Sec. 15-1-201 and 15-1-211, MCA
IMP: Sec. 15-1-211, 15-1-406, 15-23-102, 15-23-107, 15-30-142, 15-30-257, and 39-51-1109, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to establish time periods applicable to statements of account (SOA) that are provided to the customers informing them of a debt to the State of Montana. The rule provides a flow-chart that explains the two possible situations that could occur when a SOA, as required in 15-1-211, MCA, is provided to the customer. If there is no dispute of the amount shown on this SOA, and the customer pays the debt, the matter is resolved. In a case where the customer disputes the debt, they are required to provide the department with a written objection to the SOA within 30 days of the date of the SOA. If they fail to file a timely objection, the matter will be forwarded to the department's accounts receivable and collection process (ARC) to begin collection action. If an objection is timely filed, the department will review the objection. If the department agrees with the objection, it will make the necessary adjustments to the SOA and the matter will be resolved. If the department disagrees with the objection it must advise the customer in writing, within 30 days, of the adverse decision. The customer then has 15 days to either pay the debt (matter is resolved); file a notice of referral or detailed letter appealing the department's decision with the office of dispute resolution; or if they do not pay or file an appeal, the matter will be forwarded to ARC for handling.

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:

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 5805
Helena, Montana 59604-5805
and must be received no later than June 17, 2002.

6. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

7. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at http://www.state.mt.us/revenue/rules_home_page.htm, under the Notice of Rulemaking section. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although

the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

8. The Department of Revenue 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 regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 5 or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Kurt G. Alme
KURT G. ALME
Director of Revenue

Certified to Secretary of State May 6, 2002

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 42.5.213 relating to filing and remittance requirements for electronic fund transfers	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On July 12, 2002, the department proposes to amend ARM 42.5.213 relating to filing and remittance requirements for electronic fund transfers.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m. on May 21, 2002, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax number (406) 444-3696; e-mail address canderson@state.mt.us.

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

42.5.213 BACKUP SITUATION (1) In an emergency situation, fed wire transfers or paper bank drafts (checks) may be utilized by taxpayers who have elected to file electronically. The use must meet with prior approval of the department. Nothing in this rule shall preempt ~~15-2-802~~ 15-1-802, MCA, which requires electronic payment whenever the amount due is $500,000 or greater.

AUTH: Sec. 15-30-305, MCA
IMP: Sec. 15-1-802 and 15-30-210, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.5.213 to correct a clerical error that was discovered during a biennial review of the chapter.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to:

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 5805
Helena, Montana 59604-5805

no later than June 17, 2002.

5. If persons who are directly affected by the proposed action wish to express their data, views and arguments orally or

in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Cleo Anderson at the above address no later than June 17, 2002.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee; from a governmental subdivision or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. An electronic copy of this Proposal Notice is available through the Department's site on the World Wide Web at http://www.state.mt.us/revenue/rules_home_page.htm, under the Notice of Rulemaking section. The Department strives to make the electronic copy of this Proposal Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

8. The Department of Revenue 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 notice regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

/s/ Cleo Anderson	/s/ Kurt G. Alme
CLEO ANDERSON	KURT G. ALME
Rule Reviewer	Director of Revenue

Certified to Secretary of State May 6, 2002

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 44.12.102, 44.12.103, 44.12.105, 44.12.107, 44.12.201, 44.12.202, 44.12.203, 44.12.205, 44.12.207, 44.12.209, 44.12.211, and 44.12.213, adoption of new rules I through V, and repeal of ARM 44.12.101, all relating to lobbying and regulation of lobbying	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION AND REPEAL

TO: All Concerned Persons

1. On June 11, 2002, at 9:00 a.m., a public hearing will be held in the Conference Room at the Montana Association of Counties (MACO) office, 2715 Skyway Drive, Helena, Montana, to consider the proposed amendment of ARM 44.12.102, 44.12.103, 44.12.105, 44.12.107, 44.12.201, 44.12.202, 44.12.203, 44.12.205, 44.12.207, 44.12.209, 44.12.211, and 44.12.213, adoption of new rules I through V, and repeal of ARM 44.12.101 regarding regulation of lobbying.

2. The Commissioner of Political Practices 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 Commissioner of Political Practices no later than 5:00 p.m. on May 31, 2002 to advise us of the nature of the accommodation that you need. Please contact Dulcy Hubbert, Program Supervisor, Office of the Commissioner of Political Practices, P.O. Box 202401, 1205 Eighth Avenue, Helena, Montana 59620-2401, telephone number (406) 444-2942, fax number (406) 444-1643, email dhubbert@state.mt.us.

3. The new rules and the rules as proposed to be amended provide as follows (new text is underlined; text to be deleted is interlined):

RULE I PREAMBLE AND STATEMENT OF APPLICABILITY (1) The 2002 rule revisions are the first substantive revision of the Montana Lobbyist Disclosure Act rules in 20 years. The 2002 revisions address inconsistencies and conflicts between the Act and previous rules, most of which were adopted in 1982. The 2002 rule changes will only be applied to legislative lobbying promoting or opposing the introduction or enactment of legislation before the legislature or legislators. Although 2002 rule language may appear to apply to non-legislative lobbying and legislative lobbying involving official action other than the introduction or enactment of legislation, the commissioner of political practices has

determined that it is not possible to apply existing and new lobbying rules to these lobbying activities under the Montana supreme court decision in State Bar of Montana v. Krivec, 193 Mont. 477, 632 P.2d 707 (1981). In Krivec, the court cited its 1903 decision in Bair v. Struck, 29 Mont. 45, 50, 74 P. 69, 71, and applied the following definition of quasi-judicial function:

"Quasi-judicial functions are those which lie midway between the judicial and ministerial ones. The line separating them...[is] necessarily indistinct; but, in general terms, when the law, in words or by implication, commits to any officer the duty of looking into facts, and acting upon them, not in a way which it specifically directs, but after a discretion in its nature judicial, the function is termed quasi-judicial...."

"Where a power rests in judgment or discretion, so that it is of a judicial nature or character, but does not involve the exercise of the functions of a judge, or is conferred upon an officer other than a judicial officer, the expression used is generally "quasi-judicial.... The officer may not in strictness be a judge; still, if his powers are discretionary, to be exerted or withheld according to his own view of what is necessary and proper, they are in their nature judicial. Id., at page 483."

The Krivec court declared that "when an attorney seeks to influence a public official exercising a quasi-judicial function who is acting in a matter or field in which the public official has discretion, such an attorney is not engaged in lobbying under the terms of the Initiative" (Id., at p. 484). The court went on to recognize that legislators are public officials under 5-7-102(13), MCA, but the quasi-judicial function exemption does not prevent the reporting of lobbying expenditures to support or oppose the introduction or enactment of legislation under 5-7-102(6)(a), MCA, (Id.). Based on Krivec, it is difficult if not impossible to discern what actions fall "midway between the judicial and ministerial ones" and do not involve some exercise of discretion. It appears that most lobbying activities, except for the practice of promoting or opposing the introduction or enactment of legislation before the legislature or legislators, are exempt from reporting under Krivec.

(2) Based on the preceding, the commissioner has attempted to clarify legislative lobbying issues relating to promoting or opposing the introduction or enactment of legislation in 2002 rulemaking. In addition, the 2003 Montana legislature will be asked to clarify certain provisions of the Act concerning the reporting of legislative lobbying activities. Included in the 2003 legislation will be amendments specifying that lobbying expenditures to influence any official action by the legislature or legislators and lobbying the governor to sign, veto or amendatory veto legislation must be reported.

(3) Non-legislative lobbying issues will be addressed after the 2003 legislature and after receiving public comment on non-legislative lobbying issues. It will likely be necessary to seek clarification of non-legislative lobbying issues in the 2005 legislature. Until the quasi-judicial function exemption and other non-legislative lobbying provisions of the Act are revised, either legislatively or via court decision, the rules will not be applied to non-legislative lobbying activities.

AUTH: 5-7-111, MCA
IMP: 5-7-101, MCA

44.12.102 LOBBYING--DEFINITIONS AND SCOPE--REPORTABLE ACTIVITIES ~~(1)~~ For purposes of Title 5, chapter 7, MCA, and ~~these rules~~ this chapter:

~~(a) "Administrative action" means any action taken by a public official in any agency, department, division, office, board, or commission of state government with regard to any proposal for or drafting, development, or consideration of a policy, practice, or rule to be published and used by the official or agency. "Administrative action" does not include actions that are judicial, quasi-judicial, or ministerial in nature.~~

(1) "Compensation" includes:

(a) all direct or indirect payments of salaries, fees, wages and benefits by a principal to an individual for lobbying or to the officers, agents, attorneys or employees of a principal to support or assist a lobbying activity. The term includes, but is not limited to, all payments made for overtime, compensatory time, retirement, health insurance, membership fees for social, civic and professional organizations, life insurance, professional liability insurance, unemployment, worker's compensation, personal use of a vehicle, rental car payments, disability insurance and other benefits; and

(b) the term "compensation" does not include personal living expenses of a lobbyist that are reimbursed by a principal.

~~(b)~~ (2) "Direct communication" includes face-to-face meetings, telephone conversations, and written or electronic correspondence or communication with a public official.

~~(c) "Legislative action" means the introduction or enactment of legislation, including acts that result in the creation of law or declaration of public policy, and other actions of the legislature authorized by Article V of the Montana Constitution.~~

(3) "Grassroots lobbying" means an effort, whether written, oral or by any other medium, by a principal or a lobbyist to encourage others, including the general public, to engage in direct communication with a public official to influence official action that is supported or opposed by the principal or lobbyist. The term includes letter-writing campaigns, mailings, telephone banks, print and electronic

media advertising, billboards, publications and educational campaigns involving official action that is supported or opposed by a principal or a lobbyist.

(4) "Lobbying" shall have the definition set forth in 5-7-102(6)(a) and (b), MCA. Unless otherwise exempted from the definition of "lobbying" by Title 5, chapter 7, MCA, or this chapter, lobbying shall include:

(a) any direct communication by a lobbyist with a public official to promote or oppose official action;

(b) all time spent by a lobbyist to present oral or written testimony to one or more public officials promoting or opposing official action by any public official or group of public officials, including the legislature or a committee of the legislature; or

(c) signing a sign-in sheet as an opponent or proponent of official action at a legislative hearing or a public hearing conducted by a public official other than a legislator or a legislative committee.

(5) "Lobbying activity" or "lobbying activities" mean actions or efforts to support or assist lobbying, including preparation and planning activities after a decision has been made to support or oppose official action, grassroots lobbying, research and other background work that is intended, at the time it is performed, for use in lobbying or to support or assist lobbying activities. The terms "lobbying activity" or "lobbying activities" do not include:

(a) information or testimony submitted to the legislature or a legislative committee in response to a subpoena issued under 5-5-101 through 5-5-105, MCA;

(b) actions of public officials in performing judicial, quasi-judicial or ministerial acts or the actions of any person to influence the actions of public officials in performing judicial, quasi-judicial or ministerial acts (5-7-102(13), MCA);

(c) activities of an employee or representative of a radio, newspaper, magazine, television, cable television or other medium of mass communication in gathering and disseminating news and information to the general public;

(d) activities involving a bona fide news story, commentary, or editorial distributed through the facilities of any radio, television, broadcasting station, newspaper, magazine or other periodical publication of general circulation;

(e) activities involving communications by a membership organization or corporation to its members, shareholders or employees;

(f) information or testimony compelled by statute, rule, executive order or other action of the legislature, the governor or a state agency, including information or testimony compelled by a state contract, grant, loan, permit or license; or

(g) information or testimony provided in response to an oral or written request from a legislative committee, the legislature or a public official made during a public hearing

or other public proceeding if the information or testimony solicited during the public hearing or public proceeding does not support or oppose the official action under consideration.

~~(d)~~ (6) "Lobbyist" shall have the definition set forth ~~at~~ in 5-7-102(8), MCA. The term "lobbyist" does not include:

(a) an individual lobbying or acting on his/her own behalf (5-7-101(2) and 5-7-101(8), MCA);

(b) a public official, including a legislator, who promotes or opposes the introduction or enactment of legislation before the legislature or the members of the legislature (5-7-102(6)(a), MCA); or

(c) an individual working for the same principal as a licensed lobbyist if the individual does not have direct communication with a public official to support or oppose official action on behalf of the principal (5-7-102(8)(b)(ii), MCA).

(7) "Major effort to support, oppose or modify official action" in 5-7-208(5)(d), MCA, means any official action on which a principal's lobbyist, employee, officer, agent, attorney or representative engages in direct communication with any public official on two or more occasions to support, oppose or modify the official action.

~~(e)~~ (8) "Official action" means ~~legislative action or administrative action, or both, depending on the context in which the phrase is used~~ a vote, decision, recommendation, approval, disapproval, or other action, including inaction, that involves the use of discretionary authority by the legislature or a member of the legislature concerning the introduction or enactment of legislation.

~~(f)~~ (9) "Payment" and "payment to influence official action" shall have the definitions set forth ~~at~~ in 5-7-102(9) and (10), MCA. The term "payment to influence official action" does not include:

(a) payments by a principal to an individual only for travel expenses totaling less than $1,000 per calendar year (5-7-102(7), MCA). However, a principal who makes payments of less than $1,000 for travel expenses to more than one individual for lobbying in a calendar year must file reports required by the Act and these rules if total payments for the calendar year to all individuals for lobbying total $1,000 or more; or

(b) personal living expenses paid to a lobbyist (5-7-102(10)(a), MCA).

(10) "Personal living expenses" means payments or reimbursement by a principal for a lobbyist's meals, food, lodging or residential utilities.

~~(g)~~ (11) "Principal" shall have the definition set forth ~~at~~ in 5-7-102(12), MCA.

~~(h)~~ (12) "Public official" shall have the definition set forth ~~at~~ in 5-7-102(13), MCA, and as specifically designated in [Rule III] and [Rule IV].

(13) "Travel expenses" means payments or reimbursement for transportation costs, including rental car payments.

~~(2) "Lobbying" shall have the definition set forth at 5-7-102(6)(a) and (b), MCA. Unless otherwise exempted from the definition of "lobbying" by Title 5, chapter 7, MCA, or these rules, lobbying activities shall include:~~

~~(a) any direct communication by a lobbyist with a public official to promote or oppose legislative or administrative action;~~

~~(b) all time spent by a lobbyist to present oral or written testimony promoting or opposing official action by any public official or group of public officials, including the legislature or a committee of the legislature;~~

~~(c) all time spent by a lobbyist:~~

~~(i) at any regular or special session of the legislature, during which the lobbyist engages in direct communication with a legislator or legislators to promote or oppose legislative action; or~~

~~(ii) at any interim legislative committee meeting at which any pending or proposed legislative action is considered, during which the lobbyist engages in direct communication with a legislator or legislators to promote or oppose said pending or proposed legislative action;~~

~~(d) all time spent by a lobbyist attending a meeting of, or hearing before, a public official or group of public officials at which any pending or proposed official action is considered, during which the lobbyist engages in direct communication with the public official or group of public officials to promote or oppose said pending or proposed official action.~~

AUTH: 5-7-111, MCA
IMP: 5-7-102, MCA

<u>44.12.103 LOBBYISTS AND LOBBYING SUPPORT PERSONNEL--REPORTING OF INFORMATION TO PRINCIPAL</u> (1) It is the duty of each individual ~~lobbyist~~ whose activities are covered by Title 5, chapter 7, MCA, to maintain records relating to information required to be reported and ~~to~~ <u>exemptions claimed. Each individual must timely</u> transmit such information to his principal ~~in a fashion that will~~ <u>to</u> allow timely reporting by the principal.

<u>(2) Except as provided in (3), the records submitted to a principal by an individual who is paid to lobby or who is paid to support or assist a lobbying activity must for each reporting period specified in 5-7-208, MCA:</u>

<u>(a) identify each calendar day on which the individual was paid to lobby or to support or assist a lobbying activity;</u>

<u>(b) indicate the reportable time spent lobbying or assisting or supporting a lobbying activity for each calendar day identified in (2)(a); and</u>

<u>(c) identify each official action on which the individual lobbied or supported or assisted a lobbying activity during the reporting period. The official action identified under this subsection must include sufficient detail to enable a principal to file a report required by</u>

5-7-208(5)(d), MCA, and ARM 44.12.202. The following are examples of official action descriptions that satisfy the requirements of this subsection:

(i) identification of proposed or introduced legislation by bill draft request number or bill or resolution numbers (e.g., opposed HB 62 or supported SB 381, with amendments); or

(ii) using descriptive phrases that adequately describe the official action supported, opposed or modified (e.g., senate resolution 6, supported confirmation of Gayle Good Gal to be director of department of administration).

(3) The daily itemization requirements of (2)(a) and (b) do not apply to a lobbyist or lobbying support personnel if all compensation and reimbursement paid by a principal will be reported as provided in ARM 44.12.203(1)(a), 44.12.205(1) and (2), 44.12.207(2)(a) or 44.12.211(1)(a).

AUTH: 5-7-111, MCA
IMP: 5-7-208 and 5-7-212, MCA

RULE II PERSONAL LIVING EXPENSES--LIMITATIONS AND RECORDS

(1) The exemption from reporting personal living expenses in 5-7-102(10)(a), MCA, is limited to actual and necessary personal living expenses incurred by a lobbyist.

(2) All personal living expenses claimed by a lobbyist and reimbursed by a principal must be supported by a written receipt from the third party payee, except that a lobbyist may be reimbursed by a principal in an amount not to exceed $10 per day for incidental personal living expenses without a receipt from third party payees.

(3) If a lobbyist receives payments for personal living expenses from more than one principal, the total payments for the lobbyist's personal living expenses may not exceed 100% of the actual and necessary personal living expenses incurred by the lobbyist. Each principal making payments for the personal living expenses of a lobbyist may only withhold from reporting the principal's proportional share of the lobbyist's personal living expenses paid by the principal. A lobbyist receiving payments for personal living expenses from more than one principal is responsible for reporting to each principal the total personal living expenses incurred by a lobbyist in each reporting period and the proportional amount of personal living expenses that each principal is obligated to pay. For example, Lobbyist J incurs $6,000 of personal living expenses in a legislative year. Lobbyist J is reimbursed for personal living expenses by four different principals and the four principals are responsible for paying the following proportional amounts: Principal T (50%); Principal X (20%); Principal Y (20%); and Principal Z (10%). The four principals are exempt from reporting the following payments to Lobbyist J for personal living expenses:

(a) Principal T (50%), $3,000;
(b) Principal X (20%), $1,200;
(c) Principal Y (20%), $1,200; and
(d) Principal Z (10%), $600.

(4) The personal living expense exemption in 5-7-102(10)(a), MCA, only applies to payments for personal living expenses incurred by a lobbyist. Payments for the personal living expenses of a principal's employees, agents, officer and agents who are not lobbyists but who are paid to support or assist lobbying activities must be reported by the principal as a lobbying expenditure.

AUTH: 5-7-111, MCA
IMP: 5-7-102(10)(a), MCA

44.12.105 STATE GOVERNMENT AGENCIES--LOBBYING--DEFINITIONS AND REPORTING (1) ~~For purposes of calculation of expenditures for lobbying efforts by state government agencies, salaries paid to employees engaged in the following types of activities need not be calculated or reported:~~ Agencies of state government as defined in 2-15-102(2), MCA, and the offices of elected public officials designated in [Rule III] and [Rule IV] that engage in lobbying are principals subject to the requirements of Title 5, chapter 7, MCA, and this chapter. State agencies and the offices of public officials designated in [Rule III] and [Rule IV] are exempt from reporting the following actions as lobbying activities:

(a) recommendations or reports to the legislature or a committee thereof, or a public official, in response to a request expressly requesting or directing a specific study, recommendation, or report by an agency on a particular subject;

(b) any duty which is mandated by law, ~~or~~ rule or executive order, such as the governor's annual message to the legislature;

(c) budget preparation activities related to preparation and submittal of the governor's executive budget as required by Article VI, section 9 of the Montana Constitution (5-7-211, MCA);

(d) the actions of elected and appointed public officials designated in [Rule III] and [Rule IV] while acting in their official capacity for state government to promote or oppose the introduction or enactment of legislation before the legislature or the members of the legislature (5-7-102(6)(a), MCA); and

(e) information or testimony provided in response to a request from the legislature, a legislative committee or a public official if the information or testimony does not support or oppose the official action under consideration.

