ISSUE NO. 3

The Montana Administrative Register (MAR or Register), 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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the attorney general's opinions and state declaratory rulings. Special notices and tables are found at the end 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 Secretary of State's Office, Administrative Rules Bureau, at (406) 444-2055.

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NOTICE SECTION

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

In the matter of the proposed amendment of ARM 6.6.3504, pertaining to contents of annual audited financial report	)	NOTICE OF PROPOSED AMENDMENT
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On March 13, 2006, the State Auditor proposes to amend ARM 6.6.3504 pertaining to contents of annual audited financial report.

2. The State Auditor's Office 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 State Auditor's Office no later than 5:00 p.m., on March 9, 2006, to advise us of the nature of the accommodation needed. Please contact Darla Sautter, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601; telephone (406) 444-2726; Montana Relay 1-800-332-6145; TDD (406) 444-3246; facsimile (406) 444-3497; or e-mail to dsautter@mt.gov.

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

6.6.3504 CONTENTS OF ANNUAL AUDITED FINANCIAL REPORT

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

(f) notes to financial statements. These notes shall be those required by the appropriate ~~2004~~ 2005 NAIC annual statement instructions and the March ~~2004~~ 2005, NAIC Accounting Practices and Procedures Manual, which are adopted and incorporated by reference, and may be obtained by writing to the NAIC Executive Headquarters, 2301 McGee Street, Suite 800, Kansas City, MO 64108-2662. The notes shall include reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to 33-2-701, 33-4-313, 33-7-118, 33-30-107, and 33-31-211, MCA, with a written description of the nature of these differences.

(3) remains the same.

AUTH: 33-1-313, 33-2-1517, 33-5-413, MCA
IMP: 33-2-1517 and 33-5-413, MCA

4. REASONABLE NECESSITY STATEMENT: It is necessary to amend ARM 6.6.3504 to reflect date changes referencing NAIC manuals that are published annually.

5. Concerned persons may submit their data, views, or arguments concerning the proposed amendment in writing to Steve Matthews, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601, or by facsimile (406) 444-3497, or by e-mail to smatthews@mt.gov, and must be received no later than 5:00 p.m., March 9, 2006.

6. If persons who are directly affected by the proposed amendment 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 this request along with any written comments they have to Steve Matthews, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601, or by e-mail to smatthews@mt.gov no later than March 9, 2006.

7. If the department receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 250 persons who have indicated interest in the rules of this department and who the department has determined could be directly affected by these rules.

8. The State Auditor's Office maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this department. 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 insurance rules, securities rules, or both. Such written request may be mailed or delivered to Darla Sautter, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601, or by e-mail to dsautter@mt.gov, or by completing a request form at any rules hearing held by the State Auditor's Office.

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

JOHN MORRISON, State Auditor
and Commissioner of Insurance

By: /s/ Alicia Pichette
Alicia Pichette
Deputy Insurance Commissioner

By: /s/ Patrick M. Driscoll
Patrick M. Driscoll
Rule Reviewer

Certified to the Secretary of State on January 30, 2006.

BEFORE THE TRANSPORTATION COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of new rules I and II; and the amendment of ARM 18.6.202, 18.6.211, 18.6.212, 18.6.221, 18.6.232, 18.6.242, and 18.6.245 regarding Outdoor Advertising	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On March 17, 2006, at 10:00 a.m., a public hearing will be held in the auditorium of the Transportation building at Helena, Montana, to consider the adoption and amendment of the above-stated rules.

2. The transportation commission will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking action and need an alternative accessible format of this notice. If you require an accommodation, contact Pat Hurley no later than 5:00 p.m. on March 14, 2006, to advise us of the nature of the accommodation that you need. Please contact Pat Hurley, Department of Transportation, PO Box 201001, Helena, MT 59620; phone (406) 444-6068; TTY (800) 335-7592; FAX (406) 444-7254; or e-mail phurley@mt.gov.

3. The rules proposed to be adopted provide as follows:

RULE I OFFICIAL SIGNS (1) Official signs must be erected and maintained by a public officer or agency.

(2) Official signs must be erected within the territorial jurisdiction or zoning jurisdiction of the public officer or agency. This means that the officer or agency must exercise some form of governmental authority over the area upon which the sign is located.

(3) Official signs must be erected pursuant to direction or authorization contained in federal, state, or local law. This means that the officer must be directed by statute and/or must have the specific authority by statute to erect and maintain signs and notices.

(4) Local governments may erect, within the limits of their jurisdiction, official signs welcoming travelers and describing the services and attractions available, but may not advertise private business or brand names.

(5) Not more than one official sign welcoming visitors or providing information about a community is allowed on each highway entering the community, subject to federal and state outdoor advertising control (OAC) rules.

(6) On interstate highways, official “welcome to” signs may be erected within five miles of a community. Not more than one “welcome to” sign in each direction is allowed.

(7) An official sign of a local government will not be considered in determining the spacing required between conforming outdoor advertising signs located off premises.

AUTH: 75-15-121, MCA
IMP: 75-15-111, and 75-15-113, MCA

REASON: Most Montana communities are rural in nature and have no avenue to inform the traveling public of their location. Additionally, “Welcome to” signs erected by local authority with no commercial advertising come into compliance with the CFR as official signage.

RULE II RECOGNITION OF SPONSORS, BENEFACTORS, AND SUPPORT GROUPS (1) An on-premise sign owner may recognize the name of a sponsor, benefactor, or support group if:

(a) the “thank you” identifies the name of the sponsor, benefactor, or support group, is of a noncommercial nature and does not include promotional information such as address, phone number, hours of operation, or product logos. Any advertising is prohibited;

(b) the “thank you” display is limited to a recognition plaque that does not exceed 2% of the total sign face or 1 foot x 36 inches, whichever is less;

(c) a reader board display has a maximum display time of 20 minutes during a 14 day period;

(d) not more than three recognition plaques are erected on a sign structure which is visible to traffic proceeding in any one direction on any interstate or primary highway; and

(e) the sign owner obtains a permit from MDT to display “thank you” recognition; the permit application must include the type of display and purpose for the recognition.

AUTH: 75-15-121, MCA
IMP: 75-15-111, and 75-15-113, MCA

REASON: Schools and non-profit groups with on-premise signs are requesting that the existing rules be revised to allow them to communicate to the public their appreciation to sponsors, benefactors and support groups who contribute to those organizations. This rule would give these on-premise sign owners the ability to meet that need while conforming to federal and state law.

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

18.6.202 DEFINITIONS (1) remains the same.

(2) "Commercial electronic variable message signs" (CMS) means electrical or electromechanical signs on which ~~contain, include, or are illuminated by any flashing, intermittent, or moving light or lights, producing the illusion of movement by~~

~~means of electronic, electrical or electro-mechanical input~~ messages can be changed remotely through hard wire or wireless communications and have the capability to present a large amount of text and/or symbolic imagery. Other names for CMS are “variable message signs” (VMS), “dynamic message signs” (DMS), “smart boards” (SBS), “tri-vision” (TVS) , or digital display (DD), and/or have the characteristics of one or more of the following classifications:

(a) through (6) remain the same.

(7) "Noncommercial sign" means a sign that does not display a commercial message. For the purpose of this rule, only ~~"welcome to" community and~~ "public service" signs such as DARE or ABATE are considered noncommercial signs. The Montana Department of Transportation shall make the determination of a noncommercial sign designation on a case-by-case basis.

(8) remains the same.

(9) “Official signs and notices” means signs and notices erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with direction or authorization contained in federal, state, or local law for the purposes of carrying out an official duty or responsibility. Historical markers, welcome to, public utility signs authorized by state law and erected by state or local government agencies may be considered official signs.

~~(9)~~ (10) "Off-premise signs" means all signs which are not on-premise signs as defined in ~~(10)~~(11).

(10) through (12) remain the same but are renumbered (11) through (13).

Auth: 75-15-121, MCA
Imp: 75-15-121, 75-15-111, 75-15-112, and 75-15-113, MCA

REASON: Changes in the definitions rule were done to clarify some definitions that have caused disputes with reference to prior interpretations and to clarify new language to the rules.

18.6.211 PERMITS (1) through (4) remain the same.

(5) The initial permit fee must be paid within 30 days from the approval of the application or the permit may be canceled.

(5) through (7) remain the same but are renumbered (6) through (8).

(9) Ownership of a sign permit will not be transferred without the expressed written consent of the permit holder(s). The current permit holder(s) must sign the document transferring the permit.

(10) Permits cannot be canceled except by the written request of either the permit holder(s) or the landowner(s) subject to the department’s approval or by violations of the provisions of the Outdoor Advertising Act. The document requesting cancellation of a permit must be signed by the current permit holder or the landowner(s).

(11) If the permit holder(s) are unable or unwilling to sign the cancellation document, the landowner(s) may request cancellation of the permit by providing the department with a document stating the reason for cancellation such as termination

of the land lease between the permit holder(s) and the landowner(s) and indicating whether the landowner(s) have purchased the sign structure or if the sign structure will be removed. The landowner(s) must sign this document.

AUTH: 75-15-121 and 75-15-122, MCA
IMP: 75-15-122

REASON: The transfer of permits is addressed in Chapter nine of the Right-of-Way manual, which has no force of law. Additionally, the new language clarifies the process of transferring permits for the sign owners and landowners.

18.6.212 PERMIT APPLICATIONS - NEW SIGN SITES

(1) and (2) remain the same.

(3) The applicant must clearly mark the physical place the sign is to be erected with the exact location of the proposed sign site to enable department personnel to perform the required site inspection.

AUTH: 75-15-121, MCA
IMP: 75-15-122, MCA

REASON: This rule was incomplete with the need to give adequate information so that departmental personnel could find the proposed sign sites to do the required site inspections.

18.6.221 NEW SIGN ERECTION (1) The sign owner within six months of the date of issuance of the permit will:

(a) erect the sign structure;

(i) an extension of time to erect the structure may be granted upon written request from the sign owner and at the discretion of the Montana Department of Transportation;

(b) and (c) remain the same.

(d) attach name plaque to structure identifying the sign owner;

(d) remains the same but is renumbered (e).

(2) remains the same.

AUTH: 75-15-121, MCA
IMP: 75-15-122, MCA

REASON: This is a clarification which is reasonably necessary to identify the sign owner who is often out of state. Additionally, it has been a customary practice to grant an extension of time of erect a sign structure beyond that required by the rules at the discretion of the department for reasons such as weather conditions or situations beyond the sign owner's control, but does not have the force of law.

18.6.232 COMMERCIAL ELECTRONIC VARIABLE MESSAGE SIGNS

(1) Off-premise commercial electronic variable message signs (CMS), ~~regardless of the message, are prohibited in controlled areas.~~ which present a new message, pictorial image, or change illumination at a rate less than one every six seconds, is determined to be flashing or moving light and are prohibited in controlled areas.

(2) A CMS may be approved as an off-premise outdoor advertising sign within the zoning jurisdiction of city and town areas if the sign does not contain flashing, intermittent, or moving lights, and does not cause a glare on the roadway and the following conditions are met:

(a) A message on a sign must have a minimum display (dwell) time of six seconds and a maximum change (twirl) interval of three seconds;

(b) A sign must contain a mechanism that will stop the sign in one position if a malfunction occurs;

(c) Signs shall be water tight, with service holes to provide access to each compartment with fitted waterproof covers;

(d) Signs must not be placed with illumination that interferes with the effectiveness of or obscure any official traffic sign, device, or signal;

(e) Signs must not include or be illuminated by flashing, intermittent, or moving lights;

(f) Signs must not cause beams or rays of light to be directed at the traveled way if the light is of such intensity or brilliance or is likely to be mistaken for a warning or danger signal or to cause glare or impair the vision of any driver, or to interfere with the driver's operation of a motor vehicle;

(g) Illumination or lights for signs must not resemble or simulate any lights used to control traffic;

(h) Jumping arrows or rapid chasing or flashing lamp borders are prohibited;

(i) Techniques of message display such as fading, exploding, and dissolving messages are prohibited;

(j) Signs shall only be constructed as a single face, back-to-back, or two-faced V-shaped structure. Only one face may be visible in each direction of the main traveled way. Side by side or stacked signs are prohibited;

(k) Signs are prohibited on horizontal and vertical curves;

(l) Signs are prohibited within 1000 feet of an interchange or railroad crossing and within 500 feet of an intersection;

(m) Signs shall not be placed within 2000 feet of another sign measured along the nearest edge of the pavement between points directly opposite the signs on the same side of the roadway;

(n) Signs located within 1000 feet of highway work zones where changing traffic patterns, sudden stops, workers, pedestrians, and work equipment are present will be turned off for that period of time to be determined by the Montana Department of Transportation;

(o) Portable signs may not be used as permanent illuminated signage; only fixed signs are permitted;

(p) Wording that implies a traffic control or highway emergency (for example, use of the word "STOP") is prohibited;

(g) Traffic Control Device (TCD) signs or symbols (such as an eight-sided stop sign) in signs are prohibited; and

(r) No sign may be illuminated to a degree of brightness that is greater than necessary for adequate visibility. Signs found to be brighter than necessary for adequate visibility shall be adjusted by the person owning or controlling the sign in accordance with the instructions of the Montana Department of Transportation.

(3) An existing sign may be modified or updated if the sign conforms with established criteria relating to zoning, size, lighting, and spacing. Prior approval from the Montana Department of Transportation is required to modify existing signs. Modifications require:

(a) a new sign application; and

(b) a new nonrefundable application fee of $200.00.

AUTH: 75-15-121, MCA
IMP: 75-15-111 and 75-15-113, MCA

REASON: Forty-one of the 46 states with billboards allow changeable message technology. As technological innovations continue to out pace government regulations, the trend line is moving toward nearly all states (with billboards) to accommodate changeable message signs. Embracing this new technology is good business for Montana advertisers and consumers. Presently, the department has permits for 3270 signs in the state. Ten percent of that amount is 327 signs. Because of the cost of upgrading signs to CMS ability, the department does not believe that more that 10% will apply for the upgrade and need to pay the additional $200.00 fee. It is the department's belief that only the large sign companies will upgrade their signs.

18.6.242 RANCH AND RURAL DIRECTIONAL SIGNS (1) ~~In rural residential areas, slat-type directory d~~Directional signs are allowed at ~~the outer edge of the right-of-way of the~~ intersecting roadways that enter into the main travel way, and may only be erected along the federal-aid primary highway system~~, giving the name only~~. Each ~~slat~~ directional sign is not to exceed ~~8" x 36"~~ 4’ x 8’.

(2) In cases where operations do not abut the highway, but have access via a nonpublic access road across other ownerships, directional signs may be located along this roadway leading to the operation.~~, may bear the name of the operation or owner and distance to headquarters, but shall include no advertising.~~ The message content on directional and ranch signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the activity, such as mileage, route numbers, or exit numbers. Descriptive words or phrases, and pictorial or photographic representations further describing the activity or its environs are prohibited.

(3) ~~Ranch and rural directional signs may only be erected along the federal-aid primary highway system. The message content on rural directional signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the activity, such as mileage, route numbers, or exit numbers. Descriptive words or phrases, and pictorial or photographic~~

~~representations further describing the activity or its environs are prohibited.~~ Not more than one ranch sign or directional sign may be erected which is visible to traffic proceeding in any one direction on any highway and advertising activities being conducted upon the real property, including ranching, grazing, and farming activities.

(4) through (6) remain the same.

~~(7) Not more than one ranch sign may be erected which is visible to traffic proceeding in any one direction on any primary highway and advertising activities being conducted upon the real property, including ranching, grazing, and farming activities.~~

AUTH: 75-15-121, MCA
IMP: 75-15-111 and 75-15-121, MCA

REASON: Further clarification is needed to bring this rule into compliance with the CFR. This amendment is reasonably necessary to reflect current changes to the CFR and recognizes the growing concern by rural Montanans that the activities were being unreasonably restricted in being able to alert the pubic as to their location and activity conducted on their property.

18.6.245 NONCOMMERCIAL SIGNS (1) remains the same.

(2) A noncommercial sign of a local government may be erected anywhere adjacent to an interstate and primary highway within its territorial or zoning jurisdiction, except in a scenic area or parkland, so long as the sign does not create a safety hazard to the traveling public.

(a) remains the same.

~~(b) Local government may erect, within the limits of their jurisdiction, noncommercial signs welcoming travelers and describing the services and attractions available but may not advertise private business or brand names.~~

~~(c) Not more than one noncommercial sign welcoming visitors or providing information about a community is allowed on each highway entering the community, subject to federal and state outdoor advertising control (OAC) rules.~~

~~(3) A noncommercial "welcome to" community sign shall not exceed 150 square feet in size.~~

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

AUTH: 75-15-121, MCA
IMP: 75-15-111, MCA

REASON: To come into compliance with the CFR and make this rule more community friendly. There is a reasonable necessity for the amendment of this rule to clarify the need of local communities to advise the public of their location.

5. Concerned persons may submit their data, views or arguments concerning the proposed actions, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Pat Hurley, Department of Transportation, PO Box 201001, Helena, MT 59620; phone (406) 444-6068; TTY (800) 335-7592;

FAX (406) 444-7254; or e-mail phurley@mt.gov and must be received no later than March 17, 2006, 5:00 p.m.

6. Jim Scheier, Assistant Attorney General, Department of Justice has been designated to preside over and conduct the hearing.

7. The Department of Transportation 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 [subject matter options or combination thereof]. Such written request may be mailed or delivered to Lyle Manley, Legal Services, Department of Transportation, P.O. Box 201001, Helena, MT 59620-1001, (406) 444-6097, TTY (406) 444-7696, fax (406) 444-7277, e-mail lmanley@mt.gov, or may be made by completing a request form at any rules hearing held by the Transportation Commission.

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

By: /s/ Bill Kennedy
William T. Kennedy, Chair
Transportation Board

/s/ Nick A. Rotering
Nick A. Rotering,
Alternate Rule Reviewer

Certified to the Secretary of State January 30, 2006.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment of ARM 24.11.101, 24.11.204, 24.11.206, 24.11.315, 24.11.316, 24.11.440, 24.11.441, 24.11.443, 24.11.445, 24.11.450A, 24.11.451, 24.11.454A, 24.11.461, and the proposed adoption of NEW RULE I, all related to unemployment insurance laws	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On March 3, 2006, at 10:00 a.m. the Department of Labor and Industry will hold a public hearing in the first floor conference room, Room 104, Walt Sullivan Building, 1327 Lockey, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., February 27, 2006, to advise us of the nature of the accommodation that you need. Please contact the Unemployment Insurance Division, Program Support Bureau, Attn: Don Gilbert, Management Analyst, Helena, Montana 59604-8020; telephone (406) 444-4336; fax (406) 444-2993; TDD (406) 444-0532; or email: dgilbert@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The Unemployment Insurance Division of the Department recently established a computerized system by which it can process unemployment insurance claims via the internet. This system is called "UI4U." Minor changes are necessary to incorporate this new capability into the rules. This statement of reasonable necessity applies to all the proposed rule amendments. Where there are specific bases for a proposed action, those additional reasons immediately follow the applicable rule.

