

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 16

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

Page Number

TABLE OF CONTENTS

NOTICE SECTION

STATE AUDITOR, Title 6

6-148 (Classification Review Committee) Notice of Proposed Amendment - Updating References to the NCCI Basic Manual for New Classifications for Social Services Operations and Bottling Operations. No Public Hearing Contemplated. 1874-1876

6-149 Notice of Public Hearing on Proposed Amendment, Repeal and Adoption - Viatical Settlement Agreements. 1877-1886

FISH, WILDLIFE, AND PARKS, Department of, Title 12

12-308 (Fish, Wildlife, and Parks Commission) Notice of Public Hearing on Proposed Adoption - Hunting Season Extensions. 1887-1890

TRANSPORTATION, Department of, Title 18

18-105 Notice of Proposed Adoption - Acceptance and Use of Electronic Records and Electronic Signatures. No Public Hearing Contemplated. 1891-1896

CORRECTIONS, Department of, Title 20

20-7-32 Notice of Public Hearing on Proposed Adoption - Establishment of the Eastmont Chemical Dependency Treatment Program in Glendive, Montana, for Fourth Offense DUI Offenders. 1897-1902

JUSTICE, Department of, Title 23

23-10-149 Notice of Public Hearing on Proposed Amendment - Update the List of Precursors to Dangerous Drugs. 1903-1905

LABOR AND INDUSTRY, Department of, Title 24

24-30-186 Notice of Public Hearing on Proposed Adoption - Safety and Health in Mines Other than Coal Mines. 1906-1908

24-30-187 Notice of Public Hearing on Proposed Amendment - Occupational Safety Matters in Public Sector Employment. 1909-1913

Pages 1914 - 1916 pulled at agency request.

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-334 Notice of Proposed Repeal - Minimum Standards for all Health Care Facilities: Blood Bank and Transfusion Services. No Public Hearing Contemplated. 1917-1918

REVENUE, Department of, Title 42

42-2-736 Notice of Public Hearing on Proposed Adoption and Amendment - Pass-through Entities. 1919-1924

42-2-737 Notice of Public Hearing on Proposed Amendment and Repeal - Cigarette and Tobacco Taxes. 1925-1944

SECRETARY OF STATE, Title 44

44-2-125 Notice of Public Hearing on Proposed Adoption - Filing of Certification Authorities. 1945-1946

RULE SECTION

ADMINISTRATION, Department of, Title 2

NEW Trust Company Examination Fees - Required Bond Amounts for the Licensing of Escrow Businesses. 1947-1948

ENVIRONMENTAL QUALITY, Department of, Title 17

AMD (Board of Environmental Review) (Solid Waste) Annual Operating License Required. 1949

JUSTICE, Department of, Title 23

NEW Criminal Justice Information. 1950-1954

LABOR AND INDUSTRY, Department of, Title 24

AMD (Board of Dentistry) Definitions - Fee
NEW Schedule - Dental Hygiene Local Anesthetic
Agent Certification - Application to Convert
an Inactive Status License to an Active
Status License - Grounds for Denial of a
License - Dentist Licensure by Credentials
for Specialists - Reinstatement of a License
for Non-payment of Renewal Fee - Licensure of
Retired or Nonpracticing Dentist or Dental
Hygienist for Volunteer Service. 1955-1959

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

Corrected Notice of Adoption - Outdoor
Behavioral Program. 1960-1964

REVENUE, Department of, Title 42

NEW Personal Income Taxes, Credits, Incentives,
AMD and Exemptions.
TRANS
REP 1965-1971

AMD Liquor Licensing. 1972-1973

NEW Medical Savings Accounts for Personal Income
AMD Taxes. 1974-1978

SECRETARY OF STATE, Title 44

AMD (Commissioner of Political Practices)
NEW Lobbying and the Regulation of Lobbying. 1979-1993

SPECIAL NOTICE AND TABLE SECTION

Function of Administrative Rule Review Committee. 1994-1995

How to Use ARM and MAR. 1996

Accumulative Table. 1997-2004

Boards and Councils Appointees. 2005-2015

Vacancies on Boards and Councils. 2016-2026

BEFORE THE CLASSIFICATION REVIEW COMMITTEE
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PROPOSED
amendment of ARM 6.6.8301,)	AMENDMENT
concerning updating references)	
to the NCCI Basic Manual for)	NO PUBLIC HEARING
new classifications for)	CONTEMPLATED
Social Services Operations)	
and Bottling Operations)	

TO: All Concerned Persons

1. On September 13, 2004, the Montana Classification Review Committee proposes to amend ARM 6.6.8301 concerning updating references to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance 2001 ed., and adoption of new classifications that apply to Social Services Operations and Bottling Operations.

2. The Montana Classification Review Committee 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 Montana Classification Review Committee no later than 5:00 p.m., on September 1, 2004, to advise us of the nature of the accommodation needed. Please contact the Montana Classification Review Committee, attn: Tim Hughes, National Council on Compensation Insurance, Inc., 10920 W. Glennon Dr., Lakewood, Colorado 80226; telephone (303) 969-9456; fax (303) 969-9423; e-mail tim_hughes@ncci.com.

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

6.6.8301 ESTABLISHMENT OF CLASSIFICATION FOR
COMPENSATION PLAN NO. 2 (1) The committee ~~hereby~~ adopts and incorporates by reference the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance, ~~1996, 2001~~ ed., as supplemented through ~~March 1, 2001~~ June 18, 2004, which establishes classifications with respect to employers electing to be bound by compensation plan No. 2 as provided in Title 39, chapter 71, part 22, MCA. A copy of the Basic Manual for Workers Compensation and Employers Liability Insurance is available for public inspection at the office of the Commissioner of Insurance, 840 Helena Ave., ~~P.O. Box 4009,~~ Helena, MT ~~59620-4009~~ 59601. Copies of the Basic Manual for Workers Compensation and Employers Liability Insurance may be obtained by writing to the Montana Classification Review Committee in care of the National Council on Compensation Insurance, Inc., ~~7220 West Jefferson Avenue, Suite 310,~~ 10920 W. Glennon Dr., Lakewood, Colorado ~~80235~~ 80226. Persons obtaining a copy of the Basic Manual for Workers Compensation

and Employers Liability Insurance must pay the committee's cost of providing such copies.

(2) remains the same.

AUTH: 33-16-1012, MCA

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

4. REASONABLE NECESSITY STATEMENT: It is necessary to amend ARM 6.6.8301 to update references to the NCCI Basic Manual for Workers Compensation and Employers Liability. Changes to the NCCI Basic Manual for Workers Compensation and Employers Liability affect classifications that apply to Social Services Operation and Bottling Operations. The proposed classifications changes are as follows:

a. Code 8864 - Social Services Organization, All Employees, Salespersons and Drivers. This single classification will replace Code 8861 - Charitable or Welfare Organization - Professional Employees & Clerical and Code 9110 - Charitable or Welfare Organization - All Other Employees. During the next three rate filings, the loss cost rates and rating values for codes 8861 and 9110 will be blended together. With the rate filing on or after October 1, 2007, codes 8861 and 9110 will be discontinued and replaced with a Code 8864. At this same rate filing, a new classification will be introduced, Code 8842 - Group Homes, All Employees, Salespersons and Drivers. This newly established classification will include group homes, group foster homes, halfway houses that provide rehabilitation services, shelters, and independent supportive living homes for mentally, physically or emotionally challenged individuals.

b. Code 2157 - Bottling - All Operations & Route Supervisors, Drivers. This code is being amended to include operations formerly classified to Code 2156 - Bottling - Not Carbonated Liquids or Spirituous Liquors & Route Supervisors, Drivers.

5. This amendment is intended to become effective October 1, 2004.

6. Concerned persons may present their data, views, or arguments concerning the proposed amendment in writing to Tim Hughes, National Council on Compensation Insurance, Inc., 10920 W. Glennon Dr., Lakewood, Colorado 80226, or by e-mail to tim_hughes@ncci.com and must be received no later than 5:00 p.m., September 16, 2004.

7. 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 Tim Hughes, National

Council on Compensation Insurance, Inc., 10920 W. Glennon Dr., Lakewood, Colorado 80226, or by e-mail to tim_hughes@ncci.com no later than September 16, 2004.

8. If the committee 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 15 businesses based on the 150 persons who have indicated interest in the rules of this committee and who the committee has determined could be directly affected by these rules.

9. The Montana Classification Review Committee maintains a list of concerned persons who wish to receive notices of rulemaking actions proposed by this committee. 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 specify that the person wishes to receive notices regarding rulemaking actions of the Classification Review Committee. Such written requests may be mailed or delivered to Tim Hughes, National Council on Compensation Insurance, Inc., 10920 W. Glennon Dr., Lakewood, Colorado 80226, or by e-mail to tim_hughes@ncci.com, or by completing a request form at any rules hearing held by the Montana Classification Review Committee.

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

CLASSIFICATION
REVIEW COMMITTEE

By: /s/ Tom Clarke
Tom Clarke
Review Committee Chairperson

By: /s/ Alicia Pichette
Alicia Pichette
Rule Reviewer

Certified to the Secretary of State on August 9, 2004.

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

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING
amendment of ARM 6.6.8501,	)	ON PROPOSED AMENDMENT,
6.6.8505, 6.6.8507, and	)	REPEAL AND ADOPTION
6.6.8508, and the proposed)	
repeal of ARM 6.6.8506, and)	
the proposed adoption of New)	
Rules I through III, relating)	
to viatical settlement)	
agreements)	

TO: All Concerned Persons

1. On September 9, 2004, at 10:00 a.m., a public hearing will be held in the 2nd floor conference room, State Auditor's Office, 840 Helena Avenue, Helena, Montana, to consider the proposed amendment, repeal and adoption of the above-stated rules pertaining to viatical settlement agreements.