(2) ~~With the above exceptions, activities of state government agencies which are direct attempts to influence the course of proposed or pending legislation are "lobbying" as defined, and the staff time and resources expended are lobbying payments. Each individual department of the executive branch is a "principal" as defined if lobbying payments reach the threshold $1000 level. Each department shall file a report on the statutory dates which covers~~

~~lobbying activities of all employees of the department.~~ Except as provided in (1) and unless otherwise exempted by Title 5, chapter 7, MCA, or other provisions of this chapter:

(a) the employees, agents, officers and attorneys of a public official designated in [Rule III] and [Rule IV] and a state agency defined in 2-15-102(2), MCA, who are paid, reimbursed or retained to lobby must register as lobbyists; and

(b) each agency of state government and each office of a public official must file reports under Title 5, chapter 7, MCA, and these rules concerning the activities of their employees, agents, attorneys or officers who lobby or support or assist a lobbying activity. State agencies and the offices of elected public officials shall file consolidated lobbying reports covering the lobbying activities of all employees, officers, attorneys and agents as follows:

(i) The offices of an elected public official shall file a consolidated lobbying report covering the lobbying activities of all employees, officers, attorneys and agents who lobby or assist or support a lobbying activity. If an elected public official is a member of a multi-member tribunal (e.g., the Montana supreme court) or a board or commission (e.g., the Montana public service commission), the tribunal, board or commission shall file a consolidated report including the lobbying activities of the employees, agents, attorneys or officers of each elected public official who is a member of the tribunal, board or commission.

(ii) A state agency shall file a consolidated lobbying report covering the lobbying activities of all its employees, officers, attorneys and agents who lobby or support or assist a lobbying activity. However, a state agency may elect not to file a report concerning lobbying activities by boards, commissions, or entities that are attached for administrative purposes only as defined in 2-15-121, MCA, or that have otherwise been granted autonomy to act under Montana law. If an agency elects not to include in its lobbying report the lobbying activities of any boards, commissions, or entities that are attached for administrative purposes only or entities which exercise autonomous powers, the agency shall specifically identify the boards, commissions, or entities not included in the state agency's lobbying report.

~~(3) For purposes of 5-7-103, MCA, "public official" means any individual who is elected to public office or appointed to public office by the governor. No activity by any public official is considered to be "lobbying" within the meaning of Title 5, chapter 7, MCA, of this rule.~~

AUTH: 5-7-111, MCA
IMP: 5-7-111, 5-7-208, and 5-7-211, MCA

RULE III ELECTED PUBLIC OFFICIALS (1) To provide guidance and certainty in identifying who is a public official as defined in 5-7-102(13), MCA, and an elected official as defined in 5-7-102(4), MCA, the following are deemed to be an

elected public official acting in his/her official capacity for state government:

(a) the governor;
(b) the lieutenant governor;
(c) the secretary of state;
(d) the attorney general;
(e) the state auditor;
(f) the superintendent of public instruction;
(g) public service commissioners;
(h) justices of the supreme court;
(i) district court judges;
(j) the clerk of the supreme court; and
(k) legislators.

AUTH: 5-7-111, MCA
IMP: 5-7-102(4) and 5-7-102(13), MCA

RULE IV APPOINTED PUBLIC OFFICIALS (1) To provide guidance and certainty in identifying who is a public official as defined in 5-7-102(13), MCA, the following are deemed to be an appointed public official acting in his/her official capacity for state government:

(a) any individual appointed by the governor and subject to Montana senate confirmation. This includes, but is not limited to, individuals appointed under 2-15-111, 2-15-124, 2-15-1505, 2-15-1507, 2-15-1707, and 3-1-1001 through 3-1-1014, MCA;

(b) the commissioner of political practices appointed under 13-37-102, MCA;

(c) any individual appointed by the chief justice of the supreme court under 3-1-1001 through 3-1-1014, MCA;

(d) any individual appointed to serve as a member of the judicial nomination commission under 3-1-1001, MCA;

(e) any individual appointed to serve as a member of the judicial standards commission under 3-1-1101 and 3-1-1102, MCA; and

(f) any individual appointed to serve as a member of the districting and apportionment commission under 5-1-101 and 5-1-102, MCA.

AUTH: 5-7-111, MCA
IMP: 5-7-102(13), MCA

44.12.107 ~~STATE~~ LOCAL GOVERNMENT ~~EMPLOYEES--REGISTRATION~~ LOBBYING--DEFINITIONS AND REPORTING (1) ~~State government employees whose lobbying activities are covered by the Act and these rules are required to register as lobbyists in the usual manner.~~ A local government entity, which includes but is not limited to a county, a consolidated government, an incorporated city or town, a school district or a special district, that engages in lobbying is a principal subject to the requirements of Title 5, chapter 7, MCA, and this chapter. A local government entity is exempt from reporting the following actions as lobbying activities:

(a) recommendations or reports to the legislature or a committee thereof, or a public official, in response to a request expressly requesting or directing a specific study, recommendation, or report by a state agency on a particular subject;

(b) any duty which is mandated by law, rule or executive order, such as the governor's annual message to the legislature;

(c) budget preparation activities related to preparation and submittal of the governor's executive budget as required by Article VI, section 9 of the Montana Constitution (5-7-211, MCA); and

(d) information or testimony provided in response to a request from the legislature, a legislative committee or a public official if the information or testimony does not support or oppose the official action under consideration.

(2) Except as provided in (1) and unless otherwise exempted by Title 5, chapter 7, MCA, or other provisions of this chapter:

(a) the elected officials, employees, agents, officers and attorneys of a local government entity who are paid, reimbursed or retained to lobby must register as lobbyists; and

(b) each local government entity must file reports under Title 5, chapter 7, MCA, and this chapter concerning the activities of their elected officials, employees, agents, attorneys or officers who lobby or support or assist a lobbying activity. Local government entities shall file consolidated lobbying reports covering the lobbying activities of all employees, officers, attorneys and agents.

AUTH: 5-7-111, MCA
IMP: 5-7-111, 5-7-208, and 5-7-211, MCA

44.12.201 REPORTING OF CONTRIBUTIONS AND MEMBERSHIP FEES

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

(b) paid to a group formed or existing primarily for the purpose of lobbying; or

(c) remains the same.

AUTH: 5-7-111, MCA
IMP: 5-7-208(5)(c), MCA

44.12.202 PRINCIPALS--REPORTS--MAINTENANCE OF RECORDS

(1) Pursuant to 5-7-208, MCA, a principal shall report all payments made for the purpose of lobbying, including payments made to support or assist a lobbyist engaged in lobbying or payments to support or assist a lobbying activity.

~~(a)~~(2) ~~Reports~~ Unless exempted by Title 5, chapter 7, MCA, or this chapter, reports shall include, without limitation, all payments made to a lobbyist to influence official action ~~(as those terms are defined in 5-78-102(9) and (10), MCA)~~, including payments made ~~for~~ to support or assist a

lobbyist engaged in lobbying or to support or assist any lobbying activity ~~specified in these rules~~.

~~(b)~~(3) Even if a principal declares that it made no payments for lobbying activities during a reporting period, the principal must file a lobbying report as provided in 5-7-208, MCA.

(4) Principals must report each official action on which the principal's lobbyists, employees, agents, officers or attorneys exerted a major effort to support, oppose or modify official action, together with a statement of the principal's position supporting or opposing the official action (5-7-208(5)(d), MCA).

(5) Principals must identify each official action reportable under 5-7-208(5)(d), MCA, by using descriptive phrases, legislative bill draft request numbers or legislative bill or resolution numbers as provided in ARM 44.12.103(2)(c).

(6) A principal must retain all records supporting the reports filed under Title 5, chapter 7, MCA, for three years from the date of filing as required by 5-7-212, MCA.

AUTH: 5-7-111, MCA
IMP: 5-7-208, MCA

44.12.203 PRINCIPALS--REPORTING OF COMPENSATION PAID TO LOBBYISTS (1) Pursuant to 5-7-208(5)(a), MCA, reports filed by principals shall disclose ~~fees and salaries~~ compensation paid to lobbyists in the following manner:

(a) If the compensation paid is ~~on~~ a periodic, lump sum or contingent fee ~~basis~~ and the primary purpose of the contract is for lobbying ~~services,~~ or to support or assist lobbying activities, the entire amount of the fee shall be reported.~~;~~

(b) If the lobbyist is a ~~full time~~ salaried employee or officer of the principal, and his duties include lobbying or support or assistance for lobbying activities, the ~~salary~~ compensation may be allocated and reported on a daily basis or on an hourly basis based on the amount of time the lobbyist is engaged in lobbying or in supporting or assisting lobbying activities. ~~If computed on an hourly basis, a fraction of an hour shall be counted as an hour.~~

(c) If the compensation paid is a fee for services which ~~include~~ includes lobbying or supporting or assisting lobbying activities but not as the primary purpose of the contract, either:

(i) the proportion of the total fee which equals the proportion of the total time spent lobbying or supporting or assisting lobbying activities on behalf of the principal shall be reported; or

(ii) if the principal is being billed on an hourly basis, the compensation paid for the actual time billed for lobbying or supporting or assisting lobbying activities on behalf of the principal shall be reported.

(2) In calculating and reporting compensation paid to a lobbyist for lobbying or to support or assist lobbying

activities as provided in (1)(b) and (c), a fraction of an hour for each day that a lobbyist lobbies or supports or assists lobbying activities shall be rounded up to the nearest quarter of an hour and so reported. For example, Lobbyist A reports to Principal White Hat that she spent the following time lobbying or assisting or supporting lobbying activities for the February 15 reporting period in a legislative year:

DATE	HOURS
1/12	3.2
1/13	4.8
1/16	2.1
1/28	1.3
Total	11.4

Principal White Hat must, for each of the four days Lobbyist A engaged in lobbying or supported or assisted a lobbying activity, calculate and report Lobbyist A's time as follows:

DATE	HOURS
1/12	3.2 is reported as 3.25
1/13	4.8 is reported as 5.00
1/16	2.1 is reported as 2.25
1/28	1.3 is reported as 1.50
Total	11.4 is reported as 12.00

Principal White Hat must report 12 hours (not 11.4 hours) of time for Lobbyist A at the hourly compensation paid to Lobbyist A in the February 15 lobbying report.

AUTH: 5-7-111, MCA
IMP: 5-7-111 and 5-7-208(5)(a), MCA

44.12.205 PRINCIPALS--REPORTING OF ~~TRAVEL, LIVING AND OTHER~~ REIMBURSED EXPENSES OF LOBBYISTS (1) ~~Expenses incurred by a lobbyist which are reimbursed by his principal, including those for travel, meals, lodging, and other expenses related to the lobbying effort which are not required to be itemized under section 5-7-208(5)(b), MCA, shall be reported by the principal as follows:~~ If a principal reimburses a lobbyist for actual expenses incurred for lobbying or to support or assist a lobbying activity, the actual reimbursed expenses must be reported.

~~(a)~~ (2) If the ~~lobbyist's services are contracted for on~~ lobbyist is being paid a periodic, lump sum or contingent fee ~~basis~~ and the primary purpose of the contract is for lobbying services, all reimbursed expenses shall be reported.~~;~~

~~(b)~~ (3) If the ~~services are contracted for on~~ lobbyist is being paid a fee ~~basis~~ and lobbying services are a part of ~~but not the primary purpose of~~ the contract, only those expenses or the portion of them which are ~~reasonably~~ related to or incurred in ~~relation to~~ lobbying or in providing support or assistance for a lobbying activity on behalf of the principal shall be reported.~~;~~

~~(c)~~ (4) If the expenses are incurred by a ~~full time~~ salaried employee or officer of the principal whose duties include lobbying, only those reimbursed expenses or the proportion of them which are ~~reasonably~~ related to or incurred in ~~relation to~~ lobbying or in providing support or assistance for a lobbying activity on behalf of the principal shall be reported.~~;~~

AUTH: 5-7-111, MCA
IMP: 5-7-111 and 5-7-208, MCA

44.12.207 PRINCIPALS--REPORTING OF ~~MISCELLANEOUS~~ OFFICE AND LOBBYING SUPPORT PERSONNEL EXPENSES (1) ~~As used in 5-7-208(5)(a), MCA, "other office expenses" means expenses related to or incurred in the support of a lobbying presentation or argument or the support of a lobbyist. Regular and recurring expenses such as a rent, utilities and staff time need not be reported unless lobbying is the primary purpose of the organization.~~ Principals shall report payments to influence official action, including payments to a lobbyist engaged in lobbying and payments to support or assist a lobbying activity, for each expense category in 5-7-208(5)(a), MCA.

(2) ~~For purposes of this rule, lobbying is considered to be an organization's primary purpose if over 75% of its yearly budget is allocated to lobbying efforts.~~ A principal shall report the compensation paid to the principal's lobbyists, employees, officers, agents, or attorneys to support or assist a lobbyist engaged in lobbying or to support or assist a lobbying activity. The compensation paid to such lobbying support personnel shall be reported as follows:

(a) If the compensation paid is a periodic, lump sum or contingent fee and the primary purpose of the contract is to provide support or assistance to a lobbyist engaged in lobbying or to support or assist a lobbying activity, the entire amount of the fee shall be reported.

(b) If an individual is a salaried employee or officer of the principal, and his/her duties include providing support or assistance to a lobbyist engaged in lobbying or support or assistance for a lobbying activity, the compensation may be allocated and reported on a daily or hourly basis.

(c) If the compensation paid is a fee for services which includes support or assistance to a lobbyist engaged in lobbying or support or assistance for a lobbying activity, but not as the primary purpose of the contract, either:

(i) the proportion of the total fee which equals the proportion of the total time spent providing support or assistance to a lobbyist engaged in lobbying or to support or assist a lobbying activity on behalf of the principal shall be reported; or

(ii) if the principal is being billed on an hourly basis, the compensation paid for the actual time billed for providing support or assistance to a lobbyist engaged in lobbying or to

support or assist a lobbying activity on behalf of the principal shall be reported.

(3) In calculating and reporting the compensation paid to a principal's employees, officers, agents or attorneys as provided in (2)(b) and (c), a fraction of an hour shall be rounded up to the nearest quarter of an hour and reported as specified in ARM 44.12.203(2).

(4) If a principal provides at the principal's expense office space, utilities, supplies and equipment to a lobbyist or to the officers, agents, attorneys, or employees who provide support or assistance to a lobbyist engaged in lobbying or who support or assist a lobbying activity, the principal shall report the cost of providing such office space, utilities, supplies and equipment as follows:

(a) If the actual cost of providing office space, utilities, supplies and equipment can be determined and the actual cost is less than $5,000 for a reporting period, then actual cost may be reported. In the alternative, a principal may report that office space, utilities, supplies and equipment were provided to a lobbyist or lobbyist support personnel during the reporting period and the cost of providing such office space, utilities, supplies and equipment was:

(i) $1,000 or less for the reporting period; or

(ii) more than $1,000 but less than $5,000 for the reporting period.

(b) If the cost of providing office space, utilities, supplies and equipment to a lobbyist or lobbying support personnel during a reporting period is $5,000 or more, then the actual cost must be determined and reported.

(c) If the cost of providing office space, utilities, supplies and equipment to a lobbyist or lobbying support personnel is reported as provided in ARM 44.12.207(4)(a)(i) or (ii), the principal must make a good faith determination of such expenses and retain all calculations and records relied on as provided in ARM 44.12.202. If the actual cost of providing office space, utilities, supplies and equipment can be determined but is not reported as provided in ARM 44.12.207(4)(a)(i) and (ii), the actual cost determination must be retained as a record under ARM 44.12.202.

(5) Nothing in this rule requires a principal to report the cost of office space, utilities, supplies and equipment and lobbying support personnel costs for a lobbyist or a lobbying activity if the lobbyist is responsible for paying the cost of the lobbyist's office space, supplies, support personnel, equipment and utilities out of the amount paid to the lobbyist. If, however, the lobbyist is reimbursed by the principal for any office space, supplies, support personnel, equipment or utility costs incurred as part of a lobbying activity, the amount of such reimbursement must be reported.

(6) Grassroots lobbying expenditures must be reported by a principal unless otherwise exempted by the Act or this chapter. Expenditures made for compensation paid to prepare and distribute grassroots lobbying materials, printing costs,

mailing costs, equipment costs, utility costs, office space costs, advertising costs, and any other expenditures made to assist or support a grassroots lobbying effort must be reported by a principal unless otherwise exempted by the Act or this chapter. The following examples illustrate what is reportable as a grassroots lobbying expenditure:

Example A

Principal Blue Hat is an association of widget dealers who sell widgets to the public. Principal Blue Hat determines that SB 30 will have severe adverse impacts on widget dealers. Principal Blue Hat's employees and lobbyist prepare a fact sheet and a press release to be used at a press conference blasting SB 30. In addition, Principal Blue Hat sends copies of the fact sheet and a legislative alert letter to Blue Hat's members, asking the membership to contact their legislators and widget purchasers to oppose SB 30. Principal Blue Hat also obtains customer lists from the membership and sends 1,800 customers the fact sheet, pre-printed and stamped postcards opposing SB 30 and a letter requesting that the customers either contact their legislators to oppose SB 30 or sign and mail the pre-printed stamped postcards to their legislators. Three weeks after the press conference, SB 30 passes the senate and Principal Blue Hat's lobbyist prints an additional 200 copies of the fact sheet and distributes the fact sheet to all 150 legislators. The following grassroots lobbying expenditures must be reported by Principal Blue Hat:

(a) Principal Blue Hat does not have to report the cost of personnel, equipment, office space, supplies and utilities used to prepare the fact sheet and press release for the news conference blasting SB 30. ARM 44.12.102(5)(d) exempts activities involving bona fide news stories from the definition of "lobbying activity."

(b) Principal Blue Hat does not have to report the cost of personnel, equipment, office space, supplies and utilities used to prepare the legislative alert. Similarly, Blue Hat does not have to report the cost of distributing the alert and fact sheet to Blue Hat's membership. ARM 44.12.102(5)(e) exempts communications to Blue Hat's membership from the definition of "lobbying activity."

(c) Principal Blue Hat must report the cost of personnel, equipment, office space, supplies and utilities used to:

(i) distribute the fact sheet to legislators, including the time spent by Blue Hat's lobbyist directly communicating with legislators while distributing the fact sheet;

(ii) reproduce copies of the fact sheet distributed to legislators and the membership's customers; and

(iii) prepare and distribute the letter and pre-printed stamped postcards mailed to the membership's customers, including the value of the postage for the stamped pre-printed postcards.

Example B

Same facts as Example A, except that the fact sheet is prepared for immediate distribution to legislators, other interest groups supporting Principal Blue Hat's position on SB 30 and the public. 5,000 copies of the fact sheet are printed the day before the press conference and the fact sheet is distributed at a committee hearing the day after the press conference. Under this example, the following are reportable as lobbying expenditures:

(a) Principal Blue Hat does not have to report the cost of personnel, equipment, office space, supplies and utilities used to prepare the press release for the news conference under ARM 44.12.102(5)(d).

(b) Principal Blue Hat does not have to report the cost of personnel, equipment, office space, supplies and utilities used to prepare the legislative alert under ARM 44.12.102(5)(e).

(c) Principal Blue Hat must report the cost of personnel, equipment, office space, supplies and utilities as follows:

(i) all payments made or costs incurred to prepare, reproduce and distribute the fact sheet must be reported. This interpretation is consistent with the commissioner's historic interpretation of the identical membership communication exemption under Montana's Campaign Finance and Practices Act. The full cost of preparing and distributing a membership communication must be reported if the communication is distributed unsolicited to nonmembers. The same rationale applies to Principal Blue Hat's preparation of the fact sheet as part of Blue Hat's lobbying effort; and

(ii) all payments made or costs incurred to prepare and distribute the letter and pre-printed stamped postcards mailed to the membership's customers, including the value of the postage for the stamped pre-printed postcards must be reported.