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

<u>24.11.101 DIVISION ORGANIZATION--LOCATION</u> (1) and (2) remain the same.

(3) The address and contact numbers for the Department's main office in Helena are as follows:

Unemployment Insurance Division
Montana Department of Labor and Industry
1327 Lockey Street
P.O. Box 8020
Helena, MT 59604-8020
Telephone: (406) 444-3555
Fax: (406) 444-1394
TTY/TTD: (406) 444-0532
e-mail: ~~montanaui@mt.gov~~ http://uid.dli.mt.gov/uid/contact.asp

(4) Contact numbers for unemployment insurance bureaus are as follows:

(a) Helena Claims Processing Center: (406) 444-2545;

(b) Billings Claims Processing Center: (406) 247-1000;

(c) Contributions Bureau Switchboard: (406) 444-3834; and

(d) Benefits Bureau Switchboard: (406) 444-3783.

(5) The Unemployment Insurance Internet Application (UI4U) is at: http://ui4u.mt.gov.

AUTH: 2-4-201, 39-51-302, MCA
IMP: 2-4-201, 39-51-301, MCA

REASON: There is reasonable necessity to update the internet addresses and current telephone numbers of the Unemployment Insurance Division to aid employers and workers in contacting the appropriate Bureau within the Division. With the return of the unemployment insurance tax function to the Department of Labor and Industry, and the increasing use of e-mail correspondence, the Unemployment Insurance Division created specific e-mail addresses to aid customers in reaching the appropriate Department staff. The new e-mail address above leads to a listing of specific addresses for tax contribution versus benefit claims. The address of the internet claims application (UI4U) is also provided to assist those customers wishing to use that application.

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

~~(4)~~(9) ~~"Appropriate telephone center" means the unemployment insurance telephone center that serves the geographical area in which a claimant resides.~~ "Claims processing center" means the center that provides unemployment insurance claims services to the public.

(5) through (9) remain the same, but are renumbered (4) through (8).

(10) through (36) remain the same.

AUTH: 39-51-301, 39-51-302, MCA
IMP: ~~39-51-2111~~ Title 39, chapter 51, parts 2, 21 through 24, MCA, 39-51-3206, MCA

REASON: Previous to the UI4U internet option, claims were taken by telephone. In order to appropriately include the UI4U option, telephone centers have been

renamed as claims processing centers. Further, due to technological improvements, the claims centers have become one "virtual" center linked by telecommunication and broadband communication improvements.

There is reasonable necessity to supplement and update the IMP citations to correct citations that were erroneously deleted in a prior rulemaking project.

24.11.206 TIME ALLOWED AND PROCEDURE FOR FILINGS AND SUBMISSIONS (1) remains the same.

(2) Except as provided for the filing of biweekly claims under ARM 24.11.443, if a filing or submission is required or allowed to be done by telephone, the person wishing to make the filing or submission must contact a customer service representative no later than the last day allowed to make the filing or submission, by calling the ~~appropriate telephone center~~ claims processing center during the ~~telephone~~ center's published business hours, and provide such information as the customer service representative may require to establish the identity of the person and the nature of the filing or submission the person intends to make. If a filing or submission is required or allowed to be done in writing, the writing must be delivered to the department either by mail or by facsimile and must contain such information as is needed to establish the identity of the person making the filing or submission and the nature of the filing or submission the person intends to make. Filings or submissions by mail must be postmarked no later than the last day allowed to make the filing or submission. Filings or submissions by facsimile must be received no later than the last day allowed to make the filing or submission. If the filing or submission is required or allowed to be done by electronic mail, the electronic mail message must be transmitted no later than the last day allowed to make the filing or submission and must contain such information as is needed to establish the identity of the person making the filing or submission and the nature of the filing or submission the person intends to make.

(3) through (5) remain the same.

AUTH: 39-51-301, 39-51-302, MCA
IMP: Title 39, chapter 51, parts 11 through 13, and 21 through 24, MCA

REASON: There is reasonable necessity to update terminology due to renaming the telephone centers.

24.11.315 APPEAL OF DEPARTMENT DETERMINATIONS (1) remains the same.

(2) The notice of appeal should contain reasons for the appeal. ~~Appeal forms, known as UI-214, may be used and are available at local offices.~~

(3) The notice of a benefits appeal, other than that referenced in ARM 24.11.315(1)(a), must be filed ~~at a local office or~~ at the department's office in Helena either in person, ~~or~~ by mail, by facsimile, or by e-mail. Benefit appeal forms may be used and are available upon request.

(4) The notice of a tax appeal, other than that referenced in ARM 24.11.315(1)(a), must be filed in writing with the department's office in Helena, either in person, by mail, by facsimile, or by e-mail.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 2-4-201, 39-51-1109, 39-51-2402, 39-51-2407, MCA

REASON: It is necessary to revise this rule to accurately reflect the current departmental procedures concerning the filing of an appeal of an unemployment insurance determination. Regarding benefits appeals, the Department will accept appeals submitted on a Department form (the UI-214 form) or by any of the methods listed in (3). Local Workforce Service Center (Job Service) offices are no longer involved in unemployment insurance claims processing, so references to these offices are removed from the rule.

Because the Department has resumed handling unemployment insurance tax contributions, the Department proposes to add (4) to set out a procedure for appeals of tax contribution determinations. Further, the explanation regarding benefit appeal forms is moved to (3) since (2) now applies to tax contribution appeals as well.

It is necessary to update the proper implementation citations to this rule while otherwise amending the rule.

24.11.316 TRANSFER OF FILES TO HEARINGS BUREAU (1) After receiving a notice to appeal a department determination or redetermination on benefits, ~~the benefits bureau~~ department staff send~~s~~ the administrative file to the hearings bureau of the department.

(2) and (3) remain the same.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-1109, 39-51-2403, 39-51-2407, MCA

REASON: There is reasonable necessity to amend the rule to clarify that several work units within the Unemployment Insurance Division may send appeals of benefit-related issues to the Hearings Bureau. The current language incorrectly implies that only the Benefits Bureau submits such appeals.

24.11.440 DEFINITIONS The following definitions apply to this subchapter, unless context clearly indicates otherwise:

(1) and (2) remain the same.

(3) "Valid claim" means a claim filed by a claimant who:

(a) has earned the qualifying amount of wages ~~and worked the required number of weeks~~ as required by 39-51-2105, MCA;

(b) and (c) remain the same.

AUTH: 39-51-301, 39-51-302, MCA

IMP: ~~39-51-2101 through 39-51-2601~~ Title 39, chapter 51, parts 21 through 26, MCA

REASON: The Department proposes to remove the interlined language because the Department no longer uses "weeks of work" in a determination of an individual's entitlement to UI benefits. In addition, there is reasonable necessity to update the IMP citation to more accurately reflect the implemented statutes.

24.11.441 CLAIMS FOR BENEFITS (1) To request a determination of a claimant's eligibility for benefits, the claimant must file an initial claim by accessing the department's internet claims application or calling the appropriate ~~telephone~~ claims processing center and providing such information ~~to a customer service representative~~ as the department may require for the proper administration of the claim. The information required from the claimant includes, but is not limited to:

(a) through (6) remain the same.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2101, 39-51-2102, 39-51-2103, 39-51-2104, 39-51-2105, 39-51-2106, 39-51-2107, 39-51-2108, 39-51-2109, 39-51-2110, 39-51-2201, 39-51-2202, 39-51-2203, 39-51-2204, 39-51-2205, 39-51-2207, 39-51-2208, 39-51-2301, 39-51-2302, 39-51-2303, 39-51-2304, 39-51-2305, 39-51-2306, 39-51-2307, 39-51-2401, 39-51-2402, 39-51-2403, 39-51-2404, 39-51-2405, 39-51-2406, 39-51-2407, 39-51-2408, 39-51-2409, 39-51-2410, MCA

REASON: Changes reflect the implementation of another means to file for unemployment insurance benefits by using the Department's internet-based claims filing system (UI4U). Other changes are due to renaming the telephone centers to claims processing centers that can provide service to individuals transacting business by telephone, internet, fax or mail regardless of the individual's residence.

24.11.443 BIWEEKLY CLAIMS (1) After filing an initial claim and establishing a valid claim for benefits, a claimant wishing to claim benefits or waiting period credit for any week that begins within the claimant's benefit year must file a timely biweekly claim for the week. The biweekly claim must be filed using either the department's interactive voice response telephone system or the internet claims application, unless it is determined by the department that the claimant is unable to use ~~the system~~ either filing method. In those instances, the claimant will be allowed to file biweekly claims by mail using biweekly claim forms provided by the department.

(2) remains the same.

(3) When filing a biweekly claim using the interactive voice response telephone system, a claimant must enter the claimant's social security number and personal identification number to access the system and must answer each question asked by the system. When filing a biweekly claim using the internet claims application, a claimant must enter the claimant's social security number, birth date, and personal identification number to access the application and must answer each question listed on the biweekly claims form. The claimant's personal identification

number, which is established by the claimant and unknown to the department and which the claimant is required to keep confidential, is considered to be the equivalent of the claimant's signature certifying that the claimant's responses to the questions ~~asked by the system~~ are true and accurate to the best of the claimant's knowledge. When filing a biweekly claim by mail, a claimant must answer each question on the biweekly claim form and sign the form to certify that the claimant's responses to the questions are true and accurate to the best of the claimant's knowledge.

(4) and (5) remain the same.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-201, Title 39, chapter 51, parts 21 through 23, MCA

REASON: Changes reflect the implementation of the UI4U internet system as another method to file continued claims in addition to initial claims. The proposed changes also establish the required elements needed to use the UI4U filing method.

24.11.445 INACTIVE CLAIMS--REACTIVATING A CLAIM

(1) remains the same.

(2) To reactivate an inactive claim, the claimant must call the ~~appropriate telephone~~ claims processing center during the ~~telephone~~ center's published business hours and request that the claim be reactivated. A reactivated claim is effective on the first day of the calendar week in which the claimant reactivates the claim. A claimant may request that the department backdate the claim to an earlier effective date. If the department finds that the claimant had good cause for the delay in reactivating the claim, the claim will be backdated.

(3) When ~~calling to reactivate~~ reactivating a claim, a claimant must provide information concerning any separation from insured work as provided in ARM 24.11.451.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2103, 39-51-2104, 39-51-2201, MCA

REASON: These changes are due to renaming the telephone centers and language clarification.

24.11.450A NON-MONETARY DETERMINATIONS AND REDETERMINATIONS--NOTICE (1) through (3) remain the same.

(4) When the department obtains credible information that raises a non-monetary issue relative to a claim, but there is insufficient evidence upon which to base a determination or if the claimant has not had an opportunity to respond to the information, the department notifies the claimant of the existence of the issue and of the fact that payment of benefits otherwise due will be suspended pending an initial determination relative to the issue. The claimant has ~~10~~ eight days in which to provide information concerning the issue. If the claimant does not provide the requested information within the time allowed, the claimant is determined to be unavailable for work for failure to provide requested information, as provided in ARM

24.11.452(1)(b). The ineligibility is effective on the Sunday of the week during which the act or circumstance that forms the basis of the issue occurred or came into existence.

(a) If, within ~~10~~ eight days of the date of the initial determination, the claimant provides information and the department determines from that information the claimant should not have been made ineligible for benefits, the ineligibility is removed. If the claimant provides that information after the ~~10~~ eight days has elapsed, the ineligibility is ended either:

(i) as of the Saturday of the week immediately preceding the week in which the department receives the information, if the information is received on or before Tuesday of the week; or

(ii) as of the Saturday of the week during which the department receives the information, if the information is received on or after Wednesday of the week. If the department determines that the claimant had good cause for failing to provide the information within the ~~10~~ eight days, that ineligibility is removed.

(b) If, within ~~10~~ eight days of the date of the initial determination, the claimant provides information and the department determines from that information that the ineligibility can be ended as of a particular date, the ineligibility is ended as of the Saturday of the week in which that date occurred. If the claimant provides that information after the ~~10~~ eight days has elapsed, the ineligibility is ended either:

(i) as of the Saturday of the week immediately preceding the week in which the department receives the information, if the information is received on or before Tuesday of the week; or

(ii) as of the Saturday of the week during which the department receives the information, if the information is received on or after Wednesday of the week. If the department determines that the claimant had good cause for failing to provide the information within the ~~10~~ eight days, that ineligibility is ended as of the particular date.

(5) remains the same.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2202, 39-51-2203, 39-51-2205, 39-51-2301 through 39-51-2304, 39-51-2402, 39-51-2507, 39-51-2508, 39-51-2511, 39-51-2602, 39-51-3201, 39-51-3202, 39-51-3206, MCA

REASON: There is reasonable necessity to shorten the time for responding with information in order to meet performance standards established by the U.S. Department of Labor. The U.S. Department of Labor allows 21 days from the filing date of a claim for a state unemployment insurance agency to obtain statements and rebuttals from the claimant and the last employer(s) before any resultant decision is considered "untimely." If a state has 21% or more of its claims classified as "untimely," the state must draft and implement corrective action plans, which Montana has done during the past years.

Current rules permit a 10 day response period for the employer and the claimant, which leaves only one day for the agency to receive and act upon the information before the claim is "untimely." The proposed changes are an attempt to

reduce the response periods by a small amount, 10 days to 8 days, thus providing 5 days for the Department to receive and issue a "timely" decision. Given the speedier methods of communicating by fax, email, and telephone versus mailed letters, the Department does not believe this change will adversely impact employers or claimants.

24.11.451 SIX-WEEK RULE (1) and (2) remain the same.

(3) Each employer involved in a claimant's separation is allowed ~~10 calendar~~ eight days to respond to the claimant's statement of the reasons for the separation. If the information obtained from any employer is substantially different from that provided by the claimant, the claimant is allowed ~~10 calendar~~ eight days to respond to the employer's statement. The ~~10 calendar~~ eight days allowed for the employer's or the claimant's response begins on the day following the date the information is mailed, faxed, or communicated by telephone to the employer or to the claimant. In the interest of making timely determinations and redeterminations, department personnel may attempt to provide the parties' statements to each other by telephone and obtain their responses at that time or request that they respond at sometime sooner than the expiration of the ~~10~~ eight days allowed for them to respond. Either party may waive the ~~10~~ eight days by providing their response prior to the expiration of the ~~10~~ eight days.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2301 through 39-51-2304, MCA

REASON: The proposed changes to this rule are for the same reasons as explained in 24.11.450A.

24.11.454A LEAVING OR DISCHARGE FROM WORK--SUSPENSIONS

(1) remains the same.

(2) The department applies the following rules to determine the applicable date of separation from employment:

(a) When an employer gives a valid notice of termination to a worker and the worker leaves work prior to the intended date of termination, the worker is considered to have been discharged as of the intended date of discharge. If the period of time between the worker's leaving and the intended date of discharge is four weeks or less, the worker is considered to be unavailable for work during that time as provided in ~~ARM 24.11.452(3)(c),~~ ARM 24.11.452A provided that the worker's leaving was solely in response to the notice of discharge or for other reasons not constituting good cause attributable to the employment. If the period of time between the worker's leaving and the intended date of discharge is more than four weeks, the worker is considered to have left work as of the date of leaving, provided that the worker's leaving was solely in response to the notice of discharge or for other reasons not constituting good cause attributable to the employment. To be considered a valid notice of termination, the notice must be formal, unconditional, specific as to the individual worker and as to the intended date of termination, and be communicated to the individual worker by the employer or by an agent of the employer authorized to give such notices. If the notice is not valid, the worker will

not be considered to have been terminated, but only to have left work without good cause attributable to the employment, provided that the leaving was solely in response to the notice of discharge or for other reasons not constituting good cause attributable to the employment.

(b) and (3) remain the same.

(4) A worker is considered to have constructively left work when the worker committed an act or omission that made it impracticable for the employer to utilize the worker's services and, for that reason, resulted in the worker's discharge, provided that the worker knew or should have known that the act or omission could jeopardize the worker's job and possibly result in discharge.

(a) As an example, a worker has constructively quit if the worker accepts employment on specified conditions and the worker fails to meet those conditions through the worker's own fault. Such conditions may include, but are not limited to, failure to report for work due to incarceration, failing to meet license or permit requirements for employment, or failing to maintain insurability. These examples are not meant to be exclusive reasons for a constructive quit.

(5) remains the same.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2101, 39-51-2104, 39-51-2304 MCA

REASON: The change in (2) is needed to correct a reference to a rule that was repealed and replaced with a newer rule 24.11.452A. The change in (4) is intended to clarify when a constructive quit has occurred. During the past years, both workers and employers have expressed some concern about the lack of examples, and the new wording addresses that concern.

24.11.461 SPECIFIC ACTS OF MISCONDUCT

(1) The following acts are considered misconduct because the acts signify a willful and wanton disregard of the rights, title, and interests of the employer or a fellow employee. These acts include:

(a) and (b) remain the same.

(c) dishonesty related to employment, including but not limited to deliberate falsification ~~or~~ of company records, theft, deliberate deception or lying;

(d) false statements made as part of a job application process, including, but not limited to deliberate falsification of the individual's work record, educational or licensure achievements;

(d) through (g) remain the same, but are renumbered (e) through (h).

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2303, MCA

REASON: It is necessary to correct a typographical error in (1)(c). Subsection (1)(d) is proposed to address situations in which a worker received benefits following a termination due to the employer determining that the worker submitted falsified information during the job application process and the worker was advised

of the consequences of submitting false information during the application process. The duty of honesty is a necessary element in any employment relationship.

5. The proposed new rule provides as follows:

NEW RULE I WORK REGISTRATION AND EXCEPTIONS (1) In accordance with 39-51-2102 and 39-51-2104, MCA, all claimants must register for work with the Workforce Services office serving the area in which the claimant resides, unless excused by the department. All claimants who are required to register must also maintain their work registration in an active status (as defined by the Workforce Services Division) as one of the eligibility conditions to receive benefits.

(2) A claimant who is excused from registering is not required to actively seek work, but must meet all other eligibility requirements in order to receive benefits. Work registration exceptions are limited to the following common circumstances:

(a) Job attached claimants, as defined in ARM 24.11.452A, must maintain contact with the employer to whom they are attached, and must return to work when requested by the employer.

(b) Union attached claimants, as defined in ARM 24.11.452A, must comply with the union's requirements to be considered a member in good standing and be listed on the union's out-of-work list.

(c) Labor dispute claimants who are unemployed due to a labor dispute may be excused from registering until a determination under ARM 24.11.465A is issued. If benefits are allowed, the claimant must either register for work or must provide sufficient information to the department to qualify for an exception as job attached or union attached within the time period specified in ARM 24.11.452A.

(d) Individuals participating in approved federal training programs under 39-51-2602, MCA.

