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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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NOTICE SECTION

BEFORE THE BOARD OF HOUSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of ARM 8.111.502, 8.111.508, 8.111.509, 8.111.510, 8.111.512, 8.111.513, 8.111.514, and 8.111.515 and the repeal of 8.111.511 pertaining to loans made from TANF housing assistance funds	)	NOTICE OF PROPOSED AMENDMENT AND REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On April 19, 2004, the Board of Housing proposes to amend ARM 8.111.502, 8,111.508, 8.111.509, 8.111.510, 8.111.512, 8.111.513, 8.111.514, and 8.111.515 and repeal ARM 8.111.511 concerning loans made from Temporary Assistance for Needy Families (TANF) housing assistance funds.

2. The Board of Housing 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 Housing no later than 5:00 p.m. on April 5, 2004, to advise us of the nature of the accommodation that you need. Please contact Diana Hall, 301 South Park Ave., 2nd Floor, P.O. Box 200528, Helena, MT 59620-0528; telephone (406) 841-2840; fax (406) 841-2841; e-mail dihall@state.mt.us.

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

8.111.502 DEFINITIONS When used in these rules, unless the context clearly requires a different meaning:

(1) through (9) remain the same.

(10) "TANF ~~line of credit~~ allocation" means ~~a line of credit~~ an allocation extended by the board to a housing assistance organization ~~for the purpose of making~~ regarding TANF loans to eligible recipients, and described in ARM 8.111.508 through 8.111.~~511~~510.

(11) "TANF loan" means a loan to an eligible recipient by ~~a housing assistance organization~~ the board from a TANF ~~line of credit~~ allocation of a housing assistance organization authorized by 90-6-133(2)(b), MCA, under the temporary assistance for needy families block grant pursuant to Title IV of the Social Security Act, 42 U~~.~~S~~.~~C~~.~~ 601, et seq., and described in ARM 8.111.512 through 8.111.515.

(12) remains the same.

AUTH: 90-6-136, MCA

IMP: 90-6-134, MCA

8.111.508 TANF ~~LINE OF CREDIT~~ ALLOCATION ELIGIBLE PURPOSES (1) There are two categories of TANF ~~lines of credit~~ allocations:

(a) a TANF ~~line of credit~~ allocation - home ownership; and

(b) a TANF ~~line of credit~~ allocation - emergency housing assistance.

(2) A TANF ~~line of credit~~ allocation – home ownership may be used ~~by a housing assistance organization to make~~ for loans to eligible recipients:

(a) through (e) remain the same.

(3) A TANF loan ~~made by a housing assistance organization~~ from a TANF ~~line of credit~~ allocation – home ownership is not assumable and must be repaid upon sale of the real property pledged as security for the loan.

(4) The lesser of 10% of the TANF funds available to the board or $200,000 is available for TANF ~~lines of credit~~ allocations - emergency housing assistance. A TANF ~~line of credit~~ allocation - emergency housing assistance may be used ~~by a housing assistance organization~~ to make loans to eligible recipients for:

(a) through (d) remain the same.

AUTH: 90-6-136, MCA
IMP: 90-6-134, MCA

8.111.509 TANF ~~LINE OF CREDIT~~ ALLOCATION ELIGIBILITY

(1) Housing assistance organizations are eligible to apply for a TANF ~~line of credit~~ allocation from the board.

(2) The applicant must document to the satisfaction of the board experience in providing housing assistance to low income households or, for a new housing assistance organization, demonstrate the capability to administer a TANF ~~line of credit~~ allocation. Criteria considered by the board include, but are not limited to:

(a) through (e) remain the same.

(3) Within available funding, a housing assistance organization may apply for a TANF ~~line of credit~~ allocation - home ownership not to exceed ~~$400,000~~ $500,000, a TANF ~~line of credit~~ allocation - emergency housing assistance not to exceed $50,000, or both. At such time as the housing assistance organization has drawn on the full amount of the ~~line of credit~~ allocation for the purpose of TANF loans to eligible recipients, it may apply for a supplemental ~~line of credit~~ allocation not to exceed ~~$400,000~~ $500,000 for the TANF ~~line of credit~~ allocation - home ownership and $50,000 for the TANF ~~line of credit~~ allocation - emergency housing assistance. Whether the request is for an initial or a supplemental TANF ~~line of credit~~ allocation, the board may approve a lesser amount than is requested.

AUTH: 90-6-136, MCA

IMP: 90-6-134, MCA

8.111.510 TANF ~~LINE OF CREDIT~~ ALLOCATION APPLICATION PROCEDURE (1) An application for a TANF ~~line of credit~~ allocation must be submitted using the board's uniform application and loan supplement.

(2) At the time the application is submitted, an applicant must submit:

(a) remains the same.

(b) a management plan describing the housing assistance organization's plan for~~:~~

~~(i)~~ screening of applicants including the procedure to be followed to ensure compliance with TANF eligibility requirements~~;~~

~~(ii) collection procedures for defaulted loans; and~~

~~(iii) servicing of loans made to eligible recipients~~.

(c) through (4) remain the same.

AUTH: 90-6-136, MCA
IMP: 90-6-134, MCA

8.111.512 TANF LOAN ELIGIBILITY (1) To be eligible for a TANF loan~~,~~ ~~from a housing assistance organization~~ an applicant must be a caretaker relative whose household is 200% of the federal poverty guidelines or less.

(2) An applicant for a TANF loan from a TANF ~~line of credit~~ allocation - home ownership must successfully complete instruction on the responsibilities of home ownership to the satisfaction of the housing assistance organization through which the applicant is making application for a TANF loan.

(3) An applicant for a TANF loan ~~to be funded by a housing assistance organization~~ from a TANF ~~line of credit~~ allocation - home ownership or for a TANF loan for mortgage payment assistance to be funded from a TANF ~~line of credit~~ allocation - emergency housing assistance must agree to participate in post purchase counseling provided by the housing assistance organization.

AUTH: 90-6-136, MCA
IMP: 90-6-134, MCA

8.111.513 TANF LOAN TERMS AND CONDITIONS (1) Except as provided in (2), ~~A~~ a TANF loan shall:

(a) and (b) remain the same.

(c) bear interest at the ~~same~~ rate ~~the housing assistance organization is being charged for the TANF line of credit~~ of 2% per annum;

(d) remains the same.

(e) if the loan is from a TANF ~~line of credit~~ allocation - home ownership or is a loan for mortgage payment assistance from a TANF ~~line of credit~~ allocation - emergency housing assistance, be secured at closing by a lien on the real property for which the loan is made, which lien shall be

perfected through the use of a trust indenture subordinate to the first mortgage naming the ~~housing assistance organization~~ board as beneficiary.

(2) As an alternative to an amortized loan as provided for in (1), a loan from a TANF ~~line of credit~~ allocation - home ownership or a loan for mortgage payment assistance from a TANF ~~line of credit~~ allocation - emergency housing assistance may provide that the principal balance and all accrued interest need not be paid until and upon the death of the applicant, the transfer, sale or cessation of use as the primary residence by the applicant of the real property for which the loan was made, or upon satisfaction of the first mortgage in conjunction with which the loan is made. Such a loan shall:

(a) bear interest at the ~~same~~ rate ~~the housing assistance organization is being charged for the TANF line of credit~~ of 2% per annum; and

(b) be secured at closing by a lien on the real property, perfected through the use of a trust indenture subordinate to the first mortgage naming the ~~housing assistance organization~~ board as beneficiary.

~~(3) The provisions of ARM 8.111.511, regarding the terms and conditions of a line of credit to a housing assistance organization, except for the interest rate provided for in ARM 8.111.511, do not apply relative to a loan made under (2). Further, within 10 days or repayment of such a loan by the applicant to the housing assistance agency, the housing assistance agency shall remit an amount equal to the principal balance and accrued interest to the board.~~

AUTH: 90-6-136, MCA
IMP: 90-6-133, 90-6-134, MCA

8.111.514 TANF LOAN APPLICATION PROCEDURES

(1) through (3) remain the same.

(4) The board, or personnel designated by the board, shall review each application for a TANF loan to approve the application if the housing assistance organization has certified that eligibility requirements have been met and loan documentation has appropriately been completed.

(5) remains the same.

(6) When an application for a TANF loan has been approved by the board or its designated staff, the ~~funds shall be advanced on~~ board shall make the loan to the applicant, subject to the availability of funds. The board shall deduct an amount from the housing assistance organization's TANF ~~line of credit~~ allocation equal to the amount of the approved TANF loan and the administrative fee provided for in ARM 8.111.515(2). ~~The board shall advance the funds by making a request of the Montana department of public health and human services to disburse the funds to the housing assistance organization for the benefit of the TANF loan applicant.~~

AUTH: 90-6-136, MCA

IMP: 90-6-134, MCA

8.111.515 RESPONSIBILITIES OF TANF LOAN HOUSING ASSISTANCE ORGANIZATION (1) A housing assistance organization taking applications for TANF loans:

(a) and (b) remain the same.

(c) must provide training to applicants for TANF loans from a TANF ~~line of credit~~ allocation - home ownership on the responsibilities of home ownership; and

(d) must provide post purchase counseling to recipients of TANF loans from a TANF ~~line of credit~~ allocation - home ownership or a loan for mortgage payment assistance from a TANF ~~line of credit~~ allocation - emergency housing assistance.

(2) As compensation for preparing and processing a TANF loan, providing home ownership training and post purchase counseling, the housing assistance organization shall receive from the board an administrative fee in an amount equal to ~~seven percent~~ 7% of the amount of each TANF loan made by it, provided however, that once the initial TANF funds available to the board from the department of public health and human services have been disbursed, there will be no compensation available under this section to a housing assistance organization from the board for preparing and processing any loans made with funds from repayments of initial TANF loans.

(3) through (4) remain the same.

AUTH: 90-6-136, MCA
IMP: 90-6-134, MCA

4. The rule proposed to be repealed provides as follows:

8.111.511 TANF LINE OF CREDIT TERMS AND CONDITIONS on page 8-3991 of the Administrative Rules of Montana.

AUTH: 90-6-136, MCA
IMP: 90-6-134, MCA

REASON: Amendment of the above rules and repeal of ARM 8.111.511 are necessary because operation of the TANF revolving loan program over the past eighteen months has demonstrated that the loans can be more effectively made by the Board rather than by a housing assistance organization. Requiring a housing assistance organization to repay the line of credit from repayment proceeds of TANF loans places the housing assistance organization at risk for defaults on the loans which would most likely have to be forgiven by the Board. Operation of the program has demonstrated that it can be more effectively administered if a loan to a TANF eligible applicant is made directly from the Board based on underwriting and the recommendation of a housing assistance organization rather than through an advance of funds to the organization that would then make the loan. The proposed rule amendments and repeal would eliminate the requirement that loans be made by housing assistance organizations and provide

that the loans be made directly by the Board. The Board would thereby assume the risk of the TANF loan rather than the non-profit community housing assistance organization.

Under the amended rules, the amount of TANF allocation that a housing assistance organization may apply for increases from $400,000 to $500,000. This increase only affects two nonprofit community housing assistance groups: Neighborhood Housing Services, and homeWARD. No other persons are impacted by this amendment because no other community housing assistance organization applied for a TANF allocation, and all of the TANF money available to the Board for this purpose has been allocated to the nonprofits specifically listed above. Because no additional TANF money is available at this time, it is not possible to estimate the cumulative amount for all persons of the proposed increase.

5. Concerned persons may submit their data, views or arguments concerning the proposed action in writing to the Board of Housing, 301 South Park Ave., 2nd Floor, P.O. Box 200528, Helena, MT 59620-0528, by facsimile to (406) 841-2841, or by e-mail to mrude@state.mt.us to be received no later than 5:00 p.m., April 12, 2004.

6. 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 Housing, 301 South Park Ave., 2nd Floor, P.O. Box 200528, Helena, MT 59620-0528, by facsimile to (406) 841-2841, or by e-mail to mrude@state.mt.us to be received no later than 5:00 p.m., April 5, 2004.

7. If the Board receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed action, from the appropriate administrative rule 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 2,000 based on the 20,000 persons who could benefit from this program.

8. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the Board. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding single family housing programs, multifamily housing programs, affordable housing revolving loan account, or general

procedural rules. The written request may be mailed or delivered to the Board of Housing, Montana Department of Commerce, P.O. Box 200528, Helena, MT 59620-0528, faxed to the Board at (406) 841-2841, e-mailed to dihall@state.mt.us, or submitted at any rules hearing held by the Board.

9. The Board of Housing will meet on April 19, 2004, at 8:30 a.m. to consider the comments made by the public, the proposed responses to those comments, and to take final action on the proposed amendments and repeal. 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 and repeal beyond the April 12, 2004, deadline.

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

DEPARTMENT OF COMMERCE
BOARD OF HOUSING

By: /s/ MARK A. SIMONICH
MARK A. SIMONICH, DIRECTOR
DEPARTMENT OF COMMERCE

By: /s/ G. MARTIN TUTTLE
G. MARTIN TUTTLE, RULE REVIEWER

Certified to the Secretary of State February 17, 2004.

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION AND
THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the adoption of new rules I through XI pertaining to translocation of prairie dogs	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. The Fish, Wildlife and Parks Commission (commission) and the Department of Fish, Wildlife and Parks (department) will hold public hearings to consider the adoption of new rules pertaining to translocation of prairie dogs. The hearing dates and places are as follows:

March 22, 2004, 7:00 pm
Fish, Wildlife and Parks
Region 4 Headquarters
4600 Giant Springs Road
Great Falls, MT

March 23, 2004, 7:00 pm
Great Northern Hotel
2nd South, 1st Street East
Malta, MT

March 24, 2004, 7:00 pm
Fish, Wildlife and Parks
Region 7 Headquarters
Industrial Site West
Miles City, MT

March 25, 2004, 7:00 pm
Hampton Inn
1510 Southgate Drive
Billings, MT

2. The commission and department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on March 8, 2004, to advise us of the nature of the accommodation that you need. Please contact Heidi Youmans, 1420 East Sixth Avenue, Helena, MT 59620; phone (406) 444-2612; fax (406) 444-4952; email hyoumans@state.mt.us.

3. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS (1) "Receiving area" means the site to which prairie dogs are relocated.

(2) "Sending area" means the site where prairie dogs are currently located and from which prairie dogs may be removed for relocation to another site.

(3) "Translocation" means removing prairie dogs from one location to a new location with the intent to permanently establish them at the new location.

AUTH: 87-1-301, 87-5-105, MCA
IMP: 87-1-301, 87-5-105, MCA

NEW RULE II PROPOSALS TO TRANSLOCATE PRAIRIE DOGS

(1) Persons may translocate prairie dogs provided that a proposal for the translocation complies with this subchapter and is approved by the appropriate department regional supervisor(s).

(2) The sending/receiving area proponents shall provide a translocation proposal to the department regional supervisor (or both regional supervisors if more than one department administrative region is involved).

(3) A proposal for translocation of prairie dogs must conform to the Montana Environmental Policy Act (MEPA) and must include the following information:

(a) name(s) of the owner(s) of the sending area and name(s) of the owner(s) of the receiving area;

(b) a map illustrating land ownership and public lands leases, for both sending and receiving areas;

(c) a rationale explaining the need for and the objectives of the translocation, and an explanation of why relocation of prairie dogs from the sending area to the receiving area is desirable;

(d) evidence that landowners and/or public land managers adjacent to the receiving area have been contacted and informed of the proposed translocation of prairie dogs. Any comments from the adjacent landowners and/or public land managers regarding the proposed translocation must be included in the proposal;

(e) a description of both the sending and receiving areas which should include, but are not limited to, the following:

(i) general topography;

(ii) vegetation types;

(iii) landscape setting; and

(iv) a discussion of recent and historic occupancy of the area by prairie dogs, incidence of disease, past poisoning efforts if known, presence or absence of other associated species in the area for both the sending and the receiving areas, and any other pertinent information that provides supporting evidence for the proposed translocation;

(f) a description of potential threats to other wildlife species and to agricultural production that may occur as a result of the proposed translocation. The proposal must contrast potentially significant threats with potential benefits;

(g) measures the applicant(s) intends to use to minimize potential threats to other wildlife species and to agricultural production;

(h) a description of how the trapping and transport guidance criteria of [NEW RULE III] will be met;

(i) a description of how the monitoring plan criteria of [NEW RULE V] will be met

(j) a description of how the conflict resolution plan of [NEW RULE VI] will be met;

(k) a statement indicating whether the sending and receiving areas have been prioritized by the department regional office; and

(l) copies of any documents required for environmental compliance (including public notification) or permits required by federal, state and/or local government.

(4) Translocation of prairie dogs from federal land to federal land within a national wildlife refuge will be coordinated in advance with the appropriate department administrative region. Translocation of prairie dogs originating from outside a national wildlife refuge, to areas within a refuge, will follow the procedures established by this subchapter.

AUTH: 87-1-301, 87-5-105, MCA
IMP: 87-1-301, 87-5-105, MCA

NEW RULE III CRITERIA FOR SENDING AREAS (1) An area may qualify as a sending area when one or more of the following conditions exist at the sending area:

(a) the landowner/public land manager needs or desires to reduce prairie dog density or overall acreage of prairie dog towns;

(b) the area supports sufficient acres and density of prairie dogs to provide donor stock without significantly impacting prairie dog density or overall acreage of prairie dogs;

(c) the presence of prairie dogs conflicts with urban expansion or agricultural production and there is little to no opportunity to reconcile conflicts between these land uses and prairie dog occupancy; or

(d) prairie dog colonies are threatened by lethal control.

AUTH: 87-1-301, 87-5-105, MCA
IMP: 87-1-301, 87-5-105, MCA

NEW RULE IV CRITERIA FOR RECEIVING AREAS (1) With approval of the department, prairie dogs may be relocated to an area within the historically occupied range of prairie dogs that complies with one or more of the following conditions:

(a) prairie dogs occupied the area historically, and the area is now vacant prairie dog habitat;

(b) the area contains an isolated prairie dog population or is isolated prairie dog habitat;

(c) the area is below prairie dog management objectives and where augmentation is a management strategy;

(d) the area contains suitable habitat within the historic distribution of prairie dogs but where previous occupation by prairie dogs is not documented; or

(e) the area complies with (1)(a) through (d) and where additional prairie dog colonies or increased prairie dog density will assist enhancement of prairie dogs and associated species that are rare or declining.

(2) Prairie dogs may not be moved to a location outside their historically occupied range.

AUTH: 87-1-301, 87-5-105, MCA
IMP: 87-1-301, 87-5-105, MCA

NEW RULE V MONITORING PLAN – PRAIRIE DOG TRANSLOCATION

(1) For each translocation, project monitoring must be conducted at the receiving area.

(2) A monitoring plan must be included with or attached to the translocation proposal. The department or the Montana prairie dog working group will provide assistance if requested. The monitoring plan must contain the following:

(a) a description of the methodology and time lines of data collection;

(b) a description of the amount of acreage occupied by prairie dogs at the receiving area prior to the release;

(c) a description of any habitat that prairie dogs previously occupied but that is vacant at the time of the translocation;

(d) a description of any other baseline habitat information pertaining to the release;

(e) provisions for one-year and three-year post-release assessments. These assessments must compare translocation results with the baseline inventory and must be provided to the department; and

(f) a provision for assessment of the translocation's success by comparing results of the translocation to the objectives stated in the translocation proposal, and the requirements of this subchapter.

AUTH: 87-1-301, 87-5-105, MCA
IMP: 87-1-301, 87-5-105, MCA

NEW RULE VI CONFLICT RESOLUTION PLAN (1) A conflict resolution plan must be included with or attached to the proposal for translocation. The conflict resolution plan must detail the following information:

(a) potential conflicts with private lands or public lands adjacent to the receiving area, including conflicts with agricultural production;

(b) proposed solutions for resolving conflicts with agricultural production and other landowner conflicts, including identification of the person(s)/party(s) responsible for implementing proposed solutions;

(c) potential conflicts between prairie dogs and other wildlife species; and

(d) proposed solutions for resolving conflicts between prairie dogs and other wildlife species, including identification of the person(s)/party(s) responsible for implementing proposed solutions.

AUTH: 87-1-301, 87-5-105, MCA
IMP: 87-1-301, 87-5-105, MCA

NEW RULE VII CAPTURE AND TRANSPORTATION OF PRAIRIE DOGS

(1) Persons who have department approval to translocate prairie dogs shall comply with the following criteria when capturing and transporting prairie dogs:

(a) prairie dogs may be captured and translocated between the dates of June 30 and October 31. Prairie dogs shall not be moved earlier or later than this time period unless a written exception is granted by the regional supervisor;

(b) persons translocating prairie dogs shall capture an entire town or portion of a town in order to move entire family units together;

(c) a translocation group must consist of at least 100 black-tailed prairie dogs or 30 white-tailed prairie dogs unless a written exception to translocate a smaller number of individuals is granted by the regional supervisor;

(d) persons authorized to translocate prairie dogs shall monitor the sending and receiving areas for sylvatic plague as outlined in [NEW RULE VIII] and must notify the department immediately if any suspected plague is noted;

(e) any prairie dogs that become sick or die during transport shall be examined by a qualified individual. If there is a possibility that plague is implicated in the cause of death, the entire group of animals shall be placed and remain under quarantine while the animal(s) in question is referred to a laboratory to determine whether plague is the cause of the sickness. If plague is diagnosed, the quarantine procedures described in [NEW RULE IX] must be followed.

(2) The white-tailed prairie dog is the only species of prairie dog that may be translocated from a sending area outside of Montana to a receiving area within Montana. White-tailed prairie dogs from sending areas outside of Montana must be quarantined under the procedures established by [NEW RULE IX].

AUTH: 87-1-301, 87-5-105, MCA
IMP: 87-1-301, 87-5-105, MCA

NEW RULE VIII SYLVATIC PLAGUE PRECAUTIONS (1) Prairie dogs may not be moved from an area with known, active occurrence of sylvatic plague to an area with no active plague.

(2) At a minimum, sending and receiving areas must be monitored 14 days prior to trapping and within 48 hours of trapping to determine whether plague is active.

(3) If plague is active at a sending or receiving area, the department must be notified immediately and the translocation proposal may be altered or cancelled.

(4) Prairie dogs may not be transported from a sending area within five miles of active, ongoing, sylvatic plague occurrence unless quarantine standards are employed.

(5) Where there is no evidence of ongoing or active plague, or if the receiving area is within 50 miles of the sending area, quarantine is unnecessary if the following conditions are met:

(a) there is no evidence of numerical declines in population numbers that would suggest plague;

(b) a pre-capture visual count of prairie dogs has been conducted and repeated under similar conditions, and visual counts do not indicate rapid or unexplained declines in prairie dog populations or the presence of prairie dog carcasses that could signal the presence of plague; and

(c) prairie dogs are treated for fleas at the capture area with carbaryl, permethrin, or other appropriate pulicide.

AUTH: 87-1-301, 87-5-105, MCA
IMP: 87-1-301, 87-5-105, MCA

NEW RULE IX QUARANTINE PROCEDURES (1) Animals at risk for plague must be held in quarantine for at least 14 days.

(2) Cages in quarantine facilities must be suspended by wires or chains at least one meter off the ground and separated from adjacent cages by a minimum of 60 centimeters.

(3) Animals placed in quarantine cages must remain in the same cages for the duration of the quarantine. Animals that are not part of the original group under quarantine must not be placed in cages within the quarantined group or in adjacent cages.

(4) Prairie dogs that die during the 14-day quarantine period must be necropsied and tested for plague.

(5) If plague is discovered within the group under quarantine, the group of animals must be kept in quarantine for an additional 14 days.

AUTH: 87-1-301, 87-5-105, MCA
IMP: 87-1-301, 87-5-105, MCA

NEW RULE X APPROVAL PROCESS FOR TRANSLOCATION PROPOSALS

(1) The translocation proposal must comply with [NEW RULES II through IX] and must undergo public review in accordance with MEPA. The department regional supervisor shall review prairie dog translocation proposals and render a final decision in writing within 30 days of the conclusion of a decision process that complies with MEPA. If a translocation proposal affects more than one region, the

regional supervisor of each region affected by the proposal must sign the final decision.

(2) If a regional supervisor(s) denies a translocation proposal, the written decision must include an explanation of any deficiencies or inconsistencies in the proposal pertaining to the proposal criteria required by [NEW RULE II].

(3) Regional supervisors shall maintain a list of potential sending areas and receiving areas that have been identified by private landowners, land management agencies, tribes, and other interests.

(4) The Montana prairie dog working group may review areas for prioritization, and inclusion on the list of approved areas as requested by the department.

AUTH: 87-1-301, 87-5-105, MCA
IMP: 87-1-301, 87-5-105, MCA

NEW RULE XI APPEAL PROCESS FOR TRANSLOCATION PROPOSALS

(1) Proponents or opponents of the translocation proposal may appeal a department decision to deny or approve a translocation proposal. The proponent or opponent shall prepare a written appeal and submit this appeal to the director within 30 days of the date of the department decision denying or approving the translocation proposal. The appeal must respond to the proposal deficiencies or inconsistencies cited in the regional supervisor's denial of the proposal.

(2) The director shall prepare a written response to the appeal within 30 days of receipt. The response must affirm or remand the regional supervisor's decision.

AUTH: 87-1-301, 87-5-105, MCA
IMP: 87-1-301, 87-5-105, MCA

4. In 1996 a group of state and federal employees, non-governmental organizations and private citizens concerned with issues regarding prairie dogs in Montana convened an informal group called the Montana Prairie Dog Working Group. To address these issues, this group spent several years gathering information and drafting the Conservation Plan for Black-tailed and White-tailed Prairie Dogs in Montana. After examining the plan, the commission supported department approval of the plan. Additionally, the Montana Department of Agriculture and the Montana Department of Natural Resources and Conservation, as well as five federal agencies, approved the plan. The department and commission decided that adoption of administrative rules was necessary for implementation of the translocation portion of the plan.

The prairie dog conservation plan recognizes translocation as a management tool that could be used to ensure adequate distribution and numbers of prairie dogs to maintain viability of prairie dogs and other wildlife species associated with prairie dogs. At the statewide level, translocation is envisioned as a means to ensure maintenance of isolated

prairie dog colonies at the edges of current prairie dog distribution and ultimately to ensure that the statewide distribution standard of "sustaining a viable population of black-tailed prairie dogs distributed over 90% of the historic range of the species" is achieved and maintained. The plan also recognizes a need for a management tool to accomplish non-lethal removal of prairie dogs from untenable situations and calls for establishment of a "programmatic relocation protocol" to guide all prairie dog translocations. There is no intent under the proposed rules to allow for commercial collection of prairie dogs for commercial trade.

The proposed rules establish criteria that all prairie dog translocation proposals must comply with and establish standard procedures that must be followed in order for a translocation proposal to be considered for approval. The proposed rules are intended to achieve the following objectives:

1) To provide programmatic direction, consistent with state and federal regulations, for the translocation of prairie dogs in Montana exclusive of Tribal lands and federal lands within National Wildlife Refuges.

2) To provide consistent guidance and direction for identification of areas for collection (sending areas) and areas for release (receiving areas) designed to minimize potential spread of plague and to minimize the potential for translocation to result in detrimental impacts to agricultural production or to other wildlife species.

3) To provide consistent guidance and standard procedures for planning and conducting prairie dog translocations, to minimize the potential for plague to be spread.

4) To allow for supplementing or reestablishing prairie dogs in areas where they have declined.

5) To initiate, maintain, or enhance isolated populations.

6) To allow for non-lethal removal and relocation of existing prairie dog towns from undesirable areas to acceptable areas.

7) To allow for non-lethal control of prairie dog populations that are increasing.

8) To allow for increased prairie dog numbers to address habitat needs of dependent species (black-footed ferrets) or associated species (mountain plover, burrowing owl, ferruginous hawk).

These rules are proposed under the authority of 87-5-105, MCA, which provides for establishment of regulations deemed necessary to manage wildlife species that have been designated "nongame wildlife in need of management." Both the black-tailed prairie dog and white-tailed prairie dog have been designated as "nongame wildlife in need of management" (ARM 12.2.501).

The intent of NEW RULES I through XI is to provide programmatic guidance for all future prairie dog translocations that is specific enough to allow department regional supervisors to approve or deny translocation proposals in compliance with 87-5-711, MCA, (commission approval of any release of nongame animals).

5. Concerned 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 Wildlife Division, Montana Fish, Wildlife, and Parks, P.O. Box 200701, Helena, MT 59620; fax (406) 444-4952; or email at fwpwld@state.mt.us, and must be received no later than March 26, 2004.

6. Rebecca Dockter or another hearing officer appointed by the commission and department has been designated to preside over and conduct the hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the department and commission. 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 notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East 6th, Helena, MT 59620-0701; faxed to the office at (406) 444-7456; or may be made by completing the request form at any rules hearing held by the department.

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

By: /s/ M. Jeff Hagener
M. Jeff Hagener
Fish, Wildlife and Parks
Commission Secretary
Department of Fish, Wildlife
and Parks, Director

By: /s/ Martha C. Williams
Martha C. Williams
Rule Reviewer

Certified to the Secretary of State February 17, 2004

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.56.502, 17.56.504, 17.56.505, and 17.56.602 and the adoption of new rules pertaining to release reporting, investigation, confirmation and corrective action requirements for tanks containing petroleum or hazardous substances	))))))))	AMENDED NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION (UNDERGROUND STORAGE TANKS)

TO: All Concerned Persons

1. On January 15, 2004, the Department of Environmental Quality published MAR Notice No. 17-204, a notice of public hearing regarding the proposed amendment and adoption of the above-stated rules, at page 1, 2004 Montana Administrative Register, issue number 1. The notice of proposed amendment and adoption is being amended because of the reasons shown below. The time and place of hearing have been changed to April 12, 2004, at 10:00 a.m. in Room 122 of the Remediation Division Building (the old National Guard Armory Building) at 1100 North Last Chance Gulch, Helena, Montana. Comments submitted in response to the original notice of public hearing (MAR Notice No. 17-204), do not need to be resubmitted for consideration under this amended notice. ARM 17.56.504, 17.56.505, 17.56.602 and New Rules II, IV and V remain the same as published in the original notice. ARM 17.56.502 and New Rules I and III are being re-proposed for amendment and adoption as shown below.

2. The Department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., April 5, 2004, to advise us of the nature of the accommodation that you need. Please contact Helenann Cannon, Department of Environmental Quality at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 841-5002; fax (406) 841-5050; or email hcannon@state.mt.us.