AUTH: 5-7-111, MCA
IMP: 5-7-111 and 5-7-208(5)(a), MCA

44.12.209 PRINCIPALS--REPORTING OF COSTS OF ENTERTAINMENT AND SOCIAL EVENTS ~~RELATED TO LEGISLATIVE EFFORTS~~ (1) A principal shall report the cost of ~~gatherings and events (if such expenses are not required to be itemized under 5-7-208(5)(a), MCA), if the primary purpose of the event is related to the principal's legislative effort.~~

~~(2) For purposes of this rule, the primary purpose of an event is related to the principal's legislative effort if;~~

~~(a) The event includes a program the subject of which is pending or proposed legislation; and~~

~~(b) Substantial lobbying activity is undertaken.~~ entertainment and social events, including but not limited to meals, parties, cocktail parties, shows, movies, buffets,

receptions, sporting events, membership fees for clubs or other similar functions, as follows:

(a) if one or more public officials are invited and attend the event, all payments made by the principal or the lobbyist for the benefit of the public officials who attend the event, including tips or gratuities, must be reported as a lobbying expenditure and, if applicable, itemized as provided in 5-7-208(5)(b), MCA, if:

(i) a principal's lobbyist, employee, officer, agent or attorney lobbies a public official during the event;

(ii) the event includes a program by a principal's lobbyist, employee, agent, attorney or officer concerning proposed or pending official action; or

(iii) the event is paid for at the request or suggestion of a lobbyist for the purpose of supporting or assisting a lobbying activity.

(2) To determine whether the itemization requirements of 5-7-208(5)(b), MCA, apply, a principal shall calculate the benefit to a public official as follows:

(a) If the benefit to a public official can be determined based on actual expenditures made, then actual expenditures must be used to determine whether the itemization requirements of 5-7-208(5)(b), MCA, apply. For example, Principal White Hat's lobbyist takes two state representatives to dinner to lobby for their support of Principal White Hat's legislation. Rep. B orders a $30 dinner and $15 in drinks. Rep. S is ill and orders only a salad and a glass of milk (total cost for Rep. A, $6). The lobbyist spends $26 on himself. The total bill, including tip, is $89. Principal White Hat must report $51 ($45 for Rep. B and $6 for Rep. S), plus a proportionate share of the tip, as an entertainment expense and must report $45 plus a proportionate share of the tip as a benefit to Rep. B under 5-7-208(5)(b)(i), MCA. Rep. A does not have to be identified under 5-7-208(5)(b)(i), MCA, because the personal benefit to him was less than $25 and the $100 separate itemization requirement of 5-7-208(5)(b)(ii), MCA, does not apply because the event cost less than $100.

(b) If the benefit to a public official cannot be determined based on actual expenditures because of the size or type of event (e.g., a large reception for all 150 legislators with an open bar which is also attended by a large number of other lobbyists, principals and friends), the benefit to a public official in attendance shall be determined based on the total cost of the event, including tips or gratuities, divided by the total number of attendees. The per capita cost of the event becomes the benefit to each public official who attended the event. If the per capita cost of the event is $12 per person and 30 legislators attend the event, then $360 must be reported as an entertainment expense.

AUTH: 5-7-111, MCA
IMP: 5-7-208(5)(b), MCA

44.12.211 ALLOCATIONS OF TIME AND COSTS--ALTERNATIVE REPORTING METHOD (1) ~~A person who is compensated by a principal and whose duties include lobbying is lobbying for hire, as defined in 5-7-102(6), MCA.~~ A principal may use the following alternatives to report payments for lobbying or payments to support or assist a lobbying activity:

(a) i~~I~~f most or all of ~~such~~ an employee's time during a ~~given~~ reporting period is devoted to lobbying or ~~lobbying related~~ supporting or assisting lobbying activities, the total sum of all compensation paid to him during the period may be reported as lobbying payments~~.~~;

(b) ~~(2) I~~if less than all of ~~such~~ an individual's time is devoted to lobbying or ~~other legislative~~ supporting or assisting lobbying activities, then the sum reportable may be ~~computed~~ calculated as the proportion of the total compensation paid which equals the ~~reasonable~~ proportion of the total hours or days spent ~~on~~ lobbying or supporting or assisting lobbying activities during the reporting period. For example, if an employee or agent is paid $500 per week and spends the ~~reasonable~~ equivalent of two days ~~on~~ lobbying or supporting or assisting lobbying activities, then $200 may be reported by his principal as lobbying payments~~.~~; and

(c) ~~(3) In the same manner, office and other expenses~~ office space, utilities, supplies, equipment and salary payments made to support or assist a lobbyist engaged in lobbying or to support or assist a lobbying activity may be reported as ~~an estimated~~ a proportion of total expenses ~~(including staff salaries)~~ for the reporting period. If it can be reasonably ~~estimated~~ determined that a given proportion of total expenses during a period were related to lobbying ~~efforts~~ or supporting or assisting lobbying activities, a principal may report the proportion of total expenses for the period which equals the ~~estimated~~ proportion of time and budget spent on ~~the~~ lobbying ~~effort~~ or supporting or assisting lobbying activities.

(2) A principal who uses the alternative reporting methods described in (1)(b) and (c) shall retain all calculations and records used to determine the amount reported as required by 5-7-212, MCA, and ARM 44.12.202.

AUTH: 5-7-111, MCA
IMP: 5-7-111 and 5-7-208, MCA

RULE V LICENSES--FEES--WAIVER--HEARING (1) A lobbyist employed by one or more principals must complete and file with the commissioner a lobbyist license application (form L-1) within one week of being employed or retained by a principal. Forms are available upon request from the office of the Commissioner of Political Practices, P.O. Box 202401, Helena, Montana 59620-2401, telephone (406) 444-2942. The forms may also be downloaded from the office’s website at http://www.state.mt.us/cpp/.

(a) The application must be accompanied by an application fee of $150 and by a principal authorization statement (form

L-2). An applicant may apply for a waiver of the fee based on hardship pursuant to the procedure set forth in (2).

(b) A principal's authorization will not be approved if that principal has failed to file reports required by 5-7-208, MCA.

(c) Upon approval of the lobbyist's application, payment of the $150 application fee, and filing of a principal's authorization statement, a license will be issued that entitles the lobbyist to practice lobbying on behalf of the principal or principals designated on the application.

(d) Licenses expire on December 31 of each even numbered year, or may be terminated earlier upon submission of a written request by the lobbyist. The commissioner is not authorized to refund the application fee or a portion of the fee if a license is terminated early upon the request of the lobbyist.

(2) An applicant who believes that payment of the application fee may constitute a hardship may request a waiver of the fee by filing an application fee waiver request (form L-3) with the commissioner. The fee waiver request must include a detailed description of the circumstances that justify waiver of the fee, and must be accompanied by supporting evidentiary material. The commissioner may request additional information prior to making a determination.

(a) After considering the request and any accompanying evidentiary material, the commissioner may:

(i) deny the request;

(ii) waive the entire fee; or

(iii) waive a portion of the fee.

(b) The commissioner's decision will be based on consideration of factors including but not limited to:

(i) whether the applicant is a full-time or part-time lobbyist;

(ii) whether the applicant is employed or retained by more than one principal;

(iii) the amount of compensation received by the applicant through lobbying compared to compensation received through other employment or business activities within the preceding 12 months; and

(iv) the total amount of compensation for lobbying received by the applicant during the preceding 12 months.

(3) An applicant who is denied a license for any reason other than those provided in (1)(b) or (2) may request a hearing by submitting a written request with the commissioner. Upon receipt of a request the commissioner shall, within 10 days of the filing of the application, hold an informal contested case hearing as provided in Title 2, chapter 4, part 6, MCA, and issue a decision.

AUTH: 5-7-103 and 5-7-111, MCA
IMP: 5-7-103, MCA

44.12.213 COMPLAINTS--PROCEDURE--~~RIGHT TO HEARING~~ (1) ~~A person against whom a complaint is filed with the commissioner~~

~~by a third party may request an administrative hearing prior to a determination by the commissioner that the complaint is or is not justified. In addition, such a hearing may be requested by the complaining party or by the commissioner.~~ An individual who believes that a violation of Title 5, chapter 7, MCA, or the rules implementing Title 5, chapter 7, MCA, has occurred may file a written complaint in person or by certified mail with the commissioner. When a complaint is received, it shall be marked to show the date of receipt. Unless the complaint is determined to be insufficient pursuant to (4), within five days after receipt of a complaint, the commissioner shall, by certified mail, acknowledge its receipt and transmit a copy to the alleged violator. Saturdays, Sundays, and holidays shall be excluded in the calculation of the five-day period.

(2) ~~Such hearings shall be conducted in accordance with the Montana Administrative Procedure Act and the attorney general's model rules for contested case or declaratory rulings.~~ A complaint shall be typewritten or legibly handwritten in ink. The complete name and mailing address of the person filing the complaint shall be typewritten or legibly hand printed on the complaint; and the complaint shall be signed and verified by the oath or affirmation of such person, taken before any officer authorized to administer oaths. A complaint shall name the alleged violator, and should include the complete mailing address of the alleged violator, if known or readily discoverable.

(3) ~~If a complaint is filed against a person, the commissioner shall notify the person of the fact. The commissioner shall provide a copy of a complaint to the affected party on request.~~ Upon receipt of a complaint, the commissioner shall investigate, except as provided in (4), the alleged violation. The commissioner, upon completion of the investigation, shall prepare a written summary of facts and statement of findings, which shall be sent to the complainant and the alleged violator. Following the issuance of a summary of facts and statement of findings, the commissioner may take other appropriate action.

(4) No investigation shall be required if a complaint is frivolous on its face, illegible, too indefinite, does not identify the alleged violator, is unsigned, or is not verified by oath or affirmation of such person, taken before any officer authorized to administer oaths. In addition, no investigation shall be required if the complaint does not contain sufficient allegations to enable the commissioner to determine that it states a potential violation of a statute or rule within the commissioner's jurisdiction.

(5) A filed complaint and the summary of facts and statement of findings shall be public record.

AUTH: 5-7-111, MCA
IMP: 5-7-305, MCA

4. ARM 44.12.101 Lobbying--Exemptions, the rule proposed to be repealed, is found on page 44-555 of the Administrative Rules of Montana.

AUTH: 5-7-111, MCA
IMP: 5-7-102, MCA

5. There is reasonable necessity to amend the existing rules, adopt the proposed new rules, and repeal one existing rule. There is currently considerable confusion regarding the applicability and scope of the existing rules. The existing rules are outdated, internally inconsistent, and fail to provide sufficient guidance regarding the regulation of lobbying activities and the reporting of lobbying expenses. The new rules and amendments are proposed as the result of a lengthy process involving a series of meetings and extensive discussions between the Commissioner of Political Practices, lobbyists, and representatives of various organizations and interest groups over a number of months. The proposed new rules and amendments are the end result of that process. They provide much needed clarity and guidance regarding reportable lobbying activities and the regulation of those activities. The $150 fee proposed in new Rule V is a fee adopted and mandated by the legislature in 5-7-103, MCA. The legislature evaluated and determined the necessity for this fee. Rule 44.12.101 is repealed because it does not describe all of the exemptions that exist under the Lobbyist Disclosure Act and other provisions of Montana law. The two exemptions recognized in existing rule 44.12.101 are transferred to proposed rules ARM 44.12.102(5)(a) and 44.12.102(5)(g). Other exemptions in the Act have been included in the proposed new rules to fully define the activities that are not reportable as lobbying activities.

6. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Linda L. Vaughey, Commissioner of Political Practices, P.O. Box 202401, 1205 Eighth Avenue, Helena, Montana 59620-2401, or be submitted electronically to lvaughey@state.mt.us and must be received no later than June 14, 2002.

7. The Commissioner of Political Practices maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their names added to the list shall make a written request, which includes the name and mailing address of the person to receive notice concerning campaign finance, ethics, or lobbying. Such written request may be mailed or delivered to the Commissioner of Political Practices at P.O. Box 202401, 1205 Eighth Avenue, Helena, MT 59620-2401, or faxed to (406) 444-1643, or may be made by completing a request form at any rules hearing held by the Commissioner of Political Practices.

8. Jim Scheier has been designated to preside over and conduct the hearing.

9. The bill sponsor notice requirements of 2-4-302, MCA do not apply.

By: /s/ LINDA L. VAUGHEY
Linda L. Vaughey
Commissioner

By: /s/ JIM SCHEIER
Jim Scheier
Assistant Attorney General
Rule Reviewer

Certified to the Secretary of State on May 6, 2002.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of new rule I model rules and new rule II teacher certification and the repeal of ARM 10.57.211 and 10.57.212 relating to testing for certification and minimum scores	)	NOTICE OF ADOPTION AND REPEAL

TO: All Concerned Persons

1. On March 28, 2002, the Board of Public Education published notice of the proposed adoption and repeal of rules concerning model rules and teacher certification, at page 867 of the 2002 Montana Administrative Register, Issue Number 6.

2. The Board of Public Education has adopted New Rule I ARM 10.52.103 MODEL RULES exactly as proposed.

3. After consideration of the comment received, the Board of Public Education has adopted New Rule II ARM 10.57.211A EDUCATOR RECRUITMENT with the following changes, stricken matter interlined, new matter underlined:

10.57.211A EDUCATOR RECRUITMENT (1) remains as proposed.
(a) individuals who have held, within the last five years, a professional--not alternative or provisional--teacher, specialist, or administrator certificate from another state in an area certifiable in Montana. This ~~section~~ rule applies only to individuals who have completed an applicable accredited ~~education degree~~ professional educator preparation program in an area certifiable in Montana.
(b) through (3) remain as proposed.

4. The Board of Public Education has repealed ARM 10.57.211 and 10.57.212 as proposed.

5. The following comment was received and appears with the Board of Public Education's response:

COMMENT 1: The Board received a comment from the Chapter 57 Review Committee requesting that "education degree" be deleted from paragraph (1)(a) and replaced with "professional educator preparation program". The committee requests this amendment to ensure that only prepared educators will be certified in Montana and the integrity of our workforce will be maintained.

RESPONSE 1: The Board concurs with the committee's comment and has amended ARM 10.57.211A as requested.

/s/ Kirk Miller
Dr. Kirk Miller, Chairman
Board of Public Education

/s/ Steve Meloy
Steve Meloy, Executive Secretary
Rule Reviewer
Board of Public Education

Certified to the Secretary of State May 6, 2002.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.36.101 through 17.36.104, 17.36.106, 17.36.108, 17.36.110, 17.36.116, 17.36.309, 17.36.310, 17.36.320, 17.36.325, 17.36.327, 17.36.345, 17.36.601, 17.36.605, 17.36.801, 17.36.802, 17.36.804, 17.36.805, the repeal of 17.36.105, 17.36.111, 17.36.301, 17.36.302, 17.36.303, 17.36.305, 17.36.602 and 17.36.606, and the adoption of new rules I through IX pertaining to subdivision review under the Sanitation and Subdivisions Act	NOTICE OF AMENDMENT, REPEAL AND ADOPTION (SUBDIVISIONS)

TO: All Concerned Persons

1. On March 14, 2002, the Department of Environmental Quality published a notice of public hearing on the proposed amendment, repeal and adoption of the above-stated rules at page 568, 2002 Montana Administrative Register, issue number 5. The hearing was held on April 11, 2002 in Helena, Montana.

2. The Department has amended ARM 17.36.102, 17.36.103, 17.36.104, 17.36.106, 17.36.108, 17.36.110, 17.36.116, 17.36.309, 17.36.310, 17.36.325, 17.36.327, 17.36.345, 17.36.601, 17.36.605, 17.36.801, 17.36.802, 17.36.804, 17.36.805; repealed 17.36.105, 17.36.111, 17.36.301, 17.36.302, 17.36.303, 17.36.305, 17.36.602 and 17.36.606; and adopted new rules II (17.36.330), III (17.36.331), IV (17.36.332), V (17.36.333), VI (17.36.334), VII (17.36.335), and VIII (17.36.336) exactly as proposed. The Department has amended ARM 17.36.101 and 17.36.320, and adopted new rules I (17.36.328) and IX (17.36.340), as proposed, but with the following changes: (new matter underlined, deleted matter interlined)

17.36.101 DEFINITIONS (1) through (45) remain the same as proposed.

(46) "Shared wastewater system" means a wastewater system that serves or is intended to serve two living units or commercial structures. The total number of people served may not exceed 24. ~~In estimating the population served, the reviewing authority shall multiply the number of living units~~

~~times the county average of persons per living unit based on the most recent census data.~~

(47) through (50) remain the same as proposed.

(51) "Soil profile" means a description of the soil ~~profile~~ to a depth of eight feet using the USDA soil classification system.

(52) through (61) remain the same as proposed.

(62) "Wastewater treatment system" or "wastewater disposal system" means a system that receives wastewater for purposes of treatment, storage, or disposal. The term includes, but is not limited to, pit privies~~, subsurface drainage systems,~~ and experimental systems.

(63) and (64) remain the same as proposed.

17.36.320 SEWAGE SYSTEMS: DESIGN (1) and (2) remain the same as proposed.

(3) The proposed subsurface sewage treatment area must include an area for 100% replacement of the system. Unless a waiver is approved by the department pursuant to ARM 17.36.601, the replacement area must meet the same requirements as the primary area. If the replacement area is not immediately adjacent to the primary area, or if the department indicates to the applicant that it has reason to believe that site conditions for the replacement area may vary from those for the primary area, the applicant shall submit adequate evidence of the suitability of the replacement area.

TABLE 2
ALLOWABLE SYSTEMS, REQUIREMENTS

	YES - Systems that are allowed NO - Systems that are not allowed			
DEQ-4 System	Public: > 5000 gpd (1)(7)	Public or Multiple-user: ≥ 2500 gpd and ≤ 5000 gpd (2)(7)	Public or Multiple -user: < 2500 gpd (3)	Individual /Shared: (6)
Standard Absorption Trench	NO	NO	YES	YES
At-Grade Systems	NO	NO	YES	YES
Gravelless	YES	YES	YES	YES
Deep Trench	NO	NO	NO	YES

Elevated Sand Mound	YES	YES	YES	YES
Evapotranspiration (ET) systems	NO	NO	NO	NO (5)
Intermittent Sand Filters	YES	YES	YES	YES
Recirculating Sand Filters	YES	~~NO (5)~~YES	~~NO (5)~~YES	~~NO (5)~~YES
Recirculating Trickling Filters	YES	YES	YES	YES
Chemical Nutrient Reduction; Aerobic Sewage Treatment Systems	NO (5)	NO (5)	NO (5)	NO (4)(5)
Pressure Distribution	YES	YES	YES	YES
Sand-lined Absorption Trenches	NO	YES	YES	YES
Experimental Systems	NO (5)	NO (5)	NO (5)	NO (5)

(1) Public systems with design flow greater than 5000 gallons per day (gpd).
(2) Public or multiple-user systems with design flow greater than or equal to 2500 gpd and less than or equal to 5000 gpd.
(3) Public or multiple-user systems with design flow less than 2500 gpd.
(4) Means of securing continuous operation and maintenance of these systems must be approved by the reviewing authority prior to DEQ approval.
(5) May be allowed by waiver, pursuant to ARM 17.36.601.
(6) Individual or shared commercial sewage systems that have a design flow greater than 700 gpd shall be considered multi-user.

(7) Must be designed by a professional engineer.

<u>NEW RULE I (17.36.328) PUBLIC WATER SUPPLY AND WASTEWATER SYSTEMS</u> (1) remains the same as proposed.

(2) The reviewing authority may not approve the connection of a proposed subdivision to an existing public system unless:

(a) through (b)(i) remain the same as proposed.

(ii) the connections are authorized; ~~and~~

(iii) remains the same as proposed.

<u>(iv) the appropriate water rights exist for this connection or the managing entity has made application for the appropriate water rights for their system and any connections; and</u>

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

<u>NEW RULE IX (17.36.340) LOT SIZES: EXEMPTIONS</u> (1) This rule sets out, for purposes of the review of proposed subdivisions, the requirements for minimum lot or parcel size and the criteria for varying the minimum size. Proposed subdivisions involving mobile homes, trailer courts, campgrounds, multiple family dwellings, and commercial or industrial development are also subject to this rule.