(3) Registration exceptions may be granted to other individuals or groups if the department finds the exception to be consistent with the purpose of the unemployment insurance program. Registration exceptions cannot be granted if prohibited by state or federal laws governing certain unemployment insurance programs.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2104, MCA

REASON: This rule is necessary because enactment of Chap. 466, L. of 2005 (House Bill 159) requires the Department to establish a rule specifying situations or circumstances in which the Department may excuse an individual or groups of individuals from registering for work with the Workforce Services Division. The rule collects currently followed exemptions found in other places in the UI rules.

6. 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:

Don Gilbert, Management Analyst
Program Support Bureau
Unemployment Insurance Division
Department of Labor and Industry
PO Box 8020
Helena, Montana 59604-8020

and must be received by no later than 5:00 p.m., March 10, 2006. Comments may also be submitted electronically as noted in the following paragraph.

7. An electronic copy of this Notice of Public Hearing is available through the Department's website at http://dli.state.mt.us/events/calendar.asp, under the Calendar of Events, Administrative Rules Hearings section. Interested persons may make comments on the proposed rules via the comment forum, http://dli.state.mt.us/forum.asp, linked to the Notice of Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m., March 10, 2006. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in accessing or posting to the comment forum do not excuse late submission of comments.

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

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

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

/s/ MARK CADWALLADER
Mark Cadwallader,
Alternative Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 30, 2006

BEFORE THE BOARD OF PERSONNEL APPEALS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment of ARM 24.26.508 and the proposed repeal of ARM 24.26.513 related to the consolidation of wage and classification appeals	) NOTICE OF PUBLIC HEARING) ON PROPOSED AMENDMENT) AND REPEAL)))

TO: All Concerned Persons

1. On March 3, 2006, at 1:30 p.m. the Department of Labor and Industry will hold a public hearing in the first floor conference room, Room 104, Walt Sullivan Building, 1327 Lockey, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., February 27, 2006, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Labor Standards Bureau, Attn: John Andrew, P.O. Box 6518, Helena, Montana 59604-6518; telephone (406) 444-4619; fax (406) 444-7071; TDD (406) 444-5549; or email joandrew@mt.gov.

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

24.26.508 GRIEVANCE PROCEDURE (1) Any employee, group of employees not represented by a labor organization, or an appropriately designated representatives~~~~, may utilize this formal grievance procedure. ~~The individual employee~~ Employees must obtain a state employee classification and wage appeal form and follow the accompanying instructions. ~~In the case of a potential group appeal, the group of employees must comply with the rules governing consolidated appeals (ARM 24.26.513).~~ Appeal forms may be obtained from the Board of Personnel Appeals, ~~P.O. Box 1728, Helena, MT 59624-1728,~~ P.O. Box 6518, Helena, Montana, 59604-6518, ~~or~~ from the personnel office of any department within the executive branch, or from the department's website at: erd.dli.mt.gov/laborstandard/wagehrbpa.asp.

(a) and (b) remain the same.

(c) If a number of appeals affect multiple employees in the same manner, the appeals may be consolidated at any step of the grievance process by the employees, by an appropriately designated representative, by the department, by the state Personnel Division, or by the Board of Personnel Appeals. If the appeals are consolidated, the timelines in this rule will run from the dates associated with the

latest appeal included in the consolidation. If an employee who is not represented by a labor organization opposes consolidation, that employee's appeal will not be consolidated absent a board order. However, an employee represented by a labor organization may not contradict the employee's appropriately designated representative and either consolidate an appeal or opt out of a consolidated appeal unless by board order. Consolidation of appeals will be by written stipulation of the parties or by board order. A consolidation may be altered or amended at any time before the final order of the board. If an employee opposes altering or amending the consolidation, the employee may request a hearing to be held before the final order of the board is issued.

(c) remains the same, but is renumbered (d).

(2) through (4) remain the same.

AUTH: 2-4-201, 2-18-1011, 39-31-104, 39-32-103, MCA
IMP: 2-4-201, 2-18-1011, 39-31-104, 39-32-103, MCA

REASON: There is reasonable necessity to amend ARM 24.26.513, governing the consolidation of wage and classification appeals, because the Board has determined the rule has caused significant confusion for employees wishing to consolidate their appeals. Specifically, when a designated labor representative of the employees requests consolidation from the Board of Personnel Appeals and consolidation is granted, the representative and employees are assuming the grievance procedure has begun. In fact the grievance procedure does not begin until the consolidated appeals are then filed with the relevant agency as provided by ARM 24.26.508.

In order to address this confusion and provide a clearer process, it is reasonably necessary to repeal the rule governing consolidations and amend the rule governing the grievance procedures. Regarding the rule governing the grievance process, it is reasonably necessary to allow employees, appropriately designated representatives, the relevant department, the state personnel division, and the Board of Personnel Appeals to consolidate similar appeals at any time in the process because similar appeals are discovered at each step of the process. However, it is also reasonably necessary to allow an employee who does not wish their appeal to be consolidated to opt out of consolidation if that employee is not bound by a labor agreement. It is also reasonably necessary to specify that employees represented by a labor organization may not consolidate appeals or opt out of a consolidation unless approved by the Board because those employees are bound by bargaining agreements. The proposed rule makes clear that in each instance, the Board has the final authority on approving the make-up of a consolidated appeal.

Regarding the timelines, subsection (4)(h) of this rule allows the parties to waive any of the timelines upon mutual agreement. It is the experience of staff for the Board that parties usually agree to waive the timelines. However, in the event the parties do not come to an agreement, it is reasonably necessary to indicate that the timelines will run from the dates associated with the latest filed appeal included in the consolidated appeal.

It is also reasonably necessary to ensure a consolidation is recorded in writing to memorialize it for reference. It is also reasonably necessary to allow an employee to request a hearing if that employee opposes altering or amending a consolidation before the final order of the Board is handed down. It is reasonably necessary to delete the references in the rule to ARM 24.26.513, to correct the Board's mailing address in the rule, and to add the Board's website address for internet users.

Finally, there is reasonable necessity to amend the AUTH and IMP cites to more accurately reflect the Board's statutory authority for the adoption of procedural rules.

4. The rule proposed for repeal is as follows:

24.26.513 CONSOLIDATED APPEALS found at ARM page 24-1707.

AUTH: 2-18-1011, MCA
IMP: 2-18-1011, MCA

REASON: It is reasonably necessary to repeal this rule to eliminate procedural confusion in the limited number of cases in which it is invoked.

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:

John Andrew, Bureau Chief
Labor Standards Bureau
Employment Relations Division
Department of Labor and Industry
PO Box 6518
Helena, Montana 59604-6518

and must be received by no later than 5:00 p.m., March 10, 2006. Comments may also be submitted electronically as noted in the following paragraph.

6. An electronic copy of this Notice of Public Hearing is available through the Department's website at http://dli.state.mt.us/events/calendar.asp, under the Calendar of Events, Administrative Rules Hearings section. Interested persons may make comments on the proposed rules via the comment forum, http://dli.state.mt.us/forum.asp, linked to the Notice of Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m., March 10, 2006. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to

system maintenance or technical problems, and that a person's difficulties in accessing or posting to the comment forum do not excuse late submission of comments.

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

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

BOARD OF PERSONNEL APPEALS,
Jack Holstrom, presiding officer

/s/ MARK CADWALLADER
Mark Cadwallader,
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 30, 2006

DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment of ARM 8.2.208 renewal dates and ARM 24.122.401 fee schedule for boiler operating engineers licenses	) NOTICE OF PUBLIC HEARING) ON PROPOSED AMENDMENT)) (BOILER AND BOILER OPERATOR) PROGRAM)

TO: All Concerned Persons

1. On March 2, 2006, at 9:00 a.m., a public hearing will be held in room B-07 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or who need an alternative accessible format of this notice. If you require an accommodation, contact Mr. Dan Bernhardt no later than 5:00 p.m., February 24, 2006, to advise us of the nature of the accommodation you need. Please contact Mr. Dan Bernhardt, Boiler Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2350; Montana Relay 1-800-253-4091; TDD (406) 444-2978; Facsimile (406) 841-2309; e-mail dlibsdboi@mt.gov.

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

8.2.208 RENEWAL DATES (1) through (2)(d) remain the same.

(e) April 1 is the renewal date for licenses and other authorities granted by the board of physical therapy examiners, ~~and is the renewal date for~~ guides and professional guides (regulated by the board of outfitters), and the boiler operator program;

(f) through (r) remain the same.

AUTH: 37-1-101, MCA
IMP: 37-1-101, MCA

REASON: It is reasonable and necessary to amend ARM 8.2.208(2)(e) to reflect changes in statute made by Chap. 467, Laws of 2005 (HB 182) during the 2005 Legislative session. The boiler operator licensing program is moving to a once-a-year licensing cycle. Because boiler operator licenses are currently renewed in the month of the anniversary of the license issuance, the Department proposes to prorate the renewal fees as a transition to the common renewal date. The following are the prorated renewal fees by renewal month through March 2007. Licensees renewing in January through March 2007 will have an expiration date of April 2008. All boiler operator licenses issued in 2006 will then renew on an annual date of April

1, starting 2007, with a $35.00 annual renewal fee. Those fees, based on the proposed annual rate of $35.00 will be as follows:

May 2006 through April 1, 2007 prorated renewal fee	$32
June 2006 through April 1, 2007 prorated renewal fee	29
July 2006 through April 1, 2007 prorated renewal fee	26
August 2006 through April 1, 2007 prorated renewal fee	23
September 2006 through April 1, 2007 prorated renewal fee	20
October 2006 through April 1, 2007 prorated renewal fee	17
November 2006 through April 1, 2007 prorated renewal fee	14
December 2006 through April 1, 2007 prorated renewal fee	11
January 2007 through April 1, 2008 prorated renewal fee	44
February 2007 through April 1, 2008 prorated renewal fee	41
March 2007 through April 1, 2008 prorated renewal fee	38

24.122.401 FEE SCHEDULE FOR BOILER OPERATING ENGINEERS

(1) remains the same.

(2) Annual renewal of license (all classes) ~~45~~ 35

(3) through (5) remain the same.

AUTH: 50-74-101, MCA
IMP: ~~50-74-309, 50-74-313~~ 37-1-101, 37-1-134, 37-1-141, 50-74-320, MCA

REASON: It is reasonable and necessary to amend ARM 24.122.401 in order to have the license fees be commensurate with the costs of operating the boiler operating engineer license program. Section 37-1-134, MCA, requires that license fees be set commensurate with program area costs.

The department imposed a fee increase in February 2005 to place the program back on a self-supporting financial foundation. The department also stated in the notice that fees would be reviewed, and adjusted when the program became self-supporting. Projections forecast that the program will be self-supporting by the end of state fiscal year 2006. The number of persons affected by this amendment will be approximately 3,411 licensees. This proposed fee amendment decreases licensing fees by approximately $34,110 a year, starting in May 2006.

In addition there is reasonable necessity to update the IMP citations to correctly reflect the statutes being implemented in light of the statutory changes provided by Chap. 467, L. of 2005.

4. 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 by mail to Mr. Dan Bernhardt, Boiler Operating Engineers Program, Department of Labor and Industry, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsdboi@mt.gov and must be received no later than 5:00 p.m., March 10, 2006.

5. An electronic copy of this Notice of Public Hearing is available through the Department and Program's website on the World Wide Web at http://boileroperator.mt.gov, in the Rules Notices 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, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

6. The Boiler Operating Engineers Program maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Program. 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 all Boiler Operating Engineers Program administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Boiler Operating Engineers Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2309, e-mailed to dlibsdboi@mt.gov or may be made by completing a request form at any rules hearing held by the agency.

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

8. Lon Mitchell, attorney, has been designated to preside over and conduct this hearing.

DEPARTMENT OF LABOR AND INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 30, 2006.

BEFORE THE BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment of ARM 24.183.404 fee schedule, ARM 24.183.511 license seal, ARM 24.183.702 classification of experience for engineering applicants, ARM 24.183.2105 continuing education, ARM 24.183.2202 safety, health and welfare of the public and the proposed adoption of NEW RULES I-III pertaining to classification of experience, branch offices, and fee abatement	)))))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On March 7, 2006, at 10:00 a.m., a public hearing will be held in room 489 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or who need an alternative accessible format of this notice. If you require an accommodation, contact Brooke Jasmin no later than 5:00 p.m., March 1, 2006, to advise us of the nature of the accommodation you need. Please contact Brooke Jasmin, Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2351; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdpels@mt.gov.

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

24.183.404 FEE SCHEDULE (1) Fees shall be transmitted to the Board of Professional Engineers and Land Surveyors. Fees for examinations administered by third party vendors must be paid directly to the vendor approved by the board. The board assumes no responsibility for loss in transit of such remittances. Applicants not submitting the proper fees will be notified by the department.

(2) remains the same.

(3) Fees are as follows:

(a) Engineer interns initial application $25

~~(i) Initial application and examination~~ ~~$80~~
~~(ii) Re-examination~~ ~~70~~
(b) Land surveyor interns initial application 25
~~(i) Initial application and examination~~ ~~95~~
~~(ii) Re-examination~~ ~~85~~
(c) Professional engineers
(i) Initial application ~~and examination for Montana engineer intern~~ ~~150~~ 50
~~(ii) Initial application and examination for non-Montana engineer intern~~ ~~170~~
~~(iii) Re-examination~~ ~~130~~
~~(iv)~~ (ii) Application by comity ~~250~~ 150
(d) Professional land surveyors
(i) Initial application ~~and examination~~ ~~175~~ 50
~~(ii) Re-examination for principles and practices examination~~ ~~140~~
~~(iii)~~ (ii) Re~~-~~examination only for Montana law specific ~~25~~ 50
~~(iv)~~ (iii) Application by comity which includes Montana law specific exam 200
(e) through (f)(iii) remain the same.
(iv) Certificate of authority ~~25~~ 50
(g) through (iii) remain the same.
(iv) Certificate of ~~A~~authority ~~12.50~~ 25
(h) through (h)(iii) remain the same.
(iv) Reschedule fee for Montana law examinations 25

AUTH: 37-1-134, 37-67-202, MCA
IMP: 37-1-134, 37-1-319, 37-67-303, 37-67-312, 37-67-313, 37-67-315, 37-67-320, 37-67-321, MCA

REASON: There is a reasonable necessity to amend the current fee schedule to address the change in examination process brought on by a contractual agreement with a third party examination vendor. Fees for applications will only reflect the fees needed to support administrative and board review and will exclude examination fees as were previously included. The comity application fees were also lowered to set fees commensurate with costs. Newer records programs for both professional engineers and professional land surveyors allows for easier processing and therefore faster turnaround of comity applicants. This fee schedule change will affect 650 applicants by examination and 250 comity applicants. Business entity renewal fees were changed to reflect time spent by staff inputting updated information for renewals. This increase will affect 735 business entities. The Board is required pursuant to 37-1-134, MCA, to set fees at a level commensurate with costs. The Board estimates that a total of approximately 1435 persons and entities per year will be affected by the proposed changes. The Board estimates that excluding examination costs, revenue will be decreasing approximately $4,250 per year. The Board estimates that the overall fees to examination applicants will

increase by approximately $30,000 (including fees paid to the examination vendor), although the Board's revenue will decrease by approximately $58,550 per year.

24.183.511 LICENSE SEAL (1) remains the same.

(a) pocket seal, the size commercially designated as a 1 5/8 inch seal; ~~and~~

(b) remains the same.

(c) the seal will bear the licensee's name, license number and the legend "Licensed Professional Engineer", "Licensed Professional Land Surveyor" or "Licensed Professional Engineer and Professional Land Surveyor"~~.~~ ; and

(d) a seal is allowed to be reduced to one half of its original size.

(2) remains the same.

(3) Individuals licensed as a "Professional Engineer", "Professional Land Surveyor" or "Professional Engineer and Professional Land Surveyor" may secure an official seal, which must contain the licensee's name, license number, and the applicable legend "Licensed Professional Engineer", "Licensed Professional Land Surveyor", or "Licensed Professional Engineer and Land Surveyor". For the purpose of sealing printed drawings, specifications, and other appropriate documents, each licensee shall obtain an embossing or rubber stamp and an electronic reproduction facsimile of the seal to be used on documents prepared by or under the supervision of a licensee. When required, the seal or electronic reproducible facsimile must be applied on all final original drawings, with the licensee's signature, to produce legible reproduction on all copies or prints made from the drawings.

(4) A signature is:

(a) an original manual signature of the licensee who applied it; or

(b) a digital signature, which has an electronic authentication process attached or is logically associated with an electronic document, and must be:

(i) unique to the person using it;

(ii) capable of verification;

(iii) under the sole control of the person using it; and

(iv) linked to a document in such a manner that the digital signature is invalidated if any data in the document is changed.

AUTH: 37-67-202, MCA
IMP: 37-67-314, MCA

REASON: The Board finds it reasonable and necessary to amend this rule to accommodate the use of electronic technology and to allow the seal to be reduced to half size to accommodate half size drawings, both of which changes have been requested by licensees.

24.183.702 CLASSIFICATION OF ENGINEERING EXPERIENCE

(1) Engineering experience ~~or land surveying experience~~ shall include the following:

(a) Sub-professional experience gained before graduation. This experience shall be credited to the required pre-professional experience at a maximum of one-half the period of experience. Credible experience may include:

~~(i) surveying experience, supervised;~~

~~(ii)~~ (i) engineering experience, supervised; or

~~(iii)~~ (ii) construction experience, supervised.

(b) Pre~~-~~professional experience is four years of total progressive experience, all of which is required to be completed at the time of application. Credible experience may include:

(i) approved sub~~-~~professional experience;

(ii) progressive experience on engineering~~/land surveying~~ projects which indicate the experience is of increasing quality and required greater responsibility;

(iii) and (iv) remain the same.

(v) credible teaching experience at an advanced level, post graduate or senior graduate, in a college or university offering an engineering curriculum of four years or more that is approved by the board~~. Land surveying teaching experience shall also be at an advanced level on a land surveying curriculum approved by the board~~;

(vi) through (4) remain the same.

~~(5) Land surveying experience must include a substantial portion spent in charge of work related to property conveyance and/or boundary line determination.~~

~~(6) Upon request by the board, land surveyor applicants must demonstrate adequate experience in the field aspects of the profession.~~

~~(a) Land survey experience such as section breakdowns, retracing old boundaries, establishing new boundaries, corner search and re-establishment, calculations and preparations of certificates of surveys, deed searches and corner recordation, consists of work done under the supervision of a registered professional land surveyor.~~

~~(b) Other survey experience is survey work which may or may not be done under the supervision of a registered professional land surveyor. It includes such work as construction layout of buildings and miscellaneous structures; surveys necessary to obtain data and location of highways, roads, pipelines, canals, etc.; construction staking for land modification; and construction staking for highways, roads, utilities, etc.~~

AUTH: 37-67-202, MCA
IMP: 37-67-306, 37-67-309, MCA

REASON: The Board finds it reasonable and necessary to amend this rule because the experience required for an engineer is different than the experience of a land surveyor. The experience necessary for both professions is unique, and it is confusing to have the two combined in one rule, as it is now.