2. The State Auditor's Office 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 office no later than 5:00 p.m., September 1, 2004, to advise us as to the nature of the accommodation needed. Please contact Darla Sautter, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601; telephone (406) 444-2726; facsimile (406) 444-3497; or e-mail to dsautter@state.mt.us.

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

6.6.8501 DEFINITIONS In addition to the definitions in 33-20-1302, MCA, the following definitions apply to ~~these rules~~ this subchapter:

(1) ~~"Filed" means the date that the commissioner receives a form.~~ "Chronically ill" means:

(a) being unable to perform at least two activities of daily living (i.e., eating, toileting, transferring, bathing, dressing or continence);

(b) requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or

(c) having a level of disability similar to that described in (1)(a) as determined by the secretary of health and human services.

(2) ~~"Identifying information" means the same as "personal information" as defined in Title 33, chapter 19, MCA~~ "Insured" means the person covered under the policy being considered for viatication.

(3) ~~"Individual" means a natural person~~ "Life expectancy" means the mean of the number of months the individual insured under the life insurance policy to be viaticated can be expected to live as determined by the viatical settlement provider considering medical records and appropriate experiential data.

(4) ~~"Insured" means the terminally ill individual covered under a policy~~ "Net death benefit" means the amount of the life insurance policy or certificate to be viaticated less any outstanding debts or liens.

(5) ~~"Insured's family" means the insured, spouse, children, and anyone that lives in the house with the insured.~~ "Patient identifying information" means:

(a) an insured's address, telephone number, facsimile number, electronic mail address;

(b) photograph or likeness;

(c) employer, employment status, social security number;
or

(d) any other information that is likely to lead to the identification of the insured.

(6) ~~"Financing entity" means individual or institutional entities who may or will purchase a viatical settlement contract from a viatical settlement provider~~ "Terminally ill" means having an illness or sickness that can reasonably be expected to result in death in 24 months or less.

(7) ~~"Policy" means an individual life insurance policy, a rider to an individual life insurance policy, a certificate or a rider to a certificate evidencing coverage under a group life insurance policy.~~

(8) ~~"Terminal illness" means having an illness where death is reasonably expected in 24 months or less.~~

(9) ~~"Viator" means an individual who:~~

~~(a) is the owner of a life insurance policy or is the certificate holder under a group policy, insuring the life of an individual with a terminal illness; and~~

~~(b) negotiates with, provides information to, or enters into a viatical settlement with a provider or broker. The term does not include a viatical settlement provider that sells, transfers, or pledges a policy that it has purchased from a viator.~~

AUTH: 33-1-313, 33-20-1315, MCA

IMP: 33-20-1302, MCA

6.6.8505 DISCLOSURE OF INFORMATION BROCHURE (1) A viatical settlement provider or viatical settlement broker shall provide a viator with a disclosure of information brochure containing the disclosures required in 33-20-1311, MCA, and this rule. A provider or broker shall provide this brochure before or concurrent with taking an application for a viatical settlement contract A disclosure document containing the disclosures required in 33-20-1311, MCA, and this rule, shall be provided before or concurrent with taking an application for a viatical settlement contract.

(2) ~~A brochure must contain:~~ The disclosure document must contain:

(a) ~~the following language: "All medical, financial, and identifying information solicited or obtained by a viatical settlement provider or viatical settlement broker about an insured's family is confidential.";~~ or personal information solicited or obtained by a viatical settlement company or viatical settlement broker about a viator and insured, including the viator and insured's identity or the identity of family members, a spouse or a significant other, is confidential."

~~(b) the following language: "After a viator enters into a viatical settlement contract, a provider may only check on the health of the insured, who has a life expectancy of more than one year, once every three months, and with an insured who has a life expectancy of less than one year, once every month.";~~

~~(c) language advising that a viatical settlement provider may provide information obtained from a policyholder or certificate holder to a financing entity but must follow the provisions in Title 33, chapter 19, MCA; and~~

~~(d) language advising a viator and insured that a viatical settlement provider could sell or otherwise transfer a policy that is the subject of a viatical settlement to a financing entity unknown to a viator and insured, without a viator's consent.~~

(3) ~~A provider or broker shall detach and retain an acknowledgment page from a brochure. A prospective viator shall sign and have notarized the attachment page, in which a prospective viator acknowledges that the viator~~ The medical, financial, or personal information solicited or obtained by a viatical settlement company, or viatical settlement broker about a viator and insured may not be disclosed in any form to any person, unless disclosure:

~~(a) has knowledge that the insured has a terminal illness;~~ is necessary to effect the viatical settlement between the viator and the viatical settlement provider; and

~~(b) has received and read a disclosure of information brochure;~~ the viator and insured have provided prior written consent to the disclosure.

~~(c) has received and read all the documents used to effect a viatical settlement; and~~

~~(d) is entering into a viatical settlement knowingly and voluntarily.~~

(4) ~~A brochure must disclose what effect a viatical settlement will have on the payment of premiums and disposition of proceeds, cash values and dividends, and whether a policy that is the subject of a viatical settlement contains a provision for double or additional indemnity for accidental death or contains riders or other provisions insuring the lives of spouses, family members or anyone else other than the insured~~ The disclosure shall include advising the viator and insured that the information may be provided to

financing entities including individual and institutional purchasers.

~~(5) The brochure must explain:~~

~~(a) how viatical settlements operate;~~

~~(b) a viator's right to rescind a viatical settlement not later than the 15th day after the date a viator receives viatical settlement proceeds or not later than 30 days after a provider and viator sign a viatical settlement contract, whichever is the longer period; and~~

~~(c) that if a viator elects to rescind the contract, that the viator must repay to the viatical settlement provider all paid settlement proceeds.~~

AUTH: 33-20-1315, MCA

IMP: 33-20-1311, MCA

6.6.8507 STANDARDS FOR EVALUATION OF REASONABLE PAYMENTS

~~(1) In order to assure that viatical settlement providers pay viators a reasonable amount for a policy, the following table shows the minimum percentages that must be paid on the face value of a policy viators receive a reasonable return for viaticating an insurance policy, the following shall be minimum discounts:~~

Insured's Life Expectancy	Minimum Percentage of Face Value Less Outstanding Loans Received by a Viator
Less than 6 months	80%
At least 6 but less than 12 months	70%
At least 12 but less than 18 months	65%
At least 18 but no greater than 24 months	60%
<u>24 months or more</u>	<u>50%</u>

~~(2) The percentage may be reduced by 5% for viaticating a policy written by an insurer rated less than the highest four categories by A.M. Best, or a comparable rating by another rating agency.~~

AUTH: 33-20-1315, MCA

IMP: 33-20-1315, MCA

6.6.8508 GENERAL RULES (1) remains the same.

~~(2) A viatical settlement provider shall pay the proceeds of a viatical settlement pursuant to 33-20-1314, MCA, by means of wire transfer to the account of a viator or by certified check or cashier's check. Payment of the proceeds of a viatical settlement pursuant to 33-20-1314, MCA, must be by means of wire transfer to the account of the viator or by certified check or cashier's check.~~

~~(3) A viatical settlement broker who is an agent for a viator shall not, without the written agreement of a viator~~

~~obtained prior to performing any services in connection with a viatical settlement, seek or obtain any compensation from a viator~~ Payment of the proceeds to the viator pursuant to a viatical settlement shall be made in a lump sum except where the viatical settlement provider has purchased an annuity or similar financial instrument issued by a licensed insurance company or bank, or an affiliate of either. Retention of a portion of the proceeds by the viatical settlement provider or escrow agent is not permissible.

~~(4) A viatical settlement provider may only enter into a viatical settlement contract with a viator who holds a policy of an insured with a terminal illness~~ A viatical settlement provider, viatical settlement broker or viatical settlement representative shall not discriminate in the making or solicitation of viatical settlements on the basis of race, age, sex, national origin, creed, religion, occupation, marital or family status or sexual orientation, or discriminate between viators with dependents and without.

(5) remains the same.

~~(6) Contacts for the purpose of determining the health status of an insured by a viatical settlement provider or a financing entity after a viatical settlement has occurred are limited to once every three months for insureds with a life expectancy of more than one year, and to once per month for insureds with a life expectancy of one year or less.~~

(7) and (8) remain the same, but are renumbered (6) and (7).

(8) A viatical settlement provider, viatical settlement broker or viatical settlement representative shall not pay or offer to pay any finder's fee, commission or other compensation to any insured's physician, or to an attorney, accountant or other person providing medical, legal or financial planning services to the viator, or to any other person acting as an agent of the viator with respect to the viatical settlement.

(9) A viatical settlement provider shall not knowingly solicit investors who have treated or have been asked to treat the illness of the insured whose coverage would be the subject of the investment.

(10) The following standards apply to advertising a viatical settlement:

(a) advertising related to a viatical settlement must be truthful and not misleading by fact or implication;

(b) if the advertiser emphasizes the speed with which the viatication will occur, the advertising must disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator; and

(c) if the advertising emphasizes the dollar amounts available to viators, the advertising must disclose the average purchase price as a percent of face value obtained by viators contracting with the advertiser during the past six months.

(11) If a viatical settlement provider enters into a viatical settlement that allows the viator to retain an interest in the policy, the viatical settlement contract shall contain the following provisions:

(a) the viatical settlement provider will effect the transfer of the amount of the death benefit only to the extent or portion of the amount viaticated. Benefits in excess of the amount viaticated shall be paid directly to the viator's beneficiary by the insurance company;

(b) the premiums to be paid by the viatical settlement company and the viator will be apportioned, unless the viatical settlement contract specifies that all premiums shall be paid by the viatical settlement company. The contract may also require that the viator reimburse the viatical settlement provider for the premiums attributable to the retained interest; and

(c) the viatical settlement provider will, upon acknowledgment of the perfection of the transfer, either:

(i) advise the insured, in writing, that the insurance company has confirmed the viator's interest in the policy; or

(ii) send a copy of the instrument sent from the insurance company to the viatical settlement company that acknowledges the viator's interest in the policy.