(a) If an applicant proposes to use subsurface wastewater treatment systems, as described in department Circular DEQ-4, 2000 edition, the minimum lot size must be one acre for each living unit and one acre ~~per~~ <u>for up to</u> 700 gallons per day of design wastewater flow for commercial and other non-residential uses. The department may allow smaller lot sizes pursuant to waiver as provided in (1)(b) and ARM 17.36.601~~, or~~<u>. The reviewing authority may, without a waiver, allow smaller lot sizes</u> in accordance with the criteria set out in (1)(c) and (d). The reviewing authority may require larger lot sizes as provided in (1)(e).

(b) through (d)(ii) remain the same as proposed.

(iii) The proposed subdivision is within a designated wastewater facility service area, which has been planned for by a local wastewater utility and approved by the department <u>pursuant to Title 75, chapter 6, MCA</u>, and the acreage of lots on which drainfields are located is at least one acre ~~per~~ <u>for up to</u> 700 gpd of design wastewater flow; and

(d)(iii)(A) through (e) remain the same as proposed.

3. The following comments were received, and appear with the Department's responses:

<u>17.36.101 Definitions</u>

<u>COMMENT NO. 1</u>: The definition of "bedroom", ARM 17.36.101(2), should be more narrow to prevent someone from considering a family room, office or loft as a bedroom. The commentor suggested using the FHA standards.

<u>RESPONSE</u>: The FHA definition of "bedroom" requires windows and a form of egress to the exterior of the home. The

FHA definition is a funding limitation and is related to safety. However, the FHA requirements do not apply in every case. The definition in these rules needs to be broader to ensure that wastewater systems are designed based on the planned occupancy of the home and the expected wastewater flow.

COMMENT NO. 2: The word "specifically" should be deleted from the definition of experimental system, ARM 17.36.101 (14).

RESPONSE: The word is needed in the definition to clarify that experimental systems are those for which design standards are not provided in DEQ-2 or DEQ-4.

COMMENT NO. 3: In the definitions for individual water and sewer systems, ARM 17.36.101(19) and (20), should the language read not to exceed 24 or 25?

RESPONSE: The correct wording is "not to exceed 24" because if 25 people were served, it would be a public system.

COMMENT NO. 4: The department should clarify what was required for a public system, ARM 17.36.101(37), i.e., two wells, testing requirements, water operator.

RESPONSE: These requirements are specified by the laws and rules governing public water supplies and do not need to be repeated in these rules.

COMMENT NO. 5: Why is census data referenced for the definition of a shared system, ARM 17.36.101(46)?

RESPONSE: The department referenced the census data to provide a method for estimating the number of people served for each household. Most counties in the state have between 2 to 3 people per household. This information is more important for multiple user systems and is not necessary for shared systems. The department has deleted this language from the definition.

COMMENT NO. 6: The word "profile" should be removed from the text of the definition for soil profile, ARM 17.36.101(51) to provide clarity.

RESPONSE: The department has made this change.

COMMENT NO. 7: The term "subsurface drainage systems" should be deleted from the definition of wastewater treatment systems, ARM 17.36.101(62).

RESPONSE: The department will delete this term from this definition because subsurface drainage systems are not regulated as wastewater treatment systems.

17.36.102 - Application - General

COMMENT NO. 8: What is the purpose of ARM 17.36.102(4), which requires reapplication if a file is inactive for more than one year after the issuance of a denial letter?

RESPONSE: The department has many files for which the applicant has abandoned the request for a subdivision approval. To eliminate the backlog of abandoned files, the department will require re-application if the applicant does not respond to a denial letter within one year from the date the letter was sent.

17.36.103 Application Contents

COMMENT NO. 9: The reference to "previously approved systems" in ARM 17.36.103(1)(e)(ii) is confusing.

RESPONSE: "Previously approved" means that the system was approved under a previous subdivision approval.

COMMENT NO. 10: It is not possible to have a complete application if water rights and agreements requested in ARM 17.36.103(1)(g) are necessary prior to obtaining the water right.

RESPONSE: The department must determine that a subdivision water supply is dependable. The availability of a water right affects dependability of the supply. In calling for information in some situations about water right ownership and water use agreements, the rule does not necessarily require that a water right be owned at the time of the application, but only that the applicant show how a water right will be obtained. However, if it appears that a water right cannot be obtained, the department could deny the application. For example, if the department of natural resources has established a controlled groundwater area where further use of groundwater is prohibited, the department of environmental quality must deny a subdivision application if it proposes to use groundwater in that area.

COMMENT NO. 11: In regard to ARM 17.36.103(1)(l), the environmental assessment is already addressed under the platting act.

RESPONSE: The department is requesting a copy of the environmental assessment completed under the platting act to help prepare an EA for the review under the sanitation laws.

COMMENT NO. 12: ARM 17.36.103(1)(o) requires an applicant to provide a copy of legal documents including water rights. Does this mean that if the applicant does not provide legal documents or have a water right that the application might be denied? One commentor believed this section is not necessary.

RESPONSE: See Response to Comment No. 10.

COMMENT NO. 13: ARM 17.36.103(1)(q), which allows the department to request additional information is not necessary. The department should simply specify what information is required.

RESPONSE: The department has tried to include in these rules a complete list of information necessary for review of

subdivisions. However, due to the variety of subdivision proposals, the department may occasionally need additional information to complete its review. This section informs the applicant that this list may not be a complete list for all subdivisions.

17.36.106 Review Procedures - Applicable Rules

COMMENT NO. 14: A commentor was concerned about delays in the review process and the additional time necessary for review if an application is not complete or additional items need to be addressed.

RESPONSE: The department has implemented several new processes and procedures to address this concern. For example, the department has streamlined the review process when counties are contracted to complete the review. This process is addressed in the proposed rules in ARM 17.36.116. The department has provided training to the local reviewers to assist with the preparation and review of applications. The department has also proposed changes to ARM 17.36.103 to clarify what is necessary for a complete application. The department also plans to provide training to subdivision consultants to explain the new rules and to help consultants prepare more complete applications. The department also intends to review and revise the subdivision rules more frequently to keep them current with changing technology.

COMMENT NO. 15: When is an EIS required for a subdivision application?

RESPONSE: The requirements for an EIS are set out in statute at section 75-1-201, MCA, and in department rules at ARM Title 17, chapter 4, subchapter 6.

COMMENT NO. 16: The department should define "final action" and define when a new application is required in ARM 17.36.106(1)(a).

RESPONSE: The rule clarifies that that the department's final action includes approvals, conditional approvals, and denials of applications. A new application is required for each subdivision or for a proposed change to a previously approved subdivision.

COMMENT NO. 17: Why do some applications take longer than 60 days for review if additional information is necessary?

RESPONSE: The department cannot approve a subdivision unless the applicant has demonstrated compliance with the rules and regulations governing sanitation in subdivisions. When the application information is incomplete, the department must request information to demonstrate compliance. The department tries to review the additional information within the 60-day deadline, however, due to work load this is not always possible. In those cases the statute requires that the

department deny the application at 60 days and resume processing under a new 60-day clock.

17.36.116 Certification of Local Department or Board of Health

COMMENT NO. 18: The department appears to be licensing or imposing requirements for professional engineers in ARM 17.36.116(2)(a) and (b).

RESPONSE: Before delegating review authority to local governments, the department must ensure that reviewers have the requisite experience and familiarity with the requirements of the sanitation act.

17.36.310 Storm Drainage

COMMENT NO. 19: The requirement in ARM 17.36.310(2) that a storm drainage plan be designed in accordance with DEQ-8 would be costly and should be deferred until a more reasonable rule can be developed.

RESPONSE: The department is required to address storm drainage in subdivisions and has received numerous complaints concerning storm drainage in subdivisions. The department has addressed some of these concerns by providing guidance for designing a storm drainage plan in accordance with DEQ-8. The DEQ-8 circular addresses several ways to evaluate and design storm drainage systems. The department will clarify that other methods are acceptable by modifying the language in DEQ-8.

17.36.320 Sewage System: Design

COMMENT NO. 20: In Table 2, recirculating sand filters should be allowed for all types of systems without the need for a waiver.

RESPONSE: The department was concerned that recirculating sand filters would not be maintained if they were used for smaller public, multiple user, shared or individual systems. However, the department has made this change and will clarify the maintenance requirements when Circular DEQ-4 is rewritten.

COMMENT NO. 21: The department should not require a type of wastewater treatment system for a lot without justifying the need for additional treatment or other reason.

RESPONSE: The department will not require use of a particular wastewater treatment system without justification.

17.36.601 Waivers - Deviations

COMMENT NO. 22: Waivers should be required only for isolated and unique exceptions to the rules.

RESPONSE: The department agrees with this comment and has revised the rules with the intent of minimizing the use of waivers.

17.36.802 Fee Schedules

COMMENT NO. 23: A commentor was concerned about the fees for a waiver or deviation request and wanted a fee of $50 per hour. The commentor also believed some of the other fees could just be $50 per hour.

RESPONSE: The waiver and deviation process normally includes the review by a committee of three and involves at least two hours of time. Few deviation and waiver requests can be addressed in less than two hours, given the time required for three staff members to review the request and prepare their comments, and given other administration costs. Therefore, even if the fee were based on the $50 hourly rate, a fee of $100 would be the most common charge for a waiver or deviation request. If the review period is longer than two-hours, the department will charge the $50 per hour fee. The department tried to set the fees for the typical cost of review to eliminate billing for remaining fees after the review is completed. The department will review these costs and fees and periodically adjust them as necessary.

17.36.804 Disposition of Fees

COMMENT NO. 24: ARM 17.36.804(1)(f) should be eliminated and local governments should charge whatever fee they determined was necessary.

RESPONSE: The department is following the fee structure established by statute. Fees set at the state level and reimbursed to the local reviewers help maintain consistency throughout the state. The state can also assist the counties by being the collection agency so the counties with limited budgets do not need additional fee collection and accounting personnel.

NEW RULE I Public Water Supply and Wastewater Systems

COMMENT NO. 25: A commentor was concerned that public systems would now require two wells.

RESPONSE: These rules reference the public system requirements but do not make any changes to those requirements.

COMMENT NO. 26: In NEW RULE I(2)(a) and (b), is the department trying to govern water rights instead of the department of natural resources and conservation?

RESPONSE: The department is not governing water rights. The department requests information on water rights to determine the availability of water and the dependability of the supply. See Response to Comment No. 10.

COMMENT NO. 27: Water and sewer districts should be excluded from these requirements.

RESPONSE: The department will not approve connection to any system that is in violation of the regulations, regardless of whether the system is operated by a water and sewer district or other entity. Allowing new connections to a noncompliant system may violate water quality laws and could contribute to water pollution. If the connections are not authorized by the managing entity, the department will not approve connection.

COMMENT NO. 28: The department should add a provision to NEW RULE I(2)(b) requiring the managing entity of a public system to certify that they have the appropriate water rights or have made application for the appropriate water rights for their system.

RESPONSE: The department has added this language. See Response to Comment No. 10.

NEW RULE II Water Supply Systems - General and NEW RULE IV Non-public Water Supply Systems: Water Quantity and Dependability

COMMENT NO. 29: Multiple user systems should not have to comply with the requirements for a source water protection plan or the requirements for an operation, maintenance and financial plan.

RESPONSE: The department believes that multiple user systems should address source water protection and have operation, maintenance and financial plans. An applicant can ask for a deviation from requirements in Circular DEQ-3 for isolated and unique situations.

COMMENT NO. 30: Flows do not appear to be addressed in DEQ-1 or DEQ-3.

RESPONSE: Flows are addressed in DEQ-1 on page 2 and DEQ-3 on page 7.

NEW RULE V Non-public Water Supply Systems: Design and Construction

COMMENT NO. 31: The department should eliminate the requirement in NEW RULE V(1)(a)(ii) that multiple user systems in the same subdivision be tied together.

RESPONSE: The department believes two multiple user systems in the same subdivision should be tied together to provide greater reliability. This requirement provides greater protection of public health. If one well is contaminated or not functioning properly, the second well can be on-line while repairs or clean-up are undertaken. The department has provided the opportunity to request a waiver from this requirement, if linking the systems is infeasible or would cause environmental or public health concerns.

NEW RULE VIII Alternate Water Supply Systems

COMMENT NO. 32: The commentor wants to add the requirement in NEW RULE VIII(5)(a)(ii) that the owner of a cistern must certify that they have the appropriate water rights or have made application for the appropriate water rights for their system.

RESPONSE: Water rights are not needed for individuals to use cisterns. If a water right is necessary for the water supplier for the cistern, this could be addressed in the rules governing the public water supply.

COMMENT NO. 33: This section is in conflict with New Rule VIII(5)(a)(i).

RESPONSE: These two sections are not in conflict with each other. Water may either be hauled by a licensed hauler, or owners may haul their own water if it is supplied by a public water supply rather than another individual or multiple user system.

NEW RULE IX Lot Sizes: Exemptions

COMMENT NO. 34: The commentor was concerned that the limit of 700 gpd per acre would be interpreted to limit size of lots larger than one acre. For example, a commercial development with a wastewater flow of 25,000 gpd would be required to have a lot size of 35.7 acres.

RESPONSE: The department has revised the language of the rule to clarify that it only applies for flows up to 700 gpd and not to flows greater than 700 gpd or lots larger than one acre.

COMMENT NO. 35: The 700 gpd limit should be removed for non-residential lots.

RESPONSE: A wastewater flow limit is necessary for non-residential lots in order to ensure that there is sufficient treatment area for wastewater.

COMMENT NO. 36: A commentor requested clarification of the meaning of NEW RULE IX(1)(b)(i) and (ii).

RESPONSE: This section, (1)(b), of the rule applies to lot size reductions for lots created prior to July 1, 1973. Lots created after this date are addressed by (1)(c) and (d).

COMMENT NO. 37: NEW RULE IX(1)(c)(i) and (ii) should be clarified as to whether a waiver is required.

RESPONSE: The rule has been corrected to clarify that no waiver is required under subsections (1)(c) and (1)(d).

COMMENT NO. 38: A commentor requested clarification of the meaning of NEW RULE IX(1)(d).

RESPONSE: This subsection means that a lot size reduction can be allowed if the conditions of (1)(d)(i) or (1)(d)(ii) or (1)(d)(iii)(A) or (B) are met.

COMMENT NO. 39: Definitions for "wastewater facility service area" and "local wastewater utility" should be added for use in NEW RULE IX(1)(d)(iii).

RESPONSE: The terms relate primarily to the areas of public water and sewer systems, which are regulated under Title 75, chapter 6, MCA. The rule has been amended to clarify that a department approval under Title 75, chapter 6, MCA is required. A department approval under those laws will ensure that the terms are correctly implemented.

DEPARTMENT OF ENVIRONMENTAL QUALITY

By: *JAN P. SENSIBAUGH*
JAN P. SENSIBAUGH, Director

Reviewed by:

JAMES M. MADDEN
JAMES M. MADDEN, Rule Reviewer

Certified to the Secretary of State, May 6, 2002.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.56.105 and 17.56.221 pertaining to variances and issuance of compliance tags and certificates	)))))	NOTICE OF AMENDMENT (Underground Storage Tanks)

TO: All Concerned Persons

1. On January 17, 2002, the Department of Environmental Quality published a notice of public hearing on the proposed amendment of the above-stated rules at page 51, 2002 Montana Administrative Register, Issue No. 1. The hearing was held on February 7, 2002, in Helena, Montana.

2. The Department has amended the rules exactly as proposed.

3. The following comments were received, and appear with the Department's responses:

Comment No. 1: The variance rule should allow a variance from rules that require corrosion protection on all risers and all vent lines. Many fill risers have drop tubes, which provide double-wall protection, making corrosion protection requirements excessive.

Response: The basis of this comment appears to be a statement, illustrating an example for a variance, in the department's statement of reason for the proposed rule amendment. The statement at issue is: "For example, the rule would be used to allow a variance from regulations that require corrosion protection on vent risers and other non-fill related risers." The actual language of the rule is not so limited, but allows the department to issue a variance when noncompliance is discovered as a result of a compliance inspection, immediate compliance is impracticable, and the cost of immediate compliance is disproportionate to the benefit provided. Additionally, the department must make a written determination that delaying compliance, by issuing a variance, does not create a significant increased threat to the public health, welfare, safety and the environment. Thus, the department would determine whether or not a department-issued variance is justified on a case-by-case basis, considering such things as double-wall protection and whether or not the riser is fill-related.

Comment No. 2: A variance should be allowed only in areas where the state program is more stringent than the federal program. For example, the state program requires corrosion protection on vent lines, while the federal program does not.

Response: A department-issued variance would postpone compliance with the requirements and procedures of the Montana underground storage tank rules at Title 17, Chapter 56, Administrative Rules of Montana ("UST rules" or "rules") for certain areas of noncompliance discovered during compliance inspections. The department anticipates that the compliance inspection program will reveal certain areas of non-compliance that may be impracticable to correct by the compliance deadlines. The department-initiated variance provides a method for correcting such non-compliance in a practical, reasonable and timely manner. Under the proposed rule amendment, full compliance will be postponed, not waived, based upon written findings that delaying compliance does not create a significant increased threat to the public health, welfare, safety and the environment. The proposed rule amendment also allows the department to impose variance conditions that are designed to further reduce the risk to public health and the environment. Variances will not be allowed where the effect would be to make the state program less stringent than the federal program.

Comment No. 3: The 15-year time limit on the term of a variance issued under the proposed rule amendments at ARM 17.56.105(4) is unnecessary.

Response: The purpose of the proposed department-initiated variance is to postpone absolute compliance and not to waive any requirement of the UST rules. After consideration of all comments received, the department believes that the proposed maximum 15-year term is appropriate. Each variance will specify a specific time limit, which may be less than 15 years, depending on the circumstances. The written finding for each type of variance granted must include a justification of the proposed duration of the variance. In setting the timeframe for compliance, the department would typically consider such factors as: (1) the durability of the component or system in question that relates to the requirement under consideration; (2) the imminence of the threat to the environment that would occur should the component in question fail; (3) the relationship of the requirement to overarching federal requirements; and (4) the relationship to ongoing operations and maintenance activities that could logically be coordinated with compliance needs.

Comment No. 4: The rule amendments should not allow a variance from the December 22, 1998, upgrade deadline or the leak detection deadlines.

Response: As explained in the department's response to Comment No. 2, above, the intent of these rule amendments is to postpone full compliance for certain areas of noncompliance discovered during compliance inspections. The rule amendments are not intended to grant a variance from federally mandated compliance standards and compliance deadlines. In any event, the compliance issues related to the 1998 upgrades have already been acted on. The compliance questions that this

rule will deal with were identified as a result of the department’s inspection program and are not related to the 1998 upgrade deadline and leak detection deadlines. Thus, this issue should be moot.

Comment No. 5: The following language, at ARM 17.56.105(4), is too subjective: "The department, on its own initiative, may issue a variance from a specific requirement or procedure of this chapter when . . . the cost of immediate compliance is disproportionate to the benefit provided".

Response: Disproportionate cost to benefit of immediate compliance is one factor that the department will consider when it decides whether or not to issue a time-limited variance for a particular class of noncompliance. The department's intent is to allow an owner or operator additional time to bring their facility into full compliance when immediate compliance is impracticable and the cost of immediate compliance is high, as balanced against the benefit to public health, welfare, safety and the environment. In addition to balancing the cost of immediate compliance against the benefit provided, a department-initiated variance may postpone compliance only when the department makes a written determination that delaying compliance does not create a significant increased threat to the public health, welfare, safety and environment. A variance would not be granted if the department finds a significant increased threat to public health, welfare, safety and the environment. The department's findings would be a matter of public record.

Comment No. 6: The variance term of 15 years is too long.

Response: As stated in the response to Comment No. 3, above, the written finding for each type of variance granted must include a justification of the proposed duration of the variance. This time frame may be less than 15 years. In setting the timeframe for compliance, the department would typically consider such factors as: (1) the durability of the component or system in question that relates to the requirement under consideration; (2) the imminence of the threat to the environment that would occur should the component in question fail; (3) the relationship of the requirement to overarching federal requirements; and (4) the relationship to ongoing operations and maintenance activities that could logically be coordinated with compliance needs.

Comment No. 7: The department should not grant variances from the UST rules for any reason, and any owner or operator that does not pass their compliance inspection should not get fuel.