24.183.2105 CONTINUING PROFESSIONAL COMPETENCY - CONTINUING EDUCATION (1) Every licensee shall meet the continuing professional competency (continuing education) requirements of these regulations for professional development as a condition for licensure renewal. ~~Licensees shall begin accruing credits in 1998, to be reported with the 2000 renewal.~~

(2) through (4)(g) remain the same.

(h) for teaching apply multiple of two. (Teaching credit is valid for teaching a course or seminar for the first time only. Teaching credit does not apply to full-time faculty.)

(i) self study.....10 PDH
(A maximum of 10 PDH will be allowed per renewal cycle for self study. Self-study is considered a formatted review of new subject matter or technical information such as video tapes series, internet courses that do not include a final examination, etc.)

(5) and (6) remain the same.

(7) A licensee may be exempt from the professional development educational requirements for one of the following reasons:

(a) New licensees by way of examination or ~~reciprocity~~ comity shall be exempt from accruing PDHs for 12 months following licensure, after which 7.5 PDHs are required for each six month period of licensure until the ~~for their~~ first renewal period that occurs on or after June 30, 2008;

(b) through (10) remain the same.

(a) Failure to obtain continuing education acceptable to the board within the 90-day period will result in non-renewal of the license;

(b) A licensee whose license is not renewed by the end of the 90-day period for failing to obtain the satisfactory PDH will be required to reapply, pay the appropriate fee and obtain the necessary PDH during the non-renewal period (not to exceed the annual requirement for two years acceptable to the board.)

AUTH: 37-1-319, MCA
IMP: 37-1-306, 37-1-319, MCA

REASON: The Board finds it reasonable and necessary to amend this rule to remove archaic dates that no longer apply. In addition, the Board wishes to clarify self-study that will be accepted and provide guidance to new licensees on what accumulation of continuing education (professional development hours) they must have.

24.183.2202 SAFETY, HEALTH, AND WELFARE OF THE PUBLIC PARAMOUNT IN THE PERFORMANCE OF PROFESSIONAL DUTIES (1) and (2) remain the same.

(3) Licensees having direct knowledge of any alleged violation of the laws and rules of professional conduct must report all such allegations to the board.

AUTH: 37-1-319, 37-67-202, MCA
IMP: 37-1-316, 37-67-301, MCA

REASON: The Board finds it reasonable and necessary to amend this rule to clarify the licensee's responsibility in reporting violations to the Board. The current rule may lead licensees to believe that they are required to report second hand information of a violation. The Board's intent is that only direct knowledge must be reported.

4. The proposed New Rules provide as follows:

NEW RULE I CLASSIFICATION OF EXPERIENCE FOR LAND SURVEYING APPLICANTS (1) Land surveying experience shall include the following:

(a) preprofessional experience of four years of total progressive experience, gained under the supervision of a licensed professional land surveyor, all of which is required to be completed at the time of application. Land surveying experience must include a substantial portion spent in charge of work related to property conveyance and/or boundary line determination. Credible experience may include one or more of the following:

(i) approved preprofessional experience;

(ii) progressive experience on land surveying projects which indicate the experience is of increasing quality and required greater responsibility;

(iii) experience not obtained in violation of the licensure act;

(iv) experience such as aliquot part subdivision of sections, retracing existing boundaries, establishing new boundaries, corner search and re-establishment, researching existing public records, survey computations, preparation of legal descriptions, certificates of survey, subdivision plats, corner recordation forms, exhibits and other documents pertinent to such work; or

(v) credible teaching experience at an advanced level, post graduate or senior graduate, in a college or university offering a land surveying curriculum approved by the board, gained under the supervision of a licensed land surveyor.

(2) Experience time cannot be counted during periods counted for education.

(3) Upon request by the board, land surveyor applicants must demonstrate adequate experience in the field aspects of the profession.

(4) Subprofessional experience shall be credited to the required preprofessional experience at a minimum of one-half the period of experience. Subprofessional experience shall be limited to a maximum of four years to be credited as no more than two years of pre-professional experience. Credible subprofessional experience may include one or more of the following:

(a) approved subprofessional experience;

(b) survey experience done under the supervision of a licensed professional land surveyor, including such work as:

(i) construction layout of buildings and miscellaneous structures;

(ii) surveys necessary to obtain data and location of highways, roads, pipelines, canals, etc.;

(iii) construction staking for land modification; and

(iv) construction staking for highways, roads, utilities, etc.;

(c) other construction surveying experience supervised by a licensed professional land surveyor; or

(d) other surveying experience supervised by a licensed professional land surveyor.

AUTH: 37-67-202, MCA
IMP: 37-67-306, 37-67-309, MCA

REASON: The Board finds it reasonable and necessary to create this new rule because the experience required for an engineer is different than the experience of a land surveyor. The experience necessary for both professions is unique, and it is confusing to have the two combined in one rule, as it is now.

NEW RULE II BRANCH OFFICE (1) A branch office of an engineering or land surveying firm is defined as an office established to solicit and/or provide engineering or land surveying services.

(a) Each branch office of an engineering firm must have a resident professional engineer in responsible charge.

(b) Each branch office of a surveying firm must have a resident professional land surveyor in responsible charge.

(2) A resident professional engineer is defined as a person holding a valid professional engineering license in Montana and who supervises and is in responsible charge of all engineering work performed in the branch office. The resident professional engineer is not required to be physically located at the branch office.

(3) A resident professional land surveyor is defined as a person holding a valid professional land surveyor license in Montana and who supervises and is in responsible charge of all land surveying work performed in the branch office. The resident professional land surveyor is not required to be physically located at the branch office.

AUTH: 37-1-131, MCA
IMP: 37-67-202, MCA

REASON: The Board finds it reasonable and necessary to create this new rule to make certain all acts, which constitute the practice of engineering or land surveying, are adequately supervised and effectively managed by licensed individuals.

NEW RULE III FEE ABATEMENT (1) The Board of Professional Engineers and Professional Land Surveyors adopts and incorporates by reference the fee abatement rule of the Department of Labor and Industry found at ARM 24.101.301.

AUTH: 37-1-131, MCA
IMP: 17-2-302, 17-2-303, 37-1-134, MCA

REASON: The Board has determined there is reasonable necessity to adopt and incorporate by reference ARM 24.101.301 to allow the Board to authorize the Department to perform renewal licensure fee abatements as appropriate and when needed, without further vote or action by the Board. The Department recently adopted ARM 24.101.301 to implement a means for the prompt elimination of excess cash accumulation in the licensing programs operated by the Department.

Adoption and incorporation of ARM 24.101.301 will allow the Department to promptly eliminate excess cash balances of the Board that result from unexpectedly high licensing levels or other non-typical events. Abatement in such instances will allow

the licensees who have paid fees into the Board's program to receive the temporary relief provided by abatement. Adoption of this abatement rule does not relieve the Board from its duty to use proper rulemaking procedures to adjust the Board's fee structure in the event of recurrent instances of cash balances in excess of the statutory allowed amount.

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 by mail to Brooke Jasmin, Board of Professional Engineers and Professional Land Surveyors, Department of Labor and Industry, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsdpels@mt.gov and must be received no later than 5:00 p.m., March 15, 2006.

6. An electronic copy of this Notice of Public Hearing is available through the Department and Board's site on the World Wide Web at http://engineer.mt.gov, in the Rules Notices 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, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The Board of Professional Engineers and Professional Land Surveyors maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Professional Engineers and Professional Land Surveyors administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2309, e-mailed to dlibsdpels@mt.gov or may be made by completing a request form at any rules hearing held by the agency.

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

9. Lon Mitchell, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS
DENIS APPLEBURY, PRESIDING OFFICER

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 30, 2006

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of New Rules I through VI relating to the issuance of administrative summons by the department	)))))	NOTICE OF EXTENSION OF COMMENT PERIOD ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On December 22, 2005, the department published MAR Notice No. 42-2-755 regarding the proposed adoption of New Rules I through VI, relating to the issuance of administrative summons by the department at page 2635 of the Montana Administrative Register, issue no. 24.

2. A public hearing was held on January 17, 2006, where the Montana Bankers Association submitted a request to the department to extend the comment period beyond January 20, 2006, which was the date published in MAR Notice No. 42-2-755.

3. The department grants the Montana Bankers Association request and extends the written comment period to February 17, 2006. The text of the rules remains as originally proposed. See MAR Notice No. 42-2-755 on the department's web page or in issue no. 24 of the Montana Administrative Register for the text of the rules.

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

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 7701
Helena, Montana 59604-7701

and must be received no later than February 17, 2006.

5. An electronic copy of this Proposal Notice is available through the Department's site on the World Wide Web at www.mt.gov/revenue, under "features," "administrative rules," and "upcoming events and proposed rule changes." The Department strives to make the electronic copy of this Proposal Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that

the website may be unavailable during some periods, due to system maintenance or technical problems.

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

/s/ Cleo Anderson	/s/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State January 30, 2006

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of New Rule I and II relating to gains calculations and voluntary disclosure	)))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On March 2, 2006, at 1:30 p.m., a public hearing will be held in the Director's Office (Fourth East) Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption of the above-stated rules relating to gains calculations and voluntary disclosure.

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 no later than 5:00 p.m., February 21, 2006, 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 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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 NONRESIDENT CALCULATION OF MONTANA SOURCE INCOME REALIZED AND RECOGNIZED WHEN MONTANA PROPERTY IS RELINQUISHED AS PART OF A SECTION 1031 EXCHANGE (1) Gain realized on the transfer of Montana real or tangible personal property retains its Montana source income character and must be reported if and when the gain is recognized for federal income tax purposes.

(2) When the Montana property is relinquished in a section 1031 exchange for like-kind property, the gain realized as shown on the taxpayer's U.S. Treasury Form 8824 is generally the amount of Montana source income. If, however, the Montana property was itself acquired in a prior like-kind exchange as replacement property for property located outside the state, Montana source income does not include the gain attributable to the out-of-state property that has been deferred from the prior exchange as shown on the taxpayer's U.S. Treasury Form 8824 for that exchange. The following examples illustrate how the Montana source income may be calculated in different situations:

(a) Example 1 - A nonresident relinquishes unimproved Montana land with a fair market value of $100,000 and an adjusted tax basis of $10,000 in exchange for

Wyoming property with a fair market value of $90,000 and $10,000 cash, and incurs exchange expenses of $2,000. The $88,000 realized gain reported on the taxpayer's Form 8824 is Montana source income, of which $8,000 is recognized and reportable in the year of sale and $80,000 is deferred and must be reported if and when the gain is recognized for federal income tax purposes:

Form 8824 filed with respect to Montana property relinquished		
15	Cash received, FMV of other property received, plus net liabilities assumed by other party, reduced (but not below zero) by any exchange expenses	8,000
16	FMV of like-kind property you received	90,000
17	Add lines 15 and 16	98,000
18	Adjusted basis of like-kind property you gave up, net amounts paid to other party, plus any exchange expenses not used on line 15	10,000
19	Realized gain (or loss). Subtract line 18 from line 17	88,000
20	Enter the smaller of line 15 or line 19, but not less than zero	8,000
21	Ordinary income under recapture rules	0
22	Subtract line 21 from line 20. If zero or less, enter -0-. If more than zero, enter here and on Schedule D or Form 4797, unless the installment method applies	8,000
23	Recognized gain. Add lines 21 and 22	8,000
24	Deferred gain (or loss). Subtract line 23 from line 19	80,000
25	Basis of like-kind property received. Subtract line 15 from the sum of lines 18 and 23	10,000

(b) Example 2 - Same facts as in (2)(a) except the Montana property included improvements with a fair market value of $12,000 and $1,000 is reportable as ordinary income under the recapture rules because of depreciation deductions taken with respect to those improvements. The result is the same as the result in (2)(a), except that $1,000 of the $8,000 Montana source income recognized and reportable in the year of sale is ordinary income.

Form 8824 filed with respect to Montana property relinquished		
15	Cash received, FMV of other property received, plus net liabilities assumed by other party, reduced (but not below zero) by any exchange expenses	8,000
16	FMV of like-kind property you received	90,000
17	Add lines 15 and 16	98,000
18	Adjusted basis of like-kind property you gave up, net amounts paid to other party, plus any exchange expenses not used on line 15	10,000
19	Realized gain (or loss). Subtract line 18 from line 17	88,000
20	Enter the smaller of line 15 or line 19, but not less than zero	8,000
21	Ordinary income under recapture rules	1,000
22	Subtract line 21 from line 20. If zero or less, enter -0-. If	7,000

	more than zero, enter here and on Schedule D or Form 4797, unless the installment method applies	
23	Recognized gain. Add lines 21 and 22	8,000
24	Deferred gain (or loss). Subtract line 23 from line 19	80,000
25	Basis of like-kind property received. Subtract line 15 from the sum of lines 18 and 23	10,000

(c) Example 3 - Same facts as in (2)(a) except the Montana property relinquished was replacement property exchanged for Oregon property in a prior like-kind exchange. In the prior like-kind exchange, the deferred gain or loss, as shown on the nonresident's Form 8824 was $50,000. The nonresident's Montana source income is $38,000, the $88,000 gain realized shown on the Form 8824 filed with respect to relinquishment of the Montana property, less the $50,000 deferred gain as reported on the Form 8824 filed with respect to relinquishment of the Oregon property. Of the $38,000 Montana source income realized, the $8,000 recognized for federal income tax purposes in the year of sale is currently reportable and $30,000 is deferred and must be reported if and when the gain is recognized for federal income tax purposes.

Form 8824 filed with respect to Oregon property relinquished		
24	Deferred gain (or loss). Subtract line 23 from line 19	50,000

Form 8824 filed with respect to Montana property relinquished		
15	Cash received, FMV of other property received, plus net liabilities assumed by other party, reduced (but not below zero) by any exchange expenses	8,000
16	FMV of like-kind property you received	90,000
17	Add lines 15 and 16	98,000
18	Adjusted basis of like-kind property you gave up, net amounts paid to other party, plus any exchange expenses not used on line 15	10,000
19	Realized gain (or loss). Subtract line 18 from line 17	88,000
20	Enter the smaller of line 15 or line 19, but not less than zero	8,000
21	Ordinary income under recapture rules	0
22	Subtract line 21 from line 20. If zero or less, enter -0-. If more than zero, enter here and on Schedule D or Form 4797, unless the installment method applies	8,000
23	Recognized gain. Add lines 21 and 22	8,000
24	Deferred gain (or loss). Subtract line 23 from line 19	80,000
25	Basis of like-kind property received. Subtract line 15 from the sum of lines 18 and 23	10,000

(3) The nonresident must report the deferred Montana source income realized on the relinquishment of the Montana property if and when the gain is recognized for federal income tax purposes. The amount of Montana source income recognized will never exceed the gain recognized for federal income tax purposes. The

following examples illustrate how the Montana source income may be calculated in different situations:

(a) Example 1 - Same facts as in (2)(a). In a later tax year the Wyoming replacement property is sold for $150,000, the taxpayer reporting taxable gain of $140,000 on their federal income tax return. The nonresident's $80,000 of Montana source income realized on the Montana property exchange that was deferred has been recognized for federal income tax purposes and must be reported as Montana source income when the nonresident files the Montana individual income tax return required in 15-30-105, MCA.

(b) Example 2 - Same facts as in (3)(a), except the Wyoming replacement property is sold for $60,000 and $50,000 of taxable gain is reported on the taxpayer's federal income tax return. While $80,000 of Montana source income was realized but deferred on relinquishment of the Montana property, only $50,000 was recognized for federal income tax purposes. The nonresident must report the $50,000 of Montana source income recognized when the nonresident files the Montana individual income tax return required in 15-30-105, MCA.

(c) Example 3 - Same facts as in (3)(a), except improvements with a cost of $75,000 are erected on the Wyoming property and depreciation deductions of $15,000 are claimed with respect to those improvements before the improved Wyoming property is sold for $150,000. On the date of sale the fair market value of the improvements, which have an adjusted basis of $60,000, is $70,000, and the fair market value of the Wyoming property acquired in the exchange, which has an adjusted basis of $10,000, is $80,000. Of the $80,000 of deferred Montana source income realized on relinquishment of the Montana property, $70,000 has been recognized for federal income tax purposes and must be reported when the nonresident files the Montana individual income tax required in 15-30-105, MCA.

(d) Example 4 - Same facts as in (2)(c). The Wyoming replacement property is sold for $150,000. The $30,000 deferred Montana source income realized on relinquishment of the Montana property has been recognized for federal income tax purposes and must be reported when the nonresident files the Montana individual income tax return required in 15-30-105, MCA.

AUTH: 15-1-201 and 15-30-305, MCA
IMP: 15-30-101, 15-30-103, 15-30-105, 15-30-131, 15-30-132, 15-30-1102, 15-30-1111, and 15-30-1112, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to address comments received during and subsequent to the hearing held on December 29, 2005 for MAR Notice No. 42-2-754. Many of those commenting on the proposed amendment to ARM 42.2.204, which was contained in MAR Notice No. 42-2-754, suggested that the department should consider a rule addressing how the Montana source income statute and rule affect gain calculations and basis when Montana property is relinquished or acquired in a like-kind exchange. Proposed New Rule I outlines and provides examples of how the characterization of gain as Montana source income relates to the calculation of the amount of gain realized and reported for federal income tax purposes.

NEW RULE II VOLUNTARY DISCLOSURE (1) A person who transferred Montana property in a section 1031 like-kind exchange on or after December 31, 2001, who recognized some or all of the gain, including boot, realized on the exchange for federal income tax purposes while a nonresident, and who has not met their Montana filing and tax obligations may fulfill their filing and tax obligations without assessment of penalty and part of the applicable interest.

(2) A taxpayer qualifies for the voluntary disclosure program if the taxpayer is described in (1) and did any of the following:

(a) failed to file a return and pay any tax due for a tax year beginning after 2001; or

(b) underreported tax for any tax year beginning after 2001.

(3) A taxpayer does not qualify if:

(a) the taxpayer has been contacted by the department about filing or paying the same delinquent taxes;

(b) the taxpayer has been a party to any criminal investigation or pending civil or criminal litigation for nonpayment, delinquency, or fraud in relation to any tax due; or

(c) one of the tax years is included in an ongoing or unresolved audit.

(4) If the taxpayer qualifies the taxpayer must notify the department by filing the appropriate returns and paying the tax due beginning May 1, 2006, and ending August 31, 2006 and clearly indicating on each return and any separate correspondence that the taxpayer wishes to take advantage of the voluntary disclosure program.

(5) If a taxpayer comes forward under the voluntary disclosure program, the department and the taxpayer will enter into a signed agreement which recognizes that the taxpayer had a filing and tax obligation and that the department will be waiving all penalties associated with voluntary disclosure program and one-half of any interest owed or $100 of accrued interest per tax period, whichever is greater.