AUTH: 33-20-1315, MCA

IMP: 33-20-1313 and 33-20-1314, MCA

4. The proposed rule to be repealed is:

6.6.8506 TRADE PRACTICE STANDARDS FOR REGULATING ADVERTISING AND SOLICITATION found on page 6-1980 of the Administrative Rules of Montana.

AUTH: 33-20-1315, MCA

IMP: 33-20-1315, MCA

5. The proposed New Rules provide as follows:

NEW RULE I REPORTING REQUIREMENT (1) On March 1 of each calendar year, each viatical settlement provider licensed in this state shall make a report of all viatical settlement transactions where the viator is a resident of this state and for all states in the aggregate containing the following information for the previous calendar year:

(a) for viatical settlements contracted during the reporting period:

(i) date of viatical settlement contract;

(ii) viator's state of residence at the time of the contract;

(iii) mean life expectancy of the insured at time of contract in months;

(iv) face amount of policy viaticated;

(v) net death benefit viaticated;

- (vi) estimated total premiums to keep policy in force for mean life expectancy;
- (vii) net amount paid to viator;
- (viii) source of policy (b-broker; d-direct purchase; sm-secondary market);
- (ix) type of coverage (i-individual or g-group);
- (x) within the contestable or suicide period, or both, at the time of viatical settlement (yes or no);
- (xi) primary International Classification of Diseases (ICD) Diagnosis Code, in numeric format, as defined by the international classification of diseases, as published by the U.S. department of health and human services; and
- (xii) type of funding (i-institutional; p-private);
- (b) for viatical settlements where death has occurred during the reporting period:
 - (i) date of viatical settlement contract;
 - (ii) viator's state of residence at the time of the contract;
 - (iii) mean life expectancy of the insured at time of contract in months;
 - (iv) net death benefit collected;
 - (v) total premiums paid to maintain the policy (wp-waiver of premium; na-not applicable);
 - (vi) net amount paid to viator;
 - (vii) primary ICD Diagnosis Code, in numeric format, as defined by the ICD, as published by the U.S. department of health and human services;
 - (viii) date of death;
 - (ix) amount of time between date of contract and date of death in months; and
 - (x) difference between the number of months that passed between the date of contract and the date of death and the mean life expectancy in months as determined by the reporting company;
- (c) name and address of each viatical settlement broker through whom the reporting company purchased a policy from a viator who resided in this state at the time of contract;
- (d) number of policies reviewed and rejected; and
- (e) number of policies purchased in the secondary market as a percentage of total policies purchased.

AUTH: 33-20-1315, MCA
IMP: 33-20-1309, MCA

NEW RULE II PROHIBITED PRACTICES (1) A viatical settlement provider, viatical settlement broker or viatical settlement representative shall not provide patient identifying information to any person, unless the insured and viator provide written consent to the release of the information at or before the time of the viatical settlement transaction pursuant to ARM 6.6.8505(3).

(2) A viatical settlement provider, viatical settlement broker or viatical settlement representative shall obtain from a person that is provided with patient identifying information

a signed affirmation that the person or entity will not further divulge the information without procuring the express, written consent of the insured for the disclosure. Notwithstanding the foregoing, if a viatical settlement provider, viatical settlement broker or viatical settlement representative is served with a subpoena and, therefore, is compelled to produce records containing patient identifying information, it shall notify the viator and the insured in writing at their last known addresses within five business days after receiving notice of the subpoena.

(3) A viatical settlement provider shall not act also as a viatical settlement broker, whether entitled to collect a fee directly or indirectly, in the same viatical settlement.

(4) A viatical settlement broker shall not, without the written agreement of the viator obtained prior to performing any services in connection with a viatical settlement, seek or obtain any compensation from the viator.

(5) A viatical settlement provider shall not use a longer life expectancy than is realistic in order to reduce the payout to which the viator is entitled.

AUTH: 33-20-1315, MCA

IMP: 33-20-1313, MCA

NEW RULE III INSURANCE COMPANY PRACTICES (1) Life insurance companies authorized to do business in this state shall respond to a request for verification of coverage from a viatical settlement provider or a viatical settlement broker within 30 calendar days of the date a request is received, subject to the following conditions:

(a) a current authorization consistent with applicable law, signed by the policyowner or certificateholder, accompanies the request;

(b) in the case of an individual policy, submission of a form prescribed by the commissioner, which has been completed by the viatical settlement provider or the viatical settlement broker in accordance with the instructions on the form; and

(c) in the case of group insurance coverage:

(i) submission of a form prescribed by the commissioner, which has been completed by the viatical settlement provider or viatical settlement broker in accordance with the instructions on the form; and

(ii) which has previously been referred to the group policyholder and completed to the extent the information is available to the group policyholder.

(2) Nothing in this rule shall prohibit a life insurance company and a viatical settlement provider or a viatical settlement broker from using another verification of coverage form that has been mutually agreed upon in writing in advance of submission of the request.

(3) A life insurance company may not charge a fee for responding to a request for information from a viatical settlement provider or viatical settlement broker in compliance with this rule in excess of any usual and customary

charges to contractholders, certificateholders or insureds for similar services.

(4) The life insurance company may send an acknowledgment of receipt of the request for verification of coverage to the policyowner or certificateholder and, where the policy owner or certificate owner is other than the insured, to the insured. The acknowledgment may contain a general description of any accelerated death benefit that is available under a provision of or rider to the life insurance contract.

AUTH: 33-19-306 and 33-20-1315, MCA
IMP: 33-19-306, MCA

6. REASONABLE NECESSITY STATEMENT: It is necessary to amend ARM 6.6.8501, 6.6.8505, 6.6.8507, 6.6.8508, and repeal ARM 6.6.8506, and to adopt New Rules I through III to conform with the 2003 amendments to the Viatical Settlement Act.

7. 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 Darla Sautter, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601, or by facsimile (406) 444-3497, or by e-mail, addressed to dsautter@state.mt.us, and must be received no later than September 17, 2004.

8. Don Harris has been designated to preside over and conduct the hearing.

9. The State Auditor's Office 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 whether the person wishes to receive notices regarding insurance rules, securities rules, or both. Such written requests may be mailed or delivered to the State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601, or by facsimile to (406) 444-3497, or e-mailed to dsautter@state.mt.us, or may be made by completing a request form at any rules hearing held by the State Auditor's Office.

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

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 August 9, 2004.

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

In the matter of the)
adoption of a new rule) NOTICE OF PUBLIC HEARING ON
pertaining to hunting season) PROPOSED ADOPTION
extensions)

TO: All Concerned Persons

1. On September 14, 2004, at 7:00 p.m. a public hearing will be held at the Fish, Wildlife and Parks Headquarters, 1420 East 6th Ave., Helena, Montana, to consider the adoption of new rule I, pertaining to hunting season extensions.

2. The Fish, Wildlife and Parks Commission (commission) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on September 7, 2004, to advise us of the nature of the accommodation that you need. Please contact Gary Hammond, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-5672; fax (406) 444-4952; email ghammond@state.mt.us.

3. The proposed new rule provides as follows:

NEW RULE I HUNTING SEASONS EXTENSIONS (1) The commission may determine that the extension of a hunting season may be an acceptable strategy to achieve deer or elk management objectives under the following conditions:

(a) a liberal general season deer or elk management package has been in place for two consecutive years, including the year in which the extension is proposed. A liberal season package is established when populations observed in department surveys exceed management objectives. Season packages for deer and elk are numerically described in the department's current Deer and Elk Plans;

(b) elk populations are 20% or more over the current department Elk Plan population objectives as determined by department survey, or deer populations are 20% - 30% over the current department Deer Plan population objectives as determined by department survey and as specifically identified in the five ecotypes described in the Deer Plan;

(c) public hunting access during the five-week general hunting season was at levels necessary to accomplish harvest management objectives, but management objectives were still not achieved; and

(d) mild weather conditions during the fall hunting season result in a harvest that is at least 50% below the five-year average for that check station.

(2) Additionally, the commission may consider season extensions in the event of severe winter weather conditions,

and these conditions create a situation where game damage complaints occur across multiple hunting districts.

(3) A hunting season extension may begin the day after the close of the general fall hunting season and shall close no later than February 15. If direct harvest reaches levels that are projected to bring the deer and elk populations near population objectives, as indicated by one or more game checking stations located in the area of the hunting season extension, the commission shall close a season that it has extended.

(4) When the commission determines that a season extension is appropriate, the extension must be applied on an aggregate of hunting districts or regional basis, and the hunt area must be large enough to prevent hunter overcrowding. Season extensions may not be applied in situations where individual properties or small portions of hunting districts are involved and where existing game damage procedures more appropriately apply.

(5) The commission shall extend hunting seasons according to the following procedures:

(a) at the end of the fourth week of the general big game hunting season, a regional committee, located within the pertinent administrative region and appointed by the respective regional supervisor, shall consider the criteria listed in (1)(a) through (1)(d) or (2) to determine whether or not season extensions are warranted;

(b) the committee shall present its recommendation to the regional supervisor for approval; and

(c) if the regional supervisor and director approve the hunting extension, the department shall present the recommendation to the local commissioner representing the area where the season extension is proposed for review and final approval. In the absence of the local commissioner, the department shall present the recommendation to the commission chair for review and final approval.

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

4. The purpose of this rule is to establish criteria to guide the department and commission in determining when hunting seasons may be extended. While the general, five-week hunting season is the basis of deer and elk management efforts, the commission often receives requests for hunting season extensions. The proposed rule assists the commission in determining when requests are warranted and spells out the procedure for extending hunting seasons.