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

<u>17.56.502 REPORTING OF SUSPECTED RELEASES</u> (1) Owners and operators, any installer, any person who performs subsurface investigations for the presence of regulated substances, and any person who performs a tank tightness or line tightness test pursuant to ARM 17.56.407~~(3)~~ or 17.56.408~~(2)~~, must report <u>suspected releases</u> to <u>a person within the remediation division of</u> the department and the implementing agency <u>or to the 24-hour disaster and emergency</u>

services duty officer available at telephone number (406) 841-3911 ~~by telephone~~ within 24 hours of discovery of the existence of any of the following conditions~~, and follow the procedures in ARM 17.56.504 for any of these conditions~~:

(a) ~~the discovery by an owner or operator or other person of a released regulated substance at the storage tank site or in the surrounding area (such as~~ visual or olfactory observations, field monitoring results or other indicators of the presence of regulated substances in soil or nearby surface or ground water, or the presence of free product or vapors in ~~soils,~~ basements, sewer ~~and~~ or utility lines~~, and nearby surface water and ground water)~~;

(b) the sudden or unexplained loss of product from the tank system;

(c) a failed tightness test, performed in accordance with subchapter 4, unless the tank system is found to be defective but not leaking and is immediately repaired or replaced;

(d) sampling, testing or monitoring results from a release detection method, performed in accordance with subchapter 4, that indicate a release may have occurred, unless the release detection or monitoring device is found to be defective and is immediately repaired, recalibrated, or replaced, and subsequent monitoring, sampling or testing indicates that the system is not leaking;

(e) the presence of product in the tank secondary containment system;

~~(b)~~ (f) ~~Unusual operating conditions observed by an owner or operator (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the tank system, or an unexplained presence of water in the tank) or person performing the test, unless the tank system~~ erratic behavior of product dispensing equipment or automatic release detection equipment unless the equipment is found to be defective but not leaking, and is immediately repaired or replaced; ~~or~~

(g) an unexplained presence of water in the tank;

(h) inconclusive results from a tank tightness test, performed in accordance with subchapter 4, unless the tank system is found to be defective but not leaking; and

~~(c)~~ (i) sampling, testing or ~~M~~monitoring results from a release detection method, required under ~~ARM 17.56.402 and 17.56.403~~ subchapter 4, that ~~indicate a release may have occurred~~ are inconclusive and cannot rule out the occurrence of a release, unless~~:~~

~~(i)~~ the monitoring device is found to be defective~~,~~ and is immediately repaired, recalibrated or replaced, and ~~additional~~ subsequent monitoring, ~~does not confirm the initial result; or~~ sampling or testing indicates that the system is not leaking.

~~(ii) in the case of inventory control, a second month of data does not confirm a suspected release~~.

(2) Messages left on answering machines, received by facsimile, email, voice mail or other messaging device are not

adequate 24-hour notice.

AUTH: 75-11-319, 75-11-505, MCA
IMP: 75-11-309, 75-11-505, MCA

REASON: The original Notice of Public Hearing on Proposed Amendment and Adoption published in MAR Notice Number 17-204 proposed amendments to ARM 17.56.502 that divided suspected releases into two reporting categories based upon relative risk from the release to human health, safety and the environment. Suspected releases, believed to pose a higher risk, were to be reported within 24 hours of discovery of the release. Suspected releases, believed to pose a lower risk to human health, safety and the environment were to be reported within seven days of discovery. The Department believed the separate requirements were appropriate based upon relative risk posed by the two categories of suspect releases. However, the reporting party was burdened with determining which category a suspect release may fall within. For example, under the original proposal, a "failed" statistical inventory release detection report would require reporting within 24 hours while an "inconclusive" report would require reporting within seven days. The Department believes this could cause confusion and unintentional violations of the rule. Therefore, as currently proposed, the amendments to ARM 17.56.502 require all suspected releases to be reported within 24 hours of discovery of the release. Changes have been made to the originally-proposed amendments to ARM 17.56.502(1), (1)(a), (1)(c) and (1)(c)(iii), and sections have been renumbered. The proposed rule amendments are consistent with the current requirements for reporting suspected releases.

The reason for other amendments to ARM 17.56.502 are the same as stated in the original notice.

4. The proposed new rules provide as follows:

NEW RULE I REPORTING OF CONFIRMED RELEASES (1) Upon confirmation of a release in accordance with ARM 17.56.504, or after a release from the PST or UST system is identified in any other manner, owners and operators, any installer, any person who performs subsurface investigations for the presence of regulated substances, and any person who performs a tank tightness or line tightness test pursuant to ARM 17.56.407 or 17.56.408, must report releases to the department and the implementing agency within the specified timeframes and in the following manner:

(a) Except as provided in (1)(b), all confirmed releases must be reported to a person within the remediation division of the department, the implementing agency, or the 24-hour disaster and emergency services duty officer available at telephone number (406) 841-3911 within 24 hours of confirming the release. Messages left on answering machines, received by facsimile, email or voice mail or other messaging device are not adequate 24-hour notice.

(b) When a release is confirmed from laboratory analysis of samples collected from a site, the release must be reported to the department and implementing agency by a method that ensures the department or the implementing agency receives the information within seven days of release confirmation. The date of release confirmation, for purposes of this rule, is the date the owner, operator, installer, or person who performs subsurface investigations for the presence of regulated substances received notification of the sample results from the laboratory. Laboratory analytical results that exceed the following values confirm that a release has occurred:

(i) risk-based screening levels (RBSLs) established for petroleum contaminants in surface soil, or 50 micrograms per kilogram, for extractable petroleum hydrocarbon (EPH) compounds at UST sites, published in Montana Tier 1 Risk-Based Corrective Action Guidance for Petroleum Releases (RBCA) for petroleum compounds and mixtures in soil;

(ii) preliminary remediation goals or soil screening levels published in the United States Environmental Protection Agency, Region 9 Preliminary Remediation Goals for soil analyses of contaminants in soil that are not listed in RBCA; or

(iii) contaminant levels in water that exceed background levels in the receiving water.

AUTH: 75-11-319, 75-11-505, MCA
IMP: 75-11-309, 75-11-505, MCA

REASON: As originally proposed in MAR Notice Number 17-204, New Rule I stated that a release was confirmed when laboratory analytical results for contaminant levels in water exceed Montana water quality standards, published in Department Circular WQB-7, for those contaminants. See originally-proposed amendments to New Rule I(1)(b)(ii). The change to New Rule I, proposed herein, states that a release is confirmed when laboratory results for contaminant levels in water exceed the background level for the contaminant in the receiving water. See New Rule I(1)(b)(iii). This proposed change will make the criteria for listing a release more consistent with the Department's standards for classifying a release as resolved. A release is resolved when all clean up requirements are met, including applicable environmental requirements, criteria or limitations. This includes meeting the state's policy of non-degradation of high quality waters. The effect of this proposed change is to lower the level of contamination required to classify a suspected release as a confirmed release. However, the actual impact of this proposed change will be small because very few suspect releases will be re-classified as confirmed based upon lab results that fall between the background levels in the receiving water and the levels in Department Circular WQB-7.

The reason for the other provisions of New Rule I are the same as stated in the original notice.

NEW RULE III RELEASE CATEGORIZATION (1) Except as provided in (2), (3) and (4), the department shall categorize all releases from USTs and PSTs regulated under this chapter as active.

(2) The department may categorize a release as ground water management as provided in (2)(a). The department must notify the owner or operator of the department's determination to categorize the release as ground water management, and must document all conditions that preclude the site from being categorized as resolved.

(a) The department may only categorize a release as ground water management when:

(i) site conditions satisfy all criteria listed under (4) except that water quality parameters exceed:

(A) a standard published in department Circular WQB-7;

(B) a standard established as a drinking water maximum contaminant level published in 40 CFR Part 141; or

(C) a risk-based screening level published in RBCA;

(ii) ground water performance monitoring of natural attenuation data collected in accordance with U.S. Environmental Protection Agency Office of Solid Waste and Emergency Response Directive 9200.4-17P indicate that the dissolved contaminant plume has been stable or shrinking for a period of at least two consecutive years;

(iii) all sources of the release have been eliminated or reduced to the maximum extent practicable;

(iv) all free product has been removed to the maximum extent practicable;

(v) documented investigations or site-specific risk analyses demonstrate that taking additional remedial action is neither cost effective nor practicable to address the release; and

(vi) engineering or institutional controls are in place to ensure that identified risks to human health and the environment are reduced to acceptable levels. For the purposes of this rule, engineering or institutional controls must consist of:

(A) deed restrictions or restrictive covenants that run with the land and that have been approved by the department and duly recorded;

(B) a designated controlled ground water area as provided for in 85-2-506, MCA; or

(C) another method approved by the department that has been shown to ensure risk has been reduced to acceptable levels.

(b) The department may reduce or discontinue monitoring required for a ground water management release after a period of continuous monitoring, at least five years long, that is determined by the department to be sufficient to detect unacceptable risks to human health or the environment. In deciding to reduce or discontinue monitoring, the department shall consider whether the plume's extent, magnitude, and contaminant concentrations have remained stable under fluctuating hydrogeologic conditions. The department shall

review ground water management releases once every five years, in consultation with the owner or operator, to determine whether site closure should be considered or whether unexpected conditions necessitate increased frequency of monitoring.

(c) When the department reduces or discontinues monitoring of a ground water management release in accordance with (2)(b), the department shall send a letter to the owner or operator that states all the information in (6)(a) through (e), includes a schedule of review that complies with (2)(b), and requires monitoring or a ground water investigation to determine whether the requirements at (4) are met when the owner, operator or department proposes to recategorize the release as resolved.

(3) The department may categorize a release as transferred when another state or federal program assumes jurisdiction of the facility and all releases and threatened releases of hazardous or deleterious substances from USTs or PSTs, regulated under this chapter, are addressed by that program at the facility. The department shall notify the owner or operator that the department will categorize the release as transferred.

(4) The department may categorize a release as resolved if the department has determined that all cleanup requirements have been met and that conditions at the site ensure present and long-term protection of human health, safety, welfare and the environment. The following requirements must be met before a release may be categorized as resolved:

(a) documented investigations conducted in accordance with ARM 17.56.604 identify the extent, or absence of, contamination remaining in the soil, ground water, surface water, and other environmental media relevant to the release;

(b) risks to human health and the environment from residual contamination at the site have been evaluated and indicate that unacceptable risks do not exist and are not expected to exist in the future. Owners or operators, or other persons, may use any of the following methods to evaluate risk from a release with department approval:

(i) RBCA for soil and water contamination, except for public health risk from inhalation of contaminant vapors, surface water, or sediment;

(ii) a site-specific risk assessment conducted in accordance with EPA Risk Assessment Guidance for Superfund: Volume I, Parts A through C, and EPA Exposure Factors Handbook: Volumes I through III; or

(iii) demonstration to the department's satisfaction that current and potential future exposure pathways are incomplete;

(c) all appropriate remedial actions associated with the release and required by the department, including compliance monitoring and confirmatory sampling, have been completed; and

(d) all applicable and relevant environmental requirements, criteria or limitations associated with the release have been met. Such requirements include, but are not

limited to, local, state, and federal environmental, health and safety regulations that must be complied with during implementation of the corrective action plan. These requirements include, but are not limited to, air quality, drinking water and monitoring well requirements, solid waste management requirements, hazardous waste management requirements, national pollution discharge elimination system (NPDES) and Montana pollution discharge elimination system (MPDES) requirements, underground injection controls and standards, UST requirements, reclamation requirements, ground water and surface water quality standards, storm water requirements, and requirements for the protection of endangered species, historic sites, wetlands and floodplains.

(5) The department may recategorize a resolved or ground water management release as active if the department receives information upon which it determines that further remedial action is necessary. Such information may include, but is not limited to, changes in land use or site conditions that may increase the potential for adverse impacts to human health or the environment from residual contamination. The department must notify the owner or operator of the department's determination to recategorize the release as active.

(6) When a release is categorized as resolved, the department shall send a letter to the owner or operator that:

(a) states that, based on information then available, no further corrective action will be required at that time;

(b) requires that all monitoring wells, piezometers, and other ground water sampling points either be abandoned or maintained by the property owner in accordance with applicable rules and requirements;

(c) describes the amount and location of any residual contamination that remains in the subsurface;

(d) states the reasons why the department believes the release does not pose a present or future risk to human health or the environment; and

(e) identifies known conditions that may require additional work.

AUTH: 75-11-319, 75-11-505, MCA
IMP: 75-11-309, 75-11-505, MCA

REASON: As originally proposed in MAR Notice Number 17-204, New Rule III categorized certain releases as "noncompliant ground water." See originally-proposed amendments to New Rule III(2), (2)(a), (2)(b), (2)(c), and (5). This category included releases which have met all criteria for classification as a resolved release except water quality standards are exceeded. The Department believes it is inaccurate to name this category "noncompliant ground water" because the label does not reflect the Department’s long-term management of these releases. The change to New Rule III, proposed herein, will rename this category of release "ground water management." This name reflects the Department’s long-term oversight of the releases within the ground water

management category.

The reason for the other provisions of New Rule III are the same as stated in the original notice.

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 Kirsten Bowers, Remediation Division, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901, faxed to (406) 444-1901 or emailed to kbowers@state.mt.us and must be received no later than 5:00 p.m., April 16, 2004. To be guaranteed consideration, mailed comments must be postmarked on or before that date. Comments submitted in response to the original notice of public hearing (MAR Notice No. 17-204), do not need to be resubmitted for consideration under this amended notice.

6. Kirsten Bowers has been designated to preside over and conduct the hearing.

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 must make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Legal Unit, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to ejohnson@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.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL QUALITY

James M. Madden
JAMES M. MADDEN
Rule Reviewer

BY: *Jan P. Sensibaugh*
JAN P. SENSIBAUGH, Director

Certified to the Secretary of State, February 17, 2004.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.30.702 and the adoption of new rule I pertaining to defining nutrient reducing subsurface wastewater treatment systems	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION (WATER QUALITY)

TO: All Concerned Persons

1. On March 24, 2004 at 3:00 p.m., the Board of Environmental Review will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Board 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 Board no later than 5:00 p.m., March 15, 2004, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email ber@state.mt.us.

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

17.30.702 DEFINITIONS (1) through (8) remain the same.

~~(9) "Level 2 treatment" means a waste water treatment system that will provide a higher degree of treatment than conventional systems, including the removal of at least 60% of nitrogen as measured from the raw influent load to the system. The term does not include treatment systems for industrial waste.~~

(9) "Level 1a treatment" means a subsurface wastewater treatment system (SWTS) that:

(a) removes at least 50%, but less than 60%, of total nitrogen as measured from the raw sewage load to the system; or

(b) discharges a total nitrogen effluent concentration of greater than 24 mg/L, but not greater than 30 mg/L. The term does not include treatment systems for industrial waste.

(10) "Level 1b treatment" means a SWTS that:

(a) removes at least 34%, but less than 50%, of total nitrogen as measured from the raw sewage load to the system; or

(b) discharges a total nitrogen effluent concentration of greater than 30 mg/L, but not greater than 40 mg/L. The term does not include treatment systems for industrial waste.

(11) "Level 2 treatment" means a SWTS that:

(a) removes at least 60% of total nitrogen as measured from the raw sewage load to the system; or

(b) discharges a total nitrogen effluent concentration of 24 mg/L or less. The term does not include treatment systems for industrial waste.

(10) through (24)(b) remain the same, but are renumbered (12) through (26)(b).

AUTH: 75-5-301, 75-5-303, MCA
IMP: 75-5-303, MCA

REASON: The Department has requested that the Board propose revisions to the existing nondegradation rules and a new rule for subsurface wastewater treatment systems (SWTS) that remove nitrogen at a better efficiency than a conventional septic tank/drainfield system. Current rules and circulars provide only a few sentences regarding the information required to determine whether a SWTS can be classified as a nitrogen-reducing level 2 system. The proposed rules are necessary to provide more guidance and more detailed monitoring requirements. The rules will provide manufacturers with a clear goal to achieve in order to obtain a classification as level 1a, 1b, or 2. The detailed requirements will also improve the consistency of the department's treatment technology evaluation process.

Two new terms "level 1a" and "level 1b" are being added to the rule definitions. Currently, only the term "level 2" is defined in the rule. These two new categories of nitrogren treatment are necessary in order to give credit to subsurface wastewater treatment systems that treat nitrogen better than a conventional system but are not able to meet the criteria for level 2 designation. The required nitrate concentration at the end of a mixing zone for a level 1a or level 1b system would remain as less than or equal to 5 mg/L, the same as for a conventional system. Only level 2 systems would be able to increase the nitrate concentration up to 7.5 mg/L, pursuant to 75-5-301(5)(d), MCA.

Proposed new (11) is a modification of the current definition of level 2 in existing (9). The language "or discharging a total nitrogen effluent concentration of 24 mg/L or less" is being added to the definition. This change is necessary because many types of treatment systems cannot collect raw influent samples without significantly disrupting treatment of the wastewater. Under this revised definition, a wastewater system can be classified as level 2 (or level 1a or level 1b as defined previously) without collecting influent data, except for the single sample required in (3)(c) of proposed new rule I.

4. The proposed new rule provides as follows:

NEW RULE I CRITERIA FOR NUTRIENT REDUCTION FROM SUBSURFACE WASTEWATER TREATMENT SYSTEM (SWTS) (1) This rule describes the information that must be submitted to obtain a department classification of a SWTS as level 1a, level 1b or level 2, as those terms are defined in ARM 17.30.702. The nitrogen treatment efficiency that a SWTS is granted under this rule may

be used as the effluent concentration in mixing zone calculations.

(2) A person seeking classification of a SWTS as level 1a, level 1b, or level 2 must submit the following background information to the department regarding the SWTS, in addition to any other information the department determines is necessary to verify the long-term treatment capabilities of the system:

(a) a description of the technology utilized by the system and the system components;

(b) engineering details regarding component sizes and materials specifications. Components include, but are not limited to, tanks, pumps, piping, control panels, and treatment media;

(c) operation and maintenance requirements;

(d) a description of the long-term reliability of the system components;

(e) a description of the installation process; and

(f) information verifying the reliability of the SWTS manufacturer and vendor. At a minimum, the vendor or manufacturer must either:

(i) have maintained an office in Montana for the past five years with a significant portion of its business related to design, construction, or installation of SWTSs; or

(ii) demonstrate an equivalent level of experience and reliability in Montana.

(3) A person seeking classification of a SWTS as level 1a, level 1b, or level 2 must submit monitoring information as provided in this section. The department may require additional information (particularly for technologies not included in department Circular DEQ-4) if necessary to verify the long-term reliable treatment capabilities of the system.

(a) The following background information must be submitted for each system monitored:

(i) system address (including legal description);

(ii) system start-up date;

(iii) description of current and historical system use, particularly during the performance monitoring period; and

(iv) monitoring data collected prior to and after the required performance monitoring period.

(b) For a SWTS that uses the effluent total nitrogen concentration to determine treatment efficiency, the monitoring must be from at least six systems. For a SWTS that uses the percent total nitrogen removed from measured raw sewage to determine treatment efficiency, the monitoring must be from at least three systems.

(c) For each SWTS that is monitored, at least one representative sample of raw sewage must be collected and analyzed for nitrate (as N), nitrite (as N), ammonia (as N), total kjeldahl nitrogen (TKN) (as N), biological oxygen demand (BOD), and total suspended solids (TSS). This information will be used to determine the raw sewage strength, which must not exceed residential strength. Chemical characterization of raw sewage must be based on one of the following representative samples:

(i) if the septic tank or other initial tank is used only for primary treatment of the sewage, the sample should be collected from that tank;

(ii) if the septic tank or other initial tank is used for treatment beyond primary treatment, the sample should be collected prior to start-up of the SWTS from that tank; or

(iii) another department-approved location.

(d) Each SWTS must be monitored for one year. At least one SWTS must be monitored for at least two years.

(e) Sampling frequency must be at least monthly (or equivalent frequency as approved by the department) during the winter months (November through April), and at least quarterly during the summer months (May through October). At least 50% of the monitoring data from each SWTS must be collected during the winter months.

(f) Each effluent sample must be analyzed for nitrate (as N), nitrite (as N), ammonia (as N), TKN (as N), BOD, TSS, and flow. If influent monitoring is conducted, each influent sample must be analyzed for TKN (as N) or total nitrogen. If the SWTS is experiencing significant infiltration and inflow, the department may require that influent samples be collected and analyzed during each effluent monitoring event to determine an accurate representation of the nitrogen-reducing capabilities of the system.

(g) Monitored SWTSs must be in Montana or located in a climate similar to Montana.

(h) The arithmetic mean of the available data will be used to determine compliance with this rule.

(i) All water analyses, except for temperature, must be conducted according to an EPA-approved method by an independent laboratory. Temperature measurements must be conducted on-site.

(j) The department may waive specific requirements in this rule if:

(i) the monitoring data are substantially equivalent to those requirements; or

(ii) the SWTS uses a proven nutrient reduction technology listed in DEQ-4 with proprietary variations.

(4) The results from a SWTS that is tested under the EPA/national science foundation (NSF) environmental technology verification (ETV) program may be used to demonstrate compliance with the requirements in (3).

(5) In response to a request for classification of a SWTS as level 1a, level 1b, or level 2, the department may, after evaluating the SWTS under the criteria in this rule:

(a) approve the request;

(b) approve the request with modifications or conditions;

(c) deny the request; or

(d) deny the request pending submittal of additional information.

(6) If a SWTS that is classified as level 1a, level 1b, or level 2 is modified, the department may require that the SWTS be re-evaluated under the criteria in this rule.

(7) If subsequent data indicate that a SWTS classified under this rule is not reliable or cannot meet required nutrient reductions, the department may rescind the classification.

(8) All SWTSs classified as a level 1a, level 1b, or level 2 must have an operation and maintenance (O&M) contract in perpetuity for each system installed. The O&M contract will be required in the subdivision approval, or as a deed restriction if a subdivision plat approval is not required for the property. O&M must be conducted by the system manufacturer, an approved vendor, or other qualified personnel. The SWTS vendor or manufacturer must offer an O&M plan that meets the requirements of this section and the requirements in department Circular DEQ-4. At a minimum, the O&M contract must include:

(a) an on-site inspection of all the major components of the SWTS twice a year for the first two years after use of the system begins, and annually thereafter. Inspections of suspended growth systems must be twice as frequent. Inspection items must include verifying proper operation of the visual/audible alarm system required in (9) and determining whether any water treatment devices have been added, modified or removed from the water system that discharges to the SWTS; and

(b) annual effluent sampling and analysis for nitrate (as N), nitrite (as N), ammonia (as N), TKN (as N), BOD, TSS, fecal coliform, specific conductance and temperature. Effluent sampling must be conducted after all treatment is complete, but before discharge to the absorption area.

(9) All SWTSs classified as level 1a, level 1b, or level 2 must have the following features:

(a) a visual and/or audible alarm warning that indicates if any portion of the treatment system (prior to the absorption system) is failing to provide the designated level of treatment;

(b) a physical barrier that prevents the discharge of wastewater to the absorption system if any portion of the treatment system (prior to the absorption system) is failing to provide the designated level of treatment; and

(c) a backflow prevention device installed between the house or facility and the septic tank to prevent sewage from entering the structure.

AUTH: 75-5-301, 75-5-303, MCA
IMP: 75-5-303, MCA

REASON: Section (2) is included to provide information on the dependability of the system and on the dependability of the vendor/distributor. This section is necessary to assure that the treatment system is reliable. Requiring assurance that the vendor/distributor is reliable is necessary given past experiences in Montana where vendors have sold proprietary systems to homeowners and then left the state. It is then difficult or impossible to find a qualified person to work on the systems when maintenance is needed.

Subsection (3)(a) is necessary to help the Department assess any irregularities in the monitoring data. Knowing what the system was used for and when it began operation helps the

Department to review the monitoring data. Subsection (3)(a)(iv) is necessary to give the Department the opportunity to evaluate all data collected from the system and not just the best data.

Subsection (3)(b) includes different requirements for the number of systems that need to be monitored depending on whether the influent to the system is monitored every time the effluent is monitored. Systems that do not measure influent concentrations every time the effluent is monitored are required to monitor twice as many systems. This requirement is necessary because collecting influent and effluent samples for every sampling round is statistically a better method for determining the treatment capability of a wastewater system.

The proposed rule applies only to systems that treat residential-strength wastewater. The requirement in (3)(c) is necessary to insure that the wastewater being monitored is consistent with residential strength wastewater.

Subsection (3)(d) requires monitoring for at least one year to determine how the systems operate in all climatic conditions. The requirement that one system be monitored for two years is necessary to insure that the treatment technology has long-term reliability.

Nitrogen reduction in SWTSs is less effective under colder temperatures. Subsection (3)(e) requires at least half of the monitoring data be collected during the winter months. This is necessary to insure that data showing a system's nitrogen reducing capabilities are representative of a year-round average.

The requirement in (3)(f) is necessary to prevent a treatment technology from getting credit for nutrient reduction when the influent nitrogen concentration is unusually low due to dilution of the influent wastewater. This subsection would typically only apply to large systems that have significant amounts of collection pipes where infiltration and inflow could occur.

As discussed in (3)(e), nitrogen reduction is less effective in cold weather. Therefore, (3)(g) is necessary to require that testing be conducted in states with a cold weather climate similar to Montana's.

Subsection (3)(h) requires that monitoring data be evaluated using the arithmetic mean, which is the average of the data.

Subsection (3)(i) requires water analyses to be conducted by an independent laboratory using an EPA-approved method. These are necessary to standardize the analysis of different systems.

Subsection (3)(j) is included to provide flexibility to the Department if the monitoring data do not meet the exact letter of the previous requirements in (3)(a) through (i), but are equivalent. This subsection also allows more flexibility if the Department is familiar with the technology being used. New types of technology will be scrutinized to a higher degree.

The U.S. Environmental Protection Agency (EPA) and the National Science Foundation (NSF) have a program to test water and wastewater treatment technologies. One of the categories is

for nitrogen reduction in SWTSs. The ETV program is an intensive one-year controlled monitoring program that conducts weekly and daily monitoring under a variety of stress conditions. Section (4) allows a manufacturer to substitute all the monitoring requirements in (3) for a favorable result from the ETV program. This section is necessary to allow for alternative sources of valid data.

Section (5) identifies the actions that the Department may take after evaluation of a SWTS. This section is necessary to provide guidance to applicants.

Section (6) is necessary to allow the Department to re-evaluate a product if the Department believes a design change could potentially reduce the nitrogen treatment capabilities of a system. Re-evaluation could consist of collecting a new body of data, or it may require only re-submittal of system specifications so that the Department can verify that the modification will not negatively affect the system performance.

Section (7) is necessary to allow the Department to rescind a nutrient-reducing classification if long-term data show the SWTS is not treating nitrogen to the applicable concentration.

Operation and maintenance (O&M) is often overlooked by homeowners. With the increased complexity of nutrient reducing SWTSs as compared to conventional systems, O&M is critical to insuring that wastewater is treated properly for the life of the system. Section (8) is necessary to address this issue. Annual monitoring is necessary to insure the system is operating as designed and as approved by the Department. The increased sampling frequency for suspended growth systems (e.g., Aerobic Treatment Unit (ATUs)), is necessary due to the more complex nature of these systems as compared to attached-growth systems (e.g., recirculating trickling filters). The quarterly monitoring scheduled for ATUs is the same as that recommended by EPA in "Onsite Wastewater Treatment Systems Manual," (February 2002).

The requirement in (9) for a physical barrier to the drainfield if the system is not operating properly is necessary to insure that improperly operating systems will be maintained. The audible and visual alarm will provide several days warning before the system is hydraulically overloaded. The backflow prevention device is necessary to prevent wastewater from backing up into a dwelling. Once hydraulically overloaded, the wastewater will likely surface through the septic tank or a recirculation tank, but not into the house.

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 the Board of Environmental Review, P.O. Box 200901, Helena, Montana 59620-0901, faxed to (406) 444-4386 or emailed to the Board Secretary at ber@state.mt.us and must be received no later than 5:00 p.m., March 25, 2004. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. Thomas Bowe, attorney for the Board, has been designated to preside over and conduct the hearing.

7. The Board 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 that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to the Board Secretary at ber@state.mt.us or may be made by completing a request form at any rules hearing held by the Board.

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

BOARD OF ENVIRONMENTAL REVIEW

By: *Joseph W. Russell*
JOSEPH W. RUSSELL, M.P.H.,
Chairman

Reviewed by:

James M. Madden
JAMES M. MADDEN, Rule Reviewer

Certified to the Secretary of State, February 17, 2004.

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

In the matter of the amendment of ARM 37.70.110, 37.70.115, 37.70.401, 37.70.402, 37.70.406, 37.70.407, 37.70.408, 37.70.601 and 37.70.607 pertaining to Low Income Energy Assistance Program (LIEAP)	)))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On March 17, 2004, at 10:00 a.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 March 8, 2004, 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.

37.70.110 FRAUD/TRANSFER OF ~~PROPERTY~~ RESOURCES

(1) remains the same.

(2) If an individual appears to have received assistance fraudulently, the local contractor must report all facts of the matter to the ~~program integrity~~ audit and compliance bureau. The bureau may in turn refer the matter to the department of justice or the county attorney of the county in which the recipient resides for further action.

(3) through (5)(b) remain the same.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201, MCA

37.70.115 OVERPAYMENTS AND UNDERPAYMENTS

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

(2) Current and future program year payments of low income energy assistance will be reduced the full amount of prior

overpayments, unless the administrative cost would exceed the amount of overpayment.

(a) However, cases in which the recipient willfully made false statements causing overpayment are to be referred to the ~~program integrity~~ audit and compliance bureau for determination of fraud as provided in ARM 37.70.110.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201, MCA

37.70.401 DEFINITIONS (1) through (2) remain the same.

(3) "Disabled individual household" means a household in which resides at least one person who has been determined disabled based on the criteria for disability provided in Title II or Title XVI of the Social Security Act.

(3) and (4) remain the same but are renumbered (4) and (5).

~~(5) "Handicapped household" means a household in which resides at least one person who has been determined disabled by the federal social security administration under Title II or Title XVI of the Social Security Act.~~

(6) through (7)(b) remain the same.

(8) "In-kind income" means goods, services or other non-monetary benefits, including but not limited to meals, clothing, housing or produce.

(8) through (15) remain the same but are renumbered (9) through (16).

(17) "Single elderly household" means a household consisting of one person only, who is is 60 years of age or older.

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

(19) "State fiscal year" means the period from July 1 of one calendar year through June 30 of the next calendar year. For example, state fiscal year 2004 means the period from July 1, 2003 through June 30, 2004.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201, MCA

37.70.402 ELIGIBILITY REQUIREMENTS FOR CERTAIN TYPES OF INDIVIDUALS AND HOUSEHOLDS (1) and (2) remain the same.

(3) Individuals living in shelters, including but not limited to recipients of SSI, TANF-funded cash assistance or county or tribal general assistance, are not eligible for low income energy assistance. Individuals living in licensed group-living situations as defined in ARM 37.70.401 may be eligible if they meet all other requirements for eligibility. Individuals living in licensed group-living situations which are not group-living situations as defined in ARM 37.70.401 are not eligible for low income energy assistance.

(4) Households which contain a member who is enrolled at least half time in an institution of higher education and who was claimed for the previous tax year as a dependent ~~child~~ for federal income tax purposes by a taxpayer who is not a member of ~~an eligible~~ a household which is eligible in the current heating

season, or which would be eligible in the current heating season if the household applied, are ineligible for low income energy assistance.