(6) The department reserves its right to audit a taxpayer's books and records, subject to statutory time limits. The audit may include all or part of the periods covered under the voluntary disclosure program. The department will assess any tax determined to be due that was not discharged under the voluntary disclosure program. All applicable penalties and interest will apply to additional taxes discovered to be due that have not been paid. If any of the factual representations made in the voluntary disclosure program are found to have been materially misrepresented or a material fact is found to have been omitted by the taxpayer or its representative, the department may reassess the waiver of any penalties and interest that occurred based on the provisions in (1) through (6).

(7) The application of this rule shall expire on September 1, 2006.

AUTH: 15-1-201, 15-1-211, and 15-30-305, MCA
IMP: 15-1-206, 15-30-101, 15-30-105, 15-30-142, and 15-30-304, MCA

REASONABLE NECESSITY: The department has determined that nonresidents who relinquished Montana property in a like-kind exchange after December 31, 2001, when the definition of "Montana source income" became effective, may not have been fully apprised of their duty to report to Montana any gain realized and

recognized that is Montana source income. The department has further determined that it would be in the interest of fair and efficient tax administration to allow them to voluntarily come forward to file returns and pay their Montana tax obligations. New Rule II provides a method and procedure for these nonresidents to voluntarily comply with their obligation to file returns and pay taxes.

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 7701
Helena, Montana 59604-7701

and must be received no later than March 10, 2006.

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

6. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at www.mt.gov/revenue, under "features," "administrative rules," and "upcoming events and proposed rule changes." 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.

7. 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.

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

/s/ Cleo Anderson	/s/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State January 30, 2006

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

In the matter of the adoption of New Rule I and the amendment of ARM 6.6.6811 and 6.6.6815 pertaining to captive insurance companies	)))))	CORRECTED NOTICE OF ADOPTION

TO: All Concerned Persons

1. On June 16, 2005, the State Auditor's Office published MAR Notice No. 6-159 at page 861 of the 2005 Montana Administrative Register, issue no. 11. On December 8, 2005, the department published a notice at page 2448 of the 2005 Montana Administrative Register, issue no. 23, of the adoption and amendment of the above-stated rules pertaining to captive insurance companies.

2. The reason for the correction is to renumber New Rule I due to the assigned number already being taken. The corrected rule adoption reads as follows:

(New Rule I) 6.6.6821 LIMIT OF RISK (1) remains as adopted.

AUTH: 33-28-206, MCA
IMP: 33-28-207, MCA

3. Replacement pages for the corrected notice of adoption were submitted to the Secretary of State on December 31, 2005.

JOHN MORRISON, State Auditor
and Commissioner of Insurance

By: /s/ Alicia Pichette
Alicia Pichette
Deputy Insurance Commissioner

By: /s/ Patrick M. Driscoll
Patrick M. Driscoll
Rule Reviewer

Certified to the Secretary of State on January 30, 2006.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the transfer of ARM 2.61.101 through 2.61.1005, pertaining to the consumer protection office	)))	NOTICE OF TRANSFER

TO: All Concerned Persons

1. Pursuant to HB 425, Laws of Montana 2005, effective July 1, 2005, the Consumer Protection Office was transferred from the Department of Administration to the Department of Justice, ARM Title 23, chapter 19.

2. The Department of Justice has determined that the transferred rules will be numbered as follows:

OLD	NEW	
2.61.101	23.19.101	Unlawful Acts or Practices
2.61.201	23.19.201	Definitions
2.61.202	23.19.202	Repairs, Estimates and Invoices
2.61.203	23.19.203	Repairs and Services
2.61.204	23.19.204	Motor Vehicle Sales
2.61.301	23.19.301	Disclosure Fees
2.61.401	23.19.401	Definitions
2.61.402	23.19.402	Correspondence
2.61.403	23.19.403	Procedures Adopted
2.61.404	23.19.404	Manufacturer's Informal Dispute Settlement Procedure – Certification
2.61.405	23.19.405	Manufacturer's Informal Dispute Settlement Procedure – Audit
2.61.406	23.19.406	Department's Dispute Resolution Procedure – When Available to Consumer
2.61.407	23.19.407	Arbitration Panels
2.61.408	23.19.408	Powers and Duties of Arbitrators
2.61.409	23.19.409	Consumer's Request for Arbitration
2.61.410	23.19.410	Manufacturer's Statement
2.61.411	23.19.411	Consumer Appeals Process
2.61.412	23.19.412	Notification of Parties and Arbitrators
2.61.413	23.19.413	Representation by an Attorney
2.61.414	23.19.414	Conduct of Oral Arbitration Hearings
2.61.415	23.19.415	Conduct of Documentary Arbitration Hearings
2.61.416	23.19.416	Predecision Settlement of Dispute
2.61.417	23.19.417	Record Keeping

2.61.418	23.19.418	Notice of Arbitration Decision
2.61.419	23.19.419	Post Performance Date Contact
2.61.420	23.19.420	Notice of Resale of Returned Vehicle
2.61.501	23.19.501	Definitions
2.61.502	23.19.502	Forms and Procedures for Initial Registration and Bonding
2.61.503	23.19.503	Forms and Procedures for Registration Renewal
2.61.504	23.19.504	Telemarketing Fraud Consumer Awareness Program
2.61.505	23.19.505	Civil Action Enforcement Procedure
2.61.506	23.19.506	Definitions
2.61.507	23.19.507	State Do-Not-Call Database
2.61.601	23.19.601	Purpose
2.61.602	23.19.602	Application
2.61.603	23.19.603	Issuance of an Identify Theft Passport
2.61.604	23.19.604	Name or Address Changes
2.61.605	23.19.605	Lost or Stolen Passports
2.61.606	23.19.606	Penalty for Fraudulent Application
2.61.1001	23.19.1001	License Fee
2.61.1002	23.19.1002	Bond Requirement
2.61.1003	23.19.1003	List of Accreditation and Certification Providers
2.61.1004	23.19.1004	Other Requirements for License
2.61.1005	23.19.1005	Consultation and Maintenance Fees

3. The transfer of rules is necessary because this board was transferred from the Department of Administration to the Department of Justice by the 2005 legislature by HB 425, Laws of Montana 2005.

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

/s/ Jon Ellingson
JON ELLINGSON
Rule Reviewer

Certified to the Secretary of State January 30, 2006.

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

In the matter of the amendment and transfer, the adoption of New Rules I through IV, the repeal of existing rules, and transfer of existing rules all pertaining to outfitter licensing and operations	))))))	NOTICE OF AMENDMENT AND TRANSFER, ADOPTION, REPEAL, AND TRANSFER

TO: All Concerned Persons

1. On August 25, 2005, the Board of Outfitters (Board) published MAR Notice No. 8-39-24 regarding the public hearing on the proposed amendment and transfer, adoption, and repeal of the above-stated rules relating to outfitter licensing and operations, at page 1549 of the 2005 Montana Administrative Register, issue no. 16.

2. On September 20, 2005, a public hearing on the proposed amendment and transfer, adoption and repeal was conducted in Helena. One witness provided comments at the hearing and additional written comments were timely received.

3. The Board has thoroughly considered all of the comments made. A summary of the comments received and the Board's responses are as follows:

COMMENT 1: A number of comments were received requesting that the public comment period be extended, as outfitters are currently in their busiest time of the year.

RESPONSE 1: The Board notes that there really is no optimum time for outfitters to have rules noticed for public comment because of the varied seasons and types of outfitters. The Board has followed the statutory requirements for public notice and public participation and declines to extend the comment period. Every member of the public, including those in the outfitter industry, was provided equal opportunity to comment on the proposed rule changes.

COMMENT 2: Numerous comments were received in opposition to the proposed amendment to ARM 8.39.518 (24.171.401) at subsection (1)(f), which would require outfitters to pay a $5,000.00 fee for services provided in any area beyond a 100-mile radius of the outfitter’s base of operations.

RESPONSE 2: Due to the negative concerns raised by the commenters, the Board will not proceed with the proposed amendments to subsection (1)(f) at this time. The commenters' concerns will be placed on the Board’s agenda for further review and discussion.

COMMENT 3: One commenter stated that the $50.00 fee for net client hunter use (NCHU) transfer is reasonable as long as it is per transaction.

RESPONSE 3: The Board, in the interest of clarification, notes that the fee is charged per transaction.

COMMENT 4: Comments were received in opposition to the proposed amendment to ARM 8.39.518 (24.171.401) at subsection (1)(k), creating a new per transaction fee for outfitter transfer of NCHU.

RESPONSE 4: The Board concluded that it is reasonable to implement this new fee to address the cost to the Board of processing NCHU transfers. The Board is amending subsection (1)(k) of the rule exactly as proposed.

COMMENT 5: One commenter supported the Board's provision to waive up to 50 days of guiding experience as proposed in ARM 8.39.502 (24.171.502).

RESPONSE 5: The Board acknowledges the comment.

COMMENT 6: Regarding ARM 8.39.506 (24.171.507), one commenter supported the proposed addition of "named insured" to the rule, as it more clearly identifies the insurance requirements of licensed outfitters.

RESPONSE 6: The Board acknowledges the comment.

COMMENT 7: One commenter found the proposed language at ARM 8.39.507 (24.171.510) at subsection (1)(d), confusing and suggested the Board amend it to address independent contractors.

RESPONSE 7: The Board agreed that the proposed language was confusing and is amending the rule accordingly for better clarity.

COMMENT 8: Several commenters objected to the proposed amendments to ARM 8.39.507 (24.171.510) at subsection (1)(e), regarding the additional written report to the Board of outfitters acting as guides. The commenters stated that the requirement was impractical, unnecessary and vague.

RESPONSE 8: Due to the concerns raised by the commenters, the Board will not proceed with the proposed addition of subsection (1)(e) at this time. The commenters' concerns will be placed on the Board's agenda for further review and discussion.

COMMENT 9: A commenter questioned whether a suspended outfitter's license would be considered "valid" regarding outfitters acting as guides under ARM 8.39.515 (24.171.603). If so, the commenter suggested the Board amend the rule for clarification.

RESPONSE 9: The Board notes that a suspended license is not considered a valid license for purposes of this rule. The Board is amending the rule exactly as proposed.

COMMENT 10: A commenter suggested that the Board amend ARM 8.39.703 (24.171.801) at subsection (2)(i) to add the requirement that outfitter records include names of clients transferred from another outfitter.

RESPONSE 10: The Board acknowledges the comment and notes that the suggested addition is a substantial change from what was included in the proposed notice. To assure full opportunity for public participation and comment, the issue will be placed on the Board's agenda for further review and discussion. The Board is amending subsection (2)(i) exactly as proposed.

COMMENT 11: Several commenters objected to the proposed amendment to ARM 8.39.703 (24.171.801) at section (4), that would add the requirement that outfitters report in writing to the Board all booking agents used.

RESPONSE 11: The Board determined that there is no need to require outfitters' reporting of booking agents as the Board does not license them. The Board is amending the rule to delete proposed section (4).

COMMENT 12: One commenter suggested amending ARM 8.39.508 (24.171.2101) at section (4), to require client logs be sent to the Board 30 days after the end of a hunting season as approved under the outfitter's operation plan, instead of the January 31st submission deadline.

RESPONSE 12: The Board notes that there has been confusion as to the applicable submission requirements. The January 31 deadline was added to clarify the date by which hunting outfitters must submit their amended logs. The Board is amending the rule exactly as proposed.

COMMENT 13: One commenter questioned the feasibility of the proposed amendment to ARM 8.39.709 (24.171.2301) at subsection (1)(j), requiring outfitters to designate in writing to the Board agents used to collect the outfitter's fees.

RESPONSE 13: Due to the concerns raised by the commenter, the Board will not proceed with the proposed amendments to subsection (1)(j) at this time. The commenters' concerns will be placed on the Board's agenda for further discussion.

COMMENT 14: One commenter suggested that ARM 8.39.709 (24.171.2301) at subsection (3)(o), be amended to clarify that both the outfitter's business name and personal name must be included in an advertisement.

RESPONSE 14: The Board agreed that adding the suggested language helps to clarify the Board's intent and is amending the rule accordingly.

COMMENT 15: One commenter asked regarding New Rule II whether it is the Board's intent to charge $100.00 for an emergency guide's license, and then another $100.00 when the emergency guide applies for a regular guide's license.

RESPONSE 15: The Board states that the emergency guide license is only a ten-day license to get a guide in the field. An emergency guide who subsequently applies for full guide licensure will have to pay an additional $100.00 licensing fee.

4. After consideration of the comments, the Board has amended and transferred ARM 8.39.501 (24.171.501), 8.39.502 (24.171.502), and 8.39.508 (24.171.2101) exactly as proposed.

The Board has amended and transferred ARM 8.39.503 (~~24.171.505~~, 24.171.507), 8.39.505 (~~24.171.506~~, 24.171.503), 8.39.506 (~~24.171.507~~, 24.171.509), 8.39.510 (~~24.171.511~~, 24.171.520), 8.39.515 (~~24.171.603~~, 24.171.601), 8.39.419 (~~24.171.806~~, 24.171.413), and 8.39.704 (~~24.171.802~~, 24.171.412) exactly as proposed but with the changes in numbering as shown. It was determined that these rule numbers should be modified to allow for additional expansion and the insertion of future Board rules into subchapter 4, the General Provisions subchapter. These modifications follow the overall scheme for rule transfers by allowing room for anticipated growth within the rules.

Additionally, after consideration of the comments, the Board has adopted New Rule I (24.171.602), New Rule II (24.171.604), New Rule III (24.171.702) and New Rule IV (24.171.2104) and repealed ARM 8.39.513, 8.39.514, 8.39.801, 8.39.802 and 8.39.803 exactly as proposed.

5. After consideration of the comments, the Board has amended ARM 8.39.518 (24.171.401), 8.39.507 (~~24.171.510~~, 24.171.513), 8.39.703 (~~24.171.801~~, 24.171.408), and 8.39.709 (24.171.2301) with the following changes, stricken matter interlined, new matter underlined:

8.39.518 (24.171.401) FEES (1) through (1)(e) remain as proposed.

(f) Annual fee for each additional hunting camp, ~~or area where services of a licensed outfitter are provided,~~ added after January 1, 1999 and located beyond a 100-mile radius of the outfitter's base of operations and that is in an ~~a Montana department of fish, wildlife, and parks~~ administrative region other than the region containing the outfitter's base of operations 5,000

(g) through (m) remain as proposed.

AUTH: 37-1-131, 37-1-134, 37-47-201, 37-47-306, MCA
IMP: 37-1-134, 37-47-304, 37-47-306, 37-47-307, 37-47-308, 37-47-310, 37-47-316, 37-47-317, 37-47-318, MCA

8.39.507 (24.171.513) OUTFITTER ACTING AS GUIDE

(1) through (1)(b) remain as proposed.

(c) acts as a guide only within the services and area of operation of this particular outfitter; and

(d) is reported as a guide in ~~that employer outfitter's~~ the client logs of the outfitter whose clients are being served ~~; and~~ .

~~(e) submits written notification of the guide work to the board.~~

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-47-301, 37-47-302, 37-47-303, MCA

8.39.703 (24.171.408) OUTFITTER RECORDS (1) through (3) remain as proposed.

~~(4) Outfitters must provide in writing to the board, on a board-prescribed form, all designated booking agents used by the outfitter prior to providing services.~~

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-47-301, MCA

8.39.709 (24.171.2301) UNPROFESSIONAL CONDUCT AND MISCONDUCT (1) through (1)(i) remain as proposed.

(j) personally collect, or designate an agent ~~(by written notice on a form provided by the board)~~ to collect, all fees from clients. The outfitter is solely responsible for complying with his or her ~~the outfitter's~~ deposit and deposit refund policy;

(k) through (3)(n) remain as proposed.

(o) clearly designate the business name and personal name, address, telephone number, and license number of the outfitter, when advertising outfitter and guide services. In cases where a guide owns the outfitting business, the guide must identify the endorsing and supervising outfitter in any advertisement for the business;

(p) through (s) remain as proposed.

AUTH: 37-1-319, 37-47-201, 37-47-341, MCA
IMP: 37-1-312, 37-47-341, MCA

6. The Board has transferred ARM 8.39.101, 8.39.201, 8.39.202, 8.39.418, 8.39.512, 8.39.804, and 8.39.805 as follows:

OLD	NEW	
8.39.101	24.171.101	Board Organization
8.39.201	24.171.201	Procedural Rules
8.39.202	24.171.202	Public Participation Rules
8.39.418	24.171.407	Inspection
8.39.512	24.171.512	~~Licensure --~~ Inactive License
8.39.804	24.171.701	Determination of Net Client Hunter Use and Review of New Operations Plan and Proposed

		Expansion of Net Client Hunter Use Under Existing and New Operations Plan(s)
8.39.805	24.171.402	Effect of Fee for Expansion of Net Client Hunter Use

BOARD OF OUTFITTERS
MEL MONTGOMERY, CHAIRPERSON

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 30, 2006.

BEFORE THE BOARD OF MILK CONTROL
DEPARTMENT OF LIVESTOCK
THE STATE OF MONTANA

In the matter of the amendment of ARM 32.24.513 pertaining to computation of price for quota milk and excess milk	))))	NOTICE OF AMENDMENT

To: All Concerned Persons

1. On December 22, 2005 the Department of Livestock published MAR Notice No. 32-5-175 regarding the proposed amendment of ARM 32.24.513, pertaining to computation of price for quota milk and excess milk at page 2551 of the 2005 Montana Administrative Register, Issue Number 24.

2. The Department of Livestock has amended ARM 32.24.513 exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF LIVESTOCK

By: /s/ Marc Bridges
Executive Officer
Board of Livestock
Department of Livestock

By: /s/ Carol Grell Morris
Rule Reviewer

Certified to the Secretary of State January 30, 2006.

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

In the matter of the adoption of new Rule I and the amendment of ARM 37.75.101, 37.75.102, 37.75.105, 37.75.108, 37.75.109, 37.75.201, 37.75.202, 37.75.205, 37.75.206, 37.75.209, 37.75.301, 37.75.302, 37.75.303, 37.75.401, 37.75.402, 37.75.501, 37.75.502, 37.75.601, 37.75.602, and 37.75.603 pertaining to Child and Adult Care Food Program (CACFP)	)	NOTICE OF ADOPTION AND AMENDMENT

TO: All Interested Persons

1. On November 10, 2005 the Department of Public Health and Human Services published MAR Notice No. 37-358 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules relating to the Child and Adult Care Food Program (CACFP), at page 2168 of the 2005 Montana Administrative Register, issue number 21.

2. The Department has amended ARM 37.75.102, 37.75.105, 37.75.108, 37.75.109, 37.75.201, 37.75.202, 37.75.205, 37.75.209, 37.75.301, 37.75.302, 37.75.303, 37.75.402, 37.75.501, 37.75.502, 37.75.601, 37.75.602, and 37.75.603 as proposed.