The proposed rule is designed to provide for season extensions only in extenuating circumstances. When normal management has failed to be successful, when extreme weather creates a situation where animals will likely die if not reduced, or when game damage is occurring across either multiple hunting districts or the entire region, extending a hunting season may

be appropriate. Season extensions are not appropriate in situations where conservative hunting seasons have been in place with only a limited ability to harvest animals.

Access is another issue addressed by the proposed rule. Animal populations cannot be managed if land is not accessible to an adequate number of hunters. The commission wants to avoid extending hunting seasons into winter because hunters were denied access during the general season, resulting in too large deer and elk populations. It is also physically stressful for deer and elk to be hunted during the difficult winter period when cold temperatures and deep snow conditions often occur. Pregnant (doe) deer and (cow) elk are particularly challenged during those late winter conditions. Additionally, many landowners do not want hunting season extended, as they often express that they get tired of dealing with hunters by the end of the general season.

The proposed rule is designed to allow a season extension directly after the closing day of hunting season. This allows hunters to be able to continue with the hunting season without a separation in time from the end of the general hunting season. If the seasons were closed and then reopened, some hunters would have already gone home, and may find it logistically difficult to return. The February 15 closing date is the latest that hunting seasons occur in Montana. Hunting after February 15 is very undesirable as pregnant deer and elk are nearly in their third trimester at this point.

The size of the area is another factor when determining whether or not a hunting extension is appropriate. The proposed rule provides that season extensions may only be implemented over multiple hunting districts or entire regions. Otherwise, hunter crowding could occur, resulting in hunter dissatisfaction and safety concerns. Problems within a small area are more appropriately addressed under the game damage provisions of ARM 12.9.801 through 12.9.805.

The commission believes the fourth week of the general hunting season is a reasonable time to evaluate whether or not to extend a hunting season. By that time, a general idea of hunter harvest is possible from check stations, and both short- and long-term weather forecasts are available.

The decision to extend a hunting season is one tool the commission can use in its overall management of deer and elk populations. The proposed rule provides the criteria and process for using this tool.

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 Gary Hammond, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; or emailed to

ghammond@state.mt.us, and must be received no later than September 24, 2004.

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

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

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

BY:

BY:

/s/ Chris Smith
Chris Smith, Acting for
M. Jeff Hagener, Secretary
Fish, Wildlife and Parks
Commission

/s/ Rebecca Dockter
Rebecca Dockter
Rule Reviewer

Certified to the Secretary of State August 9, 2004

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF PROPOSED
of New Rules I through VI	)	ADOPTION
pertaining to acceptance and)	
use of electronic records and	)	NO PUBLIC HEARING
electronic signatures	)	CONTEMPLATED

TO: All Concerned Persons

1. On December 3, 2004, the Department of Transportation proposes to adopt the above-stated rules.

2. The Department of Transportation will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on September 8, 2004, to advise us of the nature of the accommodation that you need. Please contact Lisa Durbin, Construction Bureau, Engineering Division, Department of Transportation, P.O. Box 201001, Helena, MT 59620-1001; Telephone: (406) 444-0453; Fax: (406) 444-7297; E-mail: ldurbin@state.mt.us.

3. The proposed new rules provide as follows:

RULE I DEFINITIONS For the purposes of this subchapter, and unless the context expressly indicates otherwise:

(1) "Acceptable certification authorities" means a certification authority that meets the requirements of 2-20-109 and 2-20-110, MCA.

(2) "Approved list of certification authorities" means the list of certification authorities approved by the secretary of state to issue certificates for digital signature transactions involving public entities in Montana.

(3) "Asymmetric cryptosystem" means a computer algorithm or series of algorithms which utilize two different keys with the following characteristics:

(a) one key signs a given message;

(b) one key verifies a given message; and

(c) the keys have the property that, knowing one key, it is computationally infeasible to discover the other key.

(4) "Certification authority" means a person or entity that issues a certificate, or in the case of certain certification processes, certifies amendments to an existing certificate, or appears on the secretary of state's "approved list of certificate authorities".

(5) "Department" means the Montana department of transportation.

(6) "Digitally signed communication" is a message that has been processed by a computer in such a manner that legally ties the message to the individual that signed the message.

(7) "Message" means a digital representation of information intended to serve as a written communication with the department.

(8) "Person" means a human being or any organization capable of signing a document, either legally or as a matter of fact.

(9) "Practice statement" means documentation of the practices, procedures and controls employed by a certification authority.

(10) "Proof of identification" means the document or documents presented to a certification authority to establish the identity of a subscriber.

(11) "Signer" means the person who signs a digitally acceptable technology to uniquely link the message with the person sending it.

(12) "Technology" means the computer infrastructure hardware and/or software-based method or process used to create digital signatures.

AUTH: 2-20-105, MCA
IMP: 2-20-105, MCA

REASON: The department has determined that it is reasonably necessary to define the terms found in this proposed rule. The terms are used in the following proposed rules, and by providing definitions the rules are made easier to understand and more useful to the department as well as the public. The definitions found throughout the proposed rules are necessary to achieve the goals of the legislature in facilitating electronic communication and commerce.

RULE II SUBMISSION OF TRANSPORTATION CONSTRUCTION BID

(1) Any person may, but is not required to, submit a transportation construction bid to the department using a message and digitally signed communication so long as such bid conforms to the rules contained in this subchapter and any other applicable laws, rules and policies.

(2) The bid must be received by the department by the date and time specified in the notice of bid or other similar document.

(3) The bidder is solely responsible for ensuring the message and digitally signed communication are received by the department by the due date and time.

(4) Any person availing itself of these rules in order to submit a transportation construction bid agrees to all of the provisions of these rules.

AUTH: 2-20-105, MCA
IMP: 2-20-105, MCA

REASON: The department has determined that it is reasonably necessary to specifically set forth the scope of the proposed rules. That is, these proposed rules for electronic bidding only apply to transportation construction bids. Further, such bids are still controlled by other applicable laws, rules and policies. The department is making it clear

that the responsibility for ensuring that the bid is properly received by the department falls upon the bidder, not the department. Finally, 2-20-105, MCA strongly encourages state agencies to permit the use of electronic signatures or to send or receive electronic records. This proposed rule and the other proposed rules in this notice are reasonably necessary to fulfill that statutory preference, and to fulfill the requirement in the same statute that a state agency adopt rules specifying certain matters regarding sending and receiving electronic records.

RULE III ELECTRONICALLY TRANSMITTED BID (1) In order for an electronically transmitted bid to be deemed properly submitted, the message must, at a minimum, contain the following:

- (a) name and address of the bidder;
- (b) name and appropriate designation of the project being bid upon;
- (c) all items required in the notice of bid; and
- (d) the digitally signed communication of the person bidding.

(2) Any bidder wishing to bid by electronic transmission must be preapproved in writing to do so by the department.

(3) The electronically transmitted bid must be submitted using an acceptable technology as set forth in [New Rule IV].

AUTH: 2-20-105, MCA

IMP: 2-20-105, MCA

REASON: The department has determined that it is reasonably necessary to set forth the minimum requirements that are to be contained in the electronically transmitted bid. This proposed rule sets forth the "baseline" of the information that is to be supplied. Also, the proposed rule makes it known that any electronic bidder must be preapproved in writing by the department prior to making a bid. This allows the department to maintain control over the process in order to ensure that such bidding remains a safe and secure process for the bidders, the state, and the general public.

RULE IV ACCEPTABLE TECHNOLOGY (1) An acceptable technology must be capable of creating signatures that conform to the following requirements. The technology must:

- (a) be unique to the person using it;
- (b) be capable of verification;
- (c) be under the sole control of the person using it;
- (d) be linked to the data in such a manner that if the data are changed, the digital signature is invalidated; and
- (e) conform to Title 2, chapter 20, part 1 of the Montana Code Annotated.

(2) The technology known as public key infrastructure is an acceptable technology for use by persons conducting business with the department, provided that the digital signature is created consistent with the provisions in Title 2, chapter 20, part 1, MCA, and these rules.

(3) Other technologies that may be existing or may be developed in the future will be deemed "acceptable" if they provide the same, or better, security as the public key infrastructure. These other technologies must be approved on a case-by-case basis by the department prior to use. These rules will be amended if necessary to adopt new acceptable technologies.

AUTH: 2-20-105, MCA
IMP: 2-20-105, MCA

REASON: The department has determined that it is necessary to set forth an explanation of the technology acceptable for the signatures and other matters that are transmitted electronically. It is critical to the process of bidding that all parties are satisfied as to its inherent integrity and security. The signature is central to that process. The industry that is evolving to provide software and services to implement the use of digital signatures has not yet fully developed, and a public need exists to differentiate between legitimate technologies and those that are less capable of providing the needed integrity and security. In the context of electronic bidding, the effort to ensure the necessary integrity, security and confidentiality faces unique challenges. This proposed rule and the others found in this notice are the department's attempt to ensure that all parties can remain confident that the process will work in a beneficial manner. Without the security provided by the proposed rule, it would be extremely difficult or impossible to ensure a functioning electronic bid procedure. Further, the public key infrastructure is an acceptable technology now, but others may, in the future, be permitted.

RULE V PRIVATE AND PUBLIC KEYS (1) Section 2-20-103, MCA requires that a digital signature be "unique to the person using it". A public key based digital signature may be considered unique to the person using it, if:

(a) the private key used to create the signature on the document is known only to the signer;

(b) the digital signature is created when a person runs a message through a one way function, creating a message digest, then encrypting the resulting message digest using an asymmetrical cryptosystem and the signer's private key; and

(c) it is computationally infeasible to derive the private key from knowledge of the public key.