Response: The rule amendments, in most cases, will apply to classes of noncompliance discovered as a result of the department's compliance inspection program. The department-initiated variance will provide a practical way for the

department to require owners and operators to bring facilities with minor compliance issues into compliance over a reasonable period of time without resulting in immediate closure of numerous facilities and the consequent hardship to the public. The department does not intend to waive compliance with any UST rules, but only to postpone full compliance based upon the written findings required at ARM 17.56.105(4).

Comment No. 8: The one-time fill permit, at ARM 17.56.221(4), should not be issued more than five times to any owner or operator.

Response: The one-time fill permit at ARM 17.56.221(4) may be issued only one time for each new UST system to allow installation and testing to be completed in accordance with the requirements of ARM 17.56.201(4).

Comment No. 9: The department should clarify how it will document the written determinations made under ARM 17.56.105(4)(a) and whether this documentation will be provided to the facility owner.

Response: The department will document written determinations made under ARM 17.56.105(4)(a) by referring to the department-issued variance within the compliance plan required under ARM 17.56.308 and 17.56.309, by noting the variance and compliance plan in the facility file, and by posting each department-initiated variance on the department's website.

Comment No. 10: The issuance of any permit to a facility owner or operator should not trigger the end of a variance period.

Response: Any permit issued to a facility owner or operator would not necessarily end the variance period. The term of variance would end, for example, when a permit for other work at a facility under variance is issued and the cost to complete the permitted work could be shared with the cost of the work to bring the facility into compliance; where the equipment or method for which the variance was requested is replaced or upgraded; or where access to the equipment subject to the variance is facilitated by removal of concrete for a permitted project.

Comment No. 11: The maximum variance term should be 25 rather than 15 years.

Response: See the responses to Comments No. 3 and 6. A 25-year variance would essentially approximate the life of a system, providing a de facto waiver from the standard. Such an effect is outside the intended scope of the rule.

Comment No. 12: The department should clarify what it meant by the following statement in the statement of reason: "It is anticipated that most department-initiated variances would be issued for a term of five years or less."

<u>Response:</u> The department believes that most facilities will upgrade or replace UST systems, subject to a department-initiated variance, within five years or less of issuance of the variance.

DEPARTMENT OF ENVIRONMENTAL QUALITY

By: *Jan P. Sensibaugh*
JAN P. SENSIBAUGH, Director

Reviewed by:

James Madden
JAMES MADDEN, Rule Reviewer

Certified to the Secretary of State, May 6, 2002.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 23.4.201, 23.4.212, 23.4.213, 23.4.214, 23.4.215, 23.4.216, 23.4.217, 23.4.218, 23.4.219, 23.4.220, and 23.4.225 pertaining to field certification of associated equipment	)	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On March 28, 2002, the Department of Justice published a notice of the proposed amendment of ARM 23.4.201, 23.4.212, 23.4.213, 23.4.214, 23.4.215, 23.4.216, 23.4.217, 23.4.218, 23.4.219, 23.4.220, and 23.4.225 pertaining to field certification of associated equipment at page 871 of the 2002 Montana Administrative Register, issue no. 6.

2. The Department of Justice has amended ARM 23.4.201, 23.4.212, 23.4.214, 23.4.215, 23.4.216, 23.4.217, 23.4.218, 23.4.219, 23.4.220, and 23.4.225 as proposed.

3. The Department of Justice has amended ARM 23.4.213 with the following changes, stricken matter interlined, new matter underlined:

23.4.213 FIELD CERTIFICATION OF BREATH ANALYSIS INSTRUMENTS AND ASSOCIATED EQUIPMENT (1) and (1)(a) same as proposed.

(b) A field certification is valid when the results of the approved standard are at ~~target value~~ plus or minus ~~210 liters~~ 10% of target value. The results of the field certification shall be reported to the third decimal (.000) and recorded on the field certification report form. If a test record card is used, it shall be affixed to the report which is to be kept at the testing location and a copy of the field certification report will be prepared for the division. All reports will be sent to the division on a monthly basis.

(c) through (2)(a) same as proposed.

(b) A field certification is valid when the results of the approved ~~ethyl alcohol~~ standard ~~test is~~ are at ~~target value~~ plus or minus ~~one hundreth gram per 210 liters~~ 10% of target value. The results of the field certification must be recorded and maintained in the administering agency's files.

(c) through (f) same as proposed.

AUTH: 61-8-405, MCA
IMP: 61-8-405, MCA

4. The following comments were received and appear with the Department of Justice's responses:

COMMENT 1: At the public hearing, Lee Meltzer testified in favor of the amendments noting that the amendments bring the division of forensic science's rules into compliance with Montana statute.

COMMENT 2: At the public hearing, Gale Albert, a representative of the Montana Law Enforcement Academy testified generally regarding the amendments. He noted that the language of ARM 23.4.213(1)(b) and 23.4.213(2)(b) should be consistent and use the same wording and that ARM 23.4.213(1)(b) and 23.4.213(2)(b) which govern the proper target value for field certification of breath analysis instruments and associated equipment should state that a test result is valid when the results of the approved standard are plus or minus 10% of target value. He argued that his proposed change would make the rule clearer.

RESPONSE: Albert's suggestions have merit and the rule has been modified to reflect that a test is valid when the approved standard is plus or minus 10% of target value.

By: /s/ Mike McGrath
MIKE McGRATH, Attorney General

/s/ Ali Sheppard
ALI SHEPPARD, Rule Reviewer

Certified to the Secretary of State May 6, 2002.

BEFORE THE MONTANA BOARD OF CRIME CONTROL
OF THE STATE OF MONTANA

In the matter of the adoption of a rule authorizing reimbursement to counties for detention of Indian youth	)	NOTICE OF ADOPTION

To: All Concerned Persons

1. On March 18, 2002, the Montana Board of Crime Control published notice of the proposed adoption of new Rule I authorizing reimbursement to counties for detention of Indian youth at page 305 of the 2002 Montana Administrative Register, Issue Number 3.

2. No public hearing was requested and no comments were received.

3. The Department has adopted new Rule I (23.14.608) as proposed.

MONTANA DEPARTMENT OF JUSTICE

By: /s/ JIM OPPEDAHL
JIM OPPEDAHL, Director
Montana Board of Crime Control

/s/ ALI SHEPPARD
ALI SHEPPARD, Rule Reviewer

Certified to the Secretary of State May 6, 2002.

BEFORE THE BOARD OF CLINICAL LABORATORY SCIENCE PRACTITIONERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the transfer of ARM 8.13.101 through 8.13.401 pertaining to the board of clinical laboratory science practitioners)	NOTICE OF TRANSFER

TO: All Concerned Persons

1. Pursuant to Chapter 483, Laws of Montana 2001, effective July 1, 2001, the Board of Clinical Laboratory Science Practitioners is transferred from the Department of Commerce to the Department of Labor and Industry ARM Title 24, Chapter 129.

2. The Department of Labor and Industry has determined that the transferred rules will be numbered as follows:

OLD	NEW	
8.13.101	24.129.101	Board Organization
8.13.201	24.129.201	Procedural Rules
8.13.202	24.129.202	Public Participation Rules
8.13.301	24.129.601	Applications for License
8.13.303	24.129.401	Fees
8.13.304	24.129.602	Renewal
8.13.305	24.129.603	Minimum Standards for Licensure
8.13.306	24.129.2101	Continuing Education Requirements
8.13.307	24.129.610	Inactive Status
8.13.308	24.129.611	Reactivation of License
8.13.309	24.129.612	Temporary Practice Permits
8.13.401	24.129.2301	Unprofessional Conduct

3. The transfer of rules is necessary because this board was transferred from the Department of Commerce to the Department of Labor and Industry by the 2001 legislature by Chapter 483, Laws of Montana 2001.

BOARD OF CLINICAL LABORATORY
SCIENCE PRACTITIONERS
Karen McNutt, Chairman

By: /s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

By: /s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

Certified to the Secretary of State, May 6, 2002.

BEFORE THE BOARD OF CLINICAL LABORATORY SCIENCE PRACTITIONERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 8.13.301, 8.13.303, 8.13.305, 8.13.306, 8.13.307 and 8.13.308 pertaining to application, fees, minimum standards for licensure, continuing education, inactive status, and reactivation of license and the adoption of new rule I, notification of denial or disciplinary action and new rule II, supervision	) NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On March 14, 2002, the Board of Clinical Laboratory Science Practitioners published a notice of proposed amendment and adoption of the above-stated rules at page 636, 2002 Montana Administrative Register, issue number 5. The hearing was held on April 4, 2002.

2. The Board has amended ARM 8.13.301, 8.13.303, 8.13.305, 8.13.306, 8.13.307 and 8.13.308 exactly as proposed.

3. The Board has adopted NEW RULE I (24.129.2302) exactly as proposed.

4. The Board has adopted NEW RULE II (24.129.402) as proposed, but with the following changes (stricken matter interlined, new matter underlined, changed matter in ALL CAPS):

NEW RULE II SUPERVISION (1) remains as proposed.
(a) remains as proposed.
(b) the training and capability of the technician to whom the laboratory test is delegated; ~~and~~
(c) the demonstrated competence of the technician in the procedure being performed~~.~~; AND
(d) THE SUPERVISOR SHALL MAKE WRITTEN DOCUMENTATION AFTER AN EVALUATION HAS OCCURRED AND A COPY OF THE EVALUATION SHALL BE MADE AVAILABLE TO THE TECHNICIAN AND THE BOARD'S REPRESENTATIVE UPON REQUEST.
(2) remains as proposed.

AUTH: 37-34-201, MCA
IMP: 37-34-201, MCA

5. The Board received one written comment. The comment received and the Board's response are as follows:

COMMENT 1: The commentor stated that there should be required documentation for the training and competency of the technician.

RESPONSE: The Board has reviewed the comment received and agrees with the commentor. A statement was added to NEW RULE II for the requirement of the documentation and competency of the technician.

BOARD OF CLINICAL LABORATORY
SCIENCE PRACTITIONERS
KAREN McNUTT, CHAIRMAN

By: /s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

By: /s/ KEVIN BRAUN
Kevin Braun, Rule Reviewer

Certified to the Secretary of State, May 6, 2002.

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

In the matter of the amendment of ARM 8.16.402, 8.16.412, 8.16.605, 8.16.605A and 8.16.611, pertaining to licensure of dentists and dental hygienists, and the repeal of ARM 8.16.402A and 8.16.605B pertaining to application requirements for dentists and dental hygienists	)	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On February 28, 2002, the Board of Dentistry published a notice of proposed amendment and repeal of the above-stated rules at page 439, 2002 Montana Administrative Register, Issue Number 4.

2. A public hearing was held in Helena on March 22, 2002.

3. There were 20 written comments received from three different individuals and agencies. One commentor testified at the public hearing and also submitted written comments.

4. The Board has amended ARM 8.16.402, 8.16.412, 8.16.605, 8.16.605A and 8.16.611 with the following changes, stricken matter interlined, new material underlined and added material in ALL CAPS.

8.16.402 ~~DENTISTS EXAMINATIONS~~ INITIAL LICENSURE OF DENTISTS BY EXAMINATION (1) remains as proposed.

(a) an original score card from the JOINT COMMISSION ON national ~~board of~~ dental ~~examiners~~ EXAMINATIONS showing the applicant's score AND PASSAGE OF ~~on~~ the written examination administered by the JOINT COMMISSION ON national ~~board of~~ dental ~~examiners~~ EXAMINATIONS;

(b) and (c) remain as proposed.

(d) verification of graduation from a dental school accredited by the ~~commission on dental accreditation for the~~ American dental association COMMISSION ON DENTAL ACCREDIATION, or its successor. Verification must consist of an original dental school transcript AND A DIPLOMA or a letter from the dean of the school of dentistry, PROGRAM DIRECTOR, OR THE DEAN'S EQUIVALENT attesting to the program of study and that graduation status was attained;

(e) through (k) remain as proposed.

(2) through (4) remain as proposed.

AUTH: 37-1-131, 37-4-205, 37-4-301, MCA
IMP: 37-4-301, MCA

8.16.412 DENTIST LICENSURE BY CREDENTIALS (1) and (1)(a) remain as proposed.

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

(ii) has successfully passed ~~completed both part I and part II of~~ the national board DENTAL examination and submits ~~a~~ AN ORIGINAL JOINT COMMISSION ON national ~~board~~ DENTAL ~~certificate and~~ EXAMINATIONS score card;

(iii) has successfully completed a clinical practical examination for licensure ~~comparable to the examination recognized by the Montana board of dentistry. The examination must have included the entry level clinical skills including:~~ administered by the WESTERN REGIONAL EXAMINING BOARD (WREB) or ONE which is substantially equivalent to the current WREB examination, or administered on or after January 1, 2000, by the CENTRAL REGIONAL DENTAL TESTING SERVICE (CRDTS), or a combination of examinations which are substantially equivalent to the current WREB examination approved by the Montana board of dentistry. Applicants using any examination(s) other than WREB or CRDTS, as defined above, will be reviewed on a case by case basis;

(A) through (E) remain as proposed.

(iv) and (v) remain the same.

(A) remains the same.

(B) through (H) remain as proposed;

(vi) through (viii) remains as proposed.

(d) through (f) remain as proposed.

(2) remains as proposed.

AUTH: 37-1-131, 37-4-205, MCA
IMP: 37-1-304, MCA

8.16.605 ~~DENTAL HYGIENIST EXAMINATION~~ INITIAL LICENSURE OF DENTAL ~~HYGIENTS~~ HYGIENISTS BY EXAMINATION (1) remains as proposed.

(a) an original score card from the JOINT COMMISSION ON national ~~board of~~ dental ~~examiners~~ EXAMINATIONS showing the applicant's score on AND PASSAGE OF the written DENTAL HYGIENE examination administered by the JOINT COMMISSION ON national ~~board of~~ dental ~~examiners~~ EXAMINATIONS;

(b) certification of successful passage of a board approved clinical practical examination. The board accepts, in satisfaction of the practical part, successful completion of an examination administered by the WESTERN REGIONAL EXAMINING BOARD (WREB) or BY THE CENTRAL REGIONAL DENTAL TESTING SERVICE (CRDTS) TAKEN ~~administered~~ on or after January 1, 2000~~, by the CRDTS~~. Both examinations shall be valid for the purpose of initial licensure for a period of five years from the date of successful passage of the examination;

(c) remains as proposed.

(d) verification of graduation from a dental hygiene school accredited by ~~the commission on dental hygiene accreditation for~~ the American dental ~~hygiene~~ association COMMISSION ON DENTAL ACCREDIATION, or its successor.

Verification must consist of an original dental hygiene school transcript AND A DIPLOMA or a letter from the dean of the school of dental hygiene, PROGRAM DIRECTOR, OR DEAN'S EQUIVALENT attesting to the program of study and that graduation status was attained;

(e) through (j) remain as proposed.

(2) The board accepts, in satisfaction of the practical part, successful completion of an examination administered by the western regional examining board. The examination results of the western regional examination board shall be valid for a period of five years from the date of successful completion of the examination. applicant may SHALL not be physically or mentally impaired by use of addictive drugs, alcohol or any other drugs or substances, or by mental or physical illness, which in the determination of the board renders the individual unfit or incapable of practicing dental hygiene.

(3) A jurisprudence examination shall MUST be taken once the application for licensure has been approved. The grading may be done by a board member or department staff. A final grade of at least 75% is required for passing the examination. Applicants must SHALL successfully pass the jurisprudence examination with a final grade of at least 75% prior to issuance of a license.

(4) Application material remains valid for six months from the time it is received in the office. If the jurisprudence examination has not been successfully passed before the end of six months, the application will be considered incomplete and a new application and fees will have to MUST be submitted.

AUTH: 37-1-131, 37-4-205, 37-4-402, MCA
IMP: 37-4-401, 37-4-402, 37-4-403, MCA

8.16.605A DENTAL HYGIENIST LICENSURE BY CREDENTIALS

(1) remains as proposed.

(a) a copy of the certificate of graduation from an A accredited dental hygiene school accredited by the AMERICAN commission on dental hygiene ASSOCIATION COMMISSION ON DENTAL accreditation for the American dental association, or its successor;

(b) ON ORIGINAL SCORE CARD FROM THE JOINT COMMISSION ON evidence of successful completion passage of the national board of dental hygiene examination. EXAMINATIONS SHOWING The THE applicant APPLICANT'S for licensure by credentials must submit his/her official score card SCORE ON AND PASSAGE OF THE WRITTEN DENTAL HYGIENE EXAMINATION ADMINISTERED BY THE JOINT COMMISSION ON NATIONAL DENTAL EXAMINATIONS;

(c) evidence of successful completion passage of a clinical examination;

(d) the applicant evidence of current licensure is currently licensed in another state or territory of the United States; and submits license verification from the licensing board(s) of the state(s) under whose jurisdiction the applicant is licensed, OR HAS BEEN LICENSED;

(e) through (i) remain as proposed.

(2) The applicant ~~may~~ SHALL not be physically or mentally impaired by use of addictive drugs, alcohol or any other drugs or substances, or by mental or physical illness, which in the determination of the board renders the individual unfit or incapable of practicing dental hygiene.

(3) The jurisprudence examination must be successfully passed once the application for licensure has been approved. Applicants ~~must~~ SHALL successfully pass the jurisprudence examination with a final grade of at least 75% prior to issuance of a license.

~~(2)~~ (4) Application material ~~is~~ remains valid for six months from the time it is received in the office. If the jurisprudence examination has not been successfully passed ~~taken~~ at the end of six months the application will be considered incomplete and a new application and fees ~~will have to~~ MUST be submitted.

AUTH: 37-1-131, 37-4-205, 37-4-402, MCA
IMP: 37-1-304, MCA

8.16.611 DENTAL HYGIENE LOCAL ANESTHETIC AGENT ~~LICENSURE~~ CERTIFICATION (1) remains the same.

(2) ~~Application for a local anesthetic permit by examination shall be made by letter of request to the board, with proof of successful completion of a western regional examining board (WREB) local anesthetic certificate, a valid and current CPR card and the appropriate fee.~~ Application for a local anesthetic ~~permit~~ CERTIFICATE by examination ~~must~~ SHALL be made on an application form provided by the board and must include the following:

(a) through (d) remain as proposed.

(3) Application for a local anesthetic ~~permit~~ CERTIFICATE by credentialing shall be made on an application provided by the board and shall ~~including~~ INCLUDE the following: ~~The board shall provide for local anesthetic agent licensure by credentials of a dental hygienist who:~~

(a) ~~submits an application on a form provided by the board~~ verification of successful passage of the WESTERN REGIONAL EXAMINING BOARD (WREB) local anesthetic examination ~~at least~~ MORE THAN five years ago;

(b) through (e)(iii) remain as proposed.

(f) ~~submits~~ copies of any local anesthetic agent ~~license~~ AUTHORIZATION(S) held in other states; and

(g) remains as proposed.

(4) An applicant who wishes to reactivate a local anesthesia ~~permit~~ CERTIFICATION in conjunction with the reactivation or reinstatement of a dental hygiene license shall:

(a) through (f) remain as proposed.

AUTH: 37-1-131, 37-4-205, 37-4-402, MCA
IMP: 37-4-401, 37-4-402, MCA

5. The Board has repealed ARM 8.16.402A and 8.16.605B as proposed.

6. The Board has received comments from three different individuals and agencies. One commentor testified at the public hearing and also submitted written comments. The comments and the Board's responses are as follows:

COMMENT 1: One comment was received in full support of all the proposed changes to the rules. The commentor stated that these rules will hopefully help new qualified dentists to come into the state.

RESPONSE: The Board acknowledges the comment.

COMMENTS 2 AND 3: Two comments were received suggesting elimination of repetition in the title in ARM 8.16.402 which reads: EXAMINATIONS INITIAL LICENSE OF DENTISTS BY EXAMINATION. Suggest eliminate "examinations" so it reads INITIAL LICENSURE OF DENTISTS BY EXAMINATION.

RESPONSE: The Board considered this comment and agrees with suggested change of the title to read "INITIAL LICENSURE OF DENTISTS BY EXAMINATION."