3. The Department has adopted the following rule as proposed but with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE I (37.75.103) CHILD AND ADULT CARE FOOD PROGRAM (CACFP): FEDERAL REGULATIONS ADOPTED BY REFERENCE (1) The CACFP ~~program~~ shall be administered in accordance with the requirements of federal law governing the ~~c~~Child and ~~a~~Adult ~~c~~Care ~~f~~Food ~~p~~Program as set forth in Title 7 CFR part 226 (2005), which regulates all state child and adult care food programs. Title 7 CFR part 226 (2005) is adopted and incorporated as a part of these rules. A copy may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, Child and Adult Care Food Program, P.O. Box 202925, 111 North Jackson Street, Fifth Floor, Helena, MT 59620-2925 or through the federal government website access at www.gpoaccess.gov/cfr/index.html.

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-704, MCA

4. The Department has adopted the following rules as proposed but with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

37.75.101 DEFINITIONS For purposes of this chapter, the following definitions apply:

(1) through (13) remain as proposed.

~~(14) "Disciplinary action" means an action taken for the purpose of modifying behavior or correcting a situation or circumstance.~~

(15) through (30) remain as proposed but are renumbered (14) through (29).

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-704, MCA

37.75.206 RECRUITMENT (1) through (3) remain as proposed.

(4) ~~Disciplinary~~ Corrective action will include the following:

(a) through (5) remain as proposed.

(6) A ~~disciplinary~~ corrective action for active recruitment will remain in effect ~~through each three year contract renewal period.~~ from the date of violation for three years. ~~At the inception of a new contract renewal period,~~ Three years after the original violation, the violation cycle will start over, with the exception that, if a third recruiting violation occurs, the minimum one year cap on enrollment may continue into the following ~~contract~~ three year period. An example is:

(a) ~~the~~ an original ~~contract period is effective October 1, 2005 through September 30, 2008~~ violation occurs on November 1, 2006;

(b) ~~the~~ a third recruiting violation occurs on ~~June 30, 2008~~ October 30, 2009; and

(c) enrollment is capped from ~~June 30, 2008 through June 30, 2009~~ October 30, 2009 through October 30, 2010, extending into the following ~~contract renewal~~ three year period.

(7) When a third recruiting violation occurs and enrollment is capped for one year for a period which spans two ~~contract terms~~ three year periods, the violation will count as the third violation in the previous ~~contract term~~ three year period and will not count as the first violation in the ~~new contract term~~ next three year period.

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-704, MCA

37.75.401 SPONSOR AND FACILITY TRAINING AND TRAINING RECORDS (1) through (4)(a) remain as proposed.

(b) the names of the training facilitator or facilitators; ~~and~~

(c) a sign in sheet signed by each training session participant~~.~~; or

(d) a copy of the certificate of completion for online training, signed by the sponsor's authorized representative.

(5) through (7) remain as proposed.

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-704, MCA

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

COMMENT #1: Will the Department's address in Rule I (ARM 37.75.103) be corrected in the adoption notice?

RESPONSE: Yes, the new address for the division has been included in the adoption notice since the division moved after the proposal notice was published.

COMMENT #2: Commentor questions the disciplinary action definition. Should it be corrective action instead?

RESPONSE: The Department agrees and the definition for disciplinary action is deleted. Please refer to the term "corrective action plan" and its definition. The term "disciplinary" has been replaced with "corrective" action throughout the rule.

COMMENT #3: In ARM 37.75.101(25) regarding the definition for a seriously deficient institution, is an institution a center or can they be different? Does an institution mean a center or a sponsor?

RESPONSE: The definition for institution is provided in ARM 37.75.101. An Institution is a sponsor of day care homes, a sponsor of centers, or a center under contract with the Department.

COMMENT #4: Should ARM 37.75.205(2)(b)(iii) read parent-signed record keeping instead?

RESPONSE: Not all record keeping involves parent signatures; therefore the rule is not changed. Records which must include parent signatures are specified in the Sponsor-Provider Agreement, which is signed by both the sponsor and the provider. The agreement is sufficient for CACFP enforcement purposes.

COMMENT #5: In ARM 37.75.205(8) on retaining records, does the three year retention pertain to the records of a provider who quits?

RESPONSE: Yes, the federal regulation states that all records, including those of providers no longer participating, which relate to the CACFP, must be retained for three federal fiscal years, plus the current year of participation.

COMMENT #6: In ARM 37.75.206(4)(b)(i), does this provision include switching providers?

RESPONSE: Yes, as specified by ARM 37.75.206(4)(b)(ii).

COMMENT #7: Is the three year contract specified in ARM 37.75.206(6) going to

change to five year contracts?

RESPONSE: No, the contract period is changed to a seven year period, with updated and/or renewal information collected annually by the Department. The rule is changed for clarity to read three year period rather than three year contract renewal period.

COMMENT #8: Should serious deficiency be added with corrective action in ARM 37.75.209(5)?

RESPONSE: The rule includes all corrective actions, including any corrective action precipitated by a finding that rises to the level of "serious deficiency". As the rule is inclusive of all corrective action, no change is being made.

COMMENT #9: In regards to ARM 37.75.401(4)(c), online training participants don't necessarily sign in or have a signoff sheet. How will this be handled?

RESPONSE: The department agrees with the comment and has added subsection (4)(d) to the rule to address this circumstance.

COMMENT #10: Does an institution mean centers and sponsors in ARM 37.75.502(2)?

RESPONSE: No, institution in this rule is applicable, as stated in the title of the rule, to Reviews of Centers and Sponsors of Centers. The definition for institution is provided in ARM 37.75.101. An institution is a sponsor of day care homes, a sponsor of centers, or a center under contract with the Department.

COMMENT #11: Does an institution mean centers and sponsors in ARM 37.75.502(5)?

RESPONSE: No, institution in this rule is applicable, as stated in the title of the rule, to Reviews of Centers and Sponsors of Centers. The definition for institution is provided in ARM 37.75.101. An institution is a sponsor of day care homes, a sponsor of centers, or a center under contract with the Department.

COMMENT #12: Commentor doesn't see in ARM 37.75.601 on recruitment a statement that a sponsor can only sponsor three at a time. Shouldn't this be added to the rule?

RESPONSE: Commentor is possibly confused in that no more than three providers may switch from one sponsor to another sponsor within any particular month as stated in the Department's CACFP Policy SH MT CACFP 98-4, Rev. 1, which addresses this issue. Federal regulation [7 CFR 226.15(m)] states "Each institution must comply with all regulations issued by FNS and the Department, all instructions and handbooks issued by FNS and the Department to clarify or explain existing regulations, and all regulations, instructions and handbooks issued by the State

agency that are consistent with the provisions established in Program regulations." No change is being made.

/s/ Dawn Sliva
Rule Reviewer

/s/ Joan Miles
Director, Public Health and Human Services

Certified to the Secretary of State January 30, 2006.

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

In the matter of the adoption of Rules I through XV pertaining to the Pharmacy Access Prescription Drug Benefit Program (Big Sky Rx)	))))	NOTICE OF ADOPTION

TO: All Interested Persons

1. On December 22, 2005, the Department of Public Health and Human Services published MAR Notice No. 37-365 pertaining to the public hearing on the proposed adoption of the above-stated rules relating to the pharmacy access prescription drug benefit, at page 2558 of the 2005 Montana Administrative Register, issue number 24.

2. The Department has adopted new rules I (37.81.101), II (37.81.104), IV (37.81.304), VI (37.81.310), VII (37.81.314), IX (37.81.322), X (37.81.326), XI (37.81.330), XII (37.81.334), XIII (37.81.338), XIV (37.81.342) and XV (37.81.346) as proposed.

3. The Department has adopted the following rules as proposed but with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE III (37.81.301) BIG SKY RX SCOPE AND PURPOSE (1) remains as proposed.

(2) An individual entitled to benefits under ~~m~~Medicare Part A or enrolled in ~~m~~Medicare Part B is eligible to enroll in a medicare Part D PDP. An individual enrolled in a PDP ~~pays a~~ is responsible for the premium and receives prescription drug coverage. There is also a federal premium subsidy called "~~s~~Social ~~s~~Security ~~e~~Extra ~~h~~Help" for some individuals that assists in paying co-payments, deductibles, and premiums.

(3) The purpose of Montana's ~~b~~Big ~~s~~Sky Rx ~~p~~Program is to pay a portion or all of the cost of the PDP premium for eligible Montana residents. ~~who have income at or below 200% of the FPL and do not qualify for federal automatic enrollment. A Montana resident who qualifies for the federal extra help program is eligible for big sky Rx benefit only to the extent needed to supplement the extra help benefit up to $33.11 per month.~~

(4) and (5) remain as proposed.

AUTH: 53-2-201, 53-6-1004, MCA
IMP: 53-6-1001, 53-6-1004, 53-6-1005, MCA

RULE V (37.81.307) ELIGIBILITY FOR BIG SKY RX (1) through (3) remain as proposed.

(4) An individual who is ~~eligible~~ receiving benefits for ~~m~~Medicaid is not eligible for the ~~b~~Big ~~s~~Sky Rx ~~p~~Program.

(5) An individual ~~who the federal government automatically enrolled~~ in a LIS program with full premium subsidy is not eligible.

(6) through (10) remain as proposed.

AUTH: 53-2-201, 53-6-1004, MCA
IMP: 53-6-1001, 53-6-1004, 53-6-1005, MCA

RULE VIII (37.81.318) PROCESSING BIG SKY RX PARTICIPANT APPLICATIONS (1) through (8) remain as proposed.

(9) Qualified but incomplete applications will be marked "pending" until the applicant provides the PDP information and, if appropriate, the ~~s~~Social ~~s~~Security ~~e~~Extra ~~h~~Help determination and any missing application material.

(a) The applicant will be notified that the application is pending. The application will be held for 60 business days from the date of the notice. Following the 61st business day, a notice will be sent to the applicant ~~reminding him~~ as a reminder of the missing information.

(b) remains as proposed.

(10) Incomplete applications that are not otherwise qualified are considered "pending" by the department. These individuals will be notified of the missing information.

(a) A pended application will be held for ~~20~~ 30 business days waiting for missing information. If the missing information is received within the ~~20~~ 30 business days from the date of the notice, the application will be processed.

(b) Following the ~~21st~~ 31st business day the department will consider the application incomplete. The applicant becomes ineligible, and will be notified. The department will take no further action.

(11) through (13) remain as proposed.

AUTH: 53-2-201, 53-6-1004, MCA
IMP: 53-6-1001, 53-6-1004, 53-6-1005, MCA

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

COMMENT #1: The Department offered written testimony proposing revisions to Rules III (37.81.301), V (37.81.307), and VIII (37.81.318). The revisions are intended to clarify any ambiguity that may have existed in the text as proposed.

RESPONSE: The proposed changes to Rules III (37.81.301) and VIII(9) (37.81.318) are nonsubstantive changes to improve readability.

The Department is making two changes to Rule V (37.81.307). The phrase "An individual who is eligible for Medicaid is not eligible for the Big Sky Rx Program" is changed to "An individual who is receiving benefits for Medicaid is not eligible for the Big Sky Rx Program". An individual may be eligible for, but not receiving, Medicaid

benefits. That individual is eligible for Big Sky Rx benefits.

The phrase "who the federal government automatically enrolled" is being removed because it is irrelevant. An individual enrolled in a LIS program with full premium subsidy is not eligible for Big Sky Rx benefits regardless of whether he or she was automatically enrolled.

The Department is changing Rule VIII(10) (37.81.318) to extend from 20 to 30 the number of days the Department will hold an incomplete application open to receive additional information. This change is necessary because, upon further consideration, the Department determined that a 30 day holding period would not be an administrative difficulty and applicants needed additional time to gather necessary information.

COMMENT #2: The following comment was received regarding Rule VI (37.81.310). "What about the applicant who is living out of wedlock? Is their partner's income taken into consideration? If not, is not this an unfair marriage penalty?"

RESPONSE: Rule VI (37.81.310) states the criteria used to determine eligibility for Big Sky Rx benefits. The Department is using the same income and household size as the Federal government uses to determine eligibility for the Social Security Extra Help Program. Both programs are intended to help senior citizens with low incomes and disabled people with low incomes pay the premium for pharmaceutical drug insurance coverage provided by Medicare Part D.

An applicant self-reports his or her status as either single or married. The applicant's eligibility depends on his or her household income being at or below 200% of the federal poverty level (FPL). Married couples who live together have a household size of two. A household of two is eligible if the household income is less than $25,660. Two single people who live together and are not related do not meet the definition of household. Each person has a household size of one. Each person must have income below $19,140, not $25,660, to be eligible.

COMMENT #3: The following comment was received regarding Rule VI (37.81.310). A commentor asked if a parent/guardian must include in his or her income the social security benefits he or she receives on behalf of a minor.

RESPONSE: No. This would not be the parent/guardian's income and would not affect his or her eligibility.

5. These rule changes will be applied retroactively to November 1, 2005.

/s/ Dawn Sliva
Rule Reviewer

/s/ John Chappuis
Director, Public Health and Human Services

Certified to the Secretary of State January 30, 2006.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.2.304 and economic impact statement relating to Montana source income	))))	NOTICE OF AMENDMENT AND ECONOMIC IMPACT STATEMENT

TO: All Concerned Persons

1. On December 8, 2005, the department published MAR Notice No. 42-2-754 regarding the proposed amendment of the above-stated rule relating to Montana source income at page 2443 of the 2005 Montana Administrative Register, issue no. 23.

2. A public hearing was held on December 29, 2005, to consider the proposed amendment. Oral and written testimony was presented at the hearing and additional written comments were received prior to January 6, 2006, which was the date set for close of comment.

3. Montana law is structured to tax nonresidents like residents on income defined as "Montana source income." A detailed statutory definition of "Montana source income" is located in 15-30-101(18), MCA, and the department's initial rule definition in ARM 42.2.304 simply referred the reader to the statute. Questions arose about how the definition applied to deferred recognition transactions. Did a gain that was realized for federal and Montana income tax purposes somehow lose its character as "Montana source income" if the gain were not recognized and taxed until a later tax year?

The rule amendment represents the department's determination that the statute is clear and unambiguous and that the character of gain from the transfer of Montana property that is realized for federal and Montana income tax purposes does not lose its character as "Montana source income" if the gain is not recognized or taxed until a later tax year or the happening of a future event. The amendment is therefore an interpretive rule as provided in 2-4-308, MCA, and advisory only.

The department would like to thank all the participants for their comments. Certain opponents noted their express agreement with the department's application of the rule to the deferred gain of installment sales. As there is no dispute about installment sale gain, comments and responses are limited to section 1031 exchanges.

4. Proponents of the proposed amendment generally commended the department for applying the law in a fair and uniform manner. They expressed a clear understanding that this rule is simply an interpretation of existing law and is necessary to help assist nonresidents in the proper application of 15-30-101(18)(a)(ii), MCA.

5. Most of the opponents of the proposed amendment opposed the proposed amendment on multiple grounds. None of the opponents provided an argument against the validity of the statute underlying the rule, or provided an analysis of the intent of the statutory definition. Opponents repeatedly mentioned the potential negative impact on economic development for inbound 1031 exchanges; that is, relinquishing out-of-state property for in-state property.

6. Because many of the comments are similar in both nature and content, the department summarized many comments and responded accordingly. Proponent and opponent comments and department responses are summarized as follows:

COMMENT NO. 1: Dennis Williams, Toston, Montana commented that he was in favor of the proposed amendment because it is important to maintain equity between in-state and out-of-state persons with respect to taxation. He further stated that it is important to remember that the tax deferral mechanisms are elective and not required by law. The taxpayer has the option of paying or deferring the gains. Any purported ill effects of this rule are unrealistic and very small compared to the ill effects to the treasury and the citizens should the rule not be amended. Mr. Williams stated that the agricultural media has provided misleading and false information regarding this rule amendment.

RESPONSE NO. 1: The department appreciates Mr. Williams' support of this proposed amendment and the action of the department. The department agrees that in certain circumstances the taxpayer may either recognize the gain immediately or defer the gain until a later date. The department is aware of two agricultural news articles that misrepresent the amendment as imposing and accelerating a tax liability.

COMMENT NO. 2: Ross Norman, CPA, Great Falls, Montana provided written comments stating that he can see the logic of Montana taxing income that was sourced in Montana when the tax becomes due. He stated he would support that because it is fair and he is convinced that is what the current law says. If another state decides to tax this same income under its own laws, Montana should work with the taxpayer and the other state before imposing the tax.

RESPONSE NO. 2: The department agrees that the rule is an interpretation of current law. See response No. 9 for an answer to the last sentence of this comment.

COMMENT NO. 3: Eric Feaver, President, MEA-MFT, Helena, Montana submitted written comments stating they agree the code provides a clear definition of Montana source income but that it has not been well understood or consistently interpreted by individual taxpayers, accountants, and even the department. He stated that Montana residents have paid the appropriate tax on gains realized from property located in the state, while numerous out-of-state residents have been erroneously and unfairly exempt from such taxation. This has resulted in a major tax incentive for investing Montana resources out of state and millions of revenue dollars

lost for the state to allocate to priority needs such as public schools, university funding, and state programs and services.

RESPONSE NO. 3: The department agrees the statute provides a clear definition of "Montana source income" but it may not have been understood by the public. The rule amendment was proposed for this reason. The department is unaware of any inconsistent interpretation of the Montana source income statute by department personnel. For clarification purposes, the department would like to point out that with a 1031 exchange a gain may be realized when an exchange occurs but because of the deferral afforded under federal law, there is not a tax liability owing until the gain is recognized. How these terms are distinguished is illustrated in the examples provided in New Rule I as shown in MAR Notice No. 42-2-758, also found in this Register.

COMMENT NO. 4: Senator Jim Elliott, Trout Creek, Montana provided written comment in support of the amendments to the rule. Senator Elliott stated, as a Montana taxpayer, he does not want to be the recipient of special treatment to the detriment of others, nor does he want to be aggrieved because someone else enjoys special tax treatment. He stated the amendment interprets the statute and elucidates two cardinal principles of fair tax policy, which are that similar transactions should be taxed similarly (equity), and that income is taxed where income is earned. He stated that the rule is clear, unambiguous, and reflects the legislative intent of the law.

RESPONSE NO. 4: Senator Elliott is correct that the amendment merely interprets the plain language of the statute and is consistent with the principles of fair tax policy.

COMMENT NO. 5: Robert and Ruth Champion, Helena, Montana, submitted written comments in favor of the proposed amendment. They stated that they applaud and support the department's action to assure Montana collects taxes lawfully due from persons engaged in 1031 land swaps. They stated that they are native Montanans who have lived here all their lives and have paid taxes under Montana's laws. They further stated that they believe they are part of a silent majority of Montanans who want to see aggressive enforcement of our tax laws to assure that out-of-state interests pay our state what they owe. They further stated that it would appear that a small cadre of Montanans who benefit directly from complex land swaps seek to use their influence in the legislature to cripple the department's efforts to collect taxes on these transactions.