(2) Although not all digitally signed communications will require the signer to obtain a certificate, the signer is capable of being issued a certificate to certify that he or she controls the key pair used to create the signature.

(3) Section 2-20-103, MCA requires that the digital signature remain "under the sole control of the person using it". Whether a signature is accompanied by a certificate or not, the person who holds the key pair, or the subscriber identified in the certificate, assumes a duty to exercise reasonable care to retain control of the private key and prevent

its disclosure to any person not authorized to create the subscriber's digital signature pursuant to the laws of Montana.

AUTH: 2-20-105, MCA
IMP: 2-20-105, MCA

REASON: The department has determined that it is necessary to provide that any digital signature be unique to the person using it. As is stated above, it is necessary in the context of bidding that all parties be satisfied that a signature be controlled by the signer and that the entity receiving the bid is assured of the validity of that signature. This proposed rule provides the necessary levels of security and integrity.

RULE VI VERIFICATION (1) Section 2-20-103, MCA requires that a digital signature be "capable of verification". A public key based digital signature is capable of verification if:

(a) the acceptor of the digitally signed document can verify the document was digitally signed by using the signer's public key to decrypt the message; and

(b) if a certificate is a required component of a transaction with a public agency, the issuing certification authority, either through a certification practice statement or through the content of the certificate itself, must identify which, if any, form(s) of identification it required of the signer prior to issuing the certificate.

AUTH: 2-20-105, MCA
IMP: 2-20-105, MCA

REASON: Similar to the reason provided for proposed Rule V, the department has determined that it is necessary to provide for the verification of an electronic signature. Again, it is necessary in the context of bidding that all parties be satisfied that a signature be controlled by the signer and that the entity receiving the bid is assured of the validity of that signature. This proposed rule provides the necessary levels of security and integrity.

4. Concerned persons may submit their data, views or arguments concerning the proposed amendment in writing to Lisa Durbin at the Montana Department of Transportation, 2701 Prospect Ave., P.O. Box 201001, Helena, MT 59620-1001; Fax: (406) 444-7297; E-mail: ldurbin@state.mt.us. Any comments must be received no later than October 8, 2004.

5. If persons who are directly affected by the proposed actions 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 Lisa Durbin at the Montana Department of Transportation, 2701 Prospect Ave., P.O. Box 201001, Helena, MT 59620-1001; Fax: (406) 444-7297; E-mail: ldurbin@state.mt.us. A written request for hearing must be received no later than September 24, 2004.

6. If the agency receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed actions; 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 30 based on 300 companies or individuals who could be expected to bid on construction projects.

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 proposed by the Administration Division, Aeronautics Division, Highways and Engineering Division, Maintenance Division, Motor Carrier Services Division, and/or Rail, Transit and Planning Division. Such written request may be mailed or delivered to Legal Services, Montana Department of Transportation, 2701 Prospect Ave., P.O. Box 201001, Helena, MT 59620-1001; Fax: (406) 444-7206; E-mail: rwuertley@state.mt.us; or may be made by completing a request form at any rules hearing held by the Department of Transportation. All department rulemaking notices and adoptions may be reviewed at the Department of Transportation's website at www.mdt.state.mt.us.

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

DEPARTMENT OF TRANSPORTATION

/s/ David A. Galt
David A. Galt
Director

/s/ Lyle Manley
Lyle Manley, Attorney
Rules Reviewer

Certified to the Secretary of State August 6, 2004.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF PUBLIC
of new rules I through VI) HEARING ON PROPOSED
pertaining to the establishment) ADOPTION
of the Eastmont chemical)
dependency treatment program)
in Glendive, Montana, for)
fourth offense DUI offenders)

TO: All Concerned Persons

1. On September 9, 2004, at 9:00 a.m., a public hearing will be held in the lower level meeting room at the Dawson County Court House, 207 West Bell Street, Glendive, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Corrections 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 Corrections no later than 5:00 p.m. on August 27, 2004, to advise us of the nature of the accommodation that you need. Please contact Sherri Townsend, P.O. Box 201301, Helena, MT 59620-1301; phone: (406) 444-7843; fax: (406) 444-4920; e-mail: stownsend@state.mt.us.

3. The new rules are necessary to implement the provisions of Sec. 4, Ch. 575, L. 2003 (codified at 53-1-210, MCA) which transferred the former Eastmont human services center at Glendive from ownership by the Department of Public Health and Human Services to the Department of Corrections. The Department has deemed an appropriate use of the facility to be a chemical dependency treatment program for fourth offense DUI offenders sentenced to the custody of the Department of Corrections. The new rules are further necessary to assure the community of Glendive that the Department will take all necessary and reasonable safety and security precautions with respect to the supervision and rehabilitation of the program participants and that the Department will not expand the program or modify its purpose without opportunity for comment and support by a majority of the community.

4. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS As used in this sub-chapter, the following definitions apply:

- (1) "Capacity" means 40 program participants.
- (2) "Contractor" means the private, nonprofit Montana corporation with which the department enters a contract to operate the program.

(3) "Department" means the department of corrections established in 2-15-2301, MCA.

(4) "Eligible offender" means an offender who has been convicted of a fourth or subsequent offense of driving under the influence of alcohol or drugs or driving with excessive alcohol concentration and has been sentenced under 61-8-731, MCA.

(5) "Facility" means the department-owned buildings that comprise the former Eastmont human services campus.

(6) "Program" means the chemical dependency treatment program established in the former Eastmont human services center in Glendive, Montana.

(7) "Program participant" means an offender who is placed in the chemical dependency treatment program.

AUTH: 53-1-203, MCA

IMP: 53-1-210 and 61-8-731, MCA

NEW RULE II EASTMONT CHEMICAL DEPENDENCY TREATMENT PROGRAM

(1) The department shall establish a chemical dependency treatment program for the custody, supervision, counseling, and treatment of eligible offenders in the facility in Glendive, Montana. The department shall choose a contractor to operate the program. The contractor shall establish an intensive therapeutic community-model program of approximately six months duration to satisfy the sentencing provision of 61-8-731, MCA for eligible offenders.

AUTH: 53-1-203, MCA

IMP: 53-1-210 and 61-8-731, MCA

NEW RULE III ADMISSION TO THE PROGRAM (1) A local screening committee shall determine which eligible offenders it will admit to the program.

(2) The following individuals shall comprise the screening committee:

(a) a department employee appointed by the department;

(b) the program administrator or designee appointed by the contractor;

(c) a law enforcement officer appointed by both the Dawson county sheriff and the Glendive city police department;

(d) a member of the public who resides in the city of Glendive appointed by the Glendive city council; and

(e) a member of the public who resides within the Hillcrest or Georgetown subdivisions appointed by the Glendive city council.

(3) The department shall make applications available to eligible offenders. The screening committee shall review the applications and:

(a) determine by majority vote which applicants the program will accept;

(b) maintain the program at or near the program's capacity; and

(c) accept eligible offenders in the following order:

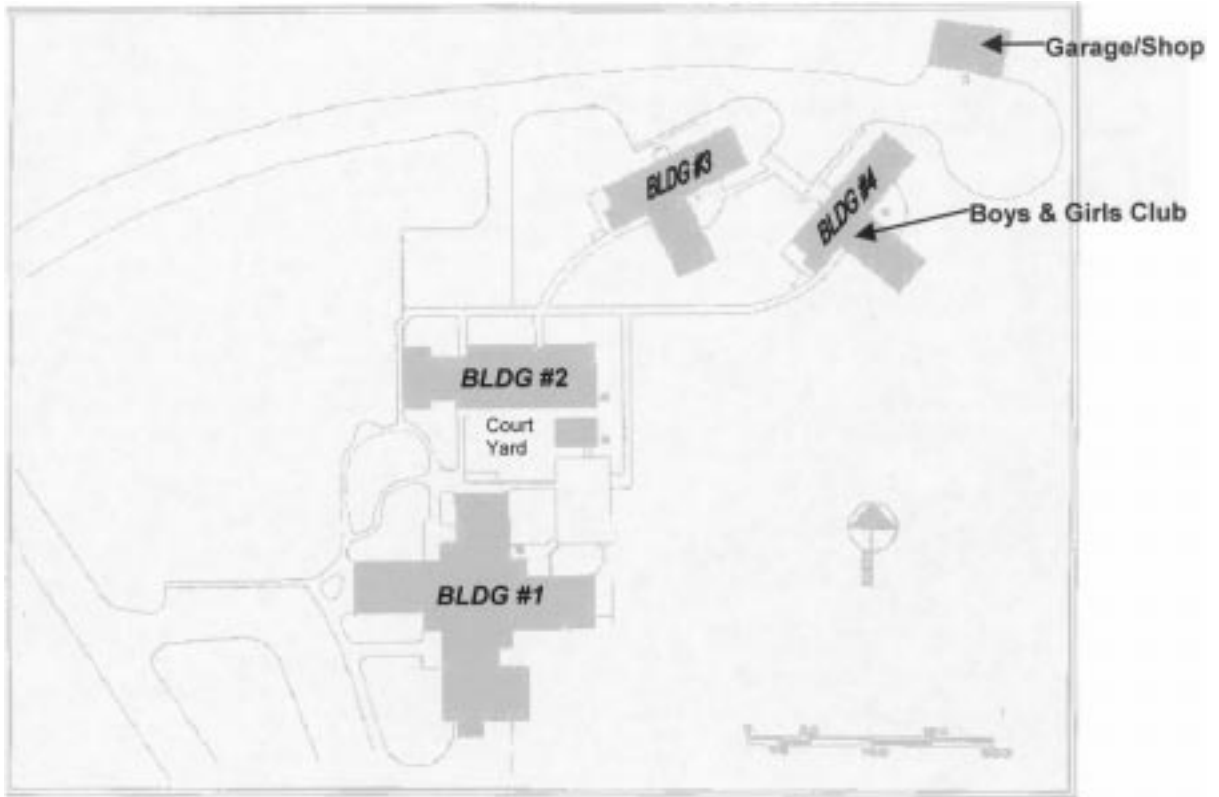
- (i) first, female eligible offenders;
 - (ii) second, male eligible offenders from the following counties: Carter, Custer, Daniels, Dawson, Fallon, Garfield, McCone, Phillips, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Treasure, Valley, and Wibaux; and
 - (iii) third, male eligible offenders from Montana counties other than those listed in (3)(c)(ii).
- (4) The screening committee may only deny admission to an eligible offender who, in the committee's opinion, is inappropriate for the program. The committee shall state the reasons for the denial in writing.