COMMENT 4: A comment was received for ARM 8.16.402(1)(a), (b), (d), (e) and (g) INITIAL LICENSURE OF DENTISTS BY EXAMINATION; ARM 8.16.412(1)(c)(ii) DENTIST LICENSURE BY CREDENTIALING; ARM 8.16.605(1)(a), (b), (d), and (e) INITIAL LICENSURE OF DENTAL HYGIENISTS BY EXAMINATION and ARM 8.16.605A(1)(a), (b), (c) and (d) DENTAL HYGIENIST LICENSURE BY CREDENTIALING. Suggestion was that the items required for licensure by the rules should be sent directly to the board office by the appropriate agency.

RESPONSE: The Board has considered this comment and based upon the fact the instruction sheet sent out with each application identifies which documents need to be received directly and other rules identify which documents need to be original materials from the source, the suggested change is unnecessary.

COMMENTS 5 AND 6: Two comments were received for ARM 8.16.412(1)(c)(iii) DENTIST LICENSURE BY CREDENTIALING suggesting the paragraph that reads, "applicants using any examination(s) other than WREB or CRDTS, as defined above, will be reviewed on a case by case basis" should be deleted. It was stated that this will open the process to anyone not using these two testing agencies to contest an application.

RESPONSE: The Board has considered these comments and for several years it has required non-WREB examined dentists to supply the Board with an independently prepared comparison of the applicants' examination components to the approved Board

exam. This system has worked well without a flood of requests. The Board intends to continue this requirement and believes it provides a competent comparison and does not increase the Board's workload. The Board declines to adopt the suggested change.

COMMENTS 7 AND 8: Two comments were received which addressed changes in ARM 8.16.605(1)(a) INITIAL LICENSURE OF DENTAL HYGIENIST BY EXAMINATION and ARM 8.16.605A(1)(a). The section that reads, "commission on dental hygiene accreditation for the American dental hygiene association": This language should identify the appropriate name as there is no commission on dental hygiene.

RESPONSE: The Board has considered these comments and agrees with the suggestion and recognizes the correct name for the entity is American Dental Association Commission on Dental Accreditation and will adopt this suggested change.

COMMENTS 9 AND 10: Two comments were received for the title of ARM 8.16.611 DENTAL HYGIENE LOCAL ANESTHETIC LICENSURE. The title does not appropriately identify the process that is allowed by board statute. The commentor suggested a title change to say something other than "licensure".

RESPONSE: The Board has considered these comments and determines that the correct wording for licensure should be "certification" and agrees to the suggested change.

COMMENT 11: One comment was received for changes in ARM 8.16.611(3)(a) DENTAL HYGIENE LOCAL ANESTHETIC AGENT LICENSURE, section that reads "verification of successful passage of the WREB local anesthetic examination at least five years ago:" should read "within the last five years."

RESPONSE: The Board has considered the comment and the need for clarification of the time limitation. The Board believes that use of the words "more than five years" will result in a clearer definition of the time requirement rather than the suggested change.

COMMENT 12: One comment was received to change ARM 8.16.611(3)(f) DENTAL HYGIENE LOCAL ANESTHETIC AGENT LICENSURE that reads "anesthetic agent license." This should identify not only permits, but licenses, certificates, etc. that are issued by other states for administration of local anesthetic agents.

RESPONSE: The Board considered the comment and agrees. Due to the varied titles given by other states for this "permit," it was determined that language should cover all of the different terms. The change will be: "anesthetic agent authorization".

COMMENT 13: One comment was received addressing changing language in ARM 8.16.402(1)(a) INITIAL LICENSURE OF DENTISTS BY EXAMINATION, ARM 8.16.605(1)(a) INITIAL LICENSURE OF DENTAL HYGIENISTS BY EXAMINATION and ARM 8.16.605A(1)(b) DENTAL HYGIENE LICENSURE BY CREDENTIALING for requiring the original national board score and should be changed to a "copy of."

RESPONSE: The Board considered the comment, but feels that requiring the original copy is important to guard against any changes to the document that can be made by the applicant. The Joint Commission, which administers the exams, has suggested that states require the original to avoid this issue. Score cards are sent directly to the board office by request of the applicant upon completion of the examination. If a candidate did not have one sent to Montana they can request this at the time of application. The Board rejected the suggested change.

COMMENT 14: One comment was received requesting adding verbiage that "a passing score" was attained on the national examination for each rule that addressed this issue. The concern was that an applicant could receive a score card and not pass the national examination. This affects ARM 8.16.402(1)(a) INITIAL LICENSURE OF DENTISTS BY EXAMINATION and ARM 8.16.605(1)(a) INITIAL LICENSURE OF DENTAL HYGIENTS BY EXAMINATION.

RESPONSE: The Board considered the comment and agrees with the suggestion and the language "showing the applicant's score on and passage of the written examination" on the above two rules. There is "passing" language in the following rules ARM 8.16.412(1)(c)(ii) DENTIST LICENSURE BY CREDENTIALING and ARM 8.16.605A(1)(b) DENTAL HYGIENE LICENSURE BY CREDENTIALING.

COMMENT 15: There was one comment received addressing verbiage that should identify the appropriate name of the examining agency in all sections - ARM 8.16.402(1)(a) INITIAL LICENSURE OF DENTISTS BY EXAMINATION, ARM 8.16.412(1)(c)(ii) DENTIST LICENSURE BY CREDENTIALING, ARM 8.16.605(1)(a) INITIAL LICENSURE OF DENTAL HYGIENISTS BY EXAMINATION and ARM 8.16.605A(1)(b) DENTAL HYGIENE LICENSURE BY CREDENTIALING.

RESPONSE: The Board considered the comment and based upon research agrees that the appropriate name is the "Joint Commission on National Dental Examinations."

COMMENT 16: One comment was received suggesting that ARM 8.16.402(1)(b) INITIAL LICENSURE OF DENTISTS BY EXAMINATION and ARM 8.16.605(1)(b) INITIAL LICENSURE OF DENTAL HYGIENISTS BY EXAMINATION are worded differently and should be changed to be consistent.

RESPONSE: The Board considered the comment and agrees that

ARM 8.16.605(1)(b) should be changed "administered by the WREB or administered on or after January 1, 2000, by the CRDTS." Both examinations shall be valid for the purpose of initial licensure for a period of five years from the date of successful passage of the examination, to be changed to "administered by the western regional examining board (WREB) or by the central regional dental testing service (CRTDS) taken on or after January 1, 2000. Both examinations shall be valid for the purpose of initial licensure for a period of five years from the date of successful passage of the examination." The language will then be consistent with ARM 8.16.402(1)(b) with additional language added to ARM 8.16.402(1)(b) "taken on or after".

COMMENT 17: One comment was received contending the language in the proposed rules ARM 8.16.402(1)(d) INITIAL LICENSURE OF DENTISTS BY EXAMINATION and ARM 8.16.605(1)(d) INITIAL LICENSURE OF DENTAL HYGIENISTS BY EXAMINATION, that reads "dean" of the school is questionable as dental hygiene schools may not have deans.

RESPONSE: The Board considered the comment and notes that the board originally added this section to the rule to allow new graduates, who may not be able to get a copy of their diploma for six weeks or more because of the time necessary for college administrators to produce the diploma, to have the "dean of the school of dentistry" provide a letter that the professional has attained graduation status. This is noted in each of the sections and identified as the "dean of the school of dentistry, or the dean of the school of dental hygiene." The Board upon further consideration agrees that this language should be changed to include "program directors or the dean's equivalent" to issue the letter.

COMMENT 18: One comment was received regarding language in proposed rules ARM 8.16.402(2) INITIAL LICENSURE OF DENTISTS BY EXAMINATION, ARM 8.16.412(1)(c)(viii) LICENSURE OF DENTISTS BY CREDENTIALING, ARM 8.16.605(2) INITIAL LICENSURE OF DENTAL HYGIENISTS BY EXAMINATION and ARM 8.16.605A(2) LICENSURE OF DENTAL HYGIENISTS BY CREDENTIALING, that "the applicant shall not be physically or mentally impaired by use of addictive drugs, alcohol or any other drug or substance or by mental or physical illness which in the determination of the board renders the individual unfit or incapable of practicing dentistry (dental hygiene)." It was suggested that this language should be taken out of these sections and put in the discipline part of the rules.

RESPONSE: The Board considered the comment and finds the language is necessary to ensure the Board's ability to address physical or mental barriers to the applicant's ability to practice at the time of application. The Board therefore, declines to adopt the requested change.

COMMENT 19: One comment addressed the inconsistent language in ARM 8.16.402(4) INITIAL LICENSURE OF DENTISTS BY EXAMINATION and ARM 8.16.605A(4) DENTAL HYGIENE LICENSURE BY CREDENTIALING and suggested using "successfully passed within six months" as stated in ARM 8.16.402(4) INITIAL LICENSURE OF DENTISTS BY EXAMINATION. This language should be used in ARM 8.16.605A(4) DENTAL HYGIENE LICENSURE BY CREDENTIALS to be consistent.

RESPONSE: The Board considered the comment and agrees with the suggested changes.

COMMENT 20: One comment was received noting in ARM 8.16.605 INITIAL LICENSURE OF DENTAL HYGIENTS BY EXAMINATION the word HYGIENISTS is misspelled.

RESPONSE: The Board considered the comment and agrees with suggested change.

COMMENT 21: Board identified a number of technical language changes to make the wording consistency throughout the rules.

RESPONSE: The Board has made the changes shown below.

8.16.402 INITIAL LICENSURE OF DENTISTS BY EXAMINATION (1)(a) add "dental" to the written dental examination, for clarification of examination. "Verification must consist of an original dental school transcript or a letter" should read "Verification must consist of an original dental school transcript and a diploma or a letter." This is to show the applicant needs both a transcript and a diploma or letter. (3) "shall" should be changed to "must," for consistency.

8.16.412 DENTIST LICENSURE BY CREDENTIALS (1)(c)(ii) submits a national should read "submits an original," grammatical change. (1)(c)(ii) administered by the WREB or which, should read "administered by the WREB or one which," grammatical change. (1)(c)(iii) add "dental" to the written dental examination, for clarification of examination.

8.16.605 INITIAL LICENSURE OF DENTAL HYGIENITS BY EXAMINATION (1) add "dental hygiene" to the written dental hygiene examination, for clarification of examination. (1)(d) "Verification must consist of an original dental hygiene school transcript or a letter" should read "verification must consist of an original dental school transcript and a diploma or a letter." To show the applicant needs both a transcript and a diploma or letter. (2) applicant "may" will be changed to "must." (4) new application and fees "will have to" changed to "must." To be consistent with other language in other rules.

8.16.605A DENTAL HYGIENIST LICENSURE BY CREDENTIALS (1)(b) delete language in this section and use the language in ARM

8.16.605(1)(a) for consistency. This will include the new additions. (1)(d) at the end "or has been licensed." (2) applicant "may" will be changed to "must." (4) new application and fees "will have to" changed to "must." To be consistent with other language in other rules.

8.16.611 DENTAL HYGIENE LOCAL ANESTHETIC AGENT LICENSURE in (2) where it says anesthetic permit change to "certification." (3) change anesthetic permit to "certification." (4) change anesthesia permit to "certification" to be consistent with changes made in title.

BOARD OF DENTISTRY
GEORGE OLSEN, D.D.S., CHAIRMAN

By:/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

By:/s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

Certified to the Secretary of State, May 6, 2002.

BEFORE THE BOARD OF LANDSCAPE ARCHITECTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the transfer of ARM 8.24.101 through 8.24.409 pertaining to the board of landscape architects	))))	NOTICE OF TRANSFER

TO: All Concerned Persons

1. Pursuant to Chapter 483, Laws of Montana 2001, effective July 1, 2001, the Board of Landscape Architects is transferred from the Department of Commerce to the Department of Labor and Industry ARM Title 24, Chapter 153.

2. The Department of Labor and Industry has determined that the transferred rules will be numbered as follows:

OLD	NEW	
8.24.101	24.153.101	Board Organization
8.24.201	24.153.201	Procedural Rules
8.24.202	24.153.202	Public Participation Rules
8.24.401	24.153.401	Quorum
8.24.409	24.153.403	Fee Schedule
8.24.404	24.153.402	Seals
8.24.403	24.153.501	Applications
8.24.405	24.153.502	Examinations
8.24.408	24.153.503	Replacement Licenses
8.24.406	24.153.2101	Renewals
8.24.414	24.153.2301	Unprofessional Conduct

3. The transfer of rules is necessary because this board was transferred from the Department of Commerce to the Department of Labor and Industry by the 2001 legislature by Chapter 483, Laws of Montana 2001.

BOARD OF LANDSCAPE ARCHITECHTS
Shelly Engler, Chairman

By: /s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

Certified to the Secretary of State, May 6, 2002.

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

In the matter of the transfer of ARM 8.60.101 through 8.60.415 pertaining to the Board of Sanitarians	))))	NOTICE OF TRANSFER

TO: All Concerned Persons

1. Pursuant to Chapter 483, Laws of Montana 2001, effective July 1, 2001, the Board of Sanitarians is transferred from the Department of Commerce to the Department of Labor and Industry ARM Title 24, Chapter 216.

2. The Department of Labor and Industry has determined that the transferred rules will be numbered as follows:

OLD	NEW	
8.60.101	24.216.101	Board Organization
8.60.201	24.216.201	Procedural Rules
8.60.202	24.216.202	Public Participation Rules
8.60.401	24.216.401	Board Meetings
8.60.403	24.216.403	Seal of the Board
8.60.413	24.216.402	Fee Schedule
8.60.407A	24.216.501	Applications
8.60.408	24.216.502	Minimum Standards for Licensure
8.60.410A	24.216.503	Examination
8.60.411A	24.216.2101	Renewal
8.60.414	24.216.2102	Continuing Education
8.60.415	24.216.2103	Sanitarian-in-Training
8.60.412	24.216.2301	Unprofessional Conduct

3. The transfer of rules is necessary because this board was transferred from the Department of Commerce to the Department of Labor and Industry by the 2001 legislature by Chapter 483, Laws of Montana 2001.

BOARD OF SANITARIANS
Denise Moldroski, Chairman

By: /s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

Certified to the Secretary of State, May 6, 2002.

BEFORE THE BOARD OF HORSE RACING
DEPARTMENT OF LIVESTOCK
STATE OF MONTANA

In the matter of the transfer and amendment, repeal, and transfer of ARM Title 8, Chapter 22, pertaining to horse racing	))))	NOTICE OF TRANSFER AND AMENDMENT, REPEAL, AND TRANSFER

TO: All Concerned Persons

1. On March 14, 2002, the board of livestock published notice of the proposed transfer and amendment, repeal, and transfer of ARM Title 8, Chapter 22, pertaining to horse racing, at page 642 of the 2002 Montana Administrative Register, Issue Number 5.

2. The Board has transferred and amended the following rules as proposed:

8.22.301 (32.28.301)	8.22.302 (32.28.302)
8.22.324 (32.28.207)	8.22.325 (32.28.208)
8.22.401 (32.28.401)	8.22.501 (32.28.202)
8.22.503 (32.28.502)	8.22.601 (32.28.601)
8.22.602 (32.28.602)	8.22.604 (32.28.604)
8.22.605 (32.28.605)	8.22.607 (32.28.606)
8.22.608 (32.28.607)	8.22.609 (32.28.608)
8.22.610 (32.28.609)	8.22.611 (32.28.610)
8.22.612 (32.28.611)	8.22.701 (32.28.701)
8.22.702 (32.28.702)	8.22.703 (32.28.703)
8.22.705 (32.28.705)	8.22.706 (32.28.706)
8.22.707 (32.28.707)	8.22.709 (32.28.709)
8.22.710 (32.28.710)	8.22.711 (32.28.711)
8.22.712 (32.28.712)	8.22.713 (32.28.713)
8.22.714 (32.28.714)	8.22.803 (32.28.803)
8.22.804 (32.28.804)	8.22.805 (32.28.805)
8.22.807 (32.28.807)	8.22.808 (32.28.808)
8.22.809 (32.28.809)	8.22.1102 (32.28.1102)
8.22.1103 (32.28.1103)	8.22.1402 (32.28.1402)
8.22.1501 (32.28.1501)	8.22.1502 (32.28.1502)
8.22.1601 (32.28.1601)	8.22.1602 (32.28.1602)
8.22.1603 (32.28.1603)	8.22.1604 (32.28.1604)
8.22.1605 (32.28.1605)	8.22.1606 (32.28.1606)
8.22.1608 (32.28.1608)	8.22.1609 (32.28.1609)
8.22.1610 (32.28.1610)	8.22.1617 (32.28.1617)

3. The Board has transferred the following rules as proposed:

8.22.101 (32.28.101)	8.22.201 (32.28.201)
8.22.303 (32.28.203)	8.22.304 (32.28.204)
8.22.307 (32.28.205)	8.22.310 (32.28.206)
8.22.603 (32.28.603)	8.22.613 (32.28.612)
8.22.704 (32.28.704)	8.22.708 (32.28.708)

8.22.802 (32.28.802)	8.22.806 (32.28.806)
8.22.1101 (32.28.1101)	8.22.1104 (32.28.1104)
8.22.1607 (32.28.1607)	8.22.1611 (32.28.1611)
8.22.1612 (32.28.1612)	8.22.1613 (32.28.1613)
8.22.1614 (32.28.1614)	8.22.1615 (32.28.1615)
8.22.1616 (32.28.1616)	8.22.1618 (32.28.1618)
8.22.1619 (32.28.1619)	8.22.1620 (32.28.1620)
8.22.1621 (32.28.1621)	8.22.1622 (32.28.1622)
8.22.1801 (32.28.1801)	8.22.1802 (32.28.1802)
8.22.1803 (32.28.1803)	8.22.1804 (32.28.1804)
8.22.1805 (32.28.1805)	8.22.1806 (32.28.1806)
8.22.1807 (32.28.1807)	8.22.1808 (32.28.1808)
8.22.1809 (32.28.1809)	

4. The Board has repealed ARM 8.22.202, 8.22.321, and 8.22.606 as proposed.

5. The Board has transferred and amended ARM 8.22.502 (32.28.501), 8.22.801 (32.28.801), 8.22.1401 (32.28.1401), and 8.22.1503 (32.28.1503) with the following changes. Matter to be added is underlined. Matter to be deleted is interlined.

8.22.502 (32.28.501) LICENSES ISSUED FOR CONDUCTING PARIMUTUEL WAGERING ON HORSE RACING MEETINGS (1) through (46) same as proposed.

(47) All stakes payments, nomination fees and entrance fees shall be placed in an account separate from any other account containing operating capital used by a licensed track. No stakes payments, nomination fees or entrance fees may be used for operating expenses, except for a percentage of the account authorized by the Montana board of horse racing, and interest generated on the account. The board or its representative shall audit the stakes accounts on a monthly basis. The account balance shall be reported as part of the bookkeeping records.

8.22.801 (32.28.801) GENERAL REQUIREMENTS (1) through (11) same as proposed.

(12) Entries and declarations shall be made in writing and assigned by the assistant trainer, trainer or owner of the horse. Each race meeting shall provide blank forms on which entries and declarations are to be made.

(13) through (65)(a) same as proposed.

8.22.1401 (32.28.1401) GENERAL RULES (1) and (2) same as proposed.

(3) The stewards of the meeting may require at any time that any horse be sent to the testing enclosure for the taking of such specimens of saliva, urine and/or blood as shall be directed, as well as for an examination for "sponging" and other examinations as may be directed.

(4) through (19) same as proposed.

8.22.1503 (32.28.1503) ALCOHOL AND DRUG TESTING
(1) through (16) same as proposed.
(17) All random testing shall be at the expense of the board of horse racing and the racing association on a 50-50 basis. All scheduled testing, done under board order or other court or drug counselor order shall be at the expense of the person being tested.
(18) through (18)(d) same as proposed.

6. The Board received written comments from one person and one person testified at the hearing. The comments received and the board's responses are as follows:

32.28.302 BOARD OF STEWARDS

COMMENT NO. 1

One comment was received stating ARM 8.22.302(6) should not be deleted. The comment stated that the proposed amendment circumvents the meaning and intention of the whole rule. The comment stated the Board is supposed to assure the method by which the stewards' decisions are reached in a race. The comment stated the Board is not qualified to examine the correctness of the stewards' decisions, but instead should only rule on the methods used by the stewards to arrive at the decision, to ensure the methods were fair, correct, and done to the best of the stewards' ability. The comment further stated that if the Board were to make disqualification decisions on its own, there would be no need for a Board of Stewards to exist.