RESPONSE NO. 5: The department agrees that it is the duty of this agency to collect lawfully owed taxes from both residents and nonresidents.

COMMENT NO. 6: William Gowen, Helena Abstract and Title Company, representing Montana Land Title Association; Russell Gowen, President, Montana Land Title Association; William Hughes, CPA, Anderson, Zurmuehlen & Co., P.C.; Joseph Shevlin, CPA, representing the Montana Society of CPAs; and Bruce Spencer,

Attorney, representing Montana Automobile Dealers Association, stated their concerns regarding how the department planned to track these transactions. They also inquired about the additional administrative costs associated with implementation of this rule. Mr. Shevlin testified that the society had no problems regarding the gain realized from the installment sales of personal (not tangible) or real property as being Montana source income.

RESPONSE NO. 6: These transactions will be tracked though the department's current computer system by the department's existing staff and through taxpayers complying with their obligation to file complete and accurate federal and state tax returns and associated forms. The department appreciates the acknowledgement by Mr. Shevlin that the department is correctly handling installment sales transactions but would like to point out that there is really no difference between installment sales and 1031s.

COMMENT NO. 7: Clayton Fiscus, Fiscus Realty; Mike Green, Attorney, representing the Montana Taxpayers Association and the Montana Association of Realtors; Steve Turkiewicz, President, Montana Bankers Association; Max Hansen, President, American Equity Exchange, Inc.; William Hughes, CPA; and Joseph Shevlin, CPA, stated that the department failed to instruct taxpayers how basis and gain would be calculated, and wondered whether the proposed rule essentially decouples Montana from the federal system of taxing 1031 exchanges. Mr. Shevlin also believed that it is unreasonable to force a taxpayer (both resident and nonresident) to track different state basis for many years when no tax might be owed.

RESPONSE NO. 7: Federal form 8824, which taxpayers already must retain, contains the information needed to calculate the Montana source income realized in 1031 like-kind exchanges. Federal form 6252 contains the information needed to calculate the Montana source income in an installment sale. Nevertheless, the department appreciates the concerns raised in this comment and has therefore proposed New Rule I in MAR Notice No. 42-2-758, which is published in this Register, that confirms, consistent with normal accounting and tax principles, that the amount of realized Montana source income a nonresident must report to Montana at the time the gain is recognized for federal income tax purposes cannot exceed the total amount of gain recognized. As provided in 15-30-105, MCA, nonresidents complete their Montana return and then multiply the resulting tax by the ratio of their Montana source income to their total income. Separate basis calculations are not required.

COMMENT NO. 8: Barry Hedrich, White Sulphur Springs, Montana; Richard J. Sidwell, Broker, Sidwell Land & Cattle Co.; Joseph Unterreiner, President, Kalispell Area Chamber of Commerce; Steve Pilcher, Executive Vice President, Montana Stockgrowers Association; William Hughes, CPA; Bruce Spencer, Attorney; Joseph Shevlin, CPA; Mike Green, Attorney; William Gowen; Amber Sundsted, representing the Billings Association of Realtors, Inc.; and Max Hansen, stated that the amendment to the rule will hinder the flow of capital into Montana, curtail inbound exchanges (out-of-state property exchanges for Montana property), and otherwise

harm economic development. Mr. Hansen and Mr. Sidwell both cited potential investors who are now contemplating acquiring property outside of Montana because of the department's proposed rule.

Mr. Hanson also argues that if Montana changes its policy and creates impediments via tax liens or other similar collection methods for people exchanging outside the state it will create a chilling effect on persons contemplating acquiring Montana property.

Mr. Gowen also asked why an economic impact study had not been completed prior to the proposed rule amendment to determine the effects of the rule on revenue sources relied upon by the general fund. Mr. Pilcher and Mr. Spencer also echoed their belief that an economic impact study was appropriate.

Mr. Green commented that this rule creates additional uncertainty about Montana's tax regime and creates an incentive for nonresidents to invest in other states because of that uncertainty.

Mr. Shevlin acknowledged that everyone needs to pay their fair share of taxes, but the society feels that Montana can ill afford to change its tax law to bite the hand that's now helping to rejuvenate Montana's economic recovery. This law change could very well decrease tax revenue to Montana.

Mr. Spencer stated that the department should assume there is going to be a negative impact on inbound exchanges by passing this rule. If that is the case, he asked, how much can the department reasonably expect to gain in tax revenue by trying to enforce this rule verses the actual cost of enforcement?

Ms. Sundsted asked how much money the state receives from residual benefits of people buying and selling land from out of state into Montana.

RESPONSE NO. 8: Potential economic impacts are addressed by the department in the economic impact statement that will be filed with the Revenue and Transportation Advisory Committee.

Many of these comments appear to be based on a misreading of the proposed amendment, which does no more than address the question of whether gain attributable to the sale or other transfer of Montana real and tangible personal property somehow loses its "Montana source income" character when recognition and taxation of the gain is deferred.

Nothing in the proposed rule amendment provides for, or allows for, the implementation of tax liens or withholding of taxes when Montana property is relinquished for out-of-state property in a 1031 exchange transaction (an out-bound exchange). HB 799, which was proposed in the 2005 legislative session and would have provided these enforcement mechanisms, was not passed.

The proposed rule amendment affects only those who are nonresidents when the Montana source deferred gain is taxed for federal income tax purposes, requiring them to report the gain to Montana as Montana source income if and when the gain is recognized for federal income tax purposes.

A nonresident's deferred gain on an inbound exchange (out-of-state property relinquished in Montana property) is not sourced to Montana under the proposed rule amendment. This is clarified in New Rule I in MAR Notice No. 42-2-758, which is also published in this Register.

Regarding Mr. Green's comment, this rule amendment was designed specifically to enhance certainty with respect to Montana's tax laws by making it clear that gain realized on the transfer of Montana property is recognized for state tax purposes when that gain is recognized for federal tax purposes.

The proposed rule amendment does not change Montana's tax law. The definition of "Montana source income," including the express statement that Montana source income includes "gain attributable to the sale or other transfer of tangible property located in the state," was enacted in 2001 and was applicable for tax years beginning after 2001.

The proposed New Rule I found in MAR 42-2-758, which is also published in this Register, clarifies how the amount of recognized Montana source income is determined when and if the gain is recognized for federal income tax purposes.

The concerns raised in this comment are further addressed in the economic impact statement filed with the Revenue and Transportation Advisory Committee. An economic impact statement is not required until requested.

COMMENT NO. 9: Clayton Fiscus; Bruce Spencer, Attorney; Joseph Shevlin; Mike Green, Attorney; and Steve Turkiewicz, believe that the department's enforcement of Montana law will place Montana at odds with our neighboring states. They wondered how the change will interact with other states; and how the department will prevent double taxation from occurring.

Mr. Green's clients contend the proposed expansion of the definition of "Montana source income" is neither fair nor equitable. With respect to receiving a credit for taxes paid in another jurisdiction, Mr. Green stated that Montana law does not provide nonresidents a credit for taxes paid to other states so Montana will assess the new tax on nonresidents without credit for or consideration of taxes paid to the state of sale. This amendment creates an opportunity for the department to effectively expand taxation of residents on those same out-of-state sales. According to Mr. Green, it is undisputed that Montana will continue to assert its right to tax all of the proceeds of that sale for residents, and that the department may rely on the proposed amendment to disallow the credit for taxes paid to the other state for gains the department characterizes as "Montana source" gains.

Similarly, Mr. Shevlin questioned whether the credit for taxes paid to another state might not be available in this situation because the situs of the property is not within Montana.

Finally, Mr. Turkiewicz indicated that Montana will be attempting to tax nonresidents of Montana, raising questions of jurisdiction and nexus.

RESPONSE NO. 9: Idaho and Utah have similar sourcing statutes. Oregon and California also have similar sourcing provisions. Oregon has a statute that specifically addresses gain realized on 1031 and 1033 exchanges rather than all gain on the transfer of Oregon real property generally.

Regarding Mr. Turkiewicz's comment about jurisdiction and nexus, as noted by James Smith and Walter Hellerstein in "State Taxation of Federally Deferred income: The Interstate Dimension," 44 Tax Law Review 349, 357, "states plainly possess the power, which they generally exercise, to tax nonresidents upon income derived from sources within the state."

Regarding double taxation of gains from a 1031 transaction, the customary approach adopted by most states to prevent double taxation of income applies here as well. Residents are taxed on their world-wide income. If the income is also taxed by another state or country (which occurs only when the income is sourced to that state or country), the state of residence gives the taxpayer a credit for those taxes paid based on source so the income is not taxed twice.

States do not provide nonresidents with credits for taxes paid to other states; rather, states provide their own residents with credits for taxes paid to other states in which the taxpayer's income is sourced. This comports with the general principle of taxation which provides that the state of residency taxes residents on their worldwide income, while providing credits for taxes paid to other states where all or a portion of the taxpayer's income is sourced. As set out in proposed New Rule I, in MAR Notice No. 42-2-758, in this Register, the department will not apply the Montana source rule to a nonresident's gain attributable to another state.

The department anticipates nonresidents will claim credits in their state of residence to avoid double taxation.

The department's office of taxpayer assistance is responsible and available for assisting taxpayers with double taxation issues, including initiating a voluntary alternative dispute resolution process as provided by the Multistate Tax Commission's bylaws.

COMMENT NO. 10: Barbara Ranf, representing the Montana Chamber of Commerce; Scott Mendenhall, Representing House District 77; Floyd Blair, Lewistown, Montana; Joseph Shevlin, CPA; Joseph Unterreiner; Steve Pilcher; Russell Gowen; Max Hansen; Steve Turkiewicz; William Hughes, CPA; William Gowen; and Mike Green, Attorney, stated the department's interpretation of the law, as applied in this rule amendment, was not intended by HB 143. Many questioned the department's rulemaking authority, believed that the proposed rule represented an attempt to bypass the legislative process and amounted to a change in current law.

Mr. Hughes stated that if clarification is needed, it should be limited to adding installment sales only.

William Gowen asked if departmental files pertaining to any discussion related to HB 143 and 1031 out-bound exchanges are open for public review.

Russell Gowen asked why the department was reluctant to wait until the 2007 legislative session to try and introduce this change and why the urgency to propose the rule now.

Scott Mendenhall stated that the legislature makes laws not the executive branch. He urged the department to not adopt this proposal because it has far reaching effects. This needs a full legislative discourse, study and analysis.

Mr. Green and others argue that Montana has never before taxed gains from a nonresident's sale of property located outside Montana, and should not begin doing so without a clear expression of legislative intent through a statutory amendment. He stated that HB 143 was directed at correcting gaps that existed regarding Montana's taxation of nonresident owners of pass-through entities.

RESPONSE NO. 10: HB 143 generally revised the taxation of nonresidents and provided detailed definitions of "Montana source income." The bill addressed

both the direct taxation of nonresidents and their receipt of Montana source income from pass-through entities. Both purposes were clearly set out in the title of the bill. The proposed rule amendment is consistent with the plain language of the statute. Interpreting realized gain on the transfer of Montana property as part of a 1031 exchange or an installment sales transaction to be outside the definition would be inconsistent with the statutory definition. There is nothing in HB 143 or its legislative history that suggests, much less compels, interpreting those realized gains as outside the definition of "Montana source income."

All files that are not protected by the constitution or statute are open to the public for review.

The department agrees with Representative Mendenhall that the Legislature enacts law, not the executive branch agencies. However, if the department believes clarification of a law is necessary and the department has the statutory authority to clarify that law through the promulgation of a rule, the department has and will continue to adopt such rules. The department's broad rulemaking authority is provided in 15-1-201, 15-30-105, 15-30-305, MCA. The proposed rule is not a change in the law, but rather an interpretation of existing law. The prompt adoption of the rule is necessary to prevent the accrual of penalties and interest against nonresidents who may have been unaware or misinformed of their obligation to pay tax on Montana source income.

Rules of statutory construction require the department to interpret the provisions of 15-30-101, MCA, according to the plain language of the statute. When a statute is clear and unambiguous there is no need to consider the legislative intent and in this case the department believes 15-30-101, MCA, is clear and unambiguous. Therefore, the rule supports the plain language of the law and is interpretive in nature. Greg Petesch, Code Commissioner and Director of the Office of the Legislative Services Division, has concluded that this rule is interpretive in nature.

The law does not limit the Montana source income application to one particular deferral mechanism.

The statement that Montana has “never before taxed gains from a nonresident’s sale of property located outside the state” misstates this sourcing rule. Out of state gain is not taxed. Rather, the deferral of taxation of the Montana source income stops when the deferral stops for federal income tax purposes and that may occur when out-of-state replacement property is sold.

COMMENT NO. 11: Joseph Unterreiner; Barbara Ranf; Bruce Spencer, Attorney; Steve Turkiewicz; William Hughes, CPA; and Joseph Shevlin, CPA, stated that HB 799, which was proposed during the 2005 legislative session, was defeated and that this rule proposal is the same concept as that bill. Mr. Shevlin believed that it is unreasonable to cause a taxpayer (both resident and nonresident) to prepay the tax in order to avoid the complications that will eventually come about if this ruling is adopted. Further, some believed that if the rule is adopted, the department must withhold or require bond on these transactions, which would constitute "boot" and that would make the transaction taxable immediately.

RESPONSE NO. 11: House Bill 799 (2005) and this proposed rule amendment both relate to section 1031 deferred gain transactions. House Bill 799 would have changed the existing Montana tax treatment of nonresidents engaging in the transactions and provided for a new collection method. This proposed rule amendment does not change tax treatment; it only clarifies how the sourcing rules - rules that clarify the nature of income, not the incidence of taxation - apply under existing law to 1031 exchanges and installment sales. No new collection methods are implemented.

COMMENT NO. 12: Barbara Ranf and Mike Green, Attorney, believe if adopted, the rule should be prospective in nature.

RESPONSE NO. 12: The rule is simply an interpretation of current law. The department cannot make this rule prospective because the law was applicable for tax years beginning after December 31, 2001. To do what Ms. Ranf and Mr. Green proposed would exceed the department's authority by creating, by rule, an exemption for certain deferred gains that does not exist in law.

COMMENT NO. 13: Mary Whittinghill, President, Montana Taxpayers Association provided written comments in response to the comments provided by Senator Jim Elliott. She stated that in the 2001 Legislature the Montana Taxpayers Association supported HB 143, which was the result of many months of discussions among stakeholders. She stated that the sole intent of HB 143 was to clarify taxation of nonresident owners of pass-through entities. Ms. Whittinghill also requested the department take administrative notice and include in the record of the rule hearing the following items:

a. The minutes of the hearing of the House Taxation Committee on HB 143;

b. The minutes of the executive action of the House Taxation Committee on HB 143;

c. The minutes of the hearing of the Senate Taxation Committee on HB 143;

d. The minutes of the executive action of the Senate Taxation Committee on HB 143;

e. The fiscal note on HB 143; and

f. The analysis conducted by the department's pass-through entities ad hoc team as referenced in number 3 from the fiscal note on HB 143.

RESPONSE NO. 13: The department has taken administrative notice of the items requested by the Montana Taxpayers Association and made those items part of the record of this rule proceeding.

COMMENT NO. 14: Representative Scott Mendenhall, representing House District 77 testified at the hearing in opposition to the proposed amendment. He voiced concerns about the timing of the hearing during the holiday and that he felt notice had not been provided according to the Montana Administrative Procedure Act. He stated that it was cloaked in secrecy by the terminology on the website.

RESPONSE NO. 14: As read into the record, prior to Representative Mendenhall's arrival at the hearing, MAR Notice No. 42-2-754 was filed, published, noticed, posted to the department's website, and mailed to all interested parties in full compliance with the Montana Administrative Procedure Act.

COMMENT NO. 15: Bruce Spencer, Attorney; Steve Turkiewicz; and Mike Green, Attorney, argued that the attempt to tax the Montana portion of gain in an outbound 1031 exchange is a significantly new enforcement procedure for the department.

RESPONSE NO. 15: The proposed rule amendment simply represents the enforcement of current law which requires nonresidents with Montana source income to file returns and pay Montana tax as provided in 15-30-105, MCA.

COMMENT NO. 16: Joseph Shevlin, CPA; and Mike Green, Attorney, believe that the department should not attempt to make these changes piecemeal. They should only propose rule changes that consider all the aspects of compliance/enforcement issues.

RESPONSE NO. 16: Again, the department is proposing New Rule I in MAR Notice No. 42-2-758, also contained in this Register, to clarify how the amount of recognized Montana source income is determined, and how cash and other boot and exchange expenses are accounted for.

COMMENT NO. 17: Mike Green, Attorney and Max Hansen do not believe any confusion exists, and disagreed that any questions of interpretation have arisen.

RESPONSE NO. 17: A review of the comments presented to the department during this rule process and responded to in this notice demonstrates the confusion that exists regarding the application of this statute.

COMMENT NO. 18: Amber Sundsted asked how the new rules will address the transfer of underlying royalties as it pertains to mineral rights, especially in the case that no physical asset (such as land) actually changes hands. Additionally, what if the royalties decipher between specific minerals and not a complete underlying royalty on all minerals and gases and transfer is purely paper and not physical property.

RESPONSE NO. 18: The department does not believe this comment is relevant to the current proposed rule amendment. While this rule would apply to transfer of a mineral estate, the sourcing rule for gain on transfer of intangible property and for royalties are different and located in 15-30-101(18)(a)(iii) and (ix), MCA, respectively.

COMMENT NO. 19: Amber Sundsted inquired about the purchase of air rights for buildings in the urban centers of Montana. She stated that currently, property includes air and ground rights above it and below it. What if there is a

situation where there is a measured sale of air above the property but no physical asset is transferred.

RESPONSE NO. 19: The proposed amendment does not speak to this issue and that subject would have to be explored further before the department could provide an answer.

7. For further clarification, the department amends ARM 42.2.304 as follows:

42.2.304 DEFINITIONS The terms used by the department are, in great part, defined in Titles 15, 16, 39, and 72, MCA. In addition to these statutory definitions, the following definitions apply to ARM Title 42, unless context of a particular chapter or rule provides otherwise:

(1) through (28) remain the same.

(29) "Montana source income" is defined in 15-30-101, MCA, and the statute should be consulted to determine whether particular income is "Montana source income" obligating a nonresident to file a Montana individual income tax return, and a pass-through entity to file a Montana information return. In general, all income from work performed in the state, real or personal property located in the state, and business conducted in the state is Montana source income. ~~For example:~~

~~(a)~~ Gain realized from transfer of real or TANGIBLE personal property located in the state remains Montana source income notwithstanding that recognition of the gain is deferred and regardless of the deferral mechanism. FOR EXAMPLE:

~~(b)~~(A) Gain realized from an installment sale of Montana property retains its Montana source income character and must be reported as the payments are received.