AUTH: 53-1-203, MCA

IMP: 53-1-210 and 61-8-731, MCA

NEW RULE IV REQUIREMENTS AFFECTING USE OF FACILITY

- (1) By written contract, the department shall require the contractor to adhere to the following provisions that pertain to the use of the facility:
- (a) program participants may not enter or occupy for any purpose buildings three and four;
 - (b) program participants may enter and occupy only buildings one and two;
 - (c) building two may only be used for programming and recreation. Participants may not enter building two between the hours of 10 p.m. and 7 a.m.;
 - (d) program participants' sleeping quarters in building one must be restricted to rooms whose windows face the interior courtyard or other fenced areas;
 - (e) program participants must be restricted from all outside areas except for the courtyard. The contractor shall provide direct supervision whenever participants are in the courtyard; and
 - (f) participant, staff and visitor access to the facility must be limited to the outside corridor located near the current dining area in building one.
- (2) The department shall complete or require the contractor to complete the following:
- (a) enclose the corridor connecting buildings one and two;
 - (b) improve or install exit alarms on all doors and windows that do not face a fenced area and enhance security on all doors and windows that do not face the courtyard;
 - (c) fence the courtyard to provide heightened security from escape and reduce visual contact with the public; and
 - (d) fence the corridor near the current dining area and adjacent area to control movement and reduce visual contact with the public.
- (3) Upon request, the department shall provide one rent-free office in the facility for the Dawson county sheriff's department and one rent-free office in the facility for the Glendive police department.
- (4) Eastmont facility map:



AUTH: 53-1-203, MCA

IMP: 53-1-210 and 61-8-731, MCA

NEW RULE V REQUIREMENTS AFFECTING PROGRAM PARTICIPANTS AND VISITORS

(1) By written contract, the department shall require the contractor to adhere to the following provisions that pertain to program participants and visitors:

(a) program participants must wear clothing of an easily identifiable style and color;

(b) the transport of program participants to the program may only be conducted by law enforcement or other supervised form of transportation approved by the department; and

(c) approved visitors may only visit program participants on Sundays unless otherwise approved by the department. Approved visitors may only access the facility via transportation provided by the contractor from an approved central Glendive city location.

(2) In the event a program participant escapes from the facility, program staff shall immediately:

(a) notify appropriate law enforcement and corrections agencies; and

(b) activate a telephone message system developed by the contractor to notify the community and neighboring residents of the escape.

AUTH: 53-1-203, MCA

IMP: 53-1-210 and 61-8-731, MCA

NEW RULE VI EXPANSION OR MODIFICATION (1) The department may not expand the capacity or modify the purpose of the program set forth in these rules unless it documents public support of a majority of public officials, a majority of residents of the community of Glendive, and a majority of the Hillcrest and Georgetown subdivisions.

(2) To document public support, the department shall conduct a survey of a representative sampling of the Glendive community and the Hillcrest and Georgetown subdivisions and a survey of the following public officials:

- (a) members of the city and county governing bodies;
- (b) the city and county attorney;
- (c) the chief public defender, if there is one;
- (d) the mayor;
- (e) the local district court judge;
- (f) state legislators for the area;
- (g) the sheriff; and
- (h) the chief of police.

(3) If the department determines a majority of the community and public officials support a proposed expansion or change in the purpose of the program, the department shall then conduct a public hearing in Glendive, Montana, in accordance with the Montana Administrative Procedure Act, 2-4-302, MCA. In addition to the notice requirements set forth therein, the department shall publish notice of the hearing in a newspaper of general circulation within the city of Glendive and Dawson County reasonably in advance of the hearing.

AUTH: 53-1-203, MCA

IMP: 2-4-302, 53-1-210 and 61-8-731, MCA

5. Concerned persons may present their data, views, or arguments concerning the proposed action in writing to Sherri Townsend at the contact information listed in paragraph 2, and must be received no later than 5:00 p.m. on September 17, 2004.

6. Colleen A. White, Hearings Examiner, will preside over and conduct the hearing.

7. The Department of Corrections 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 community corrections, juvenile corrections, board of pardons and parole, private correctional facilities or general departmental rulemakings. Such written request may be mailed or delivered to Sherri Townsend, at the contact information listed in paragraph 2 or may be made by completing a request form at any rules hearing held by the Department of Corrections.

8. An electronic copy of this Notice of Public Hearing is available through the department's web site at www.cor.state.mt.us.

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

/s/ Bill Slaughter
BILL SLAUGHTER, Director
Department of Corrections

/s/ Colleen A. White
Colleen A. White, Rule Reviewer
Department of Corrections

Certified to the Secretary of State August 9, 2004.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 23.10.101) ON PROPOSED AMENDMENT
to update the list of)
precursors to dangerous drugs)

TO: All Concerned Persons

1. On September 22, 2004, at 9:30 a.m., a public hearing will be held in the Auditorium of the Scott Hart Building, in Helena, Montana, to consider the amendment of ARM 23.10.101 to update the list of precursors to dangerous drugs.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on September 17, 2004, to advise us of the nature of the accommodation that you need. Please contact Ali Bovington, Department of Justice, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401; (406) 444-2026; FAX (406) 444-3549; email contactdoj@state.mt.us.

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

23.10.101 PRECURSORS TO DANGERS DRUGS (1) The following substances are precursors to dangerous drugs, regulated by Title 50, chapter 32, part 4, MCA:

(a) anhydrous ammonia;

(1) through (5) remain the same but are renumbered (b) through (f).

(g) butamediol-1,4;

(6) through (18) remain the same but are renumbered (h) through (t).

(u) gamma butyrolactone;

(v) gamma hydroxybutyric acid;

(19) remains the same but is renumbered (w).

(x) hydriodic acid;

(20) remains the same but is renumbered (y).

(z) hypophosphorous acid;

(21) remains the same but is renumbered (aa).

(ab) iodine in any form;

~~(22)~~ (ac) isosaffrole;

(23) through (32) remain the same but are renumbered (ad) through (am).

(an) phosphorous acid;

(33) through (35) remain the same but are renumbered (ao) through (aq).

(ar) red phosphorous;

(as) safrole;

(36) and (37) remain the same but are renumbered (at) and (au).

(av) tincture of iodine greater than 2%;

(38) and (39) remain the same but are renumbered (aw) and (ax).

~~(40)~~ (ay) tyrosine; and

(az) white phosphorous;

(ba) yellow phosphorous; and

(41) remains the same but is renumbered (bb).

AUTH: 50-32-401~~(2)~~, MCA

IMP: 50-32-401~~(1)~~, MCA

4. The amendments to ARM 23.10.101 are necessary to expand the list of precursors to dangerous drugs to include the precursors used in the synthesis of methamphetamine. Montana Code Annotated 50-32-403 requires manufacturers, wholesalers, retailers or other persons selling, transferring, or otherwise furnishing precursors to controlled substances to submit reports to the Department of Justice detailing all such transactions. The list of precursors was last updated in the 1980's, well before methamphetamine became a serious problem in Montana. These amendments are necessary to assist criminal justice agencies in identifying individuals who may be involved in the manufacture and sale of methamphetamine.

5. Concerned persons may present their data, views or arguments concerning the proposed amendment in writing to Ali Bovington, Department of Justice, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401; (406) 444-2026; FAX (406) 444-3549; email contactdoj@state.mt.us, to be received no later than 5:00 p.m., September 29, 2004.

6. An electronic copy of this notice is available through the department's site at www.doj.state.mt.us/resources/administrativerules.asp.

7. The Department of Justice maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies the subject area or areas of interest of the person requesting notice, including but not limited to rules proposed by the Motor Vehicle Division, the Forensic Science Division, the Highway Patrol Division, the Fire Prevention and Investigation Bureau, the Division of Criminal Investigation, the Board of Crime Control or the Law Enforcement Academy, or proposed rules pertaining to certificates of public advantage for health care. Such written request may be mailed or delivered to Ali Bovington, Department of Justice, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401, faxed to the office at (406) 444-3549, or may be made by completing a request form at

any rules hearing held by the department.

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

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

/s/ Ali Bovington
ALI BOVINGDON, Rule Reviewer

Certified to the Secretary of State August 9, 2004.

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING
adoption of NEW RULE I pertaining) ON PROPOSED ADOPTION
to safety and health in mines)
other than coal mines)

TO: All Concerned Persons

1. On September 21, 2004, at 10:00 a.m., a public hearing will be held in the first floor conference room at the Walt Sullivan Building (Dept. of Labor and Industry Building), 1327 Lockey Street, Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Department of Labor and Industry (Department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., September 16, 2004, to advise us of the nature of the accommodation you need. Please contact the Employment Relations Division, Safety Bureau, Attn: Mr. John Maloney, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-1605; TDD (406) 444-0532; fax (406) 444-9396; or e-mail jmaloney@state.mt.us.

3. The proposed new rule provides as follows:

NEW RULE I INCORPORATION BY REFERENCE OF RULES REGARDING
EMPLOYEE HEALTH AND SAFETY IN MINES OTHER THAN COAL MINES

(1) The department of labor and industry adopts and incorporates by reference the United States department of labor, mine safety and health administration's regulations, Title 30, Code of Federal Regulations, Parts 46, 47, 48, 49, 50, 56, 57, 58 and 62, revised as of July 1, 2004.