(5) through (7) remain the same.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201, MCA

37.70.406 TABLES OF INCOME STANDARDS (1) The income standards in the table in (2) ~~below~~ are the ~~2002~~ 2003 U.S. department of health and human services poverty guidelines for households of different sizes. This table applies to all households, including self-employed households.

(a) Households with annual gross income at or below 150% of the ~~2002~~ 2003 poverty guidelines are financially eligible for low income energy assistance. Households with an annual gross income above 150% of the ~~2002~~ 2003 poverty guidelines are ineligible for low income energy assistance, unless the household is automatically financially eligible for LIEAP benefits as provided in ARM 37.70.402 because all members of the household are receiving SSI, TANF-funded case assistance, or county or tribal general assistance.

(2) Annual income standards for all households:

Family Size	Poverty Guideline		150 Percent	
One	~~$ 8,860~~	$ 8,980	~~$13,290~~	$13,470
Two	~~11,940~~	12,120	~~17,910~~	18,180
Three	~~15,020~~	15,260	~~22,530~~	22,890
Four	~~18,100~~	18,400	~~27,150~~	27,600
Five	~~21,180~~	21,540	~~31,770~~	32,310
Six	~~24,260~~	24,680	~~36,390~~	37,020
Additional member add	~~3,080~~	3,140	~~4,620~~	4,710

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201, MCA

37.70.407 CALCULATING INCOME (1) Excluded from income are the following types of unearned income and deductions:

(a) through (t) remain the same.

(u) veteran's administration pension reimbursements for medical expenses; ~~and~~

(v) foster care payments received for a foster child or adult if the LIEAP applicant has chosen to exclude the foster child or adult from the household; such payments are not excluded if the applicant has chosen to include the foster adult or child as a member of the household. Additionally, any foster care payments received during the 12 months immediately preceding the month of application for a foster child or adult who is no longer living in the household at the time of application shall be excluded~~.~~; and

(w) in-kind income.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201, MCA

37.70.408 RESOURCES (1) through (3) remain the same.
(4) In state fiscal year ~~2003~~ 2004, a household will be eligible if its total countable non-business resources do not exceed ~~$8,222~~ $8,419 for a single person, ~~$12,333~~ $12,629 for two persons and an amount equal to ~~$12,333~~ $12,629 plus ~~$822~~ $842 for each additional household member, up to a maximum of ~~$16,444~~ $16,839 per household. In addition, the household may have business assets whose equity value does not exceed $12,500.
(5) through (5)(b) remain the same.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201, MCA

37.70.601 BENEFIT AWARD (1) The benefit matrices in (1)(c) and (1)(d) are used to establish the benefit payable to an eligible household for a full ~~winter~~ heating season (October through April). The benefit varies by household income level, type of primary heating fuel, the type of dwelling (single family unit, multi-family unit, mobile home), the number of bedrooms in the dwelling, and the heating districts in which the household is located, to account for climatic differences across the state.
(a) remains the same.
(b) Applicants may claim no more bedrooms than household members except that single elderly and ~~handicapped~~ disabled individual households are entitled to claim two bedrooms if their dwelling unit contains more than one bedroom.
(c) The following table of base benefit levels takes into account the number of bedrooms in a house, the type of dwelling structure, and the type of fuel used as a primary source of heating:

TABLE OF BENEFIT LEVELS

(i) SINGLE FAMILY

~~# BEDROOMS~~	~~NATURAL GAS~~	~~ELECTRIC~~	~~PROPANE~~	~~FUEL OIL~~	~~WOOD~~	~~COAL~~
~~ONE~~	~~$352~~	~~$ 656~~	~~$ 601~~	~~$ 537~~	~~$ 374~~	~~$296~~
~~TWO~~	~~512~~	~~954~~	~~783~~	~~781~~	~~544~~	~~430~~
~~THREE~~	~~697~~	~~1,300~~	~~1,190~~	~~1,064~~	~~741~~	~~586~~
~~FOUR~~	~~960~~	~~1,788~~	~~1,637~~	~~1,463~~	~~1,019~~	~~807~~

# BEDROOMS	NATURAL GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	$474	$ 582	$ 625	$ 598	$341	$225
TWO	689	846	908	869	496	327
THREE	939	1,153	1,237	1,184	676	446

FOUR	1,291	1,587	1,702	1,629	930	613

(ii) MULTI-FAMILY

# BEDROOMS	~~NATURAL GAS~~	~~ELECTRIC~~	~~PROPANE~~	~~FUEL OIL~~	~~WOOD~~	~~COAL~~
~~ONE~~	~~$298~~	~~$ 555~~	~~$ 508~~	~~$ 571~~	~~$316~~	~~$250~~
~~TWO~~	~~448~~	~~836~~	~~765~~	~~860~~	~~476~~	~~377~~
~~THREE~~	~~658~~	~~1,226~~	~~1,123~~	~~1,261~~	~~698~~	~~553~~
~~FOUR~~	~~769~~	~~1,433~~	~~1,311~~	~~1,474~~	~~816~~	~~646~~

# BEDROOMS	NATURAL GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	$ 401	$ 492	$ 528	$ 635	$288	$190
TWO	603	742	795	957	434	286
THREE	885	1,088	1,167	1,404	637	420
FOUR	1,035	1,271	1,364	1,640	744	491

(iii) MOBILE HOME

# BEDROOMS	~~NATURAL GAS~~	~~ELECTRIC~~	~~PROPANE~~	~~FUEL OIL~~	~~WOOD~~	~~COAL~~
~~ONE~~	~~$297~~	~~$ 553~~	~~$ 506~~	~~$ 474~~	~~$315~~	~~$250~~
~~TWO~~	~~434~~	~~808~~	~~740~~	~~694~~	~~461~~	~~365~~
~~THREE~~	~~575~~	~~1,072~~	~~981~~	~~919~~	~~611~~	~~484~~
~~FOUR~~	~~642~~	~~1,196~~	~~1,095~~	~~1,026~~	~~682~~	~~540~~

# BEDROOMS	NATURAL GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	$399	$ 491	$ 526	$ 528	$287	$190
TWO	584	717	769	772	420	277
THREE	774	951	1,020	1,023	557	367
FOUR	864	1,061	1,138	1,142	622	410

(d) remains the same.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201, MCA

37.70.607 METHOD OF PAYMENT (1) through (1)(d) remain the same.

(2) For eligible households that have their energy costs included in their rental payments:

(a) Reimbursement at the rate of 1/7 of the full amount of the benefit award matrix per month not to exceed the household's benefit award will be made by check payable to the household for paid eligible energy costs. Paid eligible energy costs claimed by the household must be supported by rent receipts. Payments

will not exceed ~~50 percent~~ 50% of the amount of paid rent evidenced by the rent receipt.

(3) ~~Households~~ Benefits for eligible households using wood to heat their ~~home may be reimbursed for wood purchased between July 1 and October 1, if supporting receipts are available.~~ dwelling shall be paid as follows:

~~(a) Households heating with wood may, at the discretion of the local agency, receive their benefit directly. Such households must disclaim any right to additional program benefits for the current heating season regardless of change of address or any other circumstances except emergencies as defined in ARM 37.70.901.~~

(a) by payment to a wood vendor for purchases of wood;

(b) at the option of the local agency, by payment directly to the household for future purchases of wood, provided, however, that households which receive a direct payment shall not be entitled to any additional benefits for the current heating season which the household might otherwise be entitled to receive due to a move to a different dwelling or other change in circumstances, except an emergency as defined in ARM 37.70.901; or

(c) when the household provides receipts to verify that the household has purchased wood between July 1 and April 30 of the current state fiscal year, by a payment directly to the household reimbursing the household for wood already purchased. Households which are reimbursed by a direct payment do not lose their right to additional benefits for the current heating season as provided in (3)(b).

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201, MCA

3. The Low Income Energy Assistance Program (LIEAP) is a federally funded program to help low income households pay their home heating costs. The maximum income standards used to determine whether a household is eligible for LIEAP benefits are contained in ARM 37.70.406. These income standards are computed as a specified percentage of the federal poverty guidelines issued annually by the U.S. Department of Health and Human Services (HHS). The standards currently in ARM 37.70.406 are based on the HHS poverty guidelines for 2002.

HHS updates the poverty guidelines each year to take into account increases in the cost of living. The amendment of ARM 37.70.406 is therefore necessary to provide that the 2003 poverty guidelines rather than the 2002 guidelines will be used to determine LIEAP eligibility and benefit amount for the 2003/2004 heating season and to insert new income standards based on the 2003 poverty guidelines in the tables of income standards. If the Department did not use the 2003 guidelines, which are higher than the 2002 guidelines, households might be ineligible for benefits due to inflationary increases in the household's income which do not reflect an increase in actual buying power.

It is also necessary to amend ARM 37.70.401 containing definitions of terms used in the LIEAP rules to add several new definitions and delete one definition. The term "handicapped household" is currently used in ARM 37.70.601 and is defined in ARM 37.70.401(5). However, the term "disabled individual household" is being substituted for "handicapped household" in ARM 37.70.601 because it is now recognized that persons with a disability should not be labeled as handicapped. Thus, the definition of "handicapped household" must be deleted from the definitions rule as there is no need to define a term which is not used in the rules, and a definition of "disabled individual household" must be added.

A definition of "in-kind income" has been added because in-kind income has been included in the list of types of income which are excluded in ARM 37.70.407. It is therefore necessary to define what is considered in-kind income. A definition of "single elderly household" is also being added. This term has been used in ARM 37.70.601 for many years without being defined, and the Department now wishes to correct this oversight. Finally, a definition of the term "state fiscal year" is being added. ARM 37.70.408 governing resources currently uses the term "fiscal year". The term fiscal year is not defined in the definitions rule, but the Department has always interpreted the term to mean the State of Montana's fiscal year, which runs from July 1 of one calendar year to June 30 of the next calendar year. To make this meaning clearer, the term "fiscal year" is being replaced by "state fiscal year" in ARM 37.70.408, and a definition of the new term is being added to the definitions rule.

ARM 37.70.407 sets forth the rules for calculating income for LIEAP eligibility purposes. Section (1) of this rule contains a list of types of income which are excluded when determining LIEAP eligibility. A new subsection, subsection (1)(w), is being added to provide that in-kind income will be excluded. The Department is excluding these payments at the suggestion of the LIEAP Round Table, an informal meeting of LIEAP contractors and other individuals interested in LIEAP issues which meets once a year. In-kind income is being excluded because it was decided that households should not be ineligible for LIEAP because of receipt of non-monetary payments such as meals, clothing, housing or produce which cannot be used to pay the costs of heating the home. This change will make LIEAP's policy consistent with the policy of the Food Stamp Program, which does not count in-kind income in determining eligibility for Food Stamps.

In determining eligibility for LIEAP, the Department considers an applicant's resources as well as income, that is, the Department looks at what assets the applicant has which can be used to pay heating costs. ARM 37.70.408 contains provisions governing resources. Section (4) of ARM 37.70.408 specifies the

maximum amount of non-business resources which households of varying sizes can have and still qualify for LIEAP. The Department is increasing these dollar amounts by 2.4% to adjust for inflation, as provided in section (5) of ARM 37.70.408. Section (5) states that the dollar limits on non-business resources will be revised annually. The revised limits are computed by multiplying the current dollar limits by the percentage increase in the national consumer price index (CPI) for the previous calendar year or by 3%, whichever is less. The CPI for 2002 was 2.4%, so the Department has used the lesser figure of 2.4% as the multiplier. The CPI for 2002 is being used because section (5) provides that the dollar limits on non-business resources will be adjusted annually on July 1 using the CPI for the previous calendar year. The Department is now making the adjustment which was due on July 1, 2003, so that the CPI for 2002 is being used. The annual increase in the limits for non-business resources prevents applicants from being determined ineligible for LIEAP based on resources due to inflationary increases in household assets which do not represent a true increase in household wealth or buying power.

ARM 37.70.402 contains eligibility requirements for certain types of individuals and households. Several years ago the Department amended ARM 37.70.402 to prohibit individuals who live in licensed group-living situations from receiving LIEAP benefits. In 2002, after obtaining more information about the financial arrangements under which most group homes operate, the Department determined that individuals in group-living situations who meet the income, resource and other eligibility requirements for LIEAP should be eligible for LIEAP. Thus, in 2002 the provision of ARM 37.70.402(3) that individuals in licensed group-living situations are ineligible for LIEAP was deleted, thereby allowing otherwise eligible residents of licensed group-living situations to receive LIEAP.

"Licensed group-living situation" is defined in ARM 37.70.401 as a facility which is licensed by the Department and meets certain other requirements. Thus, ARM 37.70.402(3) as amended in 2002 allows only residents of licensed group-living situations which are licensed by the Department and meet the other requirements of the definition to receive LIEAP. To make this clear to persons reading ARM 37.70.402(3) who might not read the definition in ARM 37.70.401, ARM 37.70.402(3) is now being amended to specifically state that only residents of licensed group-living situations as defined in ARM 37.70.401 may be eligible for LIEAP.

ARM 37.70.402(3) currently provides that individuals living in shelters, including recipients of Supplemental Security Income (SSI), Temporary Assistance for Needy Familes (TANF) cash assistance or county or tribal general assistance, are ineligible for LIEAP. This provision exists to clarify the point that recipients of SSI, TANF and general assistance who live in shelters cannot receive LIEAP, even though ARM

37.70.402(1) provides that SSI, TANF and general assistance recipients are automatically financially eligible for LIEAP, that is, are financially eligible without having to meet LIEAP income and resource requirements. ARM 37.70.402(3) is now being amended to state that individuals living in shelters, including but not limited to recipients of SSI, TANF or general assistance, are ineligible for LIEAP. The phrase "but not limited to" is being added to emphasize that no one living in a shelter is eligible for LIEAP.

ARM 37.70.402 also contains a provision relating to students at institutions of higher education. Section (4) provides that households which contain a member who is enrolled at least half time in an institution of higher education and who was claimed for the previous tax year as a dependent for federal income tax purposes by a taxpayer who is not a member of an eligible household are ineligible for LIEAP. The Department has been asked by its contractors which determine eligibility for LIEAP whether the phrase "by a taxpayer who is not a member of an eligible household" refers to a taxpayer who is not a member of a household which is eligible for LIEAP in the current heating season or in the previous heating season.

Thus, ARM 37.70.402(4) is being amended to clarify that it is the eligibility of the taxpayer's household during the current heating season which determines whether the student will be eligible for LIEAP. The Department has added this because it believes it is more logical to determine the student's eligibility based on the current financial circumstances of the household which claimed the student as a dependent rather than the household's circumstances in the previous year. Additionally, language is being added to indicate that the student may be eligible if the taxpayer's household would have been eligible for LIEAP during the current heating season if it had applied. This is being added because the Department believes a student claimed as a dependent by a household which meets the income and resource criteria for LIEAP should be eligible for LIEAP regardless of whether the household actually applied for LIEAP benefits.

ARM 37.70.601 contains tables of benefit amounts which are used to establish the amount of benefits an eligible household will receive. The size of the household's benefit depends on income level, type of primary heating fuel, the type of dwelling and number of bedrooms, and the heating district in which the household is located. The benefit amounts in the table are being revised based on available funds for the current heating season as well as fuel cost projections for the current heating season and an estimate of the number of households which will apply for and be found eligible for LIEAP for this heating season.

ARM 37.70.607 addresses the methods used to pay LIEAP benefits to eligible households, for example, whether the LIEAP benefits may be paid directly to the household rather than being paid to the fuel vendor in various circumstances. ARM 37.70.607(3) discusses households which heat with wood and provides that households which heat with wood may be reimbursed for wood purchased between July 1 and October 1. Subsection (3)(a) further provides that a household which heats with wood may, at the option of the LIEAP contractor, be paid its LIEAP benefit directly, as opposed to the benefit being paid to a vendor of wood. However, subsection (3)(a) provides that a household which is paid its benefit directly gives up its rights to any additional benefit it may be entitled to receive during the current heating season due to a change in circumstances such as a change of address. The Department requires the household sign a form agreeing to give up the right to receive additional benefits in the future in order to discourage households from using the payment to purchase items other than wood and later applying for additional benefits to meet their need for fuel.

ARM 37.70.607(3) is now being reorganized and rewritten to more clearly state that payments to households which heat with wood may be paid by one of three methods, namely, by (1) payment to a wood vendor for purchases of wood; (2) by direct payment to the household for future purchases of wood, at the option of the LIEAP contractor; and (3) by reimbursement to the household for wood already purchased. These changes do not reflect a change in policy but merely clarify the present policy.

ARM 37.70.607(3) is being amended to provide that a household can also be reimbursed for wood purchased anytime between July 1 and April 30, rather than only wood purchased from July 1 to October 1 as the rule currently states. Under the current rule, households which apply after October 1 cannot be reimbursed for wood purchased after October 1. This change is being made because households often apply for LIEAP after October 1. The Department believes households should be entitled to reimbursement for any wood purchased before the date of application, as long as it is purchased during the heating season.

ARM 37.70.607(3) is further being amended to provide that a household which is reimbursed for wood already purchased does not give up the right to additional LIEAP benefits in the future if warranted by a future change of circumstances such as a move to a different dwelling. The Department does not require the household to give up the right to additional future benefits because the household has already spent its LIEAP benefit on wood, as evidenced by the receipts the household must provide in order to obtain reimbursement.

ARM 37.70.110 addresses procedures for dealing with fraud or suspected fraud by LIEAP applicants and recipients. The rule

currently contains an outdated reference to the Program Integrity Bureau. In the past the Departmental bureau which dealt with public assistance fraud was the Program Integrity Bureau, which has been renamed the Audit and Compliance Bureau. The amendment of these rules is therefore necessary to correct this terminology. ARM 37.70.110 also discusses transfers of resources. Section (5) provides that a person who has transferred resources without adequate compensation for the purpose of qualifying for LIEAP within one year prior to applying for LIEAP will not be eligible for LIEAP benefits. The rule catchphrase refers to transfers of property rather than transfers of resources. Since the body of the rules uses the word "resource" rather than "property", the word "resources" is being substituted for the word "property" in the catchphrase for the sake of consistency.

ARM 37.70.115 addresses procedures for dealing with overpayments of LIEAP benefits. Subsection (2)(a) provides for referrals to the Program Integrity Bureau when an overpayment is caused by willful false statements of the LIEAP recipient. As mentioned above, the Program Integrity Bureau has been renamed the Audit and Compliance Bureau, so the amendment of ARM 37.70.115(2)(a) is necessary to correct this terminology.

The Department estimates that 20,000 households will receive LIEAP in the 2003-2004 heating season. All of these households will be affected by the changes in benefit amounts. The increases in the income standards and resource limits are cost of living adjustments and are not expected to result in more households becoming eligible for LIEAP; rather, the purpose of the increases is to prevent households from being ineligible due to inflationary increases in household income and resources. Although the federal LIEAP appropriation received this year is approximately $500,000 less than last year's appropriation, there will be a cumulative increase in LIEAP benefits of $2.2 million for the 2003-2004 heating season due to increases in other sources of funding for LIEAP. The Governor has allocated $1.5 million of the federal Jobs and Growth Tax Relief Reconciliation Act of 2003 funds awarded to Montana last summer to LIEAP, and $500,000 of Temporary Assistance for Needy Families (TANF) funds are being allocated to the LIEAP program to be paid to TANF-eligible families. Additionally, approximately $200,000 of last year's federal LIEAP appropriation was not spent in 2002-2003 and is available to pay benefits in the current heating season.

4. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on March 25, 2004. 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.

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

Dawn Sliva
Rule Reviewer

John Chappuis for
Director, Public Health and Human Services

Certified to the Secretary of State February 17, 2004.

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

In the matter of proposed adoption of NEW RULES I through XIII, pertaining to transportation of high-level radioactive waste and transuranic waste	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On April 6, 2004, at 1:30 p.m., a public hearing will be held in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, to consider the proposed adoption of New Rules I through XIII.

2. The PSC 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 PSC no later than 5:00 p.m. on March 30, 2004, to advise us of the nature of the accommodation that you need. Please contact Connie Jones, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone (406) 444-6170, TTD number (406) 444-6199, fax number (406) 444-7618, e-mail conniej@state.mt.us.

3. The proposed new rules provide as follows:

NEW RULE I PURPOSE, SCOPE, AND LIMITATIONS (1) The following rules implement provisions of the Montana High-Level Radioactive Waste and Transuranic Waste Transportation Act, 10-3-1301 through 10-3-1310, MCA, that are not self-implementing or otherwise require rules.

(2) The rules are supplemental to the act and must be read, interpreted, and applied in conjunction with the act itself.

(3) Under certain circumstances the administration and implementation of one or more provisions of the act or these rules may be affected by preemptive national and state security concerns.

AUTH: 10-3-1309, MCA
IMP: 10-3-1302, 10-3-1309, MCA

NEW RULE II DEFINITIONS Terminology used in these rules have the meanings assigned in the act and this rule, unless the context clearly dictates otherwise:

(1) "Account" means the radioactive waste transportation monitoring, emergency response, and training account as provided in 10-3-1304, MCA.

(2) "Act" means the Montana High-Level Radioactive Waste and Transuranic Waste Transportation Act, codified at 10-3-1301

through 10-3-1310, MCA.

(3) "Department of transportation" means the Montana department of transportation as provided at 2-15-2501, MCA.

(4) "Disaster and emergency services division" means the disaster and emergency services division of the Montana department of military affairs as referenced in 20-3-1304, MCA.

(5) "Highway patrol" means the Montana highway patrol as provided at 44-1-101, MCA.

(6) "Local authority" means Montana counties, incorporated cities, and Indian nations and associated qualifying local emergency response entities.

(7) "Originating shipper" means the owner or the person designated by the owner or by law to arrange for transportation of the radioactive waste.

(8) "Owner" means the person who owns the radioactive waste.

(9) "Public safety answering point" means a communications facility operated on a 24-hour basis that first receives 911 calls from persons in a 911 service area and that may, as appropriate, directly dispatch public or private safety services or transfer or relay 911 calls to appropriate public safety agencies.

(10) "Public service commission" means the transportation and centralized services division of the Montana department of public service regulation, public service commission, as referenced at 2-15-2601, 2-15-2602, and 69-1-101, MCA.

(11) "Radioactive waste" means high-level radioactive waste, spent nuclear fuel, or transuranic waste as defined at 10-3-1303, MCA.

(12) "State authority" includes the disaster and emergency services division, department of transportation, highway patrol, and public service commission.

(13) "Transporter" means a railroad or motor carrier transporting radioactive waste.

AUTH: 10-3-1309, MCA
IMP: 10-3-1309, MCA

NEW RULE III PRIMARY CONTACT POINT (1) The primary contact point regarding administration and implementation of the act and these rules is: administrator, disaster and emergency services division, telephone 406-841-3911, fax 406-841-3965, street address 1900 Williams Street, Helena, Montana, and mailing address P.O. Box 4789, Helena, Montana 59604.

AUTH: 10-3-1309, MCA
IMP: 10-3-1309, MCA

NEW RULE IV RESPONSIBILITIES OF OWNER, ORIGINATING SHIPPER, AND TRANSPORTER (1) The responsibilities of the owner and originating shipper (if not the owner) are as provided in 10-3-1305 and 10-3-1306, MCA. The responsibilities include elements such as notification, accompanied by information and proofs prescribed, to the disaster and emergency services

division, department of transportation, and the transporter. In addition to the information prescribed within 10-3-1305, MCA, the owner and originating shipper (if not the owner) shall provide:

(a) the identity (name, address, telephone number, contact person) of the transporter;

(b) the identity (name, address, telephone number, contact person) of the entity responsible for payment of fees; and

(c) a certification that the disaster and emergency services division, department of transportation, and the transporter have been properly notified and provided all required information.

(2) The owner and originating shipper (if not the owner) shall personally verify that notification and the required information have actually been received by the disaster and emergency services division, department of transportation, and the transporter, prior to transportation of radioactive waste within or through Montana.

(3) In addition to the requirements of the act and these rules, the owner, originating shipper (if not the owner), and the transporter shall be fully compliant with all other applicable state and federal motor carrier and rail regulations, including providing of notifications, payment of fees, and securing of permits, prior to transportation of radioactive waste within or through Montana.

AUTH: 10-3-1309, MCA
IMP: 10-3-1305, 10-3-1306, 10-3-1309, MCA

NEW RULE V RESPONSIBILITIES OF DISASTER AND EMERGENCY SERVICES DIVISION (1) The disaster and emergency services division is the lead Montana authority regarding the act and these rules and is the primary Montana point-of-contact by the owner, originating shipper, and transporter of radioactive waste within or through Montana by motor vehicle or rail and by affected state authorities and local authorities.

(2) The disaster and emergency services division shall verify the owner and originating shipper (if not the owner) have provided all information as required by 10-3-1305 and 10-3-1306, MCA, and these rules. The disaster and emergency services division shall verify that those required to receive notification and information as required by 10-3-1305 and 10-3-1306, MCA, have received the notification and information.

(3) Upon approval of the notification and information provided, the disaster and emergency services division shall provide notification to the state and local authorities affected. Notification must include all essential information.

(4) Notification to the department of transportation must affirm the number of casks approved for transportation and the identity (name, address, and telephone number) of contact persons, including the person responsible for payment of fees as provided in 10-3-1307, MCA.

AUTH: 10-3-1309, MCA

IMP: 10-3-1306, 10-3-1309, MCA

NEW RULE VI RESPONSIBILITIES OF DEPARTMENT OF TRANSPORTATION (1) The responsibilities of the department of transportation are as provided at 10-3-1306, MCA.

(2) Upon receipt of notification of approval by the disaster and emergency services division, the department of transportation shall contact the owner, originating shipper, transporter, or other to collect the required fees for transportation of radioactive waste by motor carrier or rail, issue permits as contemplated by the act, and deposit fees paid into the account.

(3) The department of transportation, in coordination with the highway patrol, will inspect motor carriers transporting radioactive waste within or through Montana.

(4) Compliance with the act and rules regarding fees, permits, and inspections related to transportation of radioactive waste does not relieve a motor carrier from general federal and Montana motor carrier regulations (e.g., weight, length, width, and height regulations).

AUTH: 10-3-1309, MCA
IMP: 10-3-1306, 10-3-1307, 10-3-1309, MCA

NEW RULE VII RESPONSIBILITIES OF HIGHWAY PATROL (1) The responsibilities of the highway patrol are as provided at 10-3-1308, MCA.

(2) Upon receipt of notification of approval by the disaster and emergency services division, the highway patrol shall coordinate with the disaster and emergency services division and the department of transportation regarding specific information pertaining to the transportation of radioactive waste.

(3) Based on information received, the highway patrol shall initiate the appropriate level of response and either escort the shipment or otherwise monitor progress of the shipment along the route within or through Montana. Highway patrol response plans must be maintained and updated as necessary.

AUTH: 10-3-1309, MCA
IMP: 10-3-1308, 10-3-1309, MCA

NEW RULE VIII RESPONSIBILITIES OF PUBLIC SERVICE COMMISSION (1) The responsibilities of the public service commission are as provided at 10-3-1309, MCA.

(2) The public service commission shall monitor transportation of radioactive waste by rail within or through Montana. Following notice of transportation of radioactive waste by rail within or through Montana, the public service commission shall coordinate with appropriate state authorities, agencies of the federal government, and the governments of states and nations bordering Montana, and to the extent

necessary, governments of other states, in or through which the radioactive waste is being transported.

(3) The objective of public service commission monitoring is to ensure that necessary inspections, whether done by federally certified inspectors of the public service commission, federal government, or other states, demonstrate that track and rolling stock used for or affected by the transportation of radioactive waste by rail within or through Montana meet and will adhere to all federal and state conditions, serviceability, and operational requirements related to public safety.

AUTH: 10-3-1309, MCA
IMP: 10-3-1309, MCA

NEW RULE IX STATE AUTHORITIES: NOTIFICATION BY DISASTER AND EMERGENCY SERVICES DIVISION (1) Disaster and emergency services division notification to the state authorities shall be by fax and telephone.

AUTH: 10-3-1309, MCA
IMP: 10-3-1306, 10-3-1309, MCA

NEW RULE X LOCAL AUTHORITIES: NOTIFICATION BY DISASTER AND EMERGENCY SERVICES DIVISION (1) The disaster and emergency services division will provide specific notification through the public safety answering point of all Montana local authorities directly affected by the intended route, and known or likely alternative (emergency) routes of transportation of radioactive waste within or through Montana.

(2) Notification by the disaster and emergency services division will be in accordance with federal department of energy minimum notification guidelines, to the extent circumstances allow. Notification may be modified for security purposes as determined or required by federal or state authorities.

AUTH: 10-3-1309, MCA
IMP: 10-3-1309, MCA

NEW RULE XI RESPONSIBILITIES OF LOCAL AUTHORITIES

(1) Local authorities must convey the disaster and emergency services division notification to the public safety answering point to the appropriate local authority offices, officers, and personnel according to the structure and response plans of the local authority's disaster and emergency services unit and its relationship with essential persons and entities (e.g., county sheriff, county road and bridge department, municipal police chief, municipal street department, etc.).

AUTH: 10-3-1309, MCA
IMP: 10-3-1309, MCA

NEW RULE XII PROCESS AND QUALIFICATIONS FOR LOCAL GOVERNMENTS AND LOCAL EMERGENCY RESPONSE ENTITIES TO RECEIVE TRAINING (1) The disaster and emergency services division

shall provide training for local jurisdiction emergency responders as part of normal disaster and emergency training programs. Local jurisdictions must be notified of the available training programs. Priority in training must be assigned to local jurisdictions on prescribed radioactive waste transportation routes.

AUTH: 10-3-1309, MCA
IMP: 10-3-1309, MCA

NEW RULE XIII COLLECTION OF FEES, ACCOUNTING, AND DISBURSEMENT OF FUNDS (1) The department of transportation shall collect fees in accordance with the act. Fees collected must be deposited in the account administered by the disaster and emergency services division.

(2) The disaster and emergency services division shall disburse amounts from the fund for the purpose of reimbursements in accordance with the act and as follows:

(a) Local governments may receive reimbursement for training. Local governments shall determine the costs incurred for training and submit a bill to the disaster and emergency services division for reimbursement. Reimbursable costs incurred for local authority training are limited to training provided by or approved by the disaster and emergency services division and state approved rates for mileage, meals, and lodging associated with that training.

(b) Local governments may receive reimbursement for emergency response pertaining to transportation of radioactive waste. Local governments shall determine the costs incurred for an emergency response and submit a bill to the disaster and emergency services division for reimbursement.

(c) The highway patrol may receive reimbursement for monitoring or providing escorts of shipments of radioactive waste. The highway patrol shall determine the cost incurred and submit a bill to the disaster and emergency services division. Reimbursable costs for highway patrol monitoring or providing escorts are limited to state approved rates for mileage, meals, and lodging and that part of salaries properly designated overtime, if applicable.

(3) As an advisory rule pending legislative action in accordance with 10-3-1304, MCA, priority of reimbursement to local governments and the highway patrol, if funds available from the account are limited, must be as follows:

(a) costs of local government emergency response activities;

(b) costs of highway patrol escort and monitoring activities;

(c) costs of local government training.