RESPONSE

The Board noted that the Montana Supreme Court had addressed this rule in the case Smith v. Board of Horse Racing, 1998 MT 91, 956 P.2d 752 (1998). There, the Court reviewed ARM 8.22.302(6) and stated that the rule's requirement that the Board defer to the stewards on questions of fact is unconstitutional when the stewards do not afford both sides an opportunity to be heard. The Court stated the Board should conduct a de novo review and make its own findings of fact. Therefore, the Board has proposed this section of the rule for deletion as per the Court's Order, so that the Board can conduct de novo reviews of appeals from the stewards' decisions.

32.28.501(47) LICENSES ISSUED FOR CONDUCTING PARIMUTUEL WAGERING ON HORSE RACING MEETINGS

COMMENT NO. 2

One comment was received stating (50) [new (47)] should not use the proposed language stating "...the board shall audit the stakes accounts." The comment stated it would be

difficult for the entire Board to audit the accounts at the track. The comment suggested the language should be clarified to state "the board <u>or its representative</u> shall audit the stakes accounts." The comment stated a representative of the Board would be entirely capable of auditing the stakes accounts.

<u>RESPONSE</u>

The Board agreed with the comment, and will amend the rule as shown to add the words "or its representative" to those persons who shall audit the stakes accounts.

<u>32.28.608 STARTER</u>

<u>COMMENT NO. 3</u>

One comment was received stating ARM 8.22.609(1) should not state that the starter will scratch a horse that will not load in the starting gate. The comment stated there is no such thing as a "starter's scratch." The comment stated the starter may call the stewards and inform them that a horse will not load, but the decision to scratch a horse should remain with the stewards and the veterinarian at the gate.

<u>RESPONSE</u>

The Board noted that communication is not always possible between the starter and the stewards due to faulty telephone equipment, etc. Therefore, past practice has always been to allow the starter to declare a scratch, and notify the stewards when it becomes possible. The starter should have the ability to scratch a horse with post-approval from the stewards. The Board further noted that the stewards are usually well aware of a starting gate failure to load situation, as they are watching the horses load, and could always override the starter's scratch decision if necessary. The Board will therefore retain the proposed language as the stewards will usually abide by a starter's decision to scratch, and can grant post approval if needed.

<u>32.28.801 GENERAL REQUIREMENTS</u>

<u>COMMENT NO. 4</u>

One comment was received stating ARM 8.22.801(14) [new (12)] should include the language "assistant" trainer, along with owner and trainer.

<u>RESPONSE</u>

The Board agrees with the comment and will amend the rule as shown above to add the phrase "assistant trainer." The Board noted that it is often the assistant trainer who has

permission from the trainer to make entries.

COMMENT NO. 5

One comment was received stating ARM 8.22.801(34) should not delete the language stating entries shall not be accepted from a husband or wife while the other is disqualified. The comment stated the Board must enforce a prohibition against an entry because the spouse may be disqualified. The comment stated that ARM 8.22.803(8) has retained language stating that spouses will be considered one entity for entry purposes. Therefore, the Board should retain the prohibition against accepting an entry if either spouse is disqualified. The comment stated the Board cannot have it both ways.

RESPONSE

The Board disagreed with the comment and noted that since ARM 8.22.803(8) already contains language stating that husband and wife will be considered as one entity for entry purposes, it is not necessary to retain the language in ARM 8.22.801(34) on husband or wife disqualifications. The Board noted that under current and proposed rule language, the racing secretary will not accept multiple entries from a husband and wife in order to preclude a husband and wife from putting too many of their own horses in a single race, to the disadvantage of other entrants. This prohibition will also prevent a husband or wife whose spouse is disqualified from attempting to enter the horses under the spouse's name to get around the disqualification. Therefore, the language in ARM 8.22.803(8) is sufficient, without the unnecessary and unenforceable language of ARM 8.22.801(34) attempting to make one spouse guilty by association of the other spouse's misconduct.

COMMENT NO. 6

One comment was received stating ARM 8.22.801(63)(a) and (b) regarding entry dates states that horses will not be eligible to receive entry dates until their registration papers are on file with the racing office. The comment stated that most tracks usually receive entries for races BEFORE the registration papers are filed. The comment stated that it will not be clear to tracks what to do if papers are faxed to the race office, as to whether this is acceptable for assigning an entry date. The comment also stated it will not be clear to tracks whether a person phoning in an entry, without registration papers on file, should still be assigned an entry date corresponding to when the telephone entry was received. The comment suggested the entry date should continue to coincide with actual entries (via telephone, fax, or in person), regardless of whether the registration papers are on file as the existing (deleted) language states.

RESPONSE

The Board disagreed with the comment and noted that current rule language already exists regarding the need for the horse's registration papers to be in the race office prior to receiving an entry date. The stewards have allowed faxed or photo copies in the past for flexibility, and would continue to do so. In actuality, most tracks ask for the registration papers in order to get the information for their entries on file in their computers. The Board noted the proposed rule change is intended to create a fairer system for trainers and owners who do not race their horses the first day or second day of a short meet, and then have no way of getting an early entry date. Those trainers are then unable to run their horses for a longer time, due to all the other horses that were able to enter or run early in the meet, and thus obtaining an earlier entry date.

32.28.803 DECLARATIONS AND SCRATCHES

COMMENT NO. 7

[The comment was designated as pertaining to ARM 8.22.609(7), but since there is no change proposed to ARM 8.22.609(7) regarding starters, the comment appears to be actually referring to ARM 8.22.803(7) on declarations and scratches]. One comment was received stating ARM 8.22.803(7) pertaining to how a quarter horse takes the post position of scratched horse should not delete the subsection, and should include the words "straightaway only." The comment stated that many quarter horses participate in mixed breed races, and will therefore take the outside post, as other breeds are required to do in races around the turn.

RESPONSE

The Board noted that the language proposed for deletion was moved to ARM 8.22.801(61) which states "In quarter horse and mixed races utilizing the straightaway, a horse or horses shall assume the post position of positions of the horse or horses excused." Therefore, it is not necessary to retain the language in ARM 8.22.803(7).

32.28.808 OBJECTIONS - PROTESTS

COMMENT NO. 8

One comment was received stating ARM 8.22.808(8) should not include the phrase "against a steward's decision." The comment stated the existing language does not need to be changed, as a protest is neither an objection nor an inquiry, and is already clearly defined as being "against a stewards' decision."

RESPONSE

The Board did not agree with the comment and noted that a "protest against a stewards' decision" is to the Board. After this step has been initiated, the only way to drop that "protest" is with permission of the Board. Once the matter leaves the steward's level, it is with the Board. The proposed language would therefore differentiate between the board of stewards' decisions and the Board of Horse Racing's decisions.

32.28.1401 GENERAL RULES

COMMENT NO. 9

One comment was received stating ARM 8.22.1401(3) should not delete the phrase "for an examination for 'sponging.'" The comment stated this should be left in the rule, as the rule will include the examination for sponging if the stewards deem it necessary or proper. The comment stated that sponging has occurred in the U.S. in recent years, and this should be left in the rule in the event it may occur in Montana.

RESPONSE

The Board agreed with the comment and will amend the rule as shown above to retain the phrase "for an examination for 'sponging.'" Retention of this phrase will ensure that the procedure is covered in the rule if it should become a problem.

COMMENT NO. 10

One comment was received stating ARM 8.22.1401(6) should define the word "representative" to specifically include State Security.

RESPONSE

The Board disagreed with the comment and noted that the inclusion of the word "representative" of the Board or of the stewards already includes the State Security person. The Board found the suggested change unnecessary.

32.28.1402 PERMISSIBLE MEDICATION

COMMENT NO. 11

One comment was received stating ARM 8.22.1402(8) should not add the sentence "Lasix approval will expire each year on December 31." The comment questioned whether this meant that the horse would no longer bleed after the first of the year. The comment questioned whether the horse would then have to bleed again to be approved for the lasix list. The comment

also questioned whether all horses approved in the previous year would then be approved for the coming year. The comment stated that this expiration of approval is just another way for the Board to generate a new fee for the coming year. The comment also questioned why a horse that is able to race in another jurisdiction without lasix, would then be placed back on the lasix list upon its return to Montana.

RESPONSE

The Board noted that the expiration of the lasix list and the need to re-list in the next race season will not create a source of revenue for the Board, as the medication list fee has been discontinued via these proposed rule changes. The Board further noted that the lasix list must expire each year for housekeeping reasons alone. If the licensees are not required to re-list each race season, the horses could remain on the list for years, even after many of the horses may be out of racing entirely. Failure to allow expiration of the list creates a lengthy, out-dated list. The expiration of the list does not mean the horses won't bleed the following season, but the methods for obtaining inclusion on the list are clearly outlined in the rules. The Board did not find a change to the proposed rule language necessary.

COMMENT NO. 12

One comment was received stating it was not clear whether the proposed changes to ARM 8.22.1402 (9) would include out-of-state certification as a method of obtaining approval for the use of lasix, as the rule text in (9) states horses which were certified to have bled (presumably in another state) will automatically be put on the bleeders list. In addition, (7) also states that one way to obtain authorization for the use of lasix is to provide evidence the horse was certified as a bleeder by another state.

RESPONSE

The Board noted the actual proposed rule language is sufficient, and clearly outlines the methods for inclusion on the lasix list, including evidence the horse was certified as a bleeder in another state. Therefore, no change to the proposed rule language is necessary.

COMMENT NO. 13

One comment was received stating it was not clear whether the proposed changes to ARM 8.22.1402 (13) [new (14)] would make the sanctions for a second violation of the permissible medication rule "permissive." The comment stated the rule already uses the word "may," which is permissive, so if the word is being changed to "shall," the Board has actually

removed the permissiveness and taken away the stewards' flexibility.

RESPONSE

The Board noted the proposed rule language is necessary and sufficiently clear in outlining that the penalty will be permissive for a first violation and mandatory for a second violation. This will allow the stewards some flexibility for penalties for first violations, while everyone adjusts to the new medication rules.

COMMENT NO. 14

One comment was received stating ARM 8.22.1402(14) [new (15)] should clarify what is meant by the phrase "such other penalty deemed appropriate."

RESPONSE

The Board disagreed with the comment and noted the actual penalty imposed and its appropriateness will be determined by the stewards. The proposed rule language deliberately did not specifically define appropriate penalties so that the stewards will have flexibility to work. The stewards must still be consistent in imposing penalties on various licensees.

32.28.1503 ALCOHOL AND DRUG TESTING

COMMENT NO. 15

One comment was received stating ARM 8.22.1503(17) should not require a person being tested for drugs or alcohol to pay for the testing themselves. The comment stated the Board and the race associations should continue to pay for this testing, as it is part of the responsibility of safeguarding those on the race track. The comment stated the Board and the association are the entities who benefit from these tests, as neither entity can afford to have an accident on the race track. The comment stated this cost is a part of doing business.

RESPONSE

The Board agreed with the comment and will amend the rule as shown above. The changes will clarify that random drug or alcohol tests conducted by the Board will continue to be paid for by the Board and the racing association on a 50-50 split. However, the changes will also state that any scheduled testing, or that conducted by Board, Court or drug counselor order, will be paid for by the person being tested. This change will clarify that the tests will be paid for by the entity who conducts them on a random basis for its own benefit, or the person who is required to undergo the tests on

a frequent schedule for their own benefit in proving sobriety.

DEPARTMENT OF LIVESTOCK

BY: /s/ Marc Bridges
Marc Bridges, Exec. Officer,
Board of Livestock
Department of Livestock

By: /s/ Bernard A. Jacobs
Bernard A. Jacobs,
Rule Reviewer
Livestock Chief Legal Counsel

Certified to the Secretary of State, May 6, 2002.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of amendment of ARM 32.2.401 as it relates to various fees charged by the department of livestock for inspecting livestock	)	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On March 14, 2002, the board of livestock published notice of the proposed amendment to ARM 32.2.401 as it relates to various fees charged by the department of livestock for inspecting livestock, at page 724 of the 2002 Montana Administrative Register, Issue Number 5.

2. The board has amended ARM 32.2.401, exactly as proposed.

AUTH: 81-2-102, MCA
IMP: 81-2-102, MCA

3. No comments or testimony were received.

DEPARTMENT OF LIVESTOCK

By: /s/ Marc Bridges
Marc Bridges, Exec. Officer,
Board of Livestock
Department of Livestock

By: /s/ Bernard A. Jacobs
Bernard A. Jacobs, Rule Reviewer
Livestock Chief Legal Counsel

Certified to the Secretary of State May 6, 2002.

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

In the matter of the repeal of ARM 37.114.799 pertaining to communicable disease control	))))	NOTICE OF REPEAL

TO: All Interested Persons

1. On March 28, 2002, the Department of Public Health and Human Services published notice of the proposed repeal of the above-stated rule at page 891 of the 2002 Montana Administrative Register, issue number 6.

2. The Department has repealed ARM 37.114.799 as proposed.

3. No comments or testimony were received.

Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and Human Services

Certified to the Secretary of State May 6, 2002.

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

In the Matter of the Amendment) NOTICE OF ADOPTION
of ARM 38.5.8001 Pertaining to)
General Requirement to Obtain)
License to Supply Electricity)

TO: All Concerned Persons

1. On February 28, 2002, the Department of Public Service Regulation, Public Service Commission (Commission), published a notice of public hearing on the proposed amendment of a rule pertaining to the general requirement to obtain a license to supply electricity, ARM 38.5.8001, at page 521 of the 2002 Montana Administrative Register, issue number 4.

2. The Commission conducted a public hearing on April 2, 2002 in its offices at 1701 Prospect Ave., Helena, Montana, in the Bollinger Room. Three individuals representing themselves or their companies or associations commented at the public hearing. The Commission received written comments through the April 1, 2002 deadline from the following: NorthWestern Energy, L.L.C. (NWE, formerly Montana Power Company); and Bonneville Power Administration (BPA). The comments are addressed in paragraph 5.

3. The Commission has amended ARM 38.5.8001 as proposed, but with amendments in response to concerns raised in comments.

38.5.8001 GENERAL REQUIREMENT TO OBTAIN LICENSE TO SUPPLY ELECTRICITY (1) All electricity suppliers, including unregulated public utility affiliates, for-profit affiliates of cooperative utilities that provide electricity supply service using public utility distribution facilities, market aggregators, marketers and brokers must file an application and receive a license from the public service commission before selling or offering to sell electricity to consumers in the state of Montana. An application must include a certificate of service showing that the application was sent to each distribution services provider on a list of providers created and maintained by the commission. The commission will issue a license within 30 days of receipt of a complete application. The commission may reject an application deemed incomplete or inadequate, and issue an order specifying the deficiencies of the application and, if practical, identify alternative ways to overcome deficiencies.

(2) An electric cooperative supplying electricity to its members is not required to obtain a license from the commission, whether or not the electric cooperative has opened its local distribution system to other suppliers. A for-profit affiliate of an electric cooperative must obtain a

license from the commission before supplying electricity to the parent cooperative's members.

(3) Any electricity supplier granted a license under this sub-chapter by the commission is presumed to have agreed that the distribution service provider is granted agency status regarding administering bonneville power administration residential exchange rights associated with eligible load (as referenced below) that may be served by the electricity provider. The presumption is overcome if the electricity provider demonstrates to the commission that it has entered into a residential exchange agreement on behalf of eligible load served.

(4) The bonneville power administration residential rights are as defined in public law No. 96-501, s. 885, the Northwest Power Act of 1980.

AUTH: 69-8-403, MCA
IMP: 69-8-404, MCA

4. The Commission received the following comments and responds as follows:

Montana Consumer Counsel supported the proposed amendment. The Commission has adopted the proposed amendment.

NWE, in written comments, stated that it supported the proposed amendment and concurred with the Commission's reasoning on the need for the amendment. NWE commented that the amendment is essential for maintaining the uninterrupted flow of the Federal benefits to which NWE's customers are entitled. The Commission has adopted the proposed amendment.

BPA commented that it has entered into an agreement with NWE to settle NWE's and BPA's respective rights and obligations under the Residential Exchange Program established by the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). The settlement agreement requires NWE to pass through the benefits it receives to each of its residential and small farm consumers, consistent with procedures developed by the Montana Public Service Commission (PSC).

The settlement agreement requires NWE to assign a portion of the benefits provided under the agreement back to BPA if another entity authorized under Montana law serves any qualifying residential and small farm load formerly served by NWE, unless 1) BPA approves an agency agreement for such entity which was previously approved by the PSC, or 2) BPA approves a state program for the pass-through of benefits by a distribution utility.

BPA commented that the proposed amendment creates a presumption that a licensed electricity supplier has granted agency status to NWE as the distribution service provider of the load served by that licensed supplier until such time as the licensed supplier signs a residential exchange agreement with BPA. BPA stated that the proposed amendment meets the requirements of BPA's agreement with NWE for a state program for the pass-through of benefits by a distribution utility.

BPA also commented that the commission should change references to "bonneville power administration" in the proposed amendment to "Bonneville Power Administration." The format of the proposed amendment is consistent with the format required by the secretary of state for administrative rules.

/s/ Gary Feland
Gary Feland, Chairman

/s/ Robin A. McHugh
Reviewed by Robin A. McHugh

CERTIFIED TO THE SECRETARY OF STATE MAY 6, 2002.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Department of Public Service Regulation; and
- Office of the State Auditor and Insurance Commissioner.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration, and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have 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. They also 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, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena, MT 59620-1706.

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	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 that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2001. This table includes those rules adopted during the period January 1, 2002 through March 31, 2002 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 December 31, 2001, 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 2001 and 2002 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.