(2) The regulations incorporated by reference in (1) relate to the following:

(a) training and retraining of miners engaged in shell dredging or employed at sand, gravel, surface stone, surface clay, colloidal phosphate, or surface limestone mines;

(b) hazard communication (HAZCOM);

(c) training and retraining of miners;

(d) mine rescue teams;

(e) notification, investigation, reports and records of accidents, injuries, illnesses, employment and production in mines;

(f) safety and health standards--surface metal and nonmetal mines;

(g) safety and health standards--underground metal and nonmetal mines;

(h) health standards for metal and nonmetal mines; and

(i) occupational noise exposure.

(3) Copies of the regulations incorporated by reference in

(1) may be obtained at cost from the Montana Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728, or the Superintendent of Documents, United States Government Printing Office, 941 North Capitol Street, Washington, D.C. 20401.

AUTH: 50-71-301, 50-71-311, MCA

IMP: 50-71-301, 50-71-311, 50-71-312 and 50-72-102, MCA

REASON: There is reasonable necessity to adopt proposed NEW RULE I in order to clarify that the Department is limited by the terms of the federal mine safety rules in any enforcement action it might take. Currently, the enforcement of mine safety rules (for operations other than sand and gravel mining) is performed by the federal Mine Safety and Health Administration ("MSHA"). Montana's mine safety statutes (Title 50, chapter 72, MCA) provide that in the event MSHA fails to regularly inspect metallic and nonmetallic mines and enforce safety rules, the Department is authorized to assume that inspection and enforcement role. Under current law, the Department has the authority to inspect and investigate sand and gravel mining operations in Montana. A number of persons recently have noted that the Department has not formally adopted rules applicable to mine safety.

As part of the Montana Safety Act (Title 50, chapter 71, MCA), the Department is authorized to adopt safety rules. The Department has historically incorporated by reference federal safety standards in the interest of uniform application and conformity. The adoption by reference of federal standards will eliminate the possibility of having inconsistent requirements under federal and state law. The Department notes that mining operations, including sand and gravel mining, are already subject to the mine safety and operating rules promulgated by MSHA.

The Department believes that by expressly incorporating by reference the existing federal mine safety rules, Montana mine operators and mine workers will know that they are all on an equal regulatory playing field and will not be placed at a competitive disadvantage with respect to mines operating in other states, nor will the workers be subject to dangerous conditions not permitted in other states.

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

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

and must be received by no later than 5:00 p.m., September 28, 2004. Comments may also be submitted electronically as noted in the following paragraph.

5. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at <http://www.dli.state.mt.us/calendar.htm> under the Calendar of Events, Administrative Rule Hearings section. Interested persons may make comments on the proposed rule via the comment forum, <http://forums.dli.state.mt.us>, linked to the Notice of Public hearing, but those comments must be posted to the comment forum by 5:00 p.m., September 28, 2004. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the comment forum do not excuse late submission of comments.

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

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

8. The Department's Hearings Bureau has been designated to preside over and conduct this hearing.

/s/ MARK CADWALLADER
Mark Cadwallader,
Alternate Rule Reviewer

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

Certified to the Secretary of State August 9, 2004

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 24.30.102,) ON PROPOSED AMENDMENT
24.30.104, 24.30.105 and)
24.30.107, relating to)
occupational safety matters)
in public sector employment)

TO: All Concerned Persons

1. On September 17, 2004, at 10:00 a.m. the Department of Labor and Industry will hold a public hearing in the Sacajawea Room (basement, east end) of the Walt Sullivan Building, 1327 Lockey, 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 need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., September 13, 2004, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Attn: Ms. Sandra Mihalik, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-6418; fax (406) 444-9396; TDD (406) 444-0532; or email smihalik@state.mt.us.

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

24.30.102 OCCUPATIONAL SAFETY AND HEALTH CODE FOR PUBLIC SECTOR EMPLOYMENT (1) and (2) remain the same.

(3) The department of labor and industry ~~hereby~~ adopts a safety code for every place of employment conducted by a public sector employer. This safety code adopts by reference the following occupational safety and health standards found in the Code of Federal Regulations, as of ~~July 1, 2003~~ July 1, 2004:

- (a) Title 29, Part 1910; and
- (b) Title 29, Part 1926.

(4) All sections adopted by reference are binding on every public sector employer even though the sections are not separately printed in a separate state pamphlet and even though they are omitted from publication in the Montana Administrative Register and the Administrative Rules of Montana. The safety standards adopted above and printed in the Code of Federal Regulations, Title 29, as of ~~July 1, 2003~~ July 1, 2004, are considered under this rule as the printed form of the safety code, and shall be used by the department and all public sector employers, employees, and other persons when referring to the provisions of the safety code. All the provisions, remedies, and penalties found in the Montana Safety Act apply to the

administration of the provisions of the safety code adopted by this rule.

(5) remains the same.

AUTH: 50-71-311, MCA

IMP: 50-71-311 and 50-71-312, MCA

REASON: There is reasonable necessity to amend these rules in order to incorporate by reference the current federal rules promulgated by the Occupational Health and Safety Administration (OSHA). These rules are periodically updated to ensure that public sector employers and employees have essentially the same duties and protections that apply to employers and employees in the private sector. The July 1, 2004 version of the Code of Federal Regulations is proposed for incorporation by reference because it is the most recent version generally available in printed form.

24.30.104 INSPECTIONS AND CITATIONS (1) In order to require the state and every political subdivision of this state to furnish to its employees a place of employment free from recognized hazards likely to cause death or serious physical harm to employees, the department of labor and industry has adopted ARM 24.30.102 and ~~24.30.103~~. In accordance with such rules, the department ~~of labor~~ is entitled to conduct inspections and to issue citations for alleged violations. With respect to such power the following provisions apply:

~~(2) (a) Posting of notice.~~ Each employer shall post and keep posted a notice or notices, to be furnished by the ~~department's~~ safety bureau, ~~Montana department of labor,~~ informing employees of the protections and obligations provided for in the Montana Safety Act. Such notice or notices shall be posted by the employer in each public entity in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to ~~insure~~ ensure that such notices are not altered, defaced, or covered by other material.

~~(3) (b) Authority for inspection.~~ Any representative of the safety bureau ~~presenting himself to~~ appearing at any place of employment including, but not limited to, any field operation, for the purpose of carrying out the intent and purpose of the Montana Safety Act, shall be allowed entry without delay and at reasonable times.

~~(4) (c) Consultation with employees.~~ Any safety bureau representative may consult with employees concerning matters of occupational safety and health to the extent ~~they deem the~~ representative deems necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Montana Safety Act which ~~he~~ the employee has reason to believe exists in the workplace to the attention of the safety bureau representative.

~~(5) (d) Posting of citations.~~ Upon receipt of any citation under the Montana Safety Act, the employer shall

immediately post an unedited legible copy in a prominent place where it will be readily observable by all affected employees. A copy of the completed Mandatory Inspection Response form(s) shall be posted at the same location the citations were posted no later than the time the original Mandatory Inspection Response form is submitted to the safety bureau. It shall remain posted for 30 days or until all abatement action has been approved by the safety bureau, whichever period is longer.

AUTH: 50-71-311, MCA
IMP: 50-71-311 and 50-71-312, MCA

REASON: There is reasonable necessity to amend this rule in order to remove reference to a repealed rule. In addition, there is reasonable necessity to amend this rule in order to make technical changes to the form of the rule, including deleting so-called "internal catchphrases", correcting earmarks, and making the language gender-neutral, while the rule is otherwise being proposed for amendment.

24.30.105 RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES: PURPOSE AND SCOPE (1) Pursuant to 50-71-311, MCA of the Montana Safety Act and to supplement ARM 24.30.102 and ~~24.30.103~~, the department of labor and industry establishes this rule with the purpose of providing a vehicle for recording of all occupational accidents, injuries and illnesses involving public sector employees covered under the act as necessary or appropriate. Further, this rule provides for developing information regarding the causes and prevention of occupational accidents and maintaining a program of collection, compilation and analysis of occupational safety and health statistics.

AUTH: 50-71-301, 50-71-311, MCA
IMP: 50-71-301, 50-71-311 and 50-71-312, MCA

REASON: There is reasonable necessity to amend this rule in order to remove reference to a repealed rule. In addition, there is reasonable necessity to update the AUTH and IMP cites to better identify the Department's authority for the rule.

24.30.107 RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES: LOG AND SUMMARY (1) Each employer shall:

(a) faithfully maintain in each establishment a log and summary of all recordable occupational injuries and illnesses for that establishment; and

(b) except as provided in (2), enter each recordable injury and illness on the log and summary as early as practical but no later than six working days after receiving information that a recordable injury or illness has occurred. For this purpose a form equivalent to the OSHA No. 300, furnished by the department of labor and industry, or a readable and comprehensible equivalent shall be used. The log and summary ~~shall~~ must be completed in the detail provided in the form.

(2) In addition to the reporting requirements of (1)(b), an employer must report to the department's occupational safety and health bureau, either by telephone, (406) 444-6401, or by fax, (406) 444-9396, any of the following events within 24 hours of the event's occurrence:

(a) the death or heart attack of any employee from a work-related incident; or

(b) the hospitalization of three or more employees as a result of a work-related incident.

(3) If the employer is not immediately aware of an incident described in (2), the employer must report the incident within 24 hours of becoming aware of such an incident. The reporting requirement of (2) does not apply to a fatality, heart attack or multiple hospitalization if it occurs on or is the result of travel on a commercial airplane, train or bus.

(2) through (5) remain the same, but are renumbered (4) through (7).