AUTH: 10-3-1309, MCA
IMP: 10-3-1304, 10-3-1306, 10-3-1309, MCA

4. Adoption of the rules is required by 10-3-1309, MCA, and is otherwise reasonably necessary to enhance the safety of

Montana's citizens in accordance with 10-3-1302, MCA, and clarify the relationships among, and the responsibilities of, state authorities and local authorities.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to the Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, or may be submitted to the PSC through the PSC's web-based comment form at http://psc.state.mt.us/PublicComment/PublicComment.htm and must be received no later than April 8, 2004. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-03.12.6-RUL.")

6. The PSC, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

7. The Montana Consumer Counsel, 616 Helena Avenue, P.O. Box 201703, Helena, Montana 59620-1703, telephone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

8. The PSC maintains a list of persons who wish to receive notices of rulemaking actions proposed by the PSC. 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: electric utilities, providers, and suppliers; natural gas utilities, providers, and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and administrative procedures. Such written request may be mailed or delivered to Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Connie Jones at (406) 444-7618, e-mailed to conniej@state.mt.us, or may be made by completing a request form at any rules hearing held by the PSC.

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

/s/ Bob Rowe
Bob Rowe, Chairman

/s/ Robin A. McHugh
Reviewed by Robin A. McHugh

Certified to the Secretary of State February 17, 2004

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of New Rules I and II; amendment of ARM 42.15.802, 42.15.803, 42.15.804, and 42.15.805; and repeal of ARM 42.15.801 relating to the taxation of family education savings accounts	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On March 22, 2004, at 1:30 p.m., a public hearing will be held in the Fourth Floor Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption, amendment, and repeal of the above-stated rules relating to taxation of the family education savings accounts.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, 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., March 15, 2004, 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 1712, Helena, Montana 59604-1712; telephone (406) 459-2646; fax (406) 444-3696; or e-mail canderson@state.mt.us.

3. The proposed new rules do not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rules provide as follows:

NEW RULE I TAXATION OF FAMILY EDUCATION SAVINGS PROGRAM ACCOUNT EARNINGS (1) Earnings on family education savings program accounts are not included in Montana adjusted gross income when earned. The earnings will be included in Montana adjusted gross income when distributed to the extent they are not used to pay for qualified higher education expenses.

AUTH: 15-30-305 and 15-62-201, MCA
IMP: 15-30-111, MCA

REASONABLE NECESSITY: The department is proposing New Rule I to clarify the application of federal income tax provisions in Montana. The rule clarifies that account earnings are never taxed when earned and that account earnings may be subject to tax when distributed if not used to pay for qualified higher education expenses.

NEW RULE II EFFECTIVE DATE OF CONTRIBUTION FOR TAX PURPOSES (1) For purposes of determining whether a contribution should be considered for one tax year or another, the date of mailing will be determinative. A certificate of mailing issued by the post office will be evidence of the date of mailing.

AUTH: 15-30-305 and 15-62-201, MCA
IMP: 15-30-111, MCA

REASONABLE NECESSITY: The department is proposing New Rule II to clarify which tax year a contribution will be considered. Many contributions are made at the close of each calendar year, but are not received until the new year. The intent of this rule is to clarify that the postmark will be used when there is any doubt regarding which year the contribution should be applied.

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

42.15.802 CONTRIBUTIONS TO FAMILY EDUCATION SAVINGS PROGRAM ACCOUNTS (1) A taxpayer is allowed to deduct the lesser of the total contributions actually made to ~~an educational~~ one or more family education savings accounts during the tax year, or $3,000. A deduction is allowed only for contributions to accounts owned by the taxpayer, the taxpayer's spouse, or, if the taxpayer's child or stepchild is a Montana resident, the taxpayer's child or stepchild.

(2) For Montana tax purposes, deductible contributions to ~~an educational~~ a family education savings account do not include ~~interest earned~~ the earnings on the account. ~~Interest generated by educational family savings accounts is exempt from taxation by Montana until the time it is distributed to the account owner or the account beneficiary.~~

~~(3) A taxpayer may contribute to more than one educational family savings account. The total deduction for contributions made to all accounts during the tax year may not exceed $3,000.~~

~~(4) A taxpayer may contribute to more than one family education savings account during a tax year. The total deduction for contributions made to all accounts by the taxpayer may not exceed $3,000.~~

~~(5) Married taxpayers may each deduct up to $3,000 for contributions made to family education savings accounts during the tax year. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse.~~

AUTH: 15-30-305 and 15-62-201, MCA
IMP: 15-30-111, 15-62-201, ~~15-62-204~~ and 15-62-207, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.802 to reflect the amendments made by Chapter 468, Laws of 2001, and Chapter 566, Laws of 2003, to 15-30-111 and 15-62-207, MCA. The department is proposing to delete 15-

62-204 because it was repealed by the 2001 legislature. Most of the deleted material is now found in the law and would be redundant in rule.

42.15.803 WITHDRAWALS FROM FAMILY EDUCATION SAVINGS PROGRAM ACCOUNTS (1) ~~Nonqualified withdrawals of earnings and deductible contributions~~ Earnings withdrawn from ~~educational~~ family education savings accounts, other than in a qualified withdrawal, must be included in the distributee's Montana adjusted gross income in the year withdrawn.

(2) The ~~interest~~ earnings portion of a qualified withdrawal is ~~includable~~ not included in ~~the account beneficiary's~~ Montana adjusted gross income ~~in the year withdrawn~~. ~~The taxable portion of a qualified withdrawal is determined using the provisions of the Internal Revenue Code, 26 U.S.C. 72.~~

(3) and (4) remain the same.

(5) A recapture tax at a rate equal to the highest rate of tax provided in 15-30-103, MCA, is imposed on the recoverable withdrawal of contributions to a family education savings account deducted by the contributor. The recapture tax is payable by the owner of the account from which the withdrawal was made even if the account owner did not make the deductible contribution. The account owner is liable for the tax even if the account owner is not a Montana resident at the time of the withdrawal.

(6) An account owner who is subject to the recapture tax must report the tax on the tax return for the taxable year of the withdrawal and must pay the tax at the time the income tax for such year is due.

~~(5)~~(7) The portion of a ~~nonqualified~~ recoverable withdrawal that is not treated as the withdrawal of earnings shall be treated as:

(a) first, out of nondeductible contributions not previously withdrawn; and

(b) second, out of deductible contributions not previously withdrawn.

(8) The portion of any other withdrawal that is not treated as the withdrawal of earnings shall be treated as:

(a) first, out of deductible contributions not previously withdrawn; and

(b) second, out of nondeductible contributions not previously withdrawn.

~~(6)~~(9) The taxpayer shall have the burden of sustaining a claim that all or a portion of the contributions withdrawn were not attributable to deductible contributions. There shall be a presumption that a ~~nonqualified~~ recoverable withdrawal is a withdrawal of deductible contributions.

AUTH: 15-30-305 and 15-62-201, MCA
IMP: 15-30-111, 15-62-201, and 15-62-208, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.803 to delete the reference to nonqualified withdrawals and deductible contributions because the

legislature enacted a new recapture tax. The amendment refers to withdrawals other than qualified withdrawals (rather than to nonqualified withdrawals) to pick up a class of withdrawals that are neither qualified nor nonqualified, i.e., withdrawals due to the award of a scholarship, death or disability of the designated beneficiary. Further, the rule is amended to clarify that earnings are subject to tax because they are included in federal adjusted gross income. The account owner is being deleted and the term "distributee" is being added to track section 26 USC, 529(c)(3)(A) of the Internal Revenue Code. Earnings can include dividends, capital gains, and other items that increase the value of mutual funds that are held through accounts so that term is being added in (2). The deleted text in (2) is duplicative of what is currently found in (4). New (5), (6), and (8) support 15-62-208, MCA.

42.15.804 VERIFICATION OF FAMILY EDUCATION SAVINGS PROGRAM ACCOUNT CONTRIBUTIONS AND WITHDRAWALS (1) Each program manager shall provide to the department for each tax year a report identifying all contributions made during such year to family education savings accounts ~~during such year~~ for which the account owner is, or was at the time the account was opened, a Montana resident. Such report shall be in an electronic form that ~~is sortable~~ may be sorted by names and social security numbers and shall be submitted within two months following the close of the year. The form shall include for each contributor and designated beneficiary the following:

(a) full name;

(b) last reported address;

(c) amount of the contributions; and

(d) social security number.

(2) ~~Each program manager shall provide to the department for each tax year a copy of the report prepared for the internal revenue service on withdrawals from family education savings accounts. Such report shall be in electronic form that is sortable by names and social security numbers of the distributees (i.e., the designated beneficiary, account owner or estate that is treated as having withdrawn the funds for federal income tax purposes).~~ Each program manager shall provide to the department for each tax year a report identifying all withdrawals made during such year from family education savings accounts during such year for which the account owner is, or was at the time the account was opened, a Montana resident. Such report shall be in electronic form that may be sorted by names and social security numbers of the account owners and the distributees, and shall be submitted within one month following the close of the year. The report shall include for each account owner and distributee the following:

(a) full name;

(b) last reported address;

(c) amount of the withdrawals (and to the extent that

internal revenue service requires such information with respect to withdrawals, the portion constituting contributions and the portion constituting earnings);

(d) social security number; and

(e) in the case of the account owner, a notation as to whether the distribution is an early withdrawal.

(3) At the request of the department, each program manager shall provide to the department copies of any other reports about accounts that it provides to either the internal revenue service or the Montana board of regents. These reports shall contain the same information and be provided in the same format as those provided to either the internal revenue service or the Montana board of regents.

(4) For purposes of this section, a program manager shall report a withdrawal as an early withdrawal if the withdrawal is made within three years of the date that the account was opened (unless the account was opened before April 1, 2001).

(5) A program manager shall withhold the potential recapture tax from any potentially recoverable withdrawal from an account that was at any time owned by a resident of Montana but that at the time of the withdrawal is not owned by a person who is a resident of Montana. For purposes of this provision, the program manager shall be entitled to assume that the account owner's address is the last address that the account owner reported to the program manager.

(6) Any potential recapture tax that is withheld shall be paid to the department not later than the last day of the month following the month in which such withholding occurred. A program manager shall have no liability to the department for failure to withhold potential recapture tax if such error was made in good faith.

(7) A taxpayer who desires to make a potentially recoverable withdrawal for which withholding would be required may petition the department to determine the proper amount of the potential recapture tax. The petition shall include all facts relevant to the proposed withdrawal, including information about the account and other accounts owned by the taxpayer and evidence to show that all or a portion of the contributions component of the potentially recoverable withdrawal is not attributable to deductible contributions. If the department is satisfied with the evidence, it shall issue a letter determining the potential recapture tax to be withheld by the program manager.

AUTH: 15-30-305 and 15-62-201, MCA
IMP: 15-30-111, ~~and~~ 15-62-201, and 15-62-208, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.804 because Montana needs information to verify deductible contributions. Deductible contributions may be made only to accounts that are owned by Montana residents, i.e., by the taxpayer, who must be a Montana resident to claim the deduction or a child who is a Montana resident. Section (2) is being amended because the report can be requested under

(3). Montana needs reports on distribution from accounts owned by present or former Montana residents to match with recapture tax reporting and reporting of income attributable to nonqualified withdrawals. The requirement to have the full name, last reported address, etc., will give the department the necessary information to catch recaptured withdrawals that would not be reportable to the IRS as nonqualified withdrawals that are subject to penalties. The additions of (6) and (7) are necessary because 15-62-208(3)(b), MCA, permits the department to require withholding on potentially recoverable withdrawals by account owners who have moved out of state.

42.15.805 DEFINITIONS In addition to the terms found in 15-62-103, MCA, which may be used in the rules of this sub-chapter, ~~T~~the following definitions also apply to this sub-chapter:

(1) "Act" means the Family Education Savings Act, as referenced in 15-62-101, MCA.

(2) "Child" means a son, stepson, daughter, stepdaughter, or legally adopted son or daughter of the taxpayer.

(3) "Distributee" means the account owner or designated beneficiary who withdraws the funds.

(4) The "potential recapture tax" is the lesser of the:

(a) recapture tax that would be applicable if the potentially recoverable withdrawal were a recoverable withdrawal and the entire contributions component of the withdrawal (as reasonably determined by the program manager) were attributable to deductible contributions; or

(b) amount the department determines to be the potential recapture tax.

(5) A "potentially recoverable withdrawal" is any withdrawal that the program manager would be required to report under ARM 42.15.804 as an early withdrawal and any other withdrawal that the account owner did not certify to the program manager as a qualified withdrawal or a withdrawal on account of the death, disability, or scholarship of the designated beneficiary.

(6) "Program" means the family education savings program established pursuant to the Act.

~~(2)~~(7) "Program manager" means a financial institution selected pursuant to 15-62-203, MCA. ~~The term also includes a depository.~~

(8) "Recoverable withdrawal" means a nonqualified withdrawal, or a withdrawal from an account opened after April 30, 2001, if the withdrawal is made within three years of the date that the account was opened.

AUTH: 15-30-305 and 15-62-201, MCA
IMP: 15-30-111, 15-62-103, and 15-62-201, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.805 to define new terms that are used in this chapter. The department is proposing to eliminate the second sentence to (7) because the 2003 legislature eliminated the

term "depository."

5. The Department proposes to repeal the following rule:

42.15.801 FAMILY EDUCATION SAVINGS PROGRAM ACCOUNT OWNERS AND DESIGNATED BENEFICIARIES which can be found on page 42-1599 of the Administrative Rules of Montana.

AUTH: 15-30-305 and 15-62-201, MCA
IMP: 15-30-111, 15-62-202, and 15-62-206, MCA

REASONABLE NECESSITY: The department proposes to repeal ARM 42.15.801 because the program is governed by the Act and rules of the Board of Regents of Higher Education. This rule is an operative rule and does not belong in the tax rules.

6. 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 1712
Helena, Montana 59604-1712

and must be received no later than March 26, 2004.

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

8. 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.

9. 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 6 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.

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

/s/ Cleo Anderson	/s/ Linda M. Francis
CLEO ANDERSON	LINDA M. FRANCIS
Rule Reviewer	Director of Revenue

Certified to Secretary of State February 17, 2004

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of New Rules I through VII relating to first-time home buyers	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On March 22, 2004, at 3:00 p.m., a public hearing will be held in Fourth Floor Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption of New Rules I through VI relating to first-time home buyers.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, 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., March 15, 2004, 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 1712, Helena, Montana 59604-1712; telephone (406) 459-2646; fax (406) 444-3696; or e-mail canderson@state.mt.us.

3. The proposed new rules do not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS The following definitions apply to this sub-chapter:

(1) "Montana form FTB" means the Montana first-time home buyer's savings account form containing annual reporting information for self-administered individual accounts.

(2) "Montana form FTB-P" means the Montana first-time home buyer's savings account form used to report penalties assessed for non-qualified withdrawals made other than on the last business day of the tax year of the account holder.

(3) "Self-administered account holder" is synonymous with that of an account holder as defined in 15-63-102, MCA, but a self-administered account holder may also be an account administrator. For purposes of these rules, the term may be used in place of account administrator.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-63-102, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to define terms used in this sub-chapter.

NEW RULE II FIRST-TIME HOME BUYER ACCOUNT ADMINISTRATOR REGISTRATION (1) Every account administrator, except a self-administered account holder, is required to register on form FTB, which is provided by the department.

(2) The registration form must contain:

(a) the name, address, identification number of the entity, and the names of the owners or officers for a business; or

(b) the name, address, and social security number for a sole proprietorship or partnership.

(3) The account administrator number will be:

(a) the federal employer identification number for a business; and

(b) the social security number of the owner for a sole proprietor or partnership.

(4) Non-registration does not relieve an account administrator from being responsible for reporting, withholding, and remitting penalties.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-63-102 and 15-63-204, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule II to establish a registration requirement when an individual opens a first-time home buyer account when the account administrator is other than the individual.

NEW RULE III ACCOUNT ADMINISTRATOR REPORTING AND PAYMENTS (1) Every self-administered account holder or account administrator is required to annually submit the following information regarding each account:

(a) name of the account holder;

(b) address of the account holder;

(c) taxpayer identification number of the account holder;

(d) deposits made during the tax year by the account holder;

(e) amount of withdrawals made during the tax year by the account holder;

(f) dates of any withdrawals;

(g) interest or other income earned on the principal and excess contributions of the account; and

(h) amount of penalties withheld and remitted.

(2) The self-administered account holder must also include the name and address of where the account is established and the account number.

(3) Both the contributions and any interest, or other income, earned on the account are to be segregated by the self-administered account holder or account administrator from all other accounts.

(4) Each self-administered individual account holder must establish a separate account with a financial or other approved institution. The account must be segregated from all other accounts.

(5) Any year-end reporting of interest, or other income, earned to the taxing authorities and to the account holder of

interest, or other income earned must be done so that any interest, or other income earned on that account could be separately identified.

(6) For the purpose of determining the amount of interest, or other income, earned on the principal which is excluded from Montana adjusted gross income, when interest or other income earned is on principal and excess contribution, the provisions of [NEW RULE VI] apply.

(7) On or before January 31, an account administrator other than a self-administered account holder must file the information required under (1) on forms provided by or authorized by the department.

(8) Each self-administered account holder must file the information required in (1) either on a Montana form FTB provided by the department or any means available, so long as the necessary information is provided and remitted with the individual income tax form for the corresponding tax year.

(9) Self-administered account holders or account administrators who withhold penalties on monies used for items other than eligible expenses must submit the penalties to the department.

(a) Account administrators, other than self-administered account holders, must remit the penalties monthly by the 15th day of the following month when the total amount of penalties exceeds $500.

(b) Account administrators, other than self-administered account holders, whose total penalties withheld during the calendar year are less than $500 must remit the penalties on or before January 31 of the following year to the department.

(c) Self-administered account holders must complete and file Montana form FTB-P and remit the penalty shown on Montana form FTB-P with the individual income tax return (Montana form 2).

(10) Failure to remit any withheld penalties within the time provided is considered to be an unlawful conversion of trust money. Penalties provided in 15-1-216 and 15-30-321, MCA, apply to any violation of the requirement to collect, truthfully account for, and pay amounts required to be withheld from ineligible withdrawals of the account holder.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-63-202 and 15-63-204, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule III to explain the requirements to report any and all deposits and withdrawals made from a first-time home buyer account.

NEW RULE IV FIRST-TIME HOME BUYER ACCOUNT - WITHDRAWALS

(1) The funds held in an account may be withdrawn by the account holder at any time for eligible expenses. Withdrawals for the purpose of paying eligible expenses shall not be subject to the 10% penalty.

(2) Withdrawals to pay for eligible costs must be supported by an itemized statement of the down payment and

allowable closing costs that were paid by the account holder. The account holder must sign the statement attesting that these expenses are eligible costs.

(3) The burden of proving that the withdrawal from a savings account was made for eligible costs is upon the account holder and not upon the account administrator. Each account holder must maintain documentation of eligible costs.

(4) There shall be a penalty for withdrawal of funds by the account holder for purposes other than the payment of eligible costs except upon the death of the account holder. The penalty shall be 10% of the amount of the withdrawal from the account and, in addition, the amount withdrawn shall be taxed as ordinary income in the year the funds are withdrawn for non-eligible costs.

(5) The direct transfer of funds from a savings account to a savings account with a different account administrator shall not be considered a withdrawal for purposes of this rule. A direct transfer is when monies in an account are transferred to a new account without the beneficiary or account holder receiving any funds.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-63-203, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule IV to clarify when it is appropriate for funds to be withdrawn from a first-time home buyer account. The rule further clarifies what is required to support such withdrawals and who bears the burden of proof regarding what would be considered eligible costs. There is a penalty for withdrawals that do not meet the criteria set out in the rule and the rule is necessary to explain that amounts ineligible amounts will be taxed as ordinary income in the year the funds are withdrawn. It is also necessary to clarify that direct transfers may occur when the beneficiary or account holder does not receive any funds without a penalty.

RULE V INDIVIDUAL LIABILITY (1) If a corporate account administrator, limited liability company, or a limited partnership fails to withhold or fails to remit any penalties withheld to the department as required, the officers and owners are individually responsible for the penalties.

(2) A financial institution is not responsible for analyzing the eligibility of the expenses if the account holder attests that the withdrawal is made for eligible costs.

(3) Each self-administered account holder is individually responsible for remitting the penalties as stated in [NEW RULE III].

(4) In the case of a bankruptcy by an account administrator, the liability for the penalties remain unaffected and the individual or owners remains liable for the amount of penalties withheld but unpaid.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-63-203, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule V to explain when liabilities and penalties occur for a corporate account administrator, limited liability company, limited partnership, financial institution, or self-administered account holder.

NEW RULE VI TAX EXEMPTION FOR FIRST-TIME HOME BUYER

(1) An account holder who remains a "first-time home buyer" may deposit into an account more than the maximum exclusion allowed under 15-63-202, MCA, in any given tax year and may exclude from subsequent years any amounts previously deposited and not deducted as principal in a prior year.

(2) Once an individual purchases a single-family residence, the individual no longer is considered an account holder and a first-time home buyer. In subsequent years, the individual is not entitled to exclude amounts deposited into a first-time home buyer savings account or amounts previously deposited but not yet excluded from the account holder's adjusted gross income.

(3) Interest or other income earned on the principal is excluded from Montana adjusted gross income. Interest on other income on excess contributions, which have not yet been classified as principal, is not exempt in the years the interest or other income is earned.

(4) The amounts deposited into a first-time home buyer savings account is not considered principal until the year it is excluded from adjusted gross income pursuant to 15-30-111, MCA.

(a) Example: In 2004, a single individual who has never owned a home transferred $15,000 from an existing savings account into a first-time home buyer account. For 2004, the individual reduced the state income by $3,000 plus $90 in interest earned on the $3,000 principal only ($90 at the rate of 3% of the $3,000 principal). The remaining interest ($360 at the rate of 3% of the $12,000 carryover amount) is taxable in 2003.

(i) In 2005, the single individual is allowed a $3,000 carryover reduction plus interest earned on $6,090 ($183 at the rate of 3% of the $6,000 principal) for a total of $3,183 reduction on the state income tax return. The remaining interest ($281 at the rate of 3% of the $9,360 carryover amount) is taxable in 2005.

(ii) At the end of December in 2006, the single individual buys a qualifying home. The individual is permitted the $3,000 carryover reduction on the Montana income tax for the year 2006 plus interest earned to the date of purchase ($278 at the rate of 3% on $9,273) for a total of $9,551. The taxpayer must spend at least $9,551 for eligible first-time home buyer expenses. The amount includes $9,000 that qualifies for the reduction ($3,000 for 2004; $3,000 for 2005; $3,000 for 2006) plus the tax deferred interest for $551 earned during 2004, 2005, and 2006.

(iii) Once the taxpayer purchases the home, the taxpayer can no longer claim the carryover reduction for the portion of the $15,000 ($6,000 plus interest) that the taxpayer did not claim as a reduction in prior years.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-63-203, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule VI because there has been some confusion about whether a "first-time home buyer" can deposit more money into an account than the maximum exclusion. The rule will clarify that the taxpayer may deposit more money but that the taxpayer will only be entitled to the statutory amount for any tax year. The rule further clarifies that the excess amount deposited in one tax year may be deducted in subsequent tax years, so long as the taxpayer has not purchased a home yet. However, once a taxpayer purchases a single-family home, the taxpayer no longer qualifies for the exclusion. This rule provides some examples of how deposits would be treated for tax purposes and when interest and other income on the principal will be taxed.

NEW RULE VII FIRST-TIME HOME BUYER ACCOUNT – NON-ELIGIBLE WITHDRAWAL FOR NONRESIDENT (1) A resident account holder who subsequently becomes a nonresident and who has established a Montana first-time home buyer account while a resident and excluded income from Montana adjusted gross income in prior years is not entitled to a qualified withdrawal for the purchase of a single-family residence outside the state of Montana.

(2) A non-resident who files a final tax return in Montana must report, as income in the final year of residency, the amount of principal and interest previously excluded from adjusted gross income. This amount is considered a non-qualified withdrawal and subject to the 10% penalty provided in 15-63-203, MCA, unless withdrawn on the last business day of the account holder's business year.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-63-102 and 15-63-203, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule VII to clarify that once an account holder who has established a Montana first-time home buyer account in subsequent years and has excluded from Montana adjusted gross income contributions made to this account becomes a nonresident of Montana, all withdrawals are non-qualifying withdrawals and subject to taxation in Montana.

4. 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 1712
Helena, Montana 59604-1712

and must be received no later than March 26, 2004.

5. Cleo Anderson, Department of Revenue, Director's

Office, has been designated to preside over and conduct the hearing.

6. 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 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.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Linda M. Francis
LINDA M. FRANCIS
Director of Revenue

Certified to Secretary of State February 17, 2004

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of New Rules I through XI; amendment of ARM 42.4.103 and 42.4.118; amendment and transfer of ARM 42.4.107, 42.4.108, 42.4.109, 42.4.111, 42.4.112, 42.4.113, 42.4.114, 42.4.115, 42.4.116, 42.4.117, 42.4.119, 42.4.120, 42.15.211, 42.15.416, 42.15.422, 42.15.501, 42.15.502, 42.15.503, 42.15.506, 42.15.508, 42.15.509, 42.15.513, 42.15.514, 42.15.518, 42.15.520, 42.15.521, 42.15.522, 42.23.513, 42.23.516, 42.23.518, 42.23.519, and 42.23.521; transfer of ARM 42.4.130, 42.4.131, 42.15.515, 42.15.516, 42.15.519, 42.23.501, 42.23.503, 42.23.504, 42.23.505, 42.23.506, 42.23.511, 42.23.512, 42.23.514, 42.23.515, 42.23.520, and 42.23.522; and repeal of ARM 42.4.110, 42.15.104, 42.15.106, 42.15.302, 42.15.411, 42.15.412, 42.15.413, 42.15.428, 42.15.433, 42.15.507, 42.15.706, 42.23.502, and 42.23.517 relating to personal income taxes, credits, incentives and exemptions	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION; AMENDMENT; AMENDMENT AND TRANSFER; TRANSFER; AND REPEAL

TO: All Concerned Persons

1. On March 25, 2004, at 1:00 p.m., a public hearing will be held in the Fourth Floor Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption, amendment, amendment and transfer, transfer, and repeal of the above-stated rules.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, 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., March 15, 2004, 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 1712, Helena, Montana 59604-1712; telephone (406) 459-2646; fax (406) 444-3696; or e-mail canderson@state.mt.us.

3. This notice proposes to consolidate various credits, exemptions, and incentives now spread throughout Title 42 into a central location, Chapter 4. Centralization would be accomplished by renaming Chapter 4, now titled "Energy Related Tax Incentives," "Tax Credits, Exemptions, and Incentives" and amending and transferring rules from Chapters 4, 15, and 23 into various new sub-chapters in Chapter 4. Transferring these rules into one chapter will make compliance easier for the taxpayer and tax preparer in the future.

4. In some instances, the proposed new rules do replace or modify sections currently found in the Administrative Rules of Montana. The text has been taken from rules that are being modified or repealed and placed in these new rules to better aid the public and the department when using these rules. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS The following definitions apply to this sub-chapter:

(1) "Appropriate time period" as referenced in 15-32-403, MCA, is defined as a one-year period beginning January 1 and ending December 31.

(2) "Customer" is defined as a retail purchaser or distribution service provider.

(3) "Placed in service" as referenced in 15-32-404, MCA, shall begin when the new industry endeavor begins commercial operation.

AUTH: Sec. 15-1-201, 15-30-305, and 15-32-105, MCA

IMP: Sec. 15-30-304, 15-32-109, 15-32-404, and 15-35-103, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to define terms used in new Chapter 4, sub-chapter 2, relating to alternative energy production credit and exemptions.

NEW RULE II DEFINITIONS The following definitions apply to this sub-chapter:

(1) "Customer" is defined as a retail purchaser or distribution service provider.

(2) "New construction" means construction of, or additions to, buildings, living areas, or attached garages that comply with the established standards of new construction as determined by the building code statutes in Title 50, MCA.

AUTH: Sec. 15-1-201, 15-30-305, 15-32-407, and 15-35-122, MCA

IMP: Sec. 15-31-501, 15-32-109, 15-32-404, and 15-35-103, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule II to define terms used in new Chapter 4, sub-chapter 3, relating to energy conservation installation credit and deductions.

NEW RULE III INDIVIDUAL INCOME TAX CREDIT FOR ENERGY CONSERVING EXPENDITURES (1) A credit against individual income tax for energy-conserving expenditures provided in 15-32-109, MCA, is claimed by filing an individual income tax return form 2 with form ENRG-C. The credit is not allowed unless the return and form ENRG-C, providing the information prescribed in the form, are filed with the Department of Revenue, P.O. Box 5805, Helena, Montana 59604-5805.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-32-109, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule III to explain what forms must be filed and where the taxpayers are required to file these returns. This text was previously found in ARM 42.4.118, but with the reorganization of the credit, exemptions, and incentives into various sub-chapters in Chapter 4, this text better fits into new sub-chapter 3, which deals with the energy conservation installation credit and deduction.

NEW RULE IV DEFINITIONS The following definitions apply to this sub-chapter:

(1) "Finished product" means a marketable product that has economic value and is ready to be used by a consumer.

(2) "Machinery or equipment" is property having a depreciable life of more than one year, whose primary purpose is to collect or process reclaimable material or is depreciable property used in the manufacturing of a product from reclaimed material.

(3) "Primarily" means over 50% of time, usage, or other appropriate measure.

(4) "Process or processing" means preparation, treatment, including treatment of hazardous waste as defined in 75-10-403, MCA, or conversion of a product or material by an action, change, or function or a series of actions, changes, or functions that bring about a desired end result.

(5) "Reclaimed material" is post-consumer material that has been collected and used in a process designed to produce recycled material.

(6) "Recycled material" means a material that can be readily utilized without further processing in place of raw or virgin material in manufacturing a product and consists of materials derived from post-consumer waste, industrial scrap, and material derived from agricultural wastes and other items, all of which can be used in the manufacture of new products.

AUTH: Sec. 15-30-305 and 15-32-611, MCA
IMP: Sec. 15-32-601, 15-32-602, 15-32-603, 15-32-604, 15-32-609, and 15-32-610, MCA

REASONABLE NECESSITY: The department is proposing New Rule IV to define the terms used in new Chapter 4, sub-chapter 4, relating to recycle credit and recycle material. This text was previously found in ARM 42.15.507, but with the reorganization of the credit, exemptions, and incentives into

various sub-chapters in Chapter 4, this text better fits into new sub-chapter 4, which deals with the recycle credit and recycle material deduction.

NEW RULE V DEFINITIONS The following definitions apply to this sub-chapter:

(1) "Allowable contribution" for the purposes of the qualified endowment credit is a charitable gift made to a qualified endowment. The contribution from an individual to a qualified endowment must be by means of a planned gift as defined in 15-30-165, MCA. A contribution from a corporation, small business corporation, estate, trust, partnership, or limited liability company may be made by means of a planned gift or may be made directly to a qualified endowment.