~~(c)~~(B) Gain realized on the transfer of Montana property in a like-kind exchange retains its Montana source income character and must be reported when the gain is recognized in a subsequent taxable transaction.

(30) through (53) remain the same.

AUTH: 15-1-201, 15-30-305, 15-31-501, 16-1-303, 16-10-104, and 16-11-103, MCA

IMP: 15-1-102, 15-1-601, 15-30-101, 15-30-105, 15-30-131, 15-30-1101, 15-30-1102, 15-30-1111, 15-30-1112, 15-30-1113, 15-30-1121, and 15-31-101 and Title 15, chapter 31, part 3, MCA

8. A Petition for an Economic Impact Statement was received from Representative Bob Lake which contained the appropriate number of signatures required by 2-4-405, MCA, on December 23, 2005 concerning the rule action contained in MAR Notice No. 42-2-754. The department has prepared its response to the Petition providing a copy to the Revenue and Transportation Advisory Interim Committee and incorporating it in this adoption notice below. Items 9 through 20 address the Economic Impact Statement.

9. Economic Impact Statement - Section 2-4-405, MCA, Description of Proposed Amendment to ARM 42.2.304 - Among other things, House Bill 143 of the 2001 Legislative Session amended MCA, 15-30-101 to provide for the definition of "Montana source income" for individual income tax purposes. As defined in statute, Montana source income includes "…gain attributable to the sale or other transfer of tangible property located in the state…" So Montana tax law is plain, clear and unambiguous. Montana tax law requires equal treatment of residents and nonresidents with respect to gains on the sale or other transfer of property located in this state, regardless of whether the gain is deferred for federal and state tax purposes.

10. However, to further assist in taxpayer understanding, and to clear up any previous notions regarding the taxable nature of gain attributable to certain specific types of transactions, the proposed amendment to ARM 42.2.304 reinforces current law by stating succinctly:

(a) first, that: "Gain realized from the transfer of real or personal property located in the state remains Montana source income notwithstanding that recognition of the gain is deferred and regardless of the deferral mechanism;" and

(b) second, that: "Gain realized on the transfer of Montana property in a like-kind exchange retains its Montana source income character and must be reported when the gain is recognized in a subsequent taxable transaction."

11. For individual income tax purposes, Montana ties its definition of adjusted gross income directly to the federal definition of adjusted gross income. The law is clear that once any gain from the sale or other transfer of tangible property located in the state is recognized for federal tax purposes, it also is recognized for state tax purposes. The department would act to ensure compliance with the law, regardless of whether the proposed amendment to rule were to be adopted or not.

Hence, this rule amendment is purely to provide notification to taxpayers that any gain attributable to the sale or other transfer of tangible property located in the state, regardless of whether recognition of the gain is deferred, and regardless of the deferral mechanism used to defer that gain (including a 1031 exchange mechanism), constitutes taxable gain for Montana individual income tax purposes once that gain is recognized for federal income tax purposes. Furthermore, that gain is recognized regardless of whether the taxpayer is a resident or a nonresident.

Montana's law embodies sound economic policy by ensuring that:

(a) out-of-state investors and Montana investors are treated equally in the purchase and ownership of Montana property, with neither group enjoying a relative tax advantage;

(b) there is no Montana tax incentive for persons to invest in a non-income tax state through an outbound 1031 exchange and then move to that state to avoid Montana tax; and

(c) the cost of public services enjoyed by both residents and nonresidents earning income from the ownership and sale of property in Montana will be assigned fairly to both residents and nonresidents.

12. It is the policy of this department to ensure that both residents and nonresidents understand and comply with the law as written. If the department failed to seek equitable compliance by both residents and nonresidents, then:

(a) out-of-state investors would be favored over Montana investors in the purchase and ownership of Montana property, with the out-of-state investors enjoying a special tax advantage financed at the expense of Montana taxpayers;

(b) an illogical incentive would exist for persons to leave and invest outside Montana and to do so illegally in violation of Montana law;

(c) the cost of public services would be shifted unfairly from nonresidents to residents, or, alternatively, Montana could experience a reduction in the level of public services provided; and

(d) the department would be, in an act of malfeasance, creating an illegal, *de facto* tax exemption for nonresidents for deferred gains on the sale of Montana property.

13. Economic Impact Statement for Proposed Amendment to ARM 42.2.304. Following sections of this document, as required by 2-4-405, MCA, provide a statement of economic impact for the proposed amendment to ARM 42.2.304 relating to Montana source income.

14. Classes of Persons Affected - The following classes of persons potentially could be affected by this proposed rule amendment:

(a) Nonresidents who have received installment payments from the sale of real or tangible personal property located in Montana; who have not filed Montana individual income tax returns reporting the gain attributable to the sale as Montana source income; and would rely on the absence of the rule amendment to assert that they did not purposefully or knowingly fail to file a return or report or pay Montana tax with respect to the Montana source income.

(b) Pass-through entities that have received installment payments from the sale of real or tangible personal property located in Montana; that have not filed Montana pass-through entity information returns reporting the gain attributable to the sale as Montana source income; and would rely on the absence of the rule amendment to assert that they did not purposefully or knowingly fail to file a return or withhold from owners of the entity who are not resident individuals with respect to the gain.

(c) Owners of pass-through entities who have not filed Montana returns or paid tax with respect to their share of the entity's Montana source income.

(d) Nonresidents who engage in 1031 exchanges where the deferral of the gain has ended (or will end at some point in the future), and have not filed (or may not file) a Montana income tax return properly reporting the recognized gain attributable to property located in the state, because they fail to properly understand the requirements to file under current law.

(e) Individuals or firms who have advised persons in the above four classes that they have no obligation to report and pay Montana tax on any realized gain when and if recognized for federal income tax purposes.

(f) All other individual income taxpayers.

(g) All Montana residents who in the future will purchase Montana property.

15. Probable Economic Impact - Adoption of this rule amendment will not have any bearing on the manner, or the extent to which the department will enforce the provisions of Title 15 of the Montana Code Annotated. Because this amendment is of an informative nature, the department believes that there are no wide-ranging impacts on economic development associated with the amendment; particularly if economic development is labeled in terms of the creation of new or better paying jobs, or the retention of existing jobs.

Beyond the impact of the proposal on general economic development in the state, the proposed amendment to rule could affect certain individuals economically.

In the recent past, there appears to have existed a misconception that nonresidents are not subject to Montana tax when Montana property acquired in a 1031 exchange is subsequently transferred in a transaction where gain is recognized for federal tax purposes. That is unfortunate for several reasons.

First, taxpayers should have every opportunity to be fully informed of their legal obligations under the law so that they can act and plan according to their best economic interests, and at the same time avoid penalties and interest on tax obligations legally due but not paid because of a misunderstanding regarding the law.

Second, opponents of the proposed rule amendment have suggested that proper enforcement of the rule and the current law pertaining to 1031 exchanges will dampen economic development by providing a new disincentive for nonresidents to engage in inbound 1031 exchanges in Montana. But for those nonresident taxpayers who live in states that have income taxes and provide their residents with a credit for taxes paid to other states, there should be no substantive change in total tax paid, but rather a transfer of a portion of total tax liability from the nonresident state to Montana. The taxpayer's total tax bill should remain relatively unchanged.

In those cases where the nonresident is a taxpayer in a state with no income taxes, any short-term impact will derive not from the law but from past inadequate advice provided on the part of tax practitioners and others with fiduciary responsibilities involved in 1031 exchanges.

Any presumed reduction in long-term economic benefits is questionable on the grounds that:

(a) there is nothing guaranteeing that these types of transactions will be structured to provide for enhanced economic development purposes, as opposed to simply providing for a tax benefit on speculative gains from merely holding real estate for investment in anticipation of market appreciation; and

(b) providing nonresidents with a special tax subsidy (economic advantage) in the purchase of Montana property enables them to outbid Montanans in the purchase of property.

To the extent that past transactions involving nonresidents have been structured using 1031 exchanges in substantial part in order to escape state taxation, resources may have been shifted to economic activities that otherwise would not have occurred had the legal obligation to pay tax been fully understood. In other words, past misunderstanding of the law likely has resulted in several instances in which market distortions brought about by the perceived nontaxability of certain transactions has resulted in the inefficient allocation of scarce resources.

Third, there has been much discussion in recent months regarding the real estate "bubbles" in certain parts of the country, including but not limited to Florida and parts of California. For example, a January 23, 2006 article in *CNNMoney* reported that an analysis by Local Market Monitor, a real estate market research provider, indicated that 79 of 100 surveyed markets around the country reported prices for housing in excess of what Local Market Monitor calculated as a fair market value. These are areas where housing prices greatly exceed the underlying intrinsic value of the properties.

Nonresident owners of these properties may look to Montana to acquire property in a 1031 exchange in order to lock in greatly appreciated current values prior to any "burst" in the bubble. Using their accumulated wealth, coupled with the immediate deferral of tax provided by the 1031 exchange mechanism and the misconception that no tax will be due the state upon disposition of the property, these taxpayers are in a highly competitive economic position that allows them to outbid neighboring Montanans who also may be considering purchasing Montana property. In effect this ends up driving up real estate prices in Montana by effectively exporting the foreign real estate market "bubble" to Montana. While the one Montanan who exchanges (sells) the Montana property may be better off than he otherwise may have been, all other Montanans suffer the consequences of higher prices for real estate.

Take the case of a Montana rancher who is considering purchasing his neighbor's farm but gets outbid by a nonresident because the nonresident has greater accumulated wealth and is laboring under the misconception that taxes to the state are not due upon disposition of the property in a taxable transaction. After acquiring it, the new nonresident owner of the ranch decides to put the property into personal recreational use, rather than continuing to use it for agricultural purposes.

This may have several adverse effects. First it reduces gross state product as the productive capacity of the land is no longer being used for agricultural purposes, but rather is used for personal enjoyment. Second, hunting and fishing access previously provided to Montana residents may no longer be granted by the absentee owners. Third, landowner relationships can become strained when local populations of deer, elk, and antelope begin to take refuge on the nonresident, absentee owner's recreational property during hunting hours, but move to neighboring ranch and farm lands during post-hunting, evening feeding hours to graze on growing crops and haystacks, costing adjacent farmers and ranchers thousands of dollars in lost income. Staff at the Department of Fish, Wildlife and Parks indicate to the department that greater difficulties in landowner/sportsman relations occur with respect to nonresident, absentee owners as compared to residents owning Montana land.

The new amendment to rule, by adding certainty to the legal tax obligations deriving from 1031 transactions entered into by nonresidents, will very likely prevent certain 1031 transactions otherwise entered into purely for tax purposes; enhance efficiencies in the allocation of scarce market resources; mitigate upward pressure on Montana real estate values, making property more affordable for ordinary Montanans; allow the continued use of agricultural land for agricultural purposes; and mitigate against concentrated wild game damage to crops, which can lead to

contentious landowner disputes that frequently require resolution through special regulatory intervention efforts by the Department of Fish, Wildlife and Parks.

The new amendment to rule also ensures that taxpayers who otherwise may not be certain of their legal liabilities may, by being better informed of the specifics of the law, properly file tax returns. This will allow them to avoid certain late payment or late filing penalties that otherwise might occur.

Furthermore, a clear understanding of the legal requirements to file leads to enhanced compliance with the law. This helps to close the "tax gap" in Montana, and mitigates against the shifting of the overall tax burden to other classes of taxpayers (e.g., all other individual income taxpayers).

16. Probable Costs of Implementation/Enforcement - Again, the department will continue to devote resources to tax compliance and enforcement of the provisions of Title 15 regardless of whether this rule is adopted or not.

However, to the extent that the rule change results in a better understanding of the law, and increased compliance with the law, the amount of enforcement effort required to administer matters related to 1031 exchanges can be reduced and reallocated to other enforcement issues.

17. Costs/Benefits of Proposed Rule - The benefits of the proposed rule have been discussed in previous sections of this economic impact statement and include, among other things:

(a) taxpayers are provided a higher degree of certainty with respect to their filing obligations, which in turn allows them to avoid payment of additional penalties and interest;

(b) to the extent that compliance is enhanced, the department can reallocate compliance efforts to other areas of tax administration; and

(c) any enhanced compliance brought about by adoption of this rule mitigates the tendency to shift the total tax burden required to fund a given level of government services to other classes of taxpayers.

There are no significant costs associated with the proposed amendment to rule.

18. Less Costly / Less Intrusive Methods Considered - There are no less costly or less intrusive methods of achieving the purpose of the proposed rule which, again, is simply to better inform the public of the requirements of current law.

19. Alternative(s) Considered to Proposed Rule -There are three alternatives available to the revenue administration agency.

The first alternative is the rule as proposed, the benefits and costs of which are discussed in this document.

The second alternative is to proceed to enforcement of the law, regardless of past practices of previous administrations, without informing the public of the specifics of the law. This could result in continued uncertainty for taxpayers regarding what the law may be, and could prove more costly by:

(a) requiring additional enforcement and compliance activities on the part of the administering agency, and

(b) having taxpayers incur penalties and interest payments that otherwise may have been avoided.

The third alternative, which has not and will not be considered by the department, but is being widely promoted by critics of the proposed rule, is to continue to ignore the law and the compliance efforts needed to enforce the law. In effect, this option constitutes (at best) nonfeasance, or (at worst) malfeasance on the part of the administering agency.

Not only would this alternative act to undermine the integrity of the tax system, but could further act to encourage noncompliance with and an erosion of respect for the law. This could further encourage noncompliance in other areas of the tax law as well, resulting in a shift of the overall tax burden to wage and salary earners who have their tax liabilities paid immediately through withholding on their incomes.

By endorsing this approach, the staunchest critics of the proposed rule are in effect advocating an *exemption* from tax on gains for nonresidents, rather than a *deferral* of tax on that gain. This would act to give nonresidents a competitive advantage in the purchase and sale of Montana properties relative to resident taxpayers.

20. Efficiency in Allocating Public and Private Resources -The rule is believed to be the least intrusive, least costly means of providing for increased tax compliance in a complex area of tax law; hence, it is the most efficient manner of achieving the goal of increased compliance, while being the least burdensome to the taxpayer, and the lowest cost alternative for the tax agency.

In addition, requiring that nonresidents be subject to the same tax treatment as residents minimizes distortions in investment decisions, adds equity to Montana's tax structure, and ensures that the department, when administering the laws, provides all affected persons with the equal protection of the law under the Montana Constitution.

21. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at www.mt.gov/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/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State January 30, 2006

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I (ARM 42.4.205), II (ARM 42.4.206), and III (ARM 42.4.207); amendment of ARM 42.4.201, 42.4.203, 42.4.204 and 42.4.4109; and repeal of ARM 42.4.4110 relating to alternative and wind energy credits	)))))))	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On December 22, 2005, the department published MAR Notice No. 42-2-756 regarding the proposed adoption, amendment, and repeal of the above-stated rules relating to alternative and wind energy credit at page 2641 of the 2005 Montana Administrative Register, issue no. 24.

2. A public hearing was held on January 18, 2006, to consider the proposed adoption, amendment, and repeal. No one appeared at the hearing to testify and no comments were received. However, the department is proposing to amend ARM 42.4.204 further to clarify questions and comments from taxpayers seeking guidance about these credits. This amendment is intended to clarify the applicability of the credits when a heating or cooling system is replaced. The rule is amended with the following changes:

42.4.204 DETERMINATION OF CAPITAL INVESTMENT FOR ENERGY CONSERVATION (1) through (1)(o) remain as proposed.

(p) installation of new domestic hot-water, heating, or cooling systems, so long as the replacement or installation of the new system reduces the waste or dissipation of energy, or reduces the amount of energy required.

(2) IF THE NEW SYSTEM DESCRIBED IN (1)(p) DIFFERS IN STYLE OR TYPE FROM THE PREVIOUS SYSTEM, SUCH AS, IF ONE OR MORE WINDOW AIR-CONDITIONING UNITS IS REPLACED WITH A CENTRAL AIR SYSTEM, THE NEW SYSTEM MUST EXCEED THE REQUIREMENT IN ARM 42.4.206 (1)(c).

(3) IF THE REPLACEMENT SYSTEM EXCEEDS THE ESTABLISHED STANDARDS, ONLY THE ADDITIONAL COST SHALL BE CONSIDERED WHEN COMPUTING THE CREDIT.

(2) through (4) remain as proposed but are renumbered (4) through (6).

AUTH: 15-32-105, MCA
IMP: 15-32-105 and 15-32-109, MCA

3. The department adopts New Rule I (ARM 42.4.205), New Rule II (ARM 42.4.206), and New Rule III (ARM 42.4.207); amends 42.4.201, 42.4.203, and 42.4.4109; and repeals 42.4.4110 as proposed. The department amends ARM 42.4.204 with the amendments listed above.

4. An electronic copy of this Adoption Notice is available through the Department's site on the World Wide Web at www.mt.gov/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/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State January 30, 2006

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 or Register) 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

2. Go to cross reference table at end of each Number and title which lists MCA section numbers and Department 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 September 30, 2005. This table includes those rules adopted during the period September 1, 2005 through December 31, 2005 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 or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2005, 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 2004 and 2005 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

(Public Employees' Retirement Board)

I-III Implementation of Detention Officer Transfer to Sheriffs' Retirement System, p. 1329, 1670

I-III Implementation of Detention Officer Transfer to Sheriffs' Retirement System, p. 725, 1021

I-VII When Salary Deferrals under a Cafeteria Plan Should be Treated as Compensation, p. 1626, 2241

2.43.1002 Investment Policy Statement for the Defined Contribution Retirement Plan, p. 1461, 1907

2.43.1801 and other rule - Plan Document and Investment Policy Statement for the 457 Deferred Compensation Plan, p. 1458, 1908

(State Compensation Insurance Fund)

2.55.320 Classifications of Employments, p. 1944, 2649

(State Lottery Commission)

2.63.201 and other rules - State Lottery's Procedures - Retailers, Licensing, Scratch Tickets and Prizes, p. 1

AGRICULTURE, Department of, Title 4

I-III Cherry Research and Marketing Development Program, p. 771, 1279

4.13.1001A and other rule - State Grain Lab Fee Schedule, p. 775, 1280

(Montana Agriculture Development Council)

4.16.303 and other rules - Agricultural Marketing Development Program, p. 1532, 1909

STATE AUDITOR, Title 6

I-XV Small Business Health Insurance Purchasing Pool - Premium Assistance and Premium Incentive Payments - Tax Credits, p. 1464, 1771

6.6.504 and other rules - Medicare Supplements, p. 1131, 1537, 1672, 1910

6.6.6811 and other rules - Captive Insurance Companies, p. 861, 2448

6.6.8301 Updating References to the NCCI Basic Manual for New Classifications for Various Industries, p. 1947

6.6.8501 and other rules - Viatical Settlement Agreements, p. 1636, 2650

COMMERCE, Department of, Title 8

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