GENERAL PROVISIONS, Title 1

1.2.419 Filing, Compiling, Printer Pickup and Publication Schedule for the Montana Administrative Register, p. 2130, 2433

ADMINISTRATION, Department of, Title 2

I Montana's Volume Cap Allocation, p. 2196, 2456
I-VII Approved Investments for Montana Banks - Investment Policies, p. 2066
I-VIII State Vehicle Use, p. 1386, 2013
2.4.101 and other rules - Regulation of Travel Expenses, p. 2198, 2455
2.5.201 and other rules - State Procurement of Supplies and Services, p. 1498, 2009
2.21.1803 and other rule - Exempt Compensatory Time Policy, p. 1699, 2133

(Public Employees' Retirement Board)
I Purchase of Service Credit through Direct Trustee-to-Trustee Transfers, p. 1154
I-III Deferred Compensation Plan Administered by the Public Employees' Retirement Board, p. 1150

I-X Deferred Retirement Option Plan (DROP) for Members of the Municipal Police Officers' Retirement System, p. 1118
2.43.302 and other rules - Retirement Systems Administered by the Montana Public Employees' Retirement Board, p. 1222, 1834, 2219
2.43.404 and other rules - Defined Contribution Retirement Plan for Members of the Public Employees' Retirement System, p. 1126
2.43.606 Retirement Systems Administered by the Public Employees' Retirement Board, p. 1114

(State Fund)
2.55.319 and other rules - Multiple Rating Tiers - Premium Modifiers - Individual Loss Sensitive Dividend Distribution Plan - Premium Rates, p. 2073, 164, 1065

(Banking and Financial Institutions)
2.59.107 Investments of Financial Institutions, p. 136, 901
2.59.112 and other rules - Approved Investments for Montana Banks - Investment Policies, p. 2066, 166

(State Board of County Printing)
8.91.101 and other rules - Transfer from the Department of Commerce - State Board of County Printing, p. 2406

(State Lottery Commission)
8.127.101 and other rules - Transfer from the Department of Commerce - State Lottery Commission, p. 2407

(Burial Preservation Board)
8.128.101 and other rules - Transfer from the Department of Commerce - Burial Preservation Board, p. 2409

AGRICULTURE, Department of, Title 4

4.12.402 and other rules - Feed Penalties, p. 1, 778
4.12.3104 and other rules - Seeds - Labeling - Analysis Fees, p. 2278, 70
4.13.1001A State Grain Laboratory Fees, p. 1008
4.14.301 and other rule - Loan Qualifications, p. 1231, 1723, 71

STATE AUDITOR, Title 6

I-XVIII Life Insurance Illustrations, p. 1244, 2234
I-XX Formation and Regulation of Captive Insurance Companies, p. 2351, 171
6.6.302 and other rules - Life Insurance and Annuities Replacement, p. 1259, 2221
6.6.802 and other rule - Annuity Disclosures - Updating References to the Buyer's Guide Contained in Appendix A, p. 1275, 2239

6.6.4202 and other rules - Continuing Education Program for Insurance Producers and Consultants, p. 1161, 1511, 1702, 2134, 2457
6.10.121 Registration and Examination of Securities Salespersons, Investment Adviser Representatives, Broker-Dealers, and Investment Advisers, p. 2283, 73

COMMERCE, Department of, Title 8

(Community Development Division)
I Administration of the 2002 Federal Community Development Block Grant Program, p. 2449
I Application to the Treasure State Endowment Program (TSEP), p. 2447, 524
I Administration of the 2001 Treasure State Endowment Program (TSEP), p. 1173, 2019

(Board of Research and Commercialization Technology)
8.100.104 and other rule - Definitions - Application Procedures, p. 2203, 74

(Hard-Rock Mining Impact Board)
8.104.101 and other rules - Organizational Rule - Rules Governing Awarding of Grants, p. 425

(Board of Housing)
I-XV Affordable Housing Revolving Loan Fund - TANF Housing Assistance Funds, p. 1513, 75

(Montana Promotion Division)
8.119.101 Tourism Advisory Council, p. 1013
8.119.101 Tourism Advisory Council, p. 1278, 1838

EDUCATION, Title 10

(Office of Public Instruction)
10.7.106A and other rules - Students Placed in Private Education Programs - Tuition, p. 855
10.7.112 and other rules - Establishment of Investment Accounts - Spending Accounts - Agreement with the County Treasurer - Payments into an Investment Account - Controls and Accounting Records - Closure of a School District Fund - Cash and Budget Transfers Between School District Funds - School Flexibility Payment - Basic Equalization Levy Shortfall, p. 825
10.13.307 and other rules - Traffic Education, p. 6, 1067
10.41.101 and other rules - Vocational Education, p. 1784, 2206, 780, 1304

(Board of Public Education)
I Substantial and Material Non-performance of a Contract of Employment, p. 1016
10.55.601 Accreditation Standards and Procedures, p. 2359, 172

10.57.211 and other rules - Model Rules - Teacher Certification - Testing for Certification and Minimum Scores, p. 867

FISH, WILDLIFE, AND PARKS, Department of, Title 12

12.9.601 and other rules - Upland Game Bird Release Program, p. 1280, 1725, 2020
12.9.802 and other rules - Issuance of Supplemental Game Damage Licenses to Hunters in Lieu of Kill Permits, p. 20, 1306

(Fish, Wildlife, and Parks Commission)

I Creating a No Wake Zone on Hebgen Lake, p. 1156
I Regulating the Use of Snowmobiles on Open Public Water, p. 27, 1084
12.3.124 and other rules - Clarifying Procedures of the Bonus Point System, p. 1802, 2287
12.3.402 Refunding of the Two-day Resident Fishing License, p. 17, 1072
12.7.801 and other rules - Fishing Contest Regulations, p. 29, 1073

(Department of Fish, Wildlife, and Parks and the Fish, Wildlife, and Parks Commission)

12.2.501 Declaring Black-tailed and White-tailed Prairie Dogs to be Nongame Wildlife in Need of Management, p. 1806, 526

ENVIRONMENTAL QUALITY, Department of, Title 17

I Air Quality - Air Quality Fee Credit for Use of Postconsumer Glass in Recycled Material, p. 1950, 529
17.36.101 and other rules - Subdivisions - Subdivision Review Under the Sanitation and Subdivisions Act, p. 568
17.53.102 and other rules - Hazardous Wastes - Management of Hazardous Wastes, p. 35, 789, 1315
17.56.105 and other rule - Underground Storage Tanks - Variances - Issuance of Compliance Tags and Certificates, p. 51
17.56.121 and other rules - Underground Storage Tanks - Operating Permits - Operating Tags - Scope of Compliance Inspections - Compliance Plans, p. 2080, 2459
17.56.308 and other rule - Underground Storage Tanks - Operating Permits or Compliance Plans - Compliance Inspections, p. 2452, 139, 1091

(Board of Environmental Review)

I Air Quality - Maintenance of Air Pollution Control Equipment for Existing Aluminum Plants, p. 1033

17.4.501 and other rules - Major Facility Siting - Regulation of Energy Generation or Conversion Facilities and Linear Facilities, p. 1874, 2410
17.8.101 and other rules - Air Quality - Definitions - Incorporation by Reference of Current Federal Regulations - Additional Conditions of Air Quality Preconstruction Permit, p. 268
17.8.302 and other rule - Air Quality - Emission Guidelines for Existing Small Municipal Waste Combustion Units, p. 931, 2022
17.8.505 Air Quality - Air Quality Operation Fees, p. 1391, 2412
17.8.514 Air Quality - Open Burning Fees, p. 928, 2023
17.8.701 and other rules - Air Quality - Issuance of Montana Air Quality Permits, p. 276
17.8.1201 Air Quality - Definition of Major Source in the Air Quality Operating Permit Rules, p. 1030
17.20.1607 and other rules - Major Facility Siting - Centerline Approval for Linear Facilities, p. 1945, 2415
17.30.201 Water Quality - Water Quality Permit and Authorization Fees, p. 2361, 382
17.30.502 and other rules - Water Quality - Surface Water Quality, p. 1920, 387, 1089, 1314
17.30.602 and other rules - Water Quality - Water Use Classifications and Numeric Nutrient Standards - Definitions - Incorporations by Reference, p. 1019
17.30.2003 Water Quality - Enforcement Actions for Administrative Penalties, p. 263

(Petroleum Tank Release Compensation Board)
17.58.336 Reimbursement of Claims, p. 1396, 2024

TRANSPORTATION, Department of, Title 18

I & II Collection of Motor Fuel Tax for Diesel Vehicles Found to have Dyed Fuel in the Supply Tank, p. 1704, 2147
18.8.101 and other rules - Maximum Allowable Weight - Definitions - Temporary Trip Permits - Special Vehicle Combinations - Insurance - Confiscation of Permits, p. 1522, 2142
18.9.101 and other rules - Motor Fuel Definitions - Late File and Pay Penalties when Filing Electronically - Off-highway Vehicle/Equipment - Dyed Special Fuel Allowance, p. 1399, 2143

(Transportation Commission)
18.6.211 Collection of Permit Fees for Outdoor Advertising Signs, p. 2208, 2465

CORRECTIONS, Department of, Title 20

20.9.101 and other rules - Youth Placement Committees, p. 618, 1039

JUSTICE, Department of, Title 23

23.3.127 and other rules - Driver Licensing and Identification Cards, p. 428, 1316
23.4.201 and other rules - Field Certification of Associated Equipment, p. 871
23.15.101 and other rules - Creating the Office of Victims Services, p. 1810
23.16.102 and other rules - Forms Used by the Department in Regulating Gambling - Gambling Applications - Video Gambling Machine Testing Fees, p. 308, 902

(Board of Crime Control)
I Authorizing Reimbursement to Counties for Detention of Indian Youth, p. 142, 305

LABOR AND INDUSTRY, Department of, Title 24

(Board of Architects)
8.6.101 and other rules - Transfer from the Department of Commerce - Board of Architects Rules, p. 173
8.6.405 and other rules - Licensure of Applicants Who Are Registered in Another State - Examinations - Renewals - Fees, p. 1408, 175

(Board of Athletics)
8.8.2501 and other rules - Transfer from the Department of Commerce - Board of Athletics Rules, p. 2148
8.8.2802 and other rules - Definitions - Licensing Requirements - Contracts and Penalties - Fees - Boxing Contestants - Physical Examination - Promoter-matchmaker and Inspectors - Club Boxing, p. 1009, 2150

(Board of Barbers)
8.10.101 and other rules - Transfer from the Department of Commerce - Board of Barbers Rules, p. 393
8.10.414 and other rule - Prohibition of Animals in Barbershops - Certain Records of Barber Schools, p. 1953, 176

(Board of Clinical Laboratory Science Practitioners)
8.13.301 and other rules - Application - Fees - Minimum Standards for Licensure - Continuing Education - Inactive Status - Reactivation of License - Notification of Denial or Disciplinary Action - Supervision, p. 636
8.13.306 Continuing Education Requirements, p. 914, 2416

(Board of Cosmetologists)
8.14.402 and other rules - Elimination of the Required Practical Examination for Cosmetologists, p. 465, 1318

(Board of Dentistry)
8.16.402 and other rules - Licensure of Dentists and Dental Hygienists - Application Requirements for Dentists and Dental Hygienists, p. 439

(State Electrical Board)
8.18.402 and other rules - Definitions - Licensee Responsibilities - Electrical Contractor Licensing - Licensure by Reciprocity or Endorsement - Renewals - General Responsibilities - Licensure of Out-of-State Applicants, p. 916, 2418

(Board of Hearing Aid Dispensers)
8.20.101 and other rules - Transfer from the Department of Commerce - Board of Hearing Aid Dispenser Rules, p. 349
8.20.402 and other rules - Fees - Examination - Pass/Fail Point - Minimum Testing and Recording Procedures, p. 819, 1412, 2422, 82

(Board of Funeral Service)
8.30.101 and other rules - Transfer from the Department of Commerce - Board of Funeral Service Rules, p. 790
8.30.406 and other rules - Examination - Continuing Education - Sponsors - Renewal, p. 1297, 84, 793

(Board of Nursing)
8.32.302 Nurse-Midwifery Practice - Fees - Nursing Tasks That May Be Delegated - General Nursing Tasks That May Not Be Delegated - Executive Director Qualifications, p. 1414, 2152

(Board of Optometry)
8.36.801 Therapeutic Pharmaceutical Agents, p. 884

(Board of Pharmacy)
8.40.101 and other rules - Transfer from the Department of Commerce - Board of Pharmacy Rules, p. 904
8.40.401 and other rules - Substantive Pharmacy Rules - Automated Data Processing - Certified Pharmacies - Internship Regulations - Continuing Education for Pharmacists - Dangerous Drug Act - Collaborative Practice Agreement Requirements - Security of Certified Pharmacy - Administration of Vaccines by Pharmacists - Explosive Chemicals - Prescription Copies for Legend Drugs, p. 1422, 178, 794
8.40.1301 and other rules - Pharmacy Technicians - Registration of Pharmacy Technicians - Renewal, p. 1447, 86, 796

(Board of Professional Engineers and Land Surveyors)
8.48.401 and other rules - Board Organization - Board Meetings - Screening Panel - Applications - Reclassification of Engineers and Land Surveyors -

Classification of Experience of Land Surveying Applicants, p. 450, 1326

8.48.1105 Fees, p. 1169, 2288

(Board of Psychologists)

8.52.616 Fees, p. 1526, 2154

(Board of Public Accountants)

8.54.410 Fees, p. 1020, 1707, 2240

(Board of Real Estate Appraisers)

24.207.401 and other rules - Fees - Adoption of USPAP by Reference - Qualifying Experience - Inactive License/Certification, p. 144, 911

(Board of Realty Regulation)

8.58.301 and other rules - Definitions - Trust Account Requirements - General License Administration Requirements - Renewal - License Renewal - Late Renewal - Continuing Property Management Education - Continuing Property Management Education Reporting Requirements, p. 1529, 2291

(Board of Veterinary Medicine)

8.64.509 Licensure of Out-of-State Applicants (Endorsement), p. 1041

I Unemployment Insurance Matters - Voluntary Layoff, p. 2090, 2466

I-XVIII Investigating Complaints on Discrimination, p. 1158

8.70.101 and other rules - Building Codes Bureau - Incorporation by Reference of Uniform Building Code - Certification of Code Enforcement Programs - Annual Report - Audit - Decertification of Code Enforcement Programs - Building Codes Education Fund Assessment - Wiring Standards - Electrical Permit - Electrical Inspections Fees - Incorporation by Reference of Elevator Code - Certificates of Inspection - Incorporation by Reference of Boiler and Pressure Vessel Code - Fees - Boilers Exempted - Boiler Inspections, p. 1536, 2293

8.70.104 and other rules - Transfer from the Department of Commerce - Building Codes Bureau, p. 2301

24.11.204 and other rules - Unemployment Insurance Benefits Matters, p. 1044

24.16.9001 and other rules - Prevailing Wage Matters, p. 1172

24.16.9001 and other rules - Prevailing Wage Matters, p. 313

24.29.2814 Emergency Amendment - Uninsured Employers' Fund Administrative Costs Balance, p. 907

24.30.102 Occupational Safety and Health Standards for Public Sector Employment, p. 887

24.301.107 and other rules - Building Codes - Modifications to the Uniform Building Code Applicable Only to the Department's Code Enforcement Program - Adoption of

the Uniform Housing Code or the Uniform Code for the Abatement of Dangerous Buildings, p. 345

(Workers' Compensation Judge)
24.5.303 and other rules - Procedural Rules of the Court, p. 2211, 93

LIVESTOCK, Department of, Title 32

(Board of Horse Racing)
8.22.301 and other rules - Transfer from the Department of Commerce - Board of Horse Racing Rules, p. 642

(Board of Livestock)
32.2.401 Various Fees Charged by the Department of Livestock for Inspecting Livestock, p. 724

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

(Board of Oil and Gas Conservation)
36.22.1242 Privilege and License Tax Rates on Oil and Gas, p. 1576, 2243

(Board of Land Commissioners and Department of Natural Resources and Conservation)
36.25.110 Minimum Rental Rate for Grazing Leases under the Jurisdiction of the State Board of Land Commissioners, p. 756, 2030

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

I Licensure of Minimum Standards for Critical Access Hospital (CAH), p. 1956, 205
16.4.101 and other rules - Distribution of Funds for Local Health Services, p. 1580, 2244
16.10.101 and other rules - Transfer from the Department of Health and Environmental Sciences - Food and Drug Standards, p. 2423
16.10.630 and other rules - Transfer from the Department of Health and Environmental Sciences - Public Accommodations, p. 2425
16.10.1601 and other rules - Transfer from the Department of Health and Environmental Sciences - Minimum Sanitation Requirements for Tattooing, p. 2429
16.22.101 and other rules - Fluoridation of Public Water Supplies, p. 1578, 2245
16.28.101 and other rules - Transfer from the Department of Environmental Sciences - Communicable Disease Control, p. 913
16.30.102 and other rules - Transfer from the Department of Health and Environmental Sciences - Emergency Medical Services, p. 2305

16.32.101 and other rules - Transfer from the Department of Health and Environmental Sciences - Licensure of Health Care Facilities, p. 185
16.32.302 Health Care Licensure, p. 1959, 192
16.32.601 and other rules - Minimum Standards for Mental Health Centers, p. 1962, 916
16.38.290 and other rules - Transfer from the Department of Health and Environmental Sciences - Approval of Laboratories - Laboratory Fees - Prenatal and Premarital Test Requirements, p. 2246
37.5.304 and other rules - Child Care Assistance and Hearing Appeal Rights, p. 727
37.8.101 and other rules - Vital Statistics, p. 2373, 397
37.40.301 and other rules - Nursing Facilities, p. 1262
37.40.905 and other rules - Medicare and Medicaid Cross-over Pricing, p. 1709, 2156
37.50.315 Foster Care Classification Model, p. 774
37.70.304 and other rules - Low Income Energy Assistance Program (LIEAP), p. 1453, 2037
37.76.101 and other rules - Temporary Assistance for Needy Families (TANF), p. 149, 952
37.78.102 and other rules - Families Achieving Independence in Montana (FAIM) and Temporary Assistance for Needy Families (TANF), p. 1207
37.82.701 and other rules - Medically Needy Family Medicaid Coverage, p. 1279
37.85.204 and other rules - Independent Diagnostic Testing Facilities - Medicaid Reimbursement, p. 56, 797
37.85.212 and other rule - Resource Based Relative Value Scale (RBRVS), p. 1247
37.85.212 and other rules - Emergency Amendment - Medicaid Reimbursement, p. 94
37.86.805 and other rules - Medicaid Reimbursement for Primary Care Services, p. 1251
37.86.1004 and other rule - Reimbursement Methodology for Source Based Relative Value on Dental Services, p. 1243
37.86.1101 and other rule - Medicaid Outpatient Drug Reimbursement, p. 1257
37.86.2207 and other rules - Mental Health Services, p. 503, 1328
37.86.2207 and other rules - Emergency Adoption and Amendment - Mental Health Services, p. 193
37.86.2207 Medicaid Mental Health Services, p. 1044, 2041
37.86.2401 and other rules - Medicaid Transportation and Ambulance Services, p. 759, 1183, 2247
37.86.2801 and other rules - Inpatient and Outpatient Hospitals, p. 1289
37.86.4401 and other rules - Rural Health Clinics (RHC) - Federally Qualified Health Centers (FQHC), p. 1301, 2043
37.95.102 and other rules - Licensure of Day Care Facilities, p. 483

37.108.507 Components of Managed Care Plan Quality Assessment Activities, p. 349, 954
37.114.799 Communicable Disease Control, p. 891

PUBLIC SERVICE REGULATION, Department of, Title 38

I Electronic Filings, p. 1582, 398
38.5.1107 Accrual of Interest on Customer Deposits with Utilities, p. 893
38.5.2202 and other rule - Pipeline Safety, p. 2093, 2467
38.5.8001 General Requirement to Obtain License to Supply Electricity, p. 521

REVENUE, Department of, Title 42

I Production Threshold for Beer Taxes, p. 379, 955
I & II Purchase of Tax Sale Certificates, p. 1996, 2431
I-III Exemptions, Reduced Tax Rates, and Credits for Energy Facilities, p. 1060
42.15.315 and other rules - Penalties and Interest Charges for Late Filed and Late Paid Taxes, p. 352, 1094
42.18.106 and other rules - Montana Appraisal Plan Rules, p. 356, 1097
42.19.1102 and other rule - Treatment of Gasohol Production Facilities, p. 65, 811
42.21.113 and other rules - Trending Schedules for Property Tax Rules, p. 1814, 2249
42.22.104 Motor Vehicles and Special Mobile Equipment, p. 2403, 99
42.22.1311 and other rules - Exemptions - Reduced Tax Rates - and Credits for Energy Facilities, p. 369, 1092
42.23.103 Corporation License Taxes, p. 1600, 2046
42.23.413 Carryovers of Net Operating Losses for Corporation License Taxes, p. 2127, 2468, 207
42.24.102 and other rules - Special Provisions Applicable to Corporation License Taxes, p. 1615, 2047
42.25.1809 and other rule - Tax Rates and Distribution of Oil and Gas Proceeds, p. 1588, 2048
42.26.101 and other rules - Corporation Taxes, p. 2096, 2469, 403
42.29.101 and other rules - Universal System Benefits Credits, p. 2216, 209
42.31.501 and other rules - Retail Communications Excise Tax, p. 2399, 68, 956

(Board of Review)

I-V One-Stop Licensing Program Administered by the Department of Revenue on Behalf of the Board of Review, p. 1056

SECRETARY OF STATE, Title 44

I-XII Fees for Records Management Microfilming, Imaging and Storage Services, p. 837, 1186, 1748, 2161

1.2.419 Filing, Compiling, Printer Pickup and Publication Schedule for the Montana Administrative Register, p. 2130, 2433
1.2.421 and other rules - Fees for Administrative Rules of Montana and Montana Administrative Register, p. 834, 1185, 2159
44.3.1101 Schedule of Fees for the Centralized Voter File, p. 896
44.5.101 and other rules - Filing and Copy Fees for Corporations, p. 2000, 2472, 960
44.6.201 and other rule - Uniform Commercial Code Filings (UCC), p. 898
44.15.102 and other rules - Filing Fees for Notary Public Licensure - Bonding Requirements - Notarial Acts under Federal Authority and Foreign Notarial Acts, p. 1720, 2162

(Commissioner of Political Practices)
44.10.101 and other rules - Organizational - Procedural - Campaign Finance and Practices - Ethics Rules, p. 1619, 2049