(2) "Beneficial interest" is a taxpayer who has a beneficial interest in a business when the taxpayer is either a sole proprietor, partner, or shareholder in an S corporation.

(3) "Donor" means an individual, corporation, estate, or trust that contributes to a qualified charitable endowment as required by 15-30-165, 15-30-166, 15-30-167, 15-31-161, and 15-31-162, MCA.

(4) "Paid-up life insurance policies" are life insurance policies in which all the premiums have been paid prior to the policies being contributed to a qualified endowment. The donor must make the tax-exempt organization the owner and beneficiary of the policy. The paid-up policy does not have to be on the life of the donor.

(5) A "permanent irrevocable fund" is a fund which receives or will receive the charitable gift portion of a planned gift or a direct charitable contribution, and holds the charitable gift or contribution on behalf of a tax-exempt organization under 26 USC 501(C)(3), for the life of the organization. The present value of the fund at the time that the donor makes a planned gift or an outright contribution to the fund is not expendable by the tax-exempt organization on a current basis under the terms of the applicable gift document or other governing documents. For the purpose of the qualified endowment credit, the fund must be used primarily for the benefit of Montana communities and citizens.

(6) "Present value of the charitable gift portion of a planned gift" is the allowable amount of the charitable contribution as defined in 15-30-121 and 15-30-136, MCA, or for corporations as defined in 15-31-114, MCA, prior to any percentage limitations.

AUTH: Sec. 15-30-305 and 15-31-501, MCA

IMP: Sec. 15-30-165, 15-30-166, 15-30-167, 15-31-161, 15-31-162, MCA

REASONABLE NECESSITY: The department is proposing New Rule V to define the terms used in new Chapter 4, sub-chapter 10, relating to deductions for qualified endowment credits. This text was previously found in ARM 42.15.507, but with the reorganization of the credit, exemptions, and incentives into

various sub-chapters in Chapter 4, this text better fits into new sub-chapter 10, which deals with the qualified endowment credit.

NEW RULE VI DEFINITIONS The following definitions apply to this sub-chapter:

(1) "Amenities" are items that enhance the pleasantness or desirability of rental or retirement homes, or contribute to the pleasure and enjoyment of the occupant(s), rather than to their indispensable needs.

(2) "Gross household income" as defined under 15-30-171, MCA, is further defined as:

(a) all capital gains income transactions less return of capital;

(b) federal refunds received during the tax year to the extent that the amount recovered reduced the claimant's Montana income tax in a prior year; and

(c) Montana state income tax and elderly homeowner/ renter credit refunds received.

(3) "Land surrounding the eligible residence for the elderly homeowner/renter credit" is the one-acre farmstead or primary acre associated with the primary residence.

(a) If the one-acre farmstead or primary acre is not separately identified on the tax bill or assessment notice from the other acreage and the ownership is less than 20 acres, the allowable credit shall be calculated as follows: total amount of property tax billed on the land, divided by the total acreage, to equal the allowable amount of property tax used in the credit calculation.

(b) Land ownership of 20 acres or more that does not have the one-acre farmstead or primary acre separately identified on the tax bill or assessment notice must be submitted to the department's local office for computation of the allowable amount of property tax used in the credit calculation.

(4) "Rent" is the amount of money charged to a tenant to occupy a dwelling. "Rent" does not include amenities such as meals, housekeeping, nursing care, etc.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-171, 15-30-172, 15-30-173, 15-30-176, 15-30-177, and 15-30-178, MCA

REASONABLE NECESSITY: The department is proposing New Rule VI to define the terms used in new Chapter 4, sub-chapter 13, relating to residential property tax credit for the elderly. This text was previously found in ARM 42.15.507, but with the reorganization of the credit, exemptions, and incentives into various sub-chapters in Chapter 4, this text better fits into new sub-chapter 13, which deals with the residential property tax credit for the elderly.

NEW RULE VII DEFINITIONS The following definitions apply to this sub-chapter:

(1) "Full-time job" means the standard set out for a particular industry in Title 39, chapter 4, part 1, MCA. In absence of a definition in that chapter, the department may accept federal definitions, standard industry practice, or other reasonable guides

AUTH: Sec. 15-31-127 and 15-31-501, MCA
IMP: Sec. 15-8-111 and 15-31-125, MCA

REASONABLE NECESSITY: The department is proposing New Rule VII to define the terms used in new Chapter 4, sub-chapter 14, relating to new and expanded industry credit. This text was previously found in ARM 42.15.507, but with the reorganization of the credit, exemptions, and incentives into various sub-chapters in Chapter 4, this text better fits into new sub-chapter 14, which deals with the new and expanded industry credit.

NEW RULE VIII DEFINITIONS The following definitions apply to this sub-chapter:

(1) "Another state" or "other state" means a state of the United States other than Montana, the District of Columbia, the Commonwealth of Puerto Rico, any other territory or possession of the United States, and a foreign country.

(2) "Foreign income tax" means the income tax paid to another state for which the credit described in ARM 42.15.501 [42.4.1602] is claimed.

(3) "Income tax" means a tax measured by and imposed on net income and, in the case of an S corporation and partnership, includes an excise tax or franchise tax that is imposed on, and measured by, the net income of the S corporation or partnership. The term does not include any other taxes such as, but not limited to, franchise or license taxes or fees not measured by net income, gross receipts taxes, gross sales taxes, capital stock taxes, or property, transaction, sales, or consumption taxes. The term does not include penalty or interest paid in connection with an income tax.

(4) "Taxable foreign income" means the income from the other state that is included in the taxpayer's Montana adjusted gross income.

(5) "Total foreign income" means the income of the other state upon which the foreign income tax was computed.

AUTH: Sec. 15-30-305, MCA
IMP: Sec. 15-30-124, MCA

REASONABLE NECESSITY: The department is proposing New Rule VIII to define the terms used in new Chapter 4, sub-chapter 16, relating to credit allowed to resident taxpayers for income taxes imposed by foreign states or countries.

NEW RULE IX DEFINITIONS The following definitions apply to this sub-chapter:

(1) "Commences practice in a rural area" means locating a principal place of practice in or relocating a principal

place of practice to a place that does not have a hospital of at least 60 beds within a 30-mile radius. The term does not include relocating any practice from one rural area to another rural area or commencing a practice that qualifies for the credit in the same rural area in which the physician engaged in a practice that did not qualify for the credit.

(2) "Full-time basis" means not fewer than 40 hours a week.

(3) "Licensed physician" means an individual meeting the qualifications for, and to whom the department of labor and industry has issued, a physician's certificate or a temporary certificate.

(4) "Open to the general public" means open to all people, including recipients of medicaid or other forms of state or county medical assistance.

(5) "Principal place of practice" means the location:

(a) at which the physician conducts at least 80% of the physician's medical practice; and

(b) from which at least 80% of the physician's gross receipts from the practice of medicine are derived.

AUTH: Sec. 15-30-305, MCA
IMP: Sec. 15-30-188 and 15-30-189, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule IX to provide definitions of terms used in Chapter 4, sub-chapter 20, relating to the rural physician's credit.

NEW RULE X RURAL PHYSICIAN'S CREDIT – QUALIFICATIONS

(1) If the requirements described in (2) are met, a licensed physician who commences practice in a rural area is eligible for a credit against the physician's individual income tax liability of up to $5,000 a year for four successive years (up to $20,000 total) beginning in the year the practice commences. Each annual credit is subject to recapture and must be repaid as provided in [NEW RULE XI] if the physician ceases practice in the rural area within four years after the tax year the credit is allowed.

(2) The following requirements govern annual eligibility for the credit:

(a) the physician's practice must be open to the general public;

(b) the physician must conduct a rural practice on a full-time basis;

(c) the physician must maintain a rural practice for at least nine months of the tax year; and

(d) a physician may not claim the credit for any tax year during which the physician ceases to practice or does not practice in the rural area.

(3) The credit is claimed by filing a statement with the individual income tax return for the tax year for which the credit is claimed setting forth:

(a) a statement that the physician is eligible to claim the rural physician's credit;

(b) the date the practice qualifying for the credit began;

(c) the location of the practice, including the street address and town; and

(d) the nearest hospital.

AUTH: Sec. 15-30-191, MCA
IMP: Sec. 15-30-190, MCA

REASONABLE NECESSITY: The department is proposing New Rule X to clarify 15-30-189 and 15-30-190, MCA, and specify how the rural physician's credit may be claimed to conform with tax return instructions.

NEW RULE XI RURAL PHYSICIAN'S CREDIT - REPAYMENT (1) If a physician ceases to practice in a rural area within four years following a tax year for which a credit was allowed, the physician is required to repay the credit.

(2) A physician required to repay the credit:

(a) shall file a Montana individual income tax return for the tax year during which the physician ceased to practice in the rural area; and

(b) shall increase total tax by the sum of the credits required to be repaid.

(3) Interest and penalty accrue as provided in 15-1-216, MCA, from the due date of the individual income tax return.

(4) The following are examples of the credit recapture:

(a) Example 1 - A physician commences a qualifying rural practice in 1996 and continues the qualifying practice until May 2003, claiming a credit of up to $5,000 against the physician's individual income tax liability for tax years 1996, 1997, 1998, and 1999. Because the physician ceased the qualifying practice within four years following the 1999 tax year, the physician must repay the credit allowed against the physician's tax year 1999 liability. The result does not change if the physician continued the qualifying practice until December 31, 2003. The physician must file a 2003 Montana individual income tax return and must report the credit recapture as additional tax on the return. In order to avoid recapture, the physician must continue the qualifying practice through December 31, 2003.

(b) Example 2 - A physician commences a qualifying rural practice in May 1998 and continues the qualifying practice until October 2004, having claimed a credit of up to $5,000 against the physician's individual income tax liability for tax years 1999, 2000, and 2001. The physician was not entitled to claim a credit for tax year 1998, the year the qualifying practice commenced, because the practice was not maintained for nine months of the tax year. The physician must repay the credits allowed for tax years 2000 and 2001 (the physician ceased to practice within four years following the tax year in which the credits were allowed). The physician must file an individual income tax return for tax year 2004 and must increase total tax by the sum of the credits allowed in 2000 and 2001.

(c) Example 3 - A physician commences a qualifying rural practice in February 2000 and continues the qualifying practice until February 2, 2004, having claimed a credit of up to $5,000 against the physician's individual income tax liability for tax years 2000, 2001, and 2002. While the physician is eligible for the credit for tax year 2003, if the credit is claimed it must be repaid, along with the credits allowed for tax years 2000, 2001, and 2002 when the physician files the tax year 2004 individual income tax return.

AUTH: Sec. 15-30-191, MCA
IMP: Sec. 15-30-190, MCA

REASONABLE NECESSITY: The department is proposing New Rule XI to clarify 15-30-190, MCA, and show some examples of when and how the requirement to repay the credit applies.

5. The department proposes to amend the following rules, stricken matter interlined, new matter underlined:

42.4.103 PROPERTY TAX EXEMPTION FOR NONFOSSIL ENERGY SYSTEM (1) through (3)(c) remain the same.

AUTH: Sec. 15-1-201 ~~and 15-32-203~~, MCA
IMP: Sec. 15-6-201 and 15-32-102, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.4.103 to delete an authority cite that does not apply to this rule.

42.4.118 ENERGY AND CONSERVATION INDIVIDUAL INCOME TAX CREDITS (1) remains the same.

(a) ~~To qualify for the energy-conserving expenditure credit allowed under 15-32-109, MCA, a taxpayer must file form ENRG-C providing information as prescribed on the form at the time the Montana individual income tax return form 2 is filed.~~

~~(b)~~ To qualify for the geothermal energy system credit allowed under 15-32-115, MCA, a taxpayer must file form ENRG-B providing information as prescribed on the form at the time the Montana individual income tax return form 2 is filed.

~~(c)~~(b) To qualify for the alternative energy system credit using a recognized non-fossil form of energy generation or ~~though~~ through the installation of a low-emission wood or biomass combustion device under 15-32-201, MCA, a taxpayer must file form ENRG-B providing information as prescribed on the form at the time the Montana individual income tax return form 2 is filed.

AUTH: Sec. 15-1-201 and 15-32-203, MCA
IMP: Sec. ~~15-32-109,~~ 15-32-115 and 15-32-201, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.4.118 to delete text that will apply to new sub-chapter 3 better. The new text is necessary to clarify the form that must be used when the taxpayer claims a geothermal energy system credit.

6. The department proposes to amend and transfer the following rules:

42.4.107 (42.4.202) ELECTRICAL GENERATION AND TRANSMISSION FACILITY - QUALIFICATION AND PUBLICATION (1) through (3)(b)(iii) remain the same.

AUTH: Sec. 15-1-201, 15-30-305, 15-31-501, and 15-32-407, MCA

IMP: Sec. 15-24-3001, 15-32-403, and 15-35-103, MCA

REASONABLE NECESSITY: The department proposes to transfer ARM 42.4.107 to new sub-chapter 2 that deals with alternative energy production credits and exemptions because this rule will fit better in the new sub-chapter. The department amends the rule to add the authority cite of 15-31-501, MCA, because it was inadvertently omitted when the rule was originally adopted.

42.4.108 (42.4.203) ELECTRICAL GENERATION AND TRANSMISSION FACILITY - REPORTING (1) remains the same.

AUTH: Sec. 15-1-201, 15-30-305, 15-31-501, and 15-32-407, MCA

IMP: Sec. 15-24-3001, 15-32-403, and 15-35-103, MCA

REASONABLE NECESSITY: The department proposes to transfer ARM 42.4.108 to new sub-chapter 2 that deals with alternative energy production credits and exemptions because this rule will fit better in the new sub-chapter. The department amends the rule to add the authority cite of 15-31-501, MCA, because it was inadvertently omitted when the rule was originally adopted.

42.4.109 (42.4.204) ELECTRICAL GENERATION AND TRANSMISSION FACILITY - VERIFICATION (1) through (7) remain the same.

AUTH: Sec. 15-1-201, 15-30-305, 15-31-501, and 15-32-407, MCA

IMP: Sec. 15-24-3001, 15-32-403, and 15-35-103, MCA

REASONABLE NECESSITY: The department proposes to transfer ARM 42.4.109 to new sub-chapter 2 that deals with alternative energy production credits and exemptions because this rule will fit better in the new sub-chapter. The department amends the rule to add the authority cite of 15-31-501, MCA, because it was inadvertently omitted when the rule was originally adopted.

42.4.111 (42.4.205) ALTERNATE RENEWABLE ENERGY GENERATION FACILITIES EXEMPTION - LESS THAN ONE MEGAWATT (1) and (2) remain the same.

AUTH: Sec. 15-1-201 and 15-1-217, MCA

IMP: Sec. 15-6-225 and 15-31-501, MCA

REASONABLE NECESSITY: The department proposes to transfer ARM 42.4.111 to new sub-chapter 2 that deals with alternative energy production credits and exemptions because this rule will fit better in the new sub-chapter. The department amends the rule to add the implementing cite of 15-31-501, MCA, because it was inadvertently omitted when the rule was originally adopted.

42.4.112 (42.4.206) APPEAL RIGHTS (1) and (2) remain the same.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-1-211 ~~and~~, 15-2-302, and 15-31-501, MCA

REASONABLE NECESSITY: The department proposes to transfer ARM 42.4.112 to new sub-chapter 2 that deals with alternative energy production credits and exemptions because this rule will fit better in the new sub-chapter. The department amends the rule to add the implementing cite of 15-31-501, MCA, because it was inadvertently omitted when the rule was originally adopted.

42.4.113 (42.4.207) COMMERCIAL USE FOR INCOME TAX

(1) remains the same.

AUTH: Sec. 15-30-305, 15-31-501, and 15-32-407, MCA
IMP: Sec. 15-31-501, 15-32-402, 15-32-403, 15-32-404, and 69-8-103, MCA

REASONABLE NECESSITY: The department proposes to transfer ARM 42.4.113 to new sub-chapter 2 that deals with alternative energy production credits and exemptions because this rule will fit better in the new sub-chapter. The department amends the rule to add the implementing cite of 15-31-501, MCA, because it was inadvertently omitted when the rule was originally adopted.

42.4.114 (43.4.208) PROPERTY TAX EXEMPTION - NON-COMMERCIAL ELECTRICAL GENERATION MACHINERY AND EQUIPMENT

(1) and (2) remain the same.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-6-226, 15-31-501, 75-2-211, and 75-2-215, MCA

REASONABLE NECESSITY: The department proposes to transfer ARM 42.4.114 to new sub-chapter 2 that deals with alternative energy production credits and exemptions because this rule will fit better in the new sub-chapter. The department amends the rule to add the implementing cite of 15-31-501, MCA, because it was inadvertently omitted when the rule was originally adopted.

42.4.115 (42.4.209) WIND ENERGY TAX CREDITS FOR GENERATION FACILITIES LOCATED IN EXTERIOR BOUNDARIES OF A MONTANA INDIAN RESERVATION - TRIBAL EMPLOYMENT AGREEMENT

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

AUTH: Sec. 15-1-201 and 15-32-407, MCA
IMP: Sec. 15-31-501, 15-32-403, and 15-32-404, MCA

REASONABLE NECESSITY: The department proposes to transfer ARM 42.4.115 to new sub-chapter 2 that deals with alternative energy production credits and exemptions because this rule will fit better in the new sub-chapter. The department amends the rule to add the implementing cite of 15-31-501, MCA, because it was inadvertently omitted when the rule was originally adopted.

42.4.116 (42.4.210) WIND ENERGY TAX CREDITS FOR GENERATION FACILITIES LOCATED ON SCHOOL TRUST LAND (1) and (2) remain the same.
AUTH: Sec. 15-32-407, MCA
IMP: Sec. 15-31-501 and 15-32-403, MCA

REASONABLE NECESSITY: The department proposes to transfer ARM 42.4.116 to new sub-chapter 2 that deals with alternative energy production credits and exemptions because this rule will fit better in the new sub-chapter. The department amends the rule to add the implementing cite of 15-31-501, MCA, because it was inadvertently omitted when the rule was originally adopted.

42.4.117 (42.4.211) DEDUCTIBILITY OF IMPACT FEE FOR LOCAL GOVERNMENT AND SCHOOL DISTRICTS (1) remains the same.
AUTH: Sec. 15-30-305 and 15-31-501, MCA
IMP: Sec. 15-24-3005, 15-30-111, ~~and~~ 15-30-121, and 15-31-501, MCA

REASONABLE NECESSITY: The department proposes to transfer ARM 42.4.117 to new sub-chapter 2 that deals with alternative energy production credits and exemptions because this rule will fit better in the new sub-chapter. The department amends the rule to add the implementing cite of 15-31-501, MCA, because it was inadvertently omitted when the rule was originally adopted.

42.4.119 (42.4.212) RECORDS REQUIRED - AUDIT
(1) through (3) remain the same.
AUTH: Sec. 15-1-201, 15-30-305, and 15-32-407, MCA
IMP: Sec. 15-24-3001, 15-32-403, ~~and~~ 15-35-103, and 15-31-501, MCA

REASONABLE NECESSITY: The department proposes to transfer ARM 42.4.119 to new sub-chapter 2 that deals with alternative energy production credits and exemptions because this rule will fit better in the new sub-chapter. The department amends the rule to add the implementing cite of 15-31-501, MCA, because it was inadvertently omitted when the rule was originally adopted.

42.4.120 (42.4.213) REQUEST FOR INFORMATION (1) through (3) remain the same.

AUTH: Sec. 15-1-201, 15-30-305, and 15-32-407, MCA
IMP: Sec. 15-24-3001, 15-31-501, 15-32-403, and 15-35-103, MCA

REASONABLE NECESSITY: The department proposes to transfer ARM 42.4.120 to new sub-chapter 2 that deals with alternative energy production credits and exemptions because this rule will fit better in the new sub-chapter. The department amends the rule to add the implementing cite of 15-31-501, MCA, because it was inadvertently omitted when the rule was originally adopted.

42.15.211 (42.2.307) ACCOUNTING METHODS (1) The taxpayer's method of accounting must be ~~his~~ the method of accounting for federal income tax purposes. If the taxpayer's accounting method is changed for federal income tax purposes, ~~his~~ the accounting method for Montana income tax purposes is automatically ~~so~~ changed to reflect the same method.

(2) Acceptable accounting methods include the cash basis, accrual method, a hybrid of the cash and accrual methods, or any other method permitted under ~~S~~section 446 of the ~~Internal Revenue Code~~ IRC.

AUTH: Sec. 15-30-305, MCA
IMP: Sec. 15-30-101, MCA

REASONABLE NECESSITY: The department proposes to amend and transfer ARM 42.15.211 to Chapter 2, sub-chapter 3, because it is not specific to personal income tax requirements and the rule fits better in the general department rules found in Chapter 2.

42.15.416 (42.4.402) ADDITIONAL DEDUCTION FOR PURCHASE OF RECYCLED MATERIAL (1) Businesses, including corporations, individuals, and partnerships, may take an additional 10% deduction of the expenses related to the purchase of recycled products used within Montana in their business if the recycled products purchased contain recycled material at a level consistent with industry standards and/or standards established by the federal environmental protection agency when such standards exist. The ~~Montana~~ department ~~of revenue~~ may request the assistance of the Montana department of environmental quality to determine if the product qualifies as a recycled product. Due to continuing technological advances in the recycling industry the standards will be subject to constant change. The industry standards to be used will be those in effect at the time the product was purchased.

(2) For a taxpayer paying individual income tax, the deduction is an adjustment to federal adjusted gross income for individual income tax. The deduction is available for tax years 1992 through ~~2001~~ 2005.

(3) For a corporation paying income/license tax, the deduction is an adjustment to federal taxable income for

corporation income/license tax. The deduction is available for tax years 1992 through ~~2001~~ 2005.

(4) Any deductions claimed are subject to review by the ~~Montana~~ department ~~of revenue~~. The responsibility to maintain accurate records to substantiate deductions remains with the taxpayer.

AUTH: Sec. 15-32-609 and 15-32-611, MCA

IMP: Sec. ~~15-32-601 through~~ 15-32-603, 15-32-609, and 15-32-610, MCA

REASONABLE NECESSITY: The department is proposing to amend and transfer ARM 42.15.416 to make minor changes to bring the rule into compliance with current practice. These changes were found during the department's biennial review of Chapter 15. The department further proposes to amend the applicability date to reflect the amendments made to the statute by Ch. 398, L. 2001.

42.15.518 (42.4.1007) QUALIFIED ENDOWMENT CREDIT

(1) remains the same.

AUTH: Sec. 15-30-305 and 15-31-501, MCA

IMP: Sec. 15-30-165, 15-30-166, 15-30-167, 15-31-161 and 15-31-162, MCA

REASONABLE NECESSITY: The department proposes to transfer ARM 42.15.518 to new sub-chapter 10, so that the qualified endowment credit rules are all located in one sub-chapter for customer convenience.

42.15.422 (42.4.1604) TREATMENT OF INCOME TAXES PAID TO OTHER STATES OR COUNTRIES (1) Income taxes paid to another state or to a foreign country are not allowable deductions if claimed as direct credit against Montana income tax liability as provided ~~for under~~ in ARM 42.15.501 [42.4.1602] and 42.15.502 [42.4.1603].

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-124, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.422 to correct the internal ARM cites to reflect the proposed new rule cites shown elsewhere in this notice. The department further proposes to transfer this rule to Chapter 4, new sub-chapter 16, with the other rules that deal with credits allowed to resident taxpayers for income taxes imposed by foreign states and countries.

42.15.501 (42.4.1602) CREDIT FOR INCOME TAXES PAID TO ANOTHER STATE OR COUNTRY (1) ~~Persons who are~~ A Montana resident~~s are~~ is allowed a ~~direct~~ nonrefundable credit against the resident's Montana income tax liability for:

(a) income taxes paid to another state or ~~to a~~ foreign country on income which is also subject to Montana income tax~~.~~;

(b) tax years beginning after December 31, 2000, the pro rata share of income taxes paid by an S corporation in which

the resident is a shareholder to another state or foreign country on income, which is subject to Montana income tax as provided in Title 15, chapter 30, MCA; and

(c) tax years beginning after December 31, 2002, the distributive share, stated separately or non-separately, of income taxes paid by a partnership, which is to another state or foreign country on income, which is subject to Montana income tax as provided in Title 15, chapter 30, MCA. ~~The credit is not allowed to nonresidents.~~

(2) The credit is allowed ~~to residents of Montana only~~ under the following conditions and limitations:

(a) The credit is allowed only with respect to an income tax ~~liability~~ imposed by law and actually paid. An income tax is a tax measured by and imposed on net income and, in the case of an S corporation or partnership, includes an excise tax or franchise tax that is imposed on and measured by the net income of the entity. The credit is not allowed for other taxes such as, but not limited to, franchise or license taxes or fees not measured by net income, gross receipts taxes, gross sales taxes, capital stock taxes, or property, transaction, sales, or consumption taxes. The credit is not allowed for penalty or interest paid in connection with an income tax;

(b) In the case of a taxpayer who either becomes or ceases to be a Montana resident during the taxable year, the credit is allowed only with respect to income earned during the fractional part of the year the taxpayer was a resident of this state~~.~~;

(c) The credit is allowed only with respect to an income tax, which the taxpayer does not claim as a deduction in determining Montana taxable income~~.~~; and

(d) The credit is allowed only if the state or foreign country imposing the income tax liability does not allow the taxpayer a credit for Montana income tax liability incurred with respect to the income derived within such state or foreign country.

AUTH: Sec. 15-30-305, MCA
IMP: Sec. 15-30-124, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.501 to expand the credit for taxes paid to another state or foreign country to include income taxes paid by an S corporation to conform to the amendments made to 15-30-124, MCA, by the 2001 and 2003 legislatures.

42.15.502 (42.4.1603) COMPUTATION OF CREDIT FOR TAX PAID TO ANOTHER STATE OR COUNTRY (1) ~~The allowable credit under ARM 42.15.501 shall be the lesser of:~~

~~(a) the tax imposed by and actually paid to the other state or foreign country; or~~

~~(b) that part (not to exceed 100%) of the taxpayer's Montana income tax liability for the taxable year, as determined without benefit of the credit, which his Montana adjusted gross income derived from and taxable in the other state or country is of his total Montana adjusted gross income.~~

~~(2) A separate computation must be made for each state's or country's income tax with respect to which a credit is claimed, and the combined credits are allowable only to the extent the total amount thereof does not exceed the taxpayer's Montana income tax liability as computed without benefit of the credit. The credit claimed must be supported by schedules showing the computations made and by a copy of the return filed with each state or country with respect to which a credit is claimed.~~ The following computations must be made separately for each state or foreign country's income tax with respect to which a credit is claimed:

(a) If the claim for credit does not include the taxpayer's share of income tax paid to another state or country by an S corporation in which the taxpayer is a shareholder:

(i) determine the amount of income from the other state or foreign country that is included in Montana adjusted gross income, but do not include income that is exempt in Montana;

(ii) determine the amount of tax paid to the other state or foreign country on income that is not exempt in Montana by multiplying the tax paid to the other state or foreign country by a fraction, the numerator of which is the amount of income from the other state or foreign country that is included in Montana adjusted gross income (excluding income exempt in Montana), and the denominator of which is the total amount of income from the other state or foreign country (including income exempt in Montana); and

(iii) multiply Montana income tax liability, as determined without the credit, by a fraction, the numerator of which is the taxpayer's income from the other state or foreign country included in the taxpayer's Montana adjusted gross income, and the denominator of which is the taxpayer's total Montana adjusted gross income.

(b) The allowable credit is the lower of the:

(i) amount of income tax paid to the other state or foreign country;

(ii) amount of the income tax paid to the other state or foreign country on income that is not exempt in Montana, the result of the calculation in (1)(a)(ii); or

(iii) proportionate amount of the Montana income tax attributable to income paid to the other state or foreign country, the result of the calculation in (1)(a)(iii).

(2) If the claim for credit does include the taxpayer's pro rata share of income tax paid to another state or country by an S corporation or the distributive share stated separately or non-separately of income taxes paid by a partnership, which is to another state or foreign country, on income which is subject to Montana income tax:

(a) increase the Montana adjusted gross income for the tax year the entity paid the income taxes by the share of the entities deduction for taxes paid to the other state or foreign country for which the entity intends to claim the credit;

(b) calculate the Montana income tax liability taking the increase in Montana adjusted gross income into account;

(c) determine the share of the amount of net entity income that is included in Montana adjusted gross income (do not include income that is exempt in Montana);

(d) determine the share of the amount of income tax paid to the other state or foreign country by the entity on income that is not exempt in Montana by multiplying the share of the amount of tax paid to the other state or foreign country by the entity by a fraction, the numerator of which is the share of the amount of the entity's net income included in the Montana adjusted gross income (excluding income exempt in Montana), and the denominator of which is the share of the total amount of the entity's net income (including income exempt in Montana); and

(e) multiply the recalculated Montana income tax liability by a fraction, the numerator of which is the taxpayer's share of income of the entity included in the taxpayer's Montana adjusted gross income, adjusted as provided in (2)(a), and the denominator of which is the taxpayer's total Montana adjusted gross income, adjusted as provided in (2)(a).

(3) The credit allowable is the lower of:

(a) the share of the amount of income tax paid by the entity to the other state or foreign country;

(b) the share of the amount of the income tax paid to the other state or foreign country by the entity on the share of income that is not exempt in Montana, the result of the calculation in (2)(d); or

(c) the proportionate amount of the Montana income tax attributable to the share of income of the entity paid to the other state or foreign country, the result of the calculation in (2)(e).

(4) Examples of how to calculate these credits paid to another state or country are:

(a) Example 1 - Taxpayer, a full-year Montana resident, sold real property in Idaho in 2002. Idaho does not provide nonresidents a credit for income earned in that state if that income is taxable in another state. In 2003, the taxpayer was legally required to, and did, file a 2002 Idaho income tax return reporting the transaction and paying Idaho an income tax of $700. The taxpayer's $5,000 gain on the sale of the Idaho property was included in the tax year 2002 Montana income tax return. The taxpayer's 2002 Montana income tax liability was $3,400. The taxpayer's total 2002 Montana adjusted gross income was $23,000, which included the $5,000 gain on the sale of the Idaho property. The taxpayer calculates the amount of credit the taxpayer may claim against the 2003 Montana income tax liability as follows:

$3,400 x (4) $5,000 / c. $23,000 = $739

Montana income tax liability multiplied by taxpayer's income from the other state or foreign country included in the taxpayer's Montana adjusted gross income divided by taxpayer's total Montana adjusted gross income. Lower of tax paid ($700) or result of calculation ($739) = $700. The taxpayer may

claim a credit of up to $700 against the 2003 Montana income tax liability.

(b) Example 2 - Taxpayer, a full-year Montana resident, was a shareholder in an S corporation that was engaged in banking in State X in 2002. State X does not allow S corporations engaged in financial businesses to elect state-level S corporation treatment and imposes a tax on them measured by net income. The following represents what occurred:

(i) The S corporation was required to and did file a 2002 income tax return with State X in 2003 and paid a tax measured by its net income of $132,000, $121,000 by estimated payments made in 2002 and the balance of $11,000 in 2003 when it filed its 2002 return;

(ii) The S corporation paid $15,000 tax to State X for tax year 2001 when it filed its 2001 return in 2002. The S corporation's non-separately stated and separately stated items for tax year 2002 were as follows, of which the Montana resident shareholder's share was 10%:

(A) An ordinary income of $2,000,000 from banking business includes a deduction of $136,000 for Minnesota taxes paid in 2002, $121,000 for estimated payments in 2002, and $15,000 for 2001 taxes paid in 2002;

Tax exempt interest income	$1,200,000
Ordinary dividends	300,000

(B) The taxpayer's total 2002 Montana adjusted gross income (AGI) was $500,000, which included 10% of the S corporation's ordinary dividends, or $30,000, and 10% of the ordinary income from its banking business, or $200,000;

(C) The shareholder's $200,000 share of the S corporation's ordinary income from its business was reduced by the shareholder's share of the S corporation's deduction for $136,000 income taxes paid to State X in 2002, or by $13,600 (had the shareholder paid the shareholder's 10% share of the Minnesota taxes rather than the S corporation, the shareholder's 10% pro rata share of the S corporation's ordinary income for 2002 would have been $213,600);

(D) The shareholder's 10% share of the S corporation's tax-exempt interest, or $120,000, is exempt from Montana individual income tax and is not subject to tax by both State X and Montana; and

(E) Assume the taxpayer's 2002 Montana tax liability would be $50,000 if the credit were not claimed;

(iii) The taxpayer calculates the Montana income tax liability and the amount of credit the taxpayer may claim against the 2002 income tax liability as follows:

(A) The taxpayer's Montana taxable income is increased by the pro rata share of the S corporation's deduction for State X taxes paid for which the taxpayer claims the credit;

Montana AGI:	$500,000
Reverse deduction:	13,600

Adjusted MT AGI: 513,600

(B) The taxpayer's Montana income tax liability is recalculated. Tax on adjusted Montana AGI of $513,600: $56,500 (assumed result). The taxpayer's pro rata share of the amount of net S corporation income that is included in Montana adjusted gross income is determined and the pro rata share of the S corporation's income tax paid allocated to income taxed in Montana:

Ordinary income from banking operations	$200,000
Ordinary dividends	30,000
S corporation income exempt from Montana tax	120,000

Pro rata share of S corporation tax:

$13,600 x $230,000 / $350,000 = $8,937

(C) The recalculated Montana income tax liability ($56,500) is multiplied by the ratio of S corporation net income included in Montana AGI, increased by the pro rata share of the S corporation deduction for the income taxes paid ($200,000 + $30,000 + $13,600 = $243,600) to the taxpayer's total adjusted gross income, increased by the pro rata share of the S corporation deduction for income taxes paid ($513,600).

$56,500 x $243,600 / $513,600 = $26,824

(D) The allowable credit is $8,937, the lower of:

(I) pro rata share of the income tax paid by the S corporation, $13,600;

(II) pro rata share of the amount of the income tax paid to the other state or foreign country by the S corporation on their pro rata share of income that is not exempt in Montana, $8,937; and

(III) proportionate amount of the Montana income tax attributable to their pro rata share of income of the S corporation paid to the other state or foreign country, $26,824.

AUTH: Sec. 15-30-305, MCA
IMP: Sec. 15-30-124, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.502 to incorporate the amendments to 15-30-124, MCA, which were made during the 2001 legislative session. Those amendments included S corporations and the 2003 legislature further amended the law with SB 407 to include partnerships.

42.15.503 (42.4.1702) CREDIT FOR PUBLIC CONTRACTOR'S GROSS RECEIPTS TAX (1) A resident or a nonresident ~~individual~~ taxpayer is allowed a credit against ~~his~~ the taxpayer's Montana income tax liability for "public contractor's gross receipts tax" paid pursuant to the provisions of 15-50-205 and 15-50-206~~(1)~~, MCA. The credit is

allowed with respect to the taxpayer's Montana income tax liability determined for the taxable year ~~with~~in which the net income from contracts subject to the gross receipts tax is reported. If the taxpayer reports ~~his~~ income from contracts on a percentage of completion basis, the credit must be allocated accordingly. The amount of credit allowable is the net public contractor's gross receipts tax (after personal property tax credit) actually imposed and paid by the taxpayer but not in excess of ~~his~~ the taxpayer's Montana income tax liability.

(2) In the event the public contractor's gross receipts tax is paid by a joint venture, partnership, ~~or~~ S corporation, limited liability company, or limited liability partnership ~~electing tax treatment under 15-31-202, MCA~~, the members, partners, or shareholders ~~thereof~~ shall be entitled to the credit for the tax as the ~~ir~~respective interests appear.

AUTH: Sec. 15-50-103, MCA
IMP: Sec. 15-50-205, 15-50-206, and 15-50-207, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.503 to delete reference to 15-31-202, MCA. This statute was repealed by the 2001 legislature in HB 143. Minor housekeeping amendments have also been made. The department further proposes to transfer this rule to Chapter 4, new sub-chapter 17, contractor's gross receipt credit.

42.15.506 (42.4.1302) COMPUTATION OF RESIDENTIAL PROPERTY TAX CREDIT FOR ELDERLY (1) When the taxpayer owns the dwelling but rents the land or owns the land and rents the dwelling, ~~he~~ the taxpayer shall add the rent-equivalent tax paid on the rented property to the property tax billed on the owned property. The total shall then be reduced as provided by 15-30-176, MCA. The tax credit will be the reduced amount or ~~$400~~ $1,000, whichever is less. ~~Effective for taxable years beginning after December 31, 1982 and before January 1, 1995, the maximum allowable credit is $400. For tax years beginning after December 31, 1994, the maximum allowable credit is $1,000.~~

(2) When a taxpayer lives in a health care facility, long-term care facility, ~~personal care facility,~~ or a residential care facility as defined in 50-5-101, MCA, the rent allowed in calculation of the property tax credit is the actual out-of-pocket rent paid subject to (7).

(3) Where one spouse lives in a health care facility, long-term care facility, ~~personal care facility,~~ or a residential care facility as defined in 50-5-101, MCA, and the other lives at a different address, they are only allowed to take the rent at the facility or the rent/taxes ~~of~~ billed for the other ~~house~~ address, but not both. Married taxpayers who are living apart are entitled to file and receive only one claim per year.

(4) through (7) remain the same.

AUTH: Sec. 15-30-305, MCA
IMP: Sec. 15-30-176 and 50-5-101, MCA

REASONABLE NECESSITY: The amendments to ARM 42.15.506 are housekeeping only. The deletion of "personal care facility" is necessary because that term is no longer defined in 50-5-101, MCA. The department further proposes to transfer this rule to Chapter 4, new sub-chapter 13, residential property tax credit for the elderly.

42.15.508 (42.4.404) CREDIT FOR INVESTMENTS IN DEPRECIABLE EQUIPMENT OR MACHINERY TO COLLECT, PROCESS, OR MANUFACTURE A PRODUCT FROM RECLAIMED MATERIAL, OR PROCESS SOILS CONTAMINATED BY HAZARDOUS WASTES (1) The credit is subject to the limitations outlined in 15-32-602, MCA, and is available only for the acquisition of machinery and/or equipment that is depreciable, as defined in ~~the Internal Revenue Code~~ ~~s~~Section 167 of the IRC. The machinery and/or equipment must be used in Montana primarily for the collection or processing of reclaimable material, or in the manufacture of finished products from reclaimed material.

(2) ~~The credit is also allowed, and subject to the limitations outlined in 15-32-602, MCA, for depreciable equipment used to treat soils contaminated by hazardous wastes. The credit only applies to property that actually treats contaminated soil and not to auxiliary property.~~

~~(3)~~ The basis for the credit is generally the cost of the property before consideration of trade-in equipment. An exception to this is that the basis shall be reduced by any trade-in which has had this credit previously taken on it. This includes the purchase price, transportation cost (if paid by the purchaser), and the installation cost before depreciation or other reductions. This credit does not increase or decrease the basis for tax purposes. Leased equipment is restricted to capital leases, and the credit is calculated on the amount capitalized for balance sheet purposes under generally accepted accounting principles.

~~(4)~~(3) Recycling machinery and/or equipment must be located and operating in Montana on the last day of the taxable year for which the credit is claimed. The machinery or equipment must be used to:

(a) collect~~,~~;

(b) process~~,~~;

(c) separate~~,~~;

(d) modify~~,~~;

(e) convert~~,~~; or

(f) treat solid waste into a product that can be used in place of a raw material for productive use or treat soil that has been contaminated by hazardous wastes.

(4) Examples may include, but are not limited to:

(a) balers~~,~~;

(b) bobcats~~,~~;

(c) briquetters~~,~~;

(d) compactors~~,~~;

(e) containers~~,~~;

(f) conveyors~~,~~;

(g) conveyor systems~~,~~;
(h) cranes with grapple hooks or magnets~~,~~;
(i) crushers~~,~~;
(j) end loaders~~,~~;
(k) exhaust fans~~,~~;
(l) fork lifts~~,~~;
(m) granulators~~,~~;
(n) lift-gates~~,~~;
(o) magnetic separators~~,~~;
(p) pallet jacks~~,~~;
(q) perforators~~,~~;
(r) pumps~~,~~;
(s) scales~~,~~;
(t) screeners~~,~~;
(u) shears~~,~~;
(v) shredders~~,~~;
(w) two-wheel carts~~,~~; and
(x) vacuum systems.

(5) This does not include transportation equipment, unless it is specialized to the point that it can only be used to collect and process reclaimable material or treat soil that has been contaminated by hazardous wastes.

(5) remains the same but is renumbered (6).

~~(6)~~(7) Absent a specific agreement to the contrary, the owners of a small business corporation, partnership, or sole proprietorship must pro~~-~~rate the credit in the same proportion as their ownership in the business.

~~(7)~~(8) Only a taxpayer that owns an interest, either directly or through a pass-through entity such as a partnership or "S" corporation, and is operating the equipment as the primary user on the last business day of the year, may claim the credit.

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

~~(9)~~(10) The department may disallow a credit resulting from a sale or lease when the overriding purpose of the transaction is not to collect or process reclaimable material, or manufacture a product from reclaimed material~~, or process soil contaminated by hazardous wastes~~.

AUTH: Sec. 15-32-611, MCA
IMP: Sec. 15-32-601, ~~through~~ 15-32-602, 15-32-603, 15-32-604, 15-32-309, and 15-32-610, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.508 to conform to the amendments made by the 2001 legislative session in SB92 as found in 15-32-603, MCA, which extended the termination date for the recycle credit and removed from the definition of "reclaimable material" reference to soil contamination by hazardous waste removal. All other amendments are housekeeping only. The department further proposes to transfer this rule to Chapter 4, new sub-chapter 4, recycle credit and recycle material deduction.

42.15.509 (42.4.405) PERIOD COVERED FOR THE RECLAMATION AND RECYCLING CREDIT (1) The recycling credit is available

for tax years 1992 through ~~2001~~ 2005. The credit must be taken in the tax year in which the machinery/equipment was acquired and placed into service. ~~The only exception is or machinery/equipment acquired and placed into service after January 1, 1990 and before December 31, 1992. The credit for this exception must be taken on the 1992 tax return.~~

(2) To be eligible for the recycling credit, qualifying equipment~~, other than equipment used to treat contaminated soil as described in (3) below,~~ must be purchased and installed after January 1, 1990, and prior to January 1, ~~2002~~ 2006.

~~(3) To be eligible for the soil processing credit, qualifying equipment used to treat soil contaminated by hazardous wastes must be purchased and installed after December 31, 1995 and before January 1, 1998.~~

~~(4)~~(3) Any credit claimed is subject to review by the ~~Montana~~ department ~~of revenue~~. The department may request the assistance of the Montana department of environmental quality when making its determinations. The responsibility to maintain accurate records to substantiate the credit remains with the taxpayer.

AUTH: Sec. 15-32-611, MCA

IMP: Sec. 15-32-601, ~~through~~ 15-32-602, 15-32-603, 15-32-604, 15-32-309, and 15-32-610, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.509 to conform to the amendments made during the 2001 legislative session in SB92 as codified at 15-32-603, MCA, which extended the termination date for the recycle credit. The department further proposes to transfer this rule to Chapter 4, new sub-chapter 4, recycle credit and recycle material deduction.

42.15.513 (42.4.1002) ELIGIBILITY REQUIREMENTS TO HOLD A QUALIFIED ENDOWMENT (1) remains the same.

(2) For the period December 31, 2000, through December 31, 2004, the affordable housing revolving loan account established in 90-6-133, MCA, is considered a qualified endowment for the purpose of qualifying for the endowment tax credit.

AUTH: Sec. 15-30-305 and 15-31-501, MCA

IMP: Sec. 15-30-165, 15-30-167, 15-31-161, ~~and~~ 15-31-162, and 90-6-133, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.513 to implement the amendments of SB350, codified at 15-30-165, et seq., MCA, by the 2001 legislature, which defined the affordable housing revolving loan account as a qualified endowment for the purpose of qualifying for the endowment tax credit. The department further proposes to transfer this rule to Chapter 4, new sub-chapter 10, qualified endowment credit.

42.15.514 (42.4.1003) TAX CREDIT AND DEDUCTION LIMITATIONS (1) The credit allowed ~~against~~ the ~~corporate~~ corporation, partnership, limited liability company, estate, trust, or individual tax liability for a contribution of a planned gift is the percentage, as shown in the following table, of the present value of the allowable contribution as defined in ~~ARM 42.15.507~~ [NEW RULE V]. The credit allowed against the corporation, partnership, limited liability company, estate, or trust for a direct contribution is equal to 20% of the charitable contribution. The maximum credit that may be claimed in one year is $10,000 per donor. A contribution made in a previous tax year cannot be used for a credit in any subsequent tax year.

Planned Gifts by Individuals or Entities

Planned Gift Date	Percent of Present Value	Present Value Used to Calculate Maximum Credit	Maximum Credit Per Year
1/1/97 - 12/31/01	50%	$20,000	$10,000
1/1/02 - 8/27/02	40%	$25,000	$10,000
8/28/02 - 6/30/03	30%	$22,000	$ 6,600
7/1/03 - ~~4/30/04~~	~~50%~~	~~$26,800~~	~~$13,400~~
~~5/1/04 -~~ 12/31/07	40%	$25,000	$10,000

(2) The credit allowed against the corporate, estate, trust, or individual tax liability for a charitable gift made by a corporation, small business corporation, estate, trust, partnership, or limited liability company directly to a qualified endowment is the percentage, as shown in the following table, of the allowable contribution as defined in ~~ARM 42.15.507~~ [NEW RULE V].

Non-Planned Gifts by Eligible Entities

Qualified Charitable Gift Date	Percent of Allowable Contribution	Allowable Contribution Used to Calculate Maximum Credit	Maximum Credit Per Year
1/1/97 - 12/31/01	50%	$20,000	$10,000
1/1/02 - 8/27/02	20%	$50,000	$10,000
8/28/02 - 6/30/03	13.3%	$49,624	$ 6,600
7/1/03 - ~~4/30/04~~	~~26.7%~~	~~$50,187~~	~~$13,400~~
~~5/1/04 -~~ 12/31/07	20%	$50,000	$10,000

(3) The balance of the allowable contributions not used in the credit calculation may be used as a deduction subject to the limitations and carryover provisions found in 15-30-121, MCA, or for corporations the limitations and carryover provisions found in 15-31-114, MCA.

(a) Examples of Allowable Deductions When a Planned Gift is Used for the Qualified Endowment Credit:

Time Period	Present Value	Maximum Credit	Credit Percentage		Allowable Deduction
1/1/97 - 12/31/01	$50,000	- ($10,000	/ .50)	=	$30,000
1/1/02 - 8/27/02	$50,000	- ($10,000	/ .40)	=	$25,000
8/28/02 - 6/30/03	$50,000	- ($ 6,600	/ .30)	=	$28,000
7/1/03 - ~~4/30/04~~	~~$50,000~~	~~- ($13,400~~	~~/ .50)~~	~~=~~	~~$23,200~~
~~5/1/04 -~~ 12/31/07	$50,000	- ($10,000	/ .40)	=	$25,000

(b) Examples of Allowable Deductions When an Outright Gift is Used for the Qualified Endowment Credit:

Time Period	Market Value	Maximum Credit	Credit Percentage		Allowable Deduction
1/1/97 - 12/31/01	$50,000	- ($10,000	/ .50)	=	$30,000
1/1/02 - 8/27/02	$50,000	- ($10,000	/ .20)	=	$ -0-
8/28/02 - 6/30/03	$50,000	- ($ 6,600	/ .133)	=	$ 376
7/1/03 - ~~4/30/04~~	~~$50,000~~	~~- ($13,400~~	~~/ .267)~~	~~=~~	~~$ -0-~~
~~5/1/04 -~~ 12/31/07	$50,000	- ($10,000	/ .20)	=	$ -0-

(4) through (7) remain the same.

(8) The maximum credit that may be claimed in a tax year by any donor for allowable contributions from all sources is limited to the maximum credit stated in (1) and (2). In the case of a married couple that makes a joint contribution, the contribution is assumed split equally. If each spouse makes a separate contribution, each may be allowed the maximum credit as stated in (1) and (2).

~~Example 1:~~

(a) Example 1 - Assume a married couple makes a joint planned gift to a qualified endowment on September 1, 2002. The allowable contribution made by the couple is $30,000. That couple is eligible to take a credit of up to $9,000, with each claiming a credit of $4,500.

~~Example 2:~~

(b) Example 2 - Assume a married couple makes separate planned gifts to qualified endowments on September 1, 2002, which result in an allowable contribution of $20,000 for each person. They each would be eligible to take a credit of up to $6,000.

(9) remains the same.

AUTH: Sec. 15-30-305 and 15-31-501, MCA

IMP: Sec. 15-30-165, 15-30-166, 15-30-167, 15-31-161, and 15-31-162, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.514 to reflect HB 377 (2001 legislature) and HB 616 (2003 legislature) amendments to the endowment tax credit statutes. These amendments reduced the amount of the credit

from 50% to 40% of the present value of the charitable gift portion of a planned gift and from 50% to 20% for charitable contributions made by a business entity. House Bill 616 repealed the 2002 special session temporary increase, which was in effect from July 1, 2003, through April 30, 2004. In addition, these amendments protect the integrity of the endowment credit giving requirements by clarifying the qualifications of a business and the creation of trust for a period of time. HB377 requires the department to adopt in administrative rule life expectancy tables and actuarial tables to determine remainder, income and annuity factors. These tables are located on our web site and can also be obtained by contacting the department for a hard copy. The department further proposes to transfer this rule to Chapter 4, new sub-chapter 10, qualified endowment credit.

42.15.520 (42.4.1202) COMPUTATION OF THE TAX CREDIT FOR THE PRESERVATION OF HISTORIC ~~BUILDINGS~~ PROPERTIES (1) and (2) remain the same.

(3) Qualified costs used in computing the credit for creating a conservation easement are those direct costs incurred in connection with the creation of the conservation easement and do not include the cost of acquiring the property or for improvements made to the property unless they are directly related to creating the conservation easement. This section applies to tax years beginning January 1, 2002 through December 31, 2011, as stated in 15-30-180, MCA.

AUTH: Sec. 15-30-305 and 15-31-501, MCA
IMP: Sec. 15-30-180 and 15-31-151, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.520 to provide for the amendments made to 15-30-180, MCA, regarding alternatives to the credit for preserving historic property. The amendment clarifies the costs associated with creating the conservation easement for the application of the credit. The department further proposes to transfer this rule to Chapter 4, new sub-chapter 12, historic property preservation credit.

42.15.521 (42.4.1203) COMPUTATION OF TAX CREDIT FOR PRESERVATION OF HISTORIC PROPERTY FOR MARRIED TAXPAYERS

(1) If property qualifying for the credit ~~for the preservation of historic buildings~~ is owned by a husband and wife, the credit may be applied to their joint tax liability if filing a joint tax return.

(2) If husband and wife file separately, and the property is jointly held, the credit ~~for preservation of historic buildings~~ must be computed individually by each spouse and applied to ~~their~~ the corresponding tax liabilities.

(3) When filing separately, one spouse's credit ~~for the preservation of historic buildings~~ cannot be applied to the other spouse's tax liability.

(4) remains the same.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-180 and 15-31-151, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.521 to amend the catchphrase to better reflect the purpose of the rule. The amendments are necessary to bring the rule into compliance with the changes in the law made by the 2001 legislature. The department further proposes to transfer this rule to Chapter 4, new sub-chapter 12, historic property preservation credit.

42.15.522 (42.4.1204) OWNERSHIP OF HISTORIC ~~BUILDINGS~~ PROPERTY (1) A credit for the preservation of historic ~~buildings~~ property generated by property owned by more than one individual must be allocated between owners based on ~~their~~ each owner's share of ownership in the property. Unless specified otherwise when the property is purchased, percentage of ownership will be considered equal between owners.

AUTH: Sec. 15-30-305, MCA
IMP: Sec. 15-30-180 and 15-31-151, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.522 to provide for amendments to 15-30-180, MCA, which provide alternative credits for preserving historic property. This alternative credit is for creating a conservation easement on historic property. The department further proposes to transfer this rule to Chapter 4, new sub-chapter 12, historic property preservation credit.

42.23.513 (42.4.1404) MANUFACTURING ~~DEFINED~~ (1) through (6)(e)(iii) remain the same.

AUTH: Sec. 15-31-127 and 15-31-501, MCA
IMP: Sec. ~~15-6-138~~, 15-8-111~~,~~ and 15-31-124, ~~and 90-4-102,~~ MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.23.513 to delete the implementing cite that was repealed by the 2003 legislature, and to remove 15-6-138, MCA, because it does not apply to this rule. The department is further proposing to transfer this rule to Chapter 4, sub-chapter 14 because it deals with expanded industry credits.

42.23.516 (42.4.1407) COMPLIANCE WITH CERTAIN STATUTES REQUIRED (1) remains the same.

AUTH: Sec. 15-31-127 and 15-31-501, MCA
IMP: Sec. ~~15-31-127~~ 15-31-125, MCA

REASONABLE NECESSITY: The department is proposing to amend and transfer ARM 42.23.516 to Chapter 4, sub-chapter 14 because that chapter covers the rules dealing with expanded industry credits. The department further proposes to change the implementing cite because 15-31-127, MCA, is the rulemaking authority cite rather than an implementing cite.

42.23.518 (42.4.1408) SUBMISSION OF EMPLOYEE LISTS

(1) through (3)(f) remain the same.
AUTH: Sec. 15-31-127 and 15-31-501, MCA
IMP: Sec. ~~15-31-127~~ 15-31-125, MCA

REASONABLE NECESSITY: The department is proposing to amend and transfer ARM 42.23.518 to Chapter 4, sub-chapter 14 because that chapter covers the rules dealing with expanded industry credits. The department further proposes to change the implementing cite because 15-31-127, MCA, is the rulemaking authority cite rather than an implementing cite.

42.23.519 (42.4.1409) DETERMINATION OF NEW JOBS
(1) The intent of 15-31-125, MCA, ~~as amended,~~ is to grant credit upon wages paid to new employees. The department shall determine from the information submitted by the corporation if there has been a 30% increase in the number of jobs, and ~~that~~ if these positions ~~are~~ were filled by newly hired personnel.
(2) The only employees ~~which shall be~~ counted ~~in~~ when making the determination of the credit are those who:
(a) were not employed by the corporation within five years of expansion; and
(b) are employed in production of the new product.
(3) through (5) remain the same.
AUTH: Sec. 15-31-127 and 15-31-501, MCA
IMP: Sec. ~~15-31-127~~ 15-31-125, MCA

REASONABLE NECESSITY: The department is proposing to amend and transfer ARM 42.23.519 to Chapter 4, sub-chapter 14 because that chapter covers the rules dealing with expanded industry credits. The department further proposes to change the implementing cite because 15-31-127, MCA, is the rulemaking authority cite rather than an implementing cite.

42.23.521 (42.4.1411) AVAILABILITY OF TAX CREDIT
(1) through (3) remain the same.
AUTH: Sec. 15-31-127 and 15-31-501, MCA
IMP: Sec. 15-31-125 ~~and 15-31-127~~, MCA

REASONABLE NECESSITY: The department is proposing to amend and transfer ARM 42.23.521 to Chapter 4, sub-chapter 14 because that chapter covers the rules dealing with expanded industry credits. The department further proposes to delete the implementing cite of 15-31-127, MCA, because that statute is a rulemaking authority cite which does not apply as an implementing cite.

7. The department proposes to transfer the following rules in their entirety to the sub-chapters identified in each rule's reasonable necessity.

42.4.130 (42.4.303) DEDUCTION OR CREDIT FOR INVESTMENT FOR ENERGY CONSERVATION (1) through (4) remain the same.
AUTH: Sec. 15-32-105, MCA

IMP: Sec. 15-32-105 and 15-32-109, MCA

REASONABLE NECESSITY: The department proposes to transfer ARM 42.4.130 to new sub-chapter 3 that deals with energy conservation installation credit and deduction.

42.4.131 (42.4.307) DETERMINATION OF CAPITAL INVESTMENT FOR ENERGY CONSERVATION (1) and (2) remain the same.

AUTH: Sec. 15-32-105, MCA
IMP: Sec. 15-32-105 and 15-32-109, MCA

REASONABLE NECESSITY: The department proposes to transfer ARM 42.4.131 to new sub-chapter 3 that deals with energy conservation installation credit and deduction.

42.15.515 (42.4.1005) CREATING A PERMANENT IRREVOCABLE FUND (1) through (5) remain the same.

AUTH: Sec. 15-30-305 and 15-31-501, MCA
IMP: Sec. 15-30-165, 15-30-167, 15-31-161 and 15-31-162, MCA

REASONABLE NECESSITY: The department proposes to transfer ARM 42.15.515 to new sub-chapter 10, so that the qualified endowment credit rules are all located in one sub-chapter for customer convenience.

42.15.516 (42.4.1006) REPORTING REQUIREMENTS (1) and (2) remain the same.

AUTH: Sec. 15-30-305 and 15-31-501, MCA
IMP: Sec. 15-30-166, 15-30-167, 15-31-161 and 15-31-162, MCA

REASONABLE NECESSITY: The department proposes to transfer ARM 42.15.516 to new sub-chapter 10, so that the qualified endowment credit rules are all located in one sub-chapter for customer convenience.

42.15.519 (42.4.1008) DETERMINING PRESENT VALUE FOR THE ENDOWMENT CREDIT (1) remains the same.

AUTH: Sec. 15-30-305 and 15-31-501, MCA
IMP: Sec. 15-30-166, MCA

REASONABLE NECESSITY: The department proposes to transfer ARM 42.15.519 to new sub-chapter 10, so that the qualified endowment credit rules are all located in one sub-chapter for customer convenience.

42.23.501 (42.4.1703) CREDIT FOR CONTRACTOR'S GROSS RECEIPTS TAX (1) through (3) remain the same.

AUTH: Sec. 15-31-501, MCA
IMP: Sec. 15-50-207, MCA

REASONABLE NECESSITY: The department proposes to transfer ARM 42.23.501 to new sub-chapter 17, so that the qualified

endowment credit rules are all located in one sub-chapter for customer convenience.

42.23.503 (42.4.1102) DISABILITY INSURANCE PREMIUMS CREDIT (1) through (6) remain the same.
AUTH: Sec. 15-31-501, MCA
IMP: Sec. 15-31-132, MCA

REASONABLE NECESSITY: The department proposes to transfer ARM 42.23.503 to new sub-chapter 11, so that the qualified endowment credit rules are all located in one sub-chapter for customer convenience.

42.23.504 (42.4.1502) WHO MAY CLAIM THE INFRASTRUCTURE USER FEE CREDIT (1) through (2)(b) remain the same.
AUTH: Sec. 15-1-201, MCA
IMP: Sec. 17-6-309 and 17-6-316, MCA

REASONABLE NECESSITY: The department proposes to transfer ARM 42.23.504 to new sub-chapter 15, so that the qualified endowment credit rules are all located in one sub-chapter for customer convenience.

42.23.505 (42.4.1503) CLAIMING THE INFRASTRUCTURE USER FEE CREDIT (1) through (4) remain the same.
AUTH: Sec. 15-1-201, MCA
IMP: Sec. 17-6-309 and 17-6-316, MCA

REASONABLE NECESSITY: The department proposes to transfer ARM 42.23.505 to new sub-chapter 15, so that the qualified endowment credit rules are all located in one sub-chapter for customer convenience.

42.23.506 (42.4.1504) RECAPTURE OF THE INFRASTRUCTURE USER FEE CREDIT (1) through (3) remain the same.
AUTH: Sec. 15-1-201, MCA
IMP: Sec. 17-6-309 and 17-6-316, MCA

REASONABLE NECESSITY: The department proposes to transfer ARM 42.23.506 to new sub-chapter 15, so that the qualified endowment credit rules are all located in one sub-chapter for customer convenience.

42.23.511 (42.4.1402) CREDIT FOR NEW OR EXPANDING CORPORATIONS (1) through (2)(c) remain the same.
AUTH: Sec. 15-31-127 and 15-31-501, MCA
IMP: Sec. 15-31-124, MCA

REASONABLE NECESSITY: The department proposes to transfer ARM 42.23.511 to new sub-chapter 14, so that the qualified endowment credit rules are all located in one sub-chapter for customer convenience.

42.23.512 (42.4.1403) PERIOD OF ELIGIBILITY (1) and (2) remain the same.
AUTH: Sec. 15-31-127 and 15-31-501, MCA
IMP: Sec. 15-31-124, MCA

REASONABLE NECESSITY: The department proposes to transfer ARM 42.23.512 to new sub-chapter 14, so that the qualified endowment credit rules are all located in one sub-chapter for customer convenience.

42.23.514 (42.4.1405) NEW CORPORATION (1) through (4) remain the same.
AUTH: Sec. 15-31-127 and 15-31-501, MCA
IMP: Sec. 15-31-124, MCA

REASONABLE NECESSITY: The department proposes to transfer ARM 42.23.514 to new sub-chapter 14, so that the qualified endowment credit rules are all located in one sub-chapter for customer convenience.

42.23.515 (42.4.1406) EXPANDING CORPORATION (1) and (2) remain the same.
AUTH: Sec. 15-31-127 and 15-31-501, MCA
IMP: Sec. 15-31-124, MCA

REASONABLE NECESSITY: The department proposes to transfer ARM 42.23.515 to new sub-chapter 14, so that the qualified endowment credit rules are all located in one sub-chapter for customer convenience.

42.23.520 (42.4.1410) DETERMINATION OF WAGES (1) and (2) remain the same.
AUTH: Sec. 15-31-127 and 15-31-501, MCA
IMP: Sec. 15-31-125, MCA

REASONABLE NECESSITY: The department proposes to transfer ARM 42.23.520 to new sub-chapter 14, so that the qualified endowment credit rules are all located in one sub-chapter for customer convenience.

42.23.522 (42.4.1412) WHEN CREDIT MAY BE CLAIMED
(1) through (3) remain the same.
AUTH: Sec. 15-31-127 and 15-31-501, MCA
IMP: Sec. 15-31-125, MCA

REASONABLE NECESSITY: The department proposes to transfer ARM 42.23.522 to new sub-chapter 14, so that the qualified endowment credit rules are all located in one sub-chapter for customer convenience.

8. The Department proposes to repeal the following rules:

42.4.110 DEFINITIONS which can be found on page 42-417 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201, 15-30-305, 15-32-407, and 15-35-122, MCA
IMP: Sec. 15-24-3001, 15-32-109, 15-32-404, and 15-35-103, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.4.110 because the definitions contained in the rule apply to terms that will be used in new sub-chapters 2 and 3.

42.15.104 PERMANENT PLACE OF ABODE which can be found on page 42-1506 of the Administrative Rules of Montana.
AUTH: Sec. 15-30-305, MCA
IMP: Sec. 15-30-101, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.15.104 because the law was changed in 1997 and the rule is no longer applicable.

42.15.106 INCOME TAX SURCHARGE which can be found on page 42-1506 of the Administrative Rules of Montana.
AUTH: Sec. 15-30-305, MCA
IMP: Sec. 15-30-108, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.15.106 because the law was repealed in 1989 and the rule is no longer applicable.

42.15.302 FILING DATE ON HOLIDAY OR WEEKEND DEFINED which can be found on page 42-1532 of the Administrative Rules of Montana.
AUTH: Sec. 15-30-305, MCA
IMP: Sec. 15-30-144, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.15.302 because the language is now in statute and the rule is no longer necessary.

42.15.411 EXEMPTIONS FOR NONRESIDENTS which can be found on page 42-1555 of the Administrative Rules of Montana.
AUTH: Sec. 15-30-305, MCA
IMP: Sec. 15-30-112, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.15.411 because the law was amended in 1993 and the rule no longer applies.

42.15.412 DEDUCTIONS FROM NET INCOME which can be found on page 42-1556 of the Administrative Rules of Montana.
AUTH: Sec. 15-30-305, MCA
IMP: Sec. 15-30-131, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.15.412 because these requirements are now covered by amendments made to 15-30-105, MCA, and the rule is no longer applicable.

42.15.413 NONRESIDENT AND PART YEAR RESIDENT DEDUCTIONS FOR KEOGH AND I.R.A. PLANS which can be found on page 42-1556 of the Administrative Rules of Montana.

AUTH: Sec. 15-30-305, MCA
IMP: Sec. 15-30-131, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.15.413 because these requirements are now covered by amendments made to 15-30-105, MCA, and the rule is no longer applicable.

42.15.428 PASSIVE ACTIVITY TREATMENT which can be found on page 42-1563 of the Administrative Rules of Montana.

AUTH: Sec. 15-30-305, MCA
IMP: Sec. 15-30-111, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.15.428 because the treatment of passive activity changed in Montana and the rule no longer applies.

42.15.433 DEFINITIONS which can be found on page 42-1565 of the Administrative Rules of Montana.

AUTH: Sec. 15-33-105, MCA
IMP: Sec. 15-33-103, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.15.433 because the definition was moved to ARM 42.15.401 which is the definition rule for sub-chapter 4.

42.15.507 DEFINITIONS which can be found on page 42-1583 of the Administrative Rules of Montana.

AUTH: Sec. 15-30-305, 15-31-501, and 15-32-611, MCA
IMP: Sec. 15-30-165, 15-30-166, 15-30-167, 15-31-161, 15-31-162, 15-32-601, 15-32-602, 15-32-603, 15-32-604, 15-32-609, and 15-32-610, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.15.507 because the definitions were moved to new Chapter 4.

42.15.706 RESPONSIBILITY OF ENTITY which can be found on page 42-1595 of the Administrative Rules of Montana.

AUTH: Sec. 15-30-305, MCA
IMP: Sec. 15-30-105, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.15.706 because the text was moved into ARM 42.9.201 in 2002.

42.23.502 INVESTMENT CREDIT which can be found on page 42-2351 of the Administrative Rules of Montana.
AUTH: Sec. 15-31-501, MCA
IMP: Sec. 15-31-123, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.23.502 because the statute that the rule was implementing was repealed by the 2003 legislature.

42.23.517 FULL-TIME JOBS which can be found on page 42-2359 of the Administrative Rules of Montana.
AUTH: Sec. 15-31-127 and 15-31-501, MCA
IMP: Sec. 15-31-124, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.23.517 because that text was moved to New Rule VII.

9. 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 1712
Helena, Montana 59604-1712
and must be received no later than April 1, 2004.

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

11. 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 9 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.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Linda M. Francis
LINDA M. FRANCIS
Director of Revenue

Certified to Secretary of State February 17, 2004

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 44.12.101A, 44.12.102, 44.12.103, 44.12.104, 44.12.105, 44.12.106, 44.12.106A, 44.12.107, 44.12.202, 44.12.203, 44.12.205, 44.12.207, 44.12.209, 44.12.211, 44.12.212, and the proposed adoption of New Rules I and II, all related to lobbying and the regulation of lobbying	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On March 31, 2004, at 9:00 a.m., a public hearing will be held in the Conference Room at the office of Agency Legal Services Bureau, 1712 Ninth Avenue, Helena, Montana, to consider the proposed amendment of ARM 44.12.101A, 44.12.102, 44.12.103, 44.12.104, 44.12.105, 44.12.106, 44.12.106A, 44.12.107, 44.12.202, 44.12.203, 44.12.205, 44.12.207, 44.12.209, 44.12.211, 44.12.212 and the proposed adoption of New Rules I and II, all related to lobbying and the regulation of lobbying.

2. The Commissioner of Political Practices will make reasonable accommodations for persons with disabilities who wish to participate in this 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 March 11, 2004 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; phone (406) 444-2942, Fax (406) 444-1643, email dhubbert@state.mt.us.

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

44.12.101A PREAMBLE AND STATEMENT OF APPLICABILITY

(1) The 2002 rule revisions ~~are~~ were the first substantive revision of the Montana Lobbyist Disclosure Act rules in 20 years. The 2002 revisions addressed inconsistencies and conflicts between the Act and previous rules, most of which were adopted in 1982. The commissioner of political practices determined that the 2002 rule changes ~~will~~ only would 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 functions:

"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 the following lobbying expenditures must be reported:~~

~~(a) expenditures made to influence any official action by the legislature or legislators, not just the introduction or enactment of legislation;~~

~~(b) lobbying the governor to sign, veto or amendatory veto legislation; and~~

~~(c) expenditures made for lobbying support personnel, supplies, and equipment to assist or support a lobbying activity.~~

~~(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 will be necessary to seek clarification of non-legislative lobbying issues ~~in the 2005 legislature~~ in a future legislative session. 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 For purposes of Title 5, chapter 7, MCA, and this chapter:

(1) "Compensation" includes:

(a) all direct or indirect payments of salaries, fees, wages, and benefits by a principal to a lobbyist or an employed or retained individual to lobby or to support or assist a lobbying activity. The term includes, but is not limited to, all payments made to a lobbyist or an employed or retained individual to lobby or to support or assist a lobbying activity 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 or an employed or retained individual that are reimbursed by a principal.

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

(3) "Employed or retained individual" means an individual who is employed, paid, or retained by a principal to promote or oppose the introduction or enactment of legislation before the legislature or the members of the legislature, but who is not required to obtain a lobbyist license because the individual does not receive payments from one or more persons that equal or exceed the amount specified in 5-7-112, MCA, in a calendar year.

~~(3)~~(4) "Lobbying" shall have the definition set forth in 5-7-102~~(6)~~(11)(a), 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 or an employed or retained individual with a public official to promote or oppose official action;

(b) all time spent by a lobbyist or an employed or retained individual 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.

~~(4)~~(5) "Lobbying activity" or "lobbying activities" mean actions or efforts by a lobbyist or an employed or retained individual to lobby or to support or assist lobbying, including preparation and planning activities after a decision has been made to support or oppose official action, and 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)~~(16), 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.

~~(5)~~(6) "Lobbyist" shall have the definition set forth in 5-7-102~~(8)~~(12), MCA. The term "lobbyist" does not include:

(a) an individual lobbying or acting on his/her own behalf (~~5-7-101(8)~~ 5-7-102(12)(b)(i), MCA);

(b) a public official~~,~~ (including a legislator), an elected local official, an elected federal official, or an elected tribal official who promotes or opposes the introduction or enactment of legislation before the legislature or the members of the legislature (5-7-102~~(6)~~(11)(b), 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)~~(12)(b)(ii), MCA)~~.~~; or

(d) an individual who receives payments from one or more persons that total less than the amount specified in 5-7-112, MCA, in a calendar year (5-7-102(12)(b)(iii), MCA).

~~(6)~~(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.

~~(7)~~(8) "Official action" means 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.

~~(8)~~(9) "Payment" ~~and "payment to influence official action"~~ shall have the definition~~s~~ set forth in 5-7-102~~(9)~~(13) ~~and (10)~~, MCA. The term ~~"payment to influence official action" does not include:~~ includes salary, fees, compensation, or anything of value to be paid to a lobbyist or an employed or retained individual, pursuant to a contract, including payments to be made in the future, after services are rendered by the lobbyist or the employed or retained individual. The term does not include payments or reimbursements for personal and necessary living expenses, but includes travel expenses if a principal is required to report payments pursuant to 5-7-208, MCA.

~~(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).~~

~~(9)~~(10) "Personal and necessary living expenses" means payments or reimbursement by a principal for a lobbyist's or an employed or retained individual's meals, food, lodging, or residential utilities.

~~(10)~~(11) "Principal" shall have the definition set forth in 5-7-102~~(12)~~(15), MCA.

~~(11)~~(12) "Public official" shall have the definition set forth in 5-7-102~~(13)~~(15), MCA, and as specifically designated in ARM 44.12.106 and 44.12.106A.

~~(12)~~(13) "Travel expenses" means payments or reimbursement for transportation costs, including rental car payments.

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

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

(2) Except as provided in (3), the records submitted to a principal by ~~an individual~~ a lobbyist or an employed or retained 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:

(a) identify each calendar day on which the lobbyist or the employed or retained individual was paid to lobby or to support or assist a lobbying activity;

(b) indicate the reportable time spent by a lobbyist or an employed or retained individual lobbying or assisting or supporting a lobbying activity for each calendar day identified in (2)(a); and

(c) identify each official action on which the lobbyist or the employed or retained 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 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 Smith to be director of department of administration).

(3) The daily itemization requirements of (2)(a) and (b) do not apply to a lobbyist or an employed or retained individual 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

44.12.104 PERSONAL LIVING EXPENSES--LIMITATIONS AND RECORDS (1) The exemption from reporting personal living expenses in 5-7-102~~(10)(a)~~(13(b)(i), MCA, is limited to actual and necessary personal living expenses incurred by a lobbyist or an employed or retained individual.

(2) All personal living expenses claimed by a lobbyist or an employed or retained individual and reimbursed by a principal must be supported by a written receipt from the third party payee, except that a lobbyist or an employed or retained individual 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 or an employed or retained individual received payments for personal living expenses from more than one principal, the total payments for the lobbyist's or the employed or retained individual's personal living expenses may not exceed 100% of the actual and necessary personal living expenses incurred by the lobbyist or the employed or retained individual. Each principal making payments for the personal living expenses of a lobbyist or an employed or retained individual may only withhold from reporting the principal's proportional share of the lobbyist's or the employed or retained individual's personal living expenses paid by the principal. A lobbyist or an employed or retained individual 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~~ the lobbyist or the employed or retained individual 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.

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

44.12.105 STATE GOVERNMENT AGENCIES--LOBBYING--DEFINITIONS AND REPORTING (1) Agencies of state government as defined in 2-15-102(2), MCA, and the offices of elected and appointed public officials designated in ARM 44.12.106 and 44.12.106A 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 ARM 44.12.106 and 44.12.106A 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~~ that 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);

(d) the actions of elected and appointed public officials designated in ARM 44.12.106 and 44.12.106A 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)~~(11)(b), 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) 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 ARM 44.12.106 and 44.12.106A and a state agency defined in 2-15-102(2), MCA, who are paid, reimbursed, or retained to lobby must register as lobbyists if they receive payments equal to or greater than the amount specified under 5-7-112, MCA; 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 lobbyists or their employed or retained individuals who lobby or support or assist a lobbying activity. State agencies and the offices of elected or appointed public officials shall file consolidated lobbying reports covering the lobbying activities of all lobbyists or employed or retained individuals as follows:

(i) The offices of an elected or appointed public official shall file a consolidated lobbying report covering the lobbying activities of all lobbyists or employed or retained individuals 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 lobbyists or the employed or retained individuals for 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 lobbyists or employed or retained individuals 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~~ that exercise autonomous powers, the agency shall specifically identify the boards, commissions, or entities not included in the state agency's lobbying report.

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

44.12.106 ELECTED PUBLIC OFFICIALS (1) To provide guidance and certainty in identifying who is a public official as defined in 5-7-102~~(13)~~(16), MCA, and an elected state official as defined in 5-7-102~~(4)~~(7), 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~~ 5-7-102, MCA
IMP: 5-7-102~~(7) and 5-7-102(13)~~, MCA

44.12.106A APPOINTED PUBLIC OFFICIALS (1) To provide guidance and certainty in identifying who is a public official as defined in 5-7-102~~(13)~~(16), MCA, and an appointed state official as defined in 5-7-102(1), MCA, the following are deemed to be an appointed public official acting in his/her official capacity for state government:

(a) any individual appointed to public office by the governor or the chief justice of the Montana supreme court 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, 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~~.~~; and

(g) any individual who is appointed by the board of regents of higher education to serve as:

(i) the commissioner of higher education; or

(ii) the chief executive officer of a campus of the Montana university system; and

(h) any individual appointed by the board of trustees of a community college to serve as president.

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

44.12.107 LOCAL GOVERNMENT LOBBYING--DEFINITIONS AND REPORTING (1) 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~~ that 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~~.~~; and

(e) the actions of elected local officials while acting in their official capacity for a local government entity to promote or oppose the introduction or enactment of legislation before the legislature or the members of the legislature (5-7-102(11)(b), MCA).

(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 if they receive payments equal to or greater than the amount specified under 5-7-112, MCA; and

(b) each local government entity must file reports under Title 5, chapter 7, MCA, and this chapter concerning the activities of their lobbyists or their employed or retained individuals 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

44.12.202 PRINCIPALS--REPORTS--MAINTENANCE OF RECORDS

(1) Pursuant to 5-7-208, MCA, a principal who makes payments that exceed the amount specified in 5-7-112, MCA, to one or more lobbyists or employed or retained individuals during a calendar year shall report all payments made to each lobbyist or employed or retained individual for lobbying or to support or assist a lobbying activity.

(2) Unless exempted by Title 5, chapter 7, MCA, or this chapter, reports shall include, without limitation, all payments made to a lobbyist or an employed or retained individual to influence official action, including payments made to support or assist any lobbying activity.

(3) Even if a principal declares that it made no payments for lobbying activities during a reporting period, ~~the~~ a principal subject to the reporting requirements of 5-7-208, MCA, must file a lobbying report as provided in 5-7-208(4), MCA.

(4) Principals must report each official action on which the principal's lobbyists or employed or retained individuals 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 compensation paid to lobbyists or employed or retained individuals in the following manner:

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

(b) If the lobbyist or the employed or retained individual is a salaried employee or officer of the principal, and his duties include lobbying or support or assistance for lobbying activities, the compensation may be allocated and reported on a daily basis or on an hourly basis based on the amount of time the lobbyist or the employed or retained individual is engaged in lobbying or in supporting or assisting lobbying activities.

(c) If the compensation paid is a fee for services ~~which~~ that include~~s~~ 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~~ that 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 or an employed or retained individual 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 REIMBURSED EXPENSES OF LOBBYISTS (1) If a principal reimburses a lobbyist or an employed or retained individual for actual expenses incurred for lobbying or to support or assist a lobbying activity (excluding personal and necessary living expenses), the actual reimbursed expenses must be reported.

(2) If the lobbyist or the employed or retained individual is being paid a periodic, lump sum, or contingent fee and the primary purpose of the contract is for lobbying services, all reimbursed expenses shall be reported.

(3) If the lobbyist or the employed or retained individual is being paid a fee and lobbying services are a part of the contract, only those expenses or the portion of them ~~which~~ that are related to or incurred in lobbying or in providing support or assistance for a lobbying activity on behalf of the principal shall be reported.

(4) If the expenses are incurred by a salaried employee or officer of the principal whose duties include lobbying, only those reimbursed expenses or the proportion of them ~~which~~ that are related to or incurred in 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 OFFICE AND MISCELLANEOUS EXPENSES (1) Principals shall report payments to influence official action, including payments to a lobbyist or an employed or retained individual to lobby or to support or assist a lobbying activity, for each expense category in 5-8-208(5)(a), MCA.

(2) If a principal provides at the principal's expense office space, utilities, supplies, and equipment to a lobbyist or an employed or retained individual to lobby or to 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 an employed or

retained individual 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 an employed or retained individual during a reporting period is $5,000 or more, then the actual cost must be determined and provided.

(c) If the cost of providing office space, utilities, supplies, and equipment to a lobbyist or an employed or retained individual is reported as provided in ARM 44.12.207(2)(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(2)(a)(i) and (ii), the actual cost determination must be retained as a record under ARM 44.12.202.

(3) Nothing in this rule requires a principal to report the cost of office space, utilities, supplies, and equipment for a lobbyist or an employed or retained individual ~~or a lobbying activity~~ if the lobbyist or the employed or retained individual is responsible for paying the cost of the lobbyist's or employed or retained individual's office space, supplies, equipment, and utilities out of the amount paid to the lobbyist or employed or retained individual. If, however, the lobbyist or the employed or retained individual 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.

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 (1) A principal shall report the cost of 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, or an employed or retained individual 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, or employed or retained individual 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 or an employed or retained individual 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. S, $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. S 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 ALLOCATION OF TIME AND COSTS--ALTERNATIVE REPORTING METHOD (1) A principal may use the following alternatives to report payments to a lobbyist or an employed or retained individual to lobby or to support or assist a lobbying activity:

(a) if most or all of a lobbyist's or an employed or retained individual's time during a reporting period is devoted to lobbying or supporting or assisting lobbying activities, the total sum of all compensation paid to him during the period may be reported as lobbying payments;

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

(c) office space, utilities, supplies, equipment, and salary payments made to support or assist a lobbyist or an employed or retained individual engaged in lobbying or a lobbying activity may be reported as a proportion of total expenses for the reporting period. If it can be reasonably determined that a given proportion of total expenses during a period were related to lobbying or supporting or assisting lobbying activities, a principal may report the proportion of total expenses for the period that equals the proportion of time and budget spent on ~~the~~ lobbying 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

44.12.212 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~~ five business days after receiving payment or payments from one or more principals equaling or exceeding the amount specified in 5-7-112, MCA. 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~~ a lobbyist license 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

REASON: There is reasonable necessity to amend the existing rules based on several amendments to the lobbying statutes passed by the 2003 Montana Legislature. The 2003 Legislature passed House Bill 689 and Senate Bill 7, revising laws relating to lobbying, revising definitions, and revising requirements for reporting of lobbying-related payments and expenses, including establishment of a reporting threshold amount. The proposed rule amendments will provide clarity and guidance regarding reportable lobbying activities and the regulation of those activities, in light of the legislative amendments to the statutes.

4. The proposed New Rules provide as follows:

NEW RULE I LOBBYING BY FEDERAL AGENCIES AND TRIBAL REPRESENTATIVES (1) Federal government agencies and Indian tribes that engage in lobbying are principals, and are subject to the same lobbying reporting requirements and entitled to the same or equivalent exemptions from reporting as state and local government agencies, as described in ARM 44.12.105 and 44.12.107. Pursuant to 5-7-102, MCA, the activities of elected federal officials and elected tribal officials, as defined in 5-7-102, MCA, when acting in an official governmental capacity, are not reportable lobbying activities.

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

REASON: There is reasonable necessity for adoption of this rule based on the 2003 Legislature's passage of House Bill 689 and Senate Bill 7, which established exemptions from reporting requirements for elected federal and tribal officials.

NEW RULE II CIVIL PENALTIES FOR DELAY IN FILING--OPTION FOR HEARING (1) A person who fails to file a report within the time required by Title 5, chapter 7, MCA, is subject to the civil penalties set forth in 5-7-306, MCA.

(2) A person against whom a civil penalty is imposed may request a hearing to contest the penalty by filing a written request for a hearing with the commissioner within 10 days after receiving notice of imposition of the penalty.

(3) Upon receipt of a timely request for a hearing the commissioner will schedule an informal contested case hearing and will issue a notice of hearing specifying the date, time, and place of the hearing.

(4) A person who has requested a hearing will be given the option of waiving an in-person hearing by filing a written waiver form that will be provided by the commissioner. A person who waives an in-person hearing will be given an opportunity to submit a written statement or argument to the commissioner, in lieu of appearing in person to present evidence or arguments.

(5) An in-person hearing will be conducted pursuant to the procedure specified in 2-4-604, MCA.

(6) The commissioner will consider any facts or circumstances in mitigation of the penalty through the evidence, statements, or arguments presented at the hearing or submitted by a person who has waived a hearing, and will issue a written decision, which will be a final decision in a contested case.

(7) A person who is aggrieved by the commissioner's decision may seek judicial review pursuant to Title 2, chapter 4, part 7, MCA.

AUTH: 5-7-111, MCA

IMP: 5-7-306, MCA

REASON: There is reasonable necessity for adoption of this rule based on the 2003 Legislature's passage of House Bill 38, which established civil penalties for late filing of lobbying reports and provided the right to a hearing.

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 Linda L. Vaughey, Commissioner of Political Practices, P.O. Box 202401, 1205 Eighth Avenue, Helena, Montana 59620-2401, faxed to (406) 444-1643, or be submitted electronically to lvaughey@state.mt.us and must be received no later than April 7, 2004.

6. 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. Such written request may be mailed or delivered to the Commissioner of Political Practices at P.O. Box 202401, 1205 Eighth Avenue, Helena, Montana 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.

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

8. The bill sponsor notice requirements of 2-4-302, MCA, apply with respect to proposed New Rule II, which implements 5-7-306, MCA, and have been fulfilled.

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 February 17, 2004.

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

In the matter of the adoption of Rules I through XXI and the amendment of ARM 37.40.406, 37.85.406, 37.86.2801, 37.86.2901, 37.86.2905, 37.86.2910, 37.86.3002, 37.86.3005, 37.86.3009, 37.86.3022, 37.86.3025, 37.86.3411, 37.88.205, 37.88.305, 37.88.605 and 37.88.906 pertaining to medicaid reimbursement of hospitals	)	NOTICE OF ADOPTION AND AMENDMENT

TO: All Interested Persons

1. On November 26, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-308 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules relating to medicaid reimbursement of hospitals at page 2580 of the 2003 Montana Administrative Register, issue number 22.

2. The Department has adopted rules I [37.86.2803], III [37.86.2904], IV [37.86.2907], V [37.86.2912], VI [37.86.2914], VII [37.86.2916], VIII [37.86.2918], IX [37.86.2920], XI [37.86.2924], XIII [37.86.3006], XIV [37.88.910], XVI [37.86.2940], XVII [37.86.2921], XX [37.86.2943] and XXI [37.86.2947] as proposed.

3. The Department has amended ARM 37.40.406, 37.85.406, 37.86.2801, 37.86.2905, 37.86.2910, 37.86.3002, 37.86.3005, 37.86.3009, 37.86.3022, 37.86.3025, 37.86.3411, 37.88.205, 37.88.305, 37.88.605 and 37.88.906 as proposed.

4. The Department has adopted the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE II [37.86.2820] DESK REVIEWS, OVERPAYMENTS AND UNDERPAYMENTS (1) Upon receipt of the cost report, the department will instruct the medicare intermediary to consider medicaid data when they perform a desk review or audit of the cost report and determine whether a medicaid overpayment or underpayment has resulted.

(2) through (4) remain as proposed.

AUTH: Sec. 2-4-201, 53-2-201 and 53-6-113, MCA
IMP: Sec. 2-4-201, 53-2-201, 53-6-101, 53-6-111 and 53-6-

113, MCA

RULE X [37.86.2925] INPATIENT HOSPITAL REIMBURSEMENT, DISPROPORTIONATE SHARE HOSPITAL (DSH) PAYMENTS

(1) ~~Disproportionate~~ Routine disproportionate share hospitals (RDSH) shall receive an additional payment amount equal to the product of the hospital's prospective base rate times the adjustment percentage of:

(a) through (2)(v) remain as proposed.

(3) Disproportionate share hospital payments, including routine disproportionate share hospital payments and supplemental disproportionate share hospital payments will be limited to the cap established by the federal ~~health care financing administration~~ centers for medicare and medicaid services (CMS) for the state of Montana. The adjustment percentages specified in this rule shall be ratably reduced as determined necessary by the department to avoid exceeding the cap.

(4) Eligibility for routine disproportionate share hospital and supplemental disproportionate share hospital payments will be determined based on a provider's year-end reimbursement status.

AUTH: Sec. 2-4-201, 53-2-201 and 53-6-113, MCA
IMP: Sec. 2-4-201, 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

RULE XII [37.86.2928] INPATIENT HOSPITAL REIMBURSEMENT, HOSPITAL REIMBURSEMENT ADJUSTOR (1) All hospitals meeting the eligibility requirements in ARM 37.86.2940 shall receive a hospital reimbursement adjustor (HRA) payment. The payment consists of two separately calculated amounts. In order to maintain access and quality in the most rural areas of Montana, critical access hospitals and exempt hospitals shall receive both components of the HRA. All other hospitals shall receive only Part 1, as defined in (2)(a). Eligibility for an HRA payment will be determined based on a hospital's year-end reimbursement status. ~~For the purposes of determining HRA payment amounts, the following apply:~~

(2) Part 1 of the HRA payment will be based upon medicaid inpatient utilization, and will be computed as follows: HRA1=[M/D]*P.

(a) through (a)(iii) remain as proposed.

(iv) "P" equals the total amount ~~to be paid via Part 1 of the HRA. The state's share of "P" will be the total amount~~ of revenue generated by Montana's hospital utilization fee, plus applicable federal financial participation, less all of the following:

(iv)(A) and (iv)(B) remain as proposed.

(C) ~~5%~~ 6% of the total revenue generated by the hospital utilization fee, which will be expended as match for Part 2 of the HRA, as provided in (3).

(3) Part 2 of the IRA payment will be based upon total ~~inpatient utilization~~ hospital medicaid charges, and will be

computed as follows: HRA2=[I/D]*P.

(a) For the purposes of calculating Part 2 of the HRA, the following apply:

(i) remains as proposed.

(ii) "I" equals the ~~number of inpatient days provided by~~ total hospital charges from medicaid paid claims for which Montana medicaid was the primary payer for the hospital for which the payment is being calculated.

(iii) "D" equals the ~~total number of inpatient days provided by~~ total hospital charges from medicaid paid claims for which Montana medicaid was the primary payer for all hospitals eligible to receive Part 2 of the HRA payment.

(iv) "P" equals the total amount to be paid via Part 2 of the HRA. ~~The state's share of~~ "P" will be ~~5%~~ 6% of the total revenue generated by Montana's hospital utilization fee plus applicable federal financial participation.

(b) The numbers used in (2) through ~~(2)(a)(ii)(C)~~ (3)(a)(iv) must be from the department's paid claims data from the ~~hospital's fiscal year that ended in the~~ most recent calendar year that ended at least 12 months prior to the calculation of the HRA payments.

~~(c) The numbers used in (3) through (3)(a)(iv) must be from the hospital utilization fee report filed with the department of revenue, in accordance with 15-66-201, MCA, and applicable rules administered by the department of revenue. The report must be from the previous calendar year.~~ For hospitals that have not been operating for two full calendar years when the HRA payments are calculated, the department may use medicaid paid claim data from a partial or more recent 12-month period or both in order to make the calculations.

AUTH: Sec. 2-4-201, 53-2-201 and 53-6-113, MCA
IMP: Sec. 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-149, MCA

RULE XV [37.86.2931] ROUTINE AND SUPPLEMENTAL DISPROPORTIONATE SHARE HOSPITAL (1) A hospital is ~~eligible for~~ deemed a routine disproportionate share hospital ~~designation~~ if:

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

(4) A hospital is deemed a supplemental disproportionate share hospital if it meets the criteria in (1)(b), (2) and (3).

AUTH: Sec. 2-4-201, 53-2-201 and 53-6-113, MCA
IMP: Sec. 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-149, MCA

RULE XVIII [37.86.2935] CALCULATING LOW INCOME UTILIZATION RATE, FOR ROUTINE ~~AND SUPPLEMENTAL~~ DISPROPORTIONATE SHARE ~~HOSPITAL PAYMENTS~~ HOSPITALS (1) ~~A Montana hospital may receive a~~ The low income utilization ~~payment,~~ rate is used to determine whether a hospital is deemed a routine disproportionate share hospital. The percentage rate is computed as follows:

(a) through (b) remain as proposed.

AUTH: Sec. 2-4-201, 53-2-201 and 53-6-113, MCA
IMP: Sec. 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-149, MCA

RULE XIX [37.86.2932] MEDICAID UTILIZATION RATE

(1) through (3)(a) remain as proposed.

~~(b) The period used for determining the medicaid inpatient utilization rate will be the most recent calendar year for which final inpatient days and initial cost reports are available for all hospital providers.~~

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

5. The Department has amended the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

37.86.2901 INPATIENT HOSPITAL SERVICES, DEFINITIONS

(1) through (5) remain as proposed.

(6) "Discharging hospital" means a hospital, other than a transferring hospital, that formally discharges an inpatient. Release of a patient to another hospital, as described in ~~(20)~~ (21) or a leave of absence from the hospital will not be recognized as a discharge. A patient who dies in the hospital is considered a discharge.

(7) and (8) remain as proposed.

(9) "Hospital reimbursement adjustor" (HRA) means a payment to a Montana hospital as specified in [RULE XII] (ARM 37.86.2928) and 37.86.2940.

(10) and (11) remain as proposed.

(12) "Inpatient hospital services" means services that are ordinarily furnished in a hospital for the care and treatment of an inpatient under the direction of a physician, dentist or other practitioner as permitted by federal law, and that are furnished in an institution that:

(a) is maintained primarily for the care and treatment of patients with disorders other than:

(i) tuberculosis; or

(ii) mental diseases, except as provided in (12)(d);

(b) is licensed or formally approved as a hospital by the officially designated authority in the state where the institution is located; ~~and~~

(c) except as otherwise permitted by federal law, meets the requirements for participation in medicare as a hospital and has in effect a utilization review plan that meets the requirements of 42 CFR 482.30~~.~~; or

(d) provides inpatient psychiatric hospital services for individuals under age 21 pursuant to ARM Title 37, chapter 88, subchapter 11.

(13) remains as proposed.

(14) "Low income utilization rate" means a ~~payment to a Montana hospital~~ hospital's percentage rate as specified in ARM

37.86.2935.

(15) and (16) remain as proposed.

(17) "Routine disproportionate share hospital" means a hospital in Montana which meets the criteria of [RULE ~~XVI~~ XV] (ARM 37.86.2931).

(18) through (22) remain as proposed.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141 and 53-6-149, MCA

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

COMMENT #1: A provider organization expressed support for many of the proposed rule changes. Generally, the organization believed the additional payments for Medicaid services would reduce the gap between the cost of delivering care and current reimbursement rates. It expressed hope that the proposed payments would reduce what it described as pressure to shift unpaid Medicaid costs to other payers.

The organization supported the renumbering and breaking up of long rules into more concise, specific individual rules. It also supported the Department's proposal to update the outpatient ambulatory payment classifications (APCs) as of the last day of the calendar year prior to the payment amount calculations. The organization also supported the designation of 4% of the hospital tax revenue as the state match for Continuity of Care payments provided for in proposed changes to ARM 37.88.1106.

RESPONSE: The Department appreciates the provider organization's support and constructive suggestions.

COMMENT #2: The new supplemental payments should be computed according to the reimbursement status, either cost reimbursed or prospective payment system reimbursed, as of the last day of the calendar year prior to the payment amount calculations.

RESPONSE: The Department agrees and has added a provision in Rule XII (ARM 37.86.2928) that the new supplemental payments will be calculated according to the reimbursement status of the hospital on the last day of the calendar year immediately preceding the calculation.

COMMENT #3: Does the provision in Rule X (ARM 37.86.2925) that the new supplemental payment will be computed from data for the latest calendar year ending at least 12 months prior to the calculation mean newly licensed hospitals with no Medicaid claims history would not receive payments? Even if so, it would be acceptable.

RESPONSE: The commentor represents only one of three new hospitals in Montana. Two other facilities would potentially be adversely affected by this rule and so might new hospitals licensed after adoption of the rule. Therefore, the Department added a provision for calculating hospital reimbursement adjustor payments, Parts 1 and 2, for facilities that have been in operation less than two full calendar years at the time the new payments are calculated. The calculation will be based on Medicaid paid claim data from the Department's Medicaid paid claim data base. The Department will extrapolate the paid claim data to estimate a complete calendar year total. Supplemental disproportionate share hospital (DSH) payment calculation methodology will not be changed in this way.

COMMENT #4: Calculation of upper payment limits separately for public and privately owned hospitals as provided in 42 CFR 447.272 potentially may prevent some cost reimbursed facilities from receiving a new supplemental payment. For the taxes paid and supplemental payments received in calendar year 2004, nothing can be done about this provision, as it is a requirement imposed by the Centers for Medicare and Medicaid Services, CMS. However, the Department should investigate options, including a waiver of the Federal regulations, to alleviate the potential problem in the future.

RESPONSE: The Department agrees and is committed to making sure the new supplemental payments are equitable and that all hospitals in Montana receive them according to their need. The Department will investigate all options to either exempt certain hospitals from the tax or to ensure that all hospitals receive an equitable supplemental payment. As the commentor recognized, the Department can make no changes to the rule at this time.

COMMENT #5: The Department should consider adding a provision to Rule X (ARM 37.86.2925) making it clear that Disproportionate Share Hospital (DSH) payments cannot be made in excess of the cost of uncompensated care provided on a facility-specific basis.

RESPONSE: Rule X(3) (ARM 37.86.2925) clearly states that "disproportionate share hospital payments will be limited to the cap established by the federal health care financing administration." The Department will update the "federal health care financing administration" reference to the "centers for medicare and medicaid services (CMS)". The Department has further clarified the rule by specifying that the facility-specific cap applies to routine DSH and supplemental DSH combined.

COMMENT #6: The reference in Rule II (ARM 37.86.2820) to the Medicare intermediary's duty to determine overpayments and underpayments should refer to a review of data when it performs a desk review or audit of the cost report.

RESPONSE: The Department agrees and has amended the rule accordingly.

COMMENT #7: Rule XII(2)(a)(iv)(C) (ARM 37.86.2928) should be amended to state that not less than 6% of the total revenue generated by the hospital tax be expended through Part 2 of the hospital reimbursement adjustor [HRA 2] payment.

RESPONSE: The Department agrees, and has changed the rule to allocate 6% of the hospital tax revenue to be expended through the HRA 2 payment.

COMMENT #8: Since Rule XII(3) (ARM 37.86.2928), provides for calculation of the HRA 2 payment on the basis of total inpatient days, would CMS assume that a "hold harmless" provision exists, varying a portion of the Medicaid payment on the amount of the total tax payment? Perhaps the calculation of the new supplemental payments should be based on a hospital's total Medicaid revenue or some other Medicaid related statistic. A change to this provision would require a change to Rule XII(2)(c) (ARM 37.86.2928), which states that the total inpatient days figures will come from the report filed by each hospital with the Department of Revenue for the calendar year immediately preceding the calculation of the new supplemental payments.

RESPONSE: The Department agrees that the use of total inpatient days to compute supplemental Medicaid payments may jeopardize federal approval of the new distributions methodology. Therefore, the final rules use total hospital Medicaid revenues as the basis for the calculation of the HRA 2 payments. The time period used as the basis for calculation will be changed to the most recent calendar year that ended at least 12 months prior to the calculation of the payments.

COMMENT #9: The catchphrase of Rule XVIII (ARM 37.86.2935), "Calculating low income utilization rate for routine and supplemental disproportionate share hospital payments" is confusing. The rule only specifies the method for calculating a routine DSH payment and does not address supplemental DSH payments. Also, the word "whether" in the first sentence of this rule be changed to "if".

RESPONSE: The Department agrees and changed the catchphrase of Rule XVIII (37.86.2935) to "Calculating Low Income Utilization Rate, for Disproportionate Share Hospitals." The rule is intended to describe the methodology by which the low-income utilization rate (LIUR) is calculated. The LIUR is used to determine whether a hospital is deemed a routine disproportionate share hospital. The rule itself has been modified to clarify this point. The Department has also changed the definition of low-income utilization rate in ARM 39.86.2901(14) accordingly.

COMMENT #10: ARM 37.86.2901(17) should cross-reference Rule XV (ARM 37.86.2931) rather than Rule XVI (ARM 37.86.2940).

RESPONSE: The Department agrees, and has changed the rule accordingly.

COMMENT #11: The definition of "inpatient hospital services" in ARM 37.86.2901 should be clarified so that a facility that provides inpatient psychiatric hospital services to individuals under age 21, that meets the requirements of ARM Title 37, chapter 88, subchapter 11 is included. Without clarification, the exclusion of facilities that are maintained primarily for the treatment of "mental diseases" could be interpreted as being applicable to those hospitals.

RESPONSE: The Department agrees and has added a new subsection (12)(d) specifically referencing institutions that provide inpatient psychiatric hospital services to individuals under age 21. A cross reference to the new subsection was also added in subsection (12)(a).

7. These new rules and rules amendments will be applied retroactively to January 1, 2004.

Dawn Sliva
Rule Reviewer

John Chappuis for
Director, Public Health
and Human Services

Certified to the Secretary of State February 17, 2004.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.19.401, 42.19.402, 42.19.406, 42.19.501, 42.19.503, 42.19.1202, 42.19.1211, 42.19.1212, 42.19.1213, 42.19.1221, 42.19.1222, 42.19.1223, 42.19.1224, and 42.19.1240 relating to the extended property tax assistance program and other property tax rules	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On January 15, 2004, the department published MAR Notice No. 42-2-726 regarding the proposed amendment of the above-stated rules relating to the extended property tax assistance program and other property tax rules at page 45 of the 2004 Montana Administrative Register, issue no. 1.

2. No comments were received, but the department amends the rule with the following changes:

42.19.406 EXTENDED PROPERTY TAX ASSISTANCE PROGRAM

(1) through (6) remain as proposed.

(7) The completed application form must include:

(a) the applicant's social security number or federal identification number (FEIN); and

(b) copies of the applicant's ~~most recent~~ federal individual, ~~or state~~ PARTNERSHIP, ESTATES OR TRUSTS, OR corporate income tax return FOR THE TAX YEAR IMMEDIATELY PRECEDING THE YEAR OF THE APPLICATION. FOR EXAMPLE: COMPLETE COPIES (INCLUDING ALL SCHEDULES) OF THE APPROPRIATE 2003 TAX YEAR RETURN MUST ACCOMPANY A 2004 APPLICATION FOR THE EXTENDED PROPERTY TAX ASSISTANCE PROGRAM, WHICH IS DUE BY APRIL 15, 2004.

(8) through (14) remain as proposed.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-6-193, MCA

3. Therefore, the department amends ARM 42.19.406 with the changes listed above and amends ARM 42.19.401, 42.19.402, 42.19.501, 42.19.503, 42.19.1202, 42.19.1211, 42.19.1212, 42.19.1213, 42.19.1221, 42.19.1222, 42.19.1223, 42.19.1224, and 42.19.1240 as proposed.

4. An electronic copy of this Adoption Notice is available through the Department's site on the World Wide Web at http://www.discoveringmontana.com/revenue, under "for your reference;" "DOR administrative rules;" and "upcoming events

and proposed rule changes." The Department strives to make the electronic copy of this Adoption 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.

/s/ Cleo Anderson	/s/ Linda M. Francis
CLEO ANDERSON	LINDA M. FRANCIS
Rule Reviewer	Director of Revenue

Certified to Secretary of State February 17, 2004

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;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

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.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

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, 2003. This table includes those rules adopted during the period January 1, 2004 through March 31, 2004 and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six 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, 2003, 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 2003 and 2004 Montana Administrative Registers.

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BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in January 2004, appear. Vacancies scheduled to appear from March 1, 2004, through May 31, 2004, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

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

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of February 9, 2004.

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

BOARD AND COUNCIL APPOINTEES FROM JANUARY 2004

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Chiropractors (Labor and Industry)			
Dr. Thomas Fullerton	Governor	Hoell	1/7/2004
Kalispell			1/1/2007
Qualifications (if required): chiropractor			
Board of Horse Racing (Livestock)			
Ms. Susan Austin	Governor	reappointed	1/20/2004
Kalispell			1/20/2007
Qualifications (if required): representative of District 5			
Mr. C.A. (Al) Carruthers	Governor	reappointed	1/20/2004
Butte			1/20/2007
Qualifications (if required): representative of horse racing industry			
Mr. Jay C. Clark	Governor	reappointed	1/20/2004
Sweetgrass			1/20/2007
Qualifications (if required): representative of horse racing industry			
Ms. Brenda Koch	Governor	reappointed	1/20/2004
Lewistown			1/20/2007
Qualifications (if required): representative of District 2			
Board of Occupational Therapy Practice (Labor and Industry)			
Ms. Debra Ammondson	Governor	reappointed	1/6/2004
Great Falls			12/31/2007
Qualifications (if required): occupational therapist			
Board of Respiratory Care Practitioners (Labor and Industry)			
Mr. Robert Kirtley	Governor	reappointed	1/12/2004
Bozeman			1/1/2008
Qualifications (if required): respiratory care practitioner			

BOARD AND COUNCIL APPOINTEES FROM JANUARY 2004

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Respiratory Care Practitioners (Labor and Industry) cont.			
Dr. Holly Strong	Governor	Pueringer	1/12/2004
Great Falls			1/1/2008
Qualifications (if required): physician			
Board of Veterans' Affairs (Military Affairs)			
Mr. C.E. Crookshanks	Governor	not listed	1/1/2004
Missoula			8/1/2007
Qualifications (if required): experienced with veterans' issues and a voting member			
Mr. Jim Heffernan	Governor	not listed	1/1/2004
Helena			8/1/2007
Qualifications (if required): experienced with veterans' issues and a voting member			
Mr. Lloyd Jackson	Governor	not listed	1/1/2004
Pablo			8/1/2006
Qualifications (if required): representative of the Montana tribal councils and a voting member			
Ms. Polly LaTray	Governor	not listed	1/1/2004
Helena			8/1/2005
Qualifications (if required): representative of veterans' employment and training service and a non-voting member			
Ms. Lee Logan	Governor	not listed	1/1/2004
Fort Harrison			8/1/2006
Qualifications (if required): representative of US Department of Veterans' Affairs and a non-voting member			
Rep. Robert J. "Bob" Pavlovich	Governor	not listed	1/1/2004
Butte			8/1/2007
Qualifications (if required): representative of veterans at large and a voting member			

BOARD AND COUNCIL APPOINTEES FROM JANUARY 2004

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Veterans' Affairs (Military Affairs) cont.			
Maj. Gen. John E. Prendergast Helena Qualifications (if required): director of the Department of Military Affairs and a non-voting member	Governor	not listed	1/1/2004 8/1/2005
Mr. Harvey Rattey Glendive Qualifications (if required): tribal member and a voting member	Governor	not listed	1/1/2004 8/1/2007
Ms. Lori Ryan Helena Qualifications (if required): representative of the Office of Indian Affairs and a non-voting member	Governor	not listed	1/1/2004 8/1/2005
Mr. Edward Sperry Stevensville Qualifications (if required): experienced with veterans' issues and a voting member	Governor	not listed	1/1/2004 8/1/2006
Ms. Kelly Williams Helena Qualifications (if required): representative of Department of Public Health and Human Services and a non-voting member	Governor	not listed	1/1/2004 8/1/2006
Commission on Community Service (Labor and Industry)			
Ms. Frances Galvin Butte Qualifications (if required): businessperson	Governor	O'Neill	1/5/2004 7/1/2004

BOARD AND COUNCIL APPOINTEES FROM JANUARY 2004

Appointee	Appointed by	Succeeds	Appointment/End Date
Committee on Telecommunications Access Services (Public Health and Human Services)			
Ms. Cheryl Gillespie	Governor	Duncan	1/27/2004
Helena			7/2/2006
Qualifications (if required): representative of the largest local exchange company in Montana			
Department of Corrections Advisory Council (Corrections)			
Sen. Mike Cooney	Governor	not listed	1/6/2004
Helena			12/12/2005
Qualifications (if required): public member			
District Court Judge 13th Judicial District Department 1 (Justice)			
Judge Ingrid Gayle Gustafson	Governor	Barz	1/1/2004
Billings			1/1/2005
Qualifications (if required): appointed			
Governor's Council on Families (Public Health and Human Services)			
Rep. Jeff Laszloffy	Governor	Christie	1/30/2004
Laurel			4/29/2005
Qualifications (if required): public member			
Governor's Council on Worklife Wellness (Public Health and Human Services)			
Dr. Mary Albright	Governor	Magsig	1/21/2004
Helena			12/1/2005
Qualifications (if required): representative of an insurer			
Homeland Security Task Force (Military Affairs)			
Mr. Steve Knecht	Governor	Greene	1/1/2004
Helena			10/1/2004
Qualifications (if required): DES Administrator and Chairman			

BOARD AND COUNCIL APPOINTEES FROM JANUARY 2004

Appointee	Appointed by	Succeeds	Appointment/End Date
Judical Nomination Commission (Justice)			
Ms. Elizabeth Brennan Missoula Qualifications (if required): attorney	Supreme Court	not listed	1/1/2004 12/31/2007
Judge Ted O. Lympus Kalispell Qualifications (if required): district judge	Governor	Barz	1/1/2004 12/31/2005
Ms. Janice Ostermiller Billings Qualifications (if required): public member	Governor	Harbaugh	1/29/2004 1/1/2008
Montana Grass Conservation Commission (Natural Resources and Conservation)			
Mr. Dewayne Ozark Glasgow Qualifications (if required): grazing district preference holder	Governor	reappointed	1/6/2004 1/1/2007
Montana Statewide Independent Living Council (Public Health and Human Services)			
Ms. Cecilia C. Cowie Helena Qualifications (if required): none specified	Director	reappointed	1/5/2004 1/5/2006
Ms. Carol LaRocque Great Falls Qualifications (if required): none specified	Director	reappointed	1/5/2004 1/5/2006
Mr. Robert D. Liston Missoula Qualifications (if required): none specified	Director	reappointed	1/5/2004 1/5/2006

BOARD AND COUNCIL APPOINTEES FROM JANUARY 2004

Appointee	Appointed by	Succeeds	Appointment/End Date
Montana Statewide Independent Living Council (Public Health and Human Services) cont.			
Mr. John Pipe	Director	reappointed	1/5/2004
Wolf Point			1/5/2006
Qualifications (if required): none specified			
Ms. Donna M. Scott	Director	reappointed	1/5/2004
Billings			1/5/2006
Qualifications (if required): none specified			
Mr. Tom Tripp	Director	reappointed	1/5/2004
Butte			1/5/2006
Qualifications (if required): none specified			
Montana Vocational Rehabilitation Council (Public Health and Human Services)			
Rep. Carol Lambert	Director	Kleinschmidt	1/1/2004
Hammond			1/1/2006
Qualifications (if required): Statewide Independent Living Council position			
Mr. Dick Trerise	Director	Verploegen	1/1/2004
Helena			1/1/2006
Qualifications (if required): Office of Public Instruction position			
State Banking Board (Administration)			
Mr. Mark Huber	Governor	Fox	1/21/2004
Helena			7/1/2004
Qualifications (if required): national bank officer of a medium-sized bank			
State Workforce Investment Board (Labor and Industry)			
Ms. Jody Messinger	Governor	McCullough	1/5/2004
Helena			0/0/0
Qualifications (if required): representative of a lead state agency official			

BOARD AND COUNCIL APPOINTEES FROM JANUARY 2004

Appointee	Appointed by	Succeeds	Appointment/End Date
Youth Justice Council (Justice)			
Ms. Beth McLaughlin	Governor	Boyd	1/26/2004
Helena			6/20/2005
Qualifications (if required): public member			

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2004 through MAY 31, 2004

Board/current position holder	Appointed by	Term end
Abstinence Education Advisory Council (Public Health and Human Services)		
Sen. Sherm Anderson, Deer Lodge	Governor	3/11/2004
Qualifications (if required): legislator		
Board of Architects (Commerce)		
Mr. Thomas R. Wood, Bozeman	Governor	3/27/2004
Qualifications (if required): representative of MSU-Bozeman School of Architecture		
Board of Architects (Labor and Industry)		
Mr. John Fontaine, Glasgow	Governor	3/27/2004
Qualifications (if required): public member		
Board of Athletics (Commerce)		
Mr. Gary Langley, Helena	Governor	4/25/2004
Qualifications (if required): public member		
Board of Dentistry (Commerce)		
Dr. Michael McCarthy, Billings	Governor	3/29/2004
Qualifications (if required): dentist		
Ms. Deana Standley, Great Falls	Governor	3/29/2004
Qualifications (if required): dental hygienist		
Board of Nursing Home Administrators (Commerce)		
Mr. Fred Patten, Helena	Governor	5/28/2004
Qualifications (if required): public member over the age of 55		
Board of Optometry (Commerce)		
Dr. Douglas McBride, Billings	Governor	4/3/2004
Qualifications (if required): optometrist		

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2004 through MAY 31, 2004

Board/current position holder	Appointed by	Term end
Board of Plumbers (Commerce)		
Mr. Kim Beaudry, Billings	Governor	5/4/2004
Qualifications (if required): professional engineer qualified in mechanical engineering		
Board of Real Estate Appraisers (Commerce)		
Mr. Tim Moore, Helena	Governor	5/1/2004
Qualifications (if required): real estate appraiser		
Ms. Jennifer Seitz, Billings	Governor	5/1/2004
Qualifications (if required): public member		
Board of Real Estate Appraisers (Labor and Industry)		
Mr. Keith O'Reilly, Bozeman	Governor	5/1/2004
Qualifications (if required): real estate appraiser		
Board of Realty Regulation (Commerce)		
Ms. Laura Odegaard, Billings	Governor	5/9/2004
Qualifications (if required): realtor		
Commission on Practice of the Supreme Court (Justice)		
Mr. Bruce A. Fredrickson, Billings	elected	4/27/2004
Qualifications (if required): elected		
Governor's Council on Organ and Tissue Donor Awareness (Public Health and Human Services)		
Gov. Judy Martz, Helena	Governor	3/25/2004
Qualifications (if required): representative of donor families and state government		
Mr. Ted Marchion, Anaconda	Governor	3/25/2004
Qualifications (if required): representative of donor recipients		
Mr. Paul Buck, Missoula	Governor	3/25/2004
Qualifications (if required): ex-officio member		

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2004 through MAY 31, 2004

Board/current position holder	Appointed by	Term end
Governor's Council on Organ and Tissue Donor Awareness (Public Health and Human Services) cont.		
Ms. Jan Hendrix, Kalispell	Governor	3/25/2004
Qualifications (if required): ex-officio member		
Ms. Sandi Stroot, Superior	Governor	3/25/2004
Qualifications (if required): ex-officio member		
Mr. Dean Roberts, Helena	Governor	3/25/2004
Qualifications (if required): representative of the Department of Justice		
Ms. Mary Hainlin, Helena	Governor	3/25/2004
Qualifications (if required): representative of donor families		
Rev. Kenneth Mottram, Kalispell	Governor	3/25/2004
Qualifications (if required): representative of clergy		
Ms. Jennifer Keck, Conrad	Governor	3/25/2004
Qualifications (if required): representative of donor recipients		
Ms. Maggie Bullock, Helena	Governor	3/25/2004
Qualifications (if required): Department of Public Health and Human Services representative		
Mr. Tim Reardon, Helena	Governor	3/25/2004
Qualifications (if required): organ donor recipient		
Mr. John Pipe, Wolf Point	Governor	3/25/2004
Qualifications (if required): organ donor recipient and a Native American		
Ms. Rosemary Wolter, Billings	Governor	3/25/2004
Qualifications (if required): family donor and businessperson		

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2004 through MAY 31, 2004

Board/current position holder	Appointed by	Term end
Helena College of Technology of the U of M Executive Board (University System)		
Mr. Ronald S. Mercer, Helena	Governor	4/15/2004
Qualifications (if required): public member		
Montana Abstinence Education Advisory Council (Public Health and Human Services)		
Dr. Tom Rasmussen, Helena	Governor	3/11/2004
Qualifications (if required): public member		
Sen. Duane Grimes, Clancy	Governor	3/11/2004
Qualifications (if required): legislator		
Ms. Geraldine (Jeri) Snell, Miles City	Governor	3/11/2004
Qualifications (if required): public member		
Ms. Jessie Stinger, Polson	Governor	3/11/2004
Qualifications (if required): public member		
Mr. Gary Swant, Deer Lodge	Governor	3/11/2004
Qualifications (if required): public member		
Mr. Bryce Skjervem, Helena	Governor	3/11/2004
Qualifications (if required): public member		
Mr. Jim Good, Bozeman	Governor	3/11/2004
Qualifications (if required): public member		
Ms. Joleen Spang, Lame Deer	Governor	3/11/2004
Qualifications (if required): public member		
Ms. Traci Hronek, Great Falls	Governor	3/11/2004
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2004 through MAY 31, 2004

Board/current position holder	Appointed by	Term end
Montana Abstinence Education Advisory Council (Public Health and Human Services) cont.		
Rep. Kenneth D. Peterson, Billings	Governor	3/11/2004
Qualifications (if required): legislator		
Ms. Julie Ippolito, Helena	Governor	3/11/2004
Qualifications (if required): public member		
Ms. Judy LaPan, Sidney	Governor	3/11/2004
Qualifications (if required): public member		
Mr. Matt Antonich, Kremlin	Governor	3/11/2004
Qualifications (if required): public member		
Mr. Collins Lawlor, Helena	Governor	3/11/2004
Qualifications (if required): youth representative		
Ms. Elisabeth Dellwo, Helena	Governor	3/11/2004
Qualifications (if required): youth representative		
Ms. Elaine Collins, Helena	Governor	3/11/2004
Qualifications (if required): public member		
Montana Heritage Preservation and Development Commission (Historical Society)		
Mr. Pat Keim, Helena	Governor	5/23/2004
Qualifications (if required): public member		
Ms. Judy McNally, Billings	Governor	5/23/2004
Qualifications (if required): public member		
Mr. John Lawton, Great Falls	Governor	5/23/2004
Qualifications (if required): experienced in community planning		

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2004 through MAY 31, 2004

Board/current position holder	Appointed by	Term end
Montana Heritage Preservation and Development Commission (Historical Society) cont.		
Ms. Rosana Skelton, Helena	Governor	5/23/2004
Qualifications (if required): businessperson		
Montana Potato Advisory Committee (Agriculture)		
Rep. Donald Steinbeisser, Sidney	Director	5/20/2004
Qualifications (if required): none specified		
Mr. John Venhuizen, Manhattan	Director	5/20/2004
Qualifications (if required): none specified		
Montana State University Billings Executive Board (University System)		
Ms. Carol Willis, Billings	Governor	4/15/2004
Qualifications (if required): public member		
Montana State University Executive Board (University System)		
Ms. Beatrice Taylor, Bozeman	Governor	4/15/2004
Qualifications (if required): public member		
Montana State University Great Falls College of Technology Executive Board (University System)		
Ms. Susan Humble, Great Falls	Governor	4/15/2004
Qualifications (if required): public member		
Montana State University Northern Executive Board (University System)		
Mr. Doug Ross, Havre	Governor	4/15/2004
Qualifications (if required): public member		
Montana Tech of the University of Montana Executive Board (University System)		
Mr. Tad Dale, Butte	Governor	4/15/2004
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2004 through MAY 31, 2004

Board/current position holder	Appointed by	Term end
Public Employees' Retirement Board (Administration)		
Mr. Jay Klawon, Hamilton	Governor	4/1/2004
Qualifications (if required): experienced in investment management		
State 9-1-1 Advisory Council (Administration)		
Mr. Larry J. Bonderud, Shelby	Director	3/1/2004
Qualifications (if required): Montana League of Cities and Towns		
Dr. Drew Dawson, Helena	Director	3/1/2004
Qualifications (if required): Department of Public Health and Human Services		
Mr. Jim Oppedahl, Helena	Director	3/1/2004
Qualifications (if required): Montana Board of Crime Control		
Mr. Jim Anderson, Helena	Director	3/1/2004
Qualifications (if required): Department of Military Affairs		
Mr. Mike Strand, Helena	Director	3/1/2004
Qualifications (if required): Montana Independent Telecommunications Systems		
Mr. Bob Jones, Great Falls	Director	3/1/2004
Qualifications (if required): Montana Association of Chiefs of Police		
Mr. Bert Obert, Helena	Director	3/1/2004
Qualifications (if required): Montana Highway Patrol		
Mr. Ronald Rowton, Lewistown	Director	3/1/2004
Qualifications (if required): Montana Sheriff's and Peace Officers Association		
Mr. Geoff Feiss, Helena	Director	3/1/2004
Qualifications (if required): Montana Telephone Association		

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2004 through MAY 31, 2004

Board/current position holder	Appointed by	Term end
State 9-1-1 Advisory Council (Administration) cont.		
Ms. Sherry Cargill, Boulder	Director	3/1/2004
Qualifications (if required): Montana Association of Counties		
Mr. Dan Hawkins, Helena	Director	3/1/2004
Qualifications (if required): Association of Public Safety Communications Officials		
Mr. Richard Brumley, Lewistown	Director	3/1/2004
Qualifications (if required): Montana Emergency Medical Services Association		
Mr. Chuck Winn, Bozeman	Director	3/1/2004
Qualifications (if required): Montana State Fire Chiefs Association		
Mr. Joe Calnan, Montana City	Director	3/1/2004
Qualifications (if required): Montana State Volunteer Fire Fighters Association		
Ms. Wilma Puich, Butte	Director	3/1/2004
Qualifications (if required): Association of Disaster and Emergency Services Coordinators		
Mr. Larry Sheldon, Helena	Director	3/1/2004
Qualifications (if required): Qwest Communications		
Ms. Jody Pierce, Helena	Director	3/1/2004
Qualifications (if required): Public Safety Answering Point representative		
Mr. Don Hollister, Kalispell	Director	3/1/2004
Qualifications (if required): PTI Communications		
Mr. Mark Yahne, Cedar City, UT	Director	3/1/2004
Qualifications (if required): Western Wireless		

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2004 through MAY 31, 2004

Board/current position holder	Appointed by	Term end
State 9-1-1 Advisory Council (Administration) cont.		
Ms. Andrea Homier, Helena	Director	3/1/2004
Qualifications (if required): Verizon Wireless		
Mr. Tom Kuntz, Red Lodge	Director	3/1/2004
Qualifications (if required): Montana Public Safety Communications Council		
Ms. Jenny Hansen, Helena	Director	3/1/2004
Qualifications (if required): Department of Administration 9-1-1 Program		
State Board of Hail Insurance (Agriculture)		
Mr. Keith Arntzen, Hilger	Governor	4/18/2004
Qualifications (if required): public member		
State Library Commission (State Library)		
Ms. Caroline Bitz, Box Elder	Governor	5/22/2004
Qualifications (if required): public member		
University of Montana Executive Board (University System)		
Ms. Arlene Breum, Missoula	Governor	4/15/2004
Qualifications (if required): public member		
University of Montana Western Executive Board (University System)		
Ms. Betty Iverson, Dillon	Governor	4/15/2004
Qualifications (if required): public member		
Upper Clark Fork River Remediation and Restoration Education Advisory Council (Environmental Quality)		
Mr. Larry Curran, Butte	Governor	4/1/2004
Qualifications (if required): member of the public active in conservation or recreation		
Mr. John Hollenback, Gold Creek	Governor	4/1/2004
Qualifications (if required): conservation district representative		

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2004 through MAY 31, 2004

Board/current position holder	Appointed by	Term end
Upper Clark Fork River Remediation and Restoration Education Advisory Council (Environmental Quality) cont.		
Ms. Judy H. Jacobson, Butte	Governor	4/1/2004
Qualifications (if required): representative of local government		
Ms. Sally Johnson, Missoula	Governor	4/1/2004
Qualifications (if required): representative of the public		
Mr. Haley Beaudry, Butte	Governor	4/1/2004
Qualifications (if required): engineer		
Mr. Jim Flynn, Anaconda	Governor	4/1/2004
Qualifications (if required): businessman		
Mr. Matt Clifford, Missoula	Governor	4/1/2004
Qualifications (if required): representative of a non-profit organization		
Ms. Carol Fox, Helena	Governor	4/1/2004
Qualifications (if required): Chief of the Natural Resource Damage Program		
Ms. Jan Sensibaugh, Helena	Governor	4/1/2004
Qualifications (if required): Director of the Department of Environmental Quality and a non-voting member		
Mr. M. Jeff Hagener, Helena	Governor	4/1/2004
Qualifications (if required): Director of the Department of Fish, Wildlife, and Parks and a non-voting member		
Mr. Gene Vuckovich, Anaconda	Governor	4/1/2004
Qualifications (if required): local development specialist		
Mr. Jules Waber, Deer Lodge	Governor	4/1/2004
Qualifications (if required): representative of local government		

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2004 through MAY 31, 2004

Board/current position holder	Appointed by	Term end
Upper Clark Fork River Remediation and Restoration Education Advisory Council (Environmental Quality) cont.		
Mr. Jerry Harrington, Butte	Governor	4/1/2004
Qualifications (if required): natural resource scientist		