AUTH: 50-71-301, 50-71-311, MCA

IMP: 50-71-301, 50-71-311 and 50-71-312, MCA

REASON: There is reasonable necessity to amend this rule to incorporate a requirement for reporting fatalities and multiple hospitalizations as found at 29 CFR 1904.39(a), so as to enable the Department to promptly investigate serious incidents and help assure that future serious incidents do not occur. The federal requirement of reporting a fatality or multiple hospitalizations within eight hours has been extended to 24 hours because, unlike the federal OSHA, the state safety bureau phone lines are not staffed 24 hours per day. In addition, there is reasonable necessity to update the AUTH and IMP cites to better identify the Department's authority for the rule.

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 to:

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

and must be received by no later than 5:00 p.m., September 24, 2004. Comments may also be submitted electronically as noted in the following paragraph.

5. An electronic copy of this Notice of Public Hearing is available through the Department's website on the World Wide Web at <http://dli.state.mt.us/calendar.htm>, under the Calendar of Events, Administrative Rules Hearings section. Interested persons may make comments on the proposed rules via the comment forum, <http://forums.dli.state.mt.us>, linked to the Notice of

Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m., September 24, 2004. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the comment forum do not excuse late submission of comments.

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

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

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

/s/ MARK CADWALLADER
Mark Cadwallader,
Alternate Rule Reviewer

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

Certified to the Secretary of State August 9, 2004

Pages 1914 - 1916 pulled at agency request

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

In the matter of the repeal of	)	NOTICE OF PROPOSED
ARM 37.106.312 pertaining to	)	REPEAL
minimum standards for all)	
health care facilities: blood	)	NO PUBLIC HEARING
bank and transfusion services	)	CONTEMPLATED

TO: All Interested Persons

1. On September 18, 2004, the Department of Public Health and Human Services proposes to repeal the above-stated rule.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you need to request an accommodation, contact the department no later than 5:00 p.m. on September 7, 2004, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

2. ARM 37.106.312 as proposed to be repealed is on page 37-25992 of the Administrative Rules of Montana.

AUTH: Sec. 50-5-103 and 50-5-404, MCA
IMP: Sec. 50-5-103, 50-5-204, and 50-5-404, MCA

3. The department proposes to repeal the minimum standards concerning blood bank and transfusion services because it does not license or regulate them. The law was changed in 1995 by amending section 50-5-101(21), MCA. (See 1995 Laws of Montana, Chapter 366, HB 301.) The intent of this legislation was to make a clear and exhaustive list of facilities that the department does license and regulate. Blood banks and transfusion services are not on that list. The food and drug administration (FDA) establishes and regulates quality assurance requirements for all facilities performing blood bank services. Blood product storage is considered to be a laboratory service regulated by the centers for medicare and medicaid services (CMS) under the Clinical Laboratory Improvement Act (CLIA).

4. Interested persons may submit their data, views or arguments concerning the proposed action in writing to Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on September 16, 2004. Data, views or arguments may also be submitted by facsimile (406)444-9744 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists

are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. If a person who is directly affected by the proposed action wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, by facsimile (406)444-9744 or by electronic mail via the Internet to dphhslegal@state.mt.us no later than 5:00 p.m. on September 16, 2004.

6. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those who are directly affected by the proposed action, from the Administrative Rule Review Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date and a notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be six based on the 61 facilities affected by rules covering blood banks.

Dawn Sliva
Rule Reviewer

Mike Billings for
Director, Public Health and
Human Services

Certified to the Secretary of State August 9, 2004.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
adoption of New Rule I and II) ON PROPOSED ADOPTION
and amendment of ARM 42.9.101,) AND AMENDMENT
42.9.104, 42.9.202, and)
42.9.203 relating to pass-)
through entities)

TO: All Concerned Persons

1. On September 23, 2004, at 10:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption of New Rule I and II and amendment of ARM 42.9.101, 42.9.104, 42.9.202, and 42.9.203, relating to pass-through entities.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue not later than 5:00 p.m., September 13, 2004, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 459-2646; fax (406) 444-3696; or e-mail canderson@state.mt.us.

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

NEW RULE I CONSENT, COMPOSITE RETURN, OR WITHHOLDING FOR PARTNERS, SHAREHOLDERS, AND SINGLE MEMBER LLC MEMBERS THAT ARE FOREIGN C CORPORATIONS (1) A partnership, S corporation, and disregarded entity with one or more foreign C corporation owners, during any part of a tax year for which an information return is required by this chapter, must for each foreign C corporation:

(a) file a composite return as provided in ARM 42.9.202 and include the foreign C corporation in the filing;

(b) obtain from the foreign C corporation and file with its information return the foreign C corporation's agreement to timely file a Montana corporate license tax or corporate income tax return, to timely pay tax due, and to be subject to the state's tax collection jurisdiction on the Montana Foreign C Corporation Income Tax Agreement, Form PT-FCA (Pass-through Entity Foreign C Corporation Agreement); or

(c) remit an amount on the foreign C corporation's

account, determined as provided in (3), with:

(i) a Statement of Montana Income Tax Withheld, Form PT-WH; and

(ii) a Pass-through Entity Withholding Payment Transmittal Document, Form PT-HWHREM.

(2) The pass-through entity is not required to attach new agreements each year, but must attach a currently effective agreement for each new foreign C corporation owner.

(3) The amount that must be remitted by the due date described in (4) is the tax rate in effect under 15-31-121, MCA, multiplied by the foreign C corporation's share of Montana source income reflected on the pass-through entity's information return.

(4) The due date for the remittance and transmittal documents described in (1)(c) is the due date of the entity's information return.

AUTH: 15-30-305 and 15-30-1112, MCA

IMP: 15-30-1113, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to implement changes made by the 2003 legislature in Ch. 225, Law of Montana, which expanded the class of owners eligible to elect to file a composite return.

NEW RULE II CONSENT, COMPOSITE RETURN, OR WITHHOLDING FOR PARTNERS, SHAREHOLDERS, AND SINGLE MEMBER LLC MEMBERS THAT ARE SECOND-TIER PASS-THROUGH ENTITIES

(1) A partnership, S corporation, and disregarded entity with one or more owners that are also pass-through entities (second-tier pass-through entities), during any part of the tax year for which an information return is required by this chapter, must for each second-tier pass-through entity:

(a) file a composite return as provided in ARM 42.9.202 and include the second-tier pass-through entity in the filing;

(b) obtain from the second-tier pass-through entity and file with its information return the second-tier pass-through entity's statement on Form PT-PTS (Pass-through Entity Second-Tier Pass-through Entity Statement) establishing that its Montana source income will be fully accounted for in individual income or corporate license or income tax returns filed with the state; or

(c) remit an amount on the second-tier pass-through entity's account, determined as provided in (3), with:

(i) a Statement of Montana Income Tax Withheld, Form PT-WH; and

(ii) a Pass-through Entity Withholding Payment Transmittal Document, Form PT-HWHREM.

(2) The pass-through entity is not required to attach new statements each year, but must attach a currently effective agreement for each new second-tier pass-through entity owner.

(3) The amount that must be remitted by the due date described in (4) is the highest marginal rate in effect under 15-30-103, MCA, multiplied by the share of Montana source

income of the second-tier pass-through entity reflected on the first-tier pass-through entity's information return.

(4) The due date for the remittance and transmittal documents described in (1)(c) is the due date of the first-tier pass-through entity's information return.

AUTH: 15-30-305 and 15-30-1112, MCA

IMP: 15-30-1113, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule II to implement changes made by the 2003 legislature in Ch. 225, Laws of Montana, which expanded the class of owners eligible to elect to file a composite return.

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

42.9.101 DEFINITIONS The following definitions apply to this chapter:

(1) "Eligible participant" means a partner of a partnership or a shareholder of an S corporation ~~who~~ that is a nonresident individual, a foreign C corporation, or a pass-through entity whose only Montana source income for the tax year is from partnerships or S corporations electing to file composite returns and pay composite taxes on ~~the individual's~~ their behalf.

(2) "Foreign C corporation" means a corporation that is not engaged in or doing business in the state. "Engaged in business" and "doing business" are defined in 15-31-101, MCA, and ARM 42.23.102.

(3) A participant's "share of a partnership's or S corporation's income" is the aggregate of his ~~or~~, her, or its share of the pass-through entity's income, gain, loss, or deduction or item of income, gain, loss, or deduction.

AUTH: 15-30-305 and 15-30-1112, MCA

IMP: 15-30-1111, 15-30-1112, and 15-30-1113, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.9.101 to conform to changes made by the 2003 legislature in Ch. 225, Laws of Montana.

42.9.104 CONSENT, COMPOSITE RETURN, OR WITHHOLDING FOR NONRESIDENT INDIVIDUAL PARTNERS, SHAREHOLDERS, AND SINGLE-MEMBER LLC MEMBERS WHO ARE NONRESIDENT INDIVIDUALS (1) A

partnership, S corporation, and single-member LLC with one or more nonresident individual owners, during any part of ~~the~~ a tax year for which an information return is required by this chapter, ~~must~~, must, for each nonresident individual:

(a) file a composite return as provided in ARM 42.9.202 and include the nonresident individual in the filing;

(b) obtain from the nonresident individual and file with its information return the individual's agreement to timely file a Montana individual income tax return, to timely pay tax due, and to be subject to the state's tax collection jurisdiction on ~~the Montana Nonresident Income Tax Agreement,~~

Form ~~PT-CON~~ PT-NRA (Pass-through Entity Nonresident Individual Agreement); or

(c) remit an amount on the individual's account, determined as provided in ~~(2)~~(3), with:

(i) a Statement of Montana Income Tax Withheld for Nonresident Individual, Form PT-WH; and

(ii) a Pass-through Entity Withholding Nonresident Individual Income Tax Estimated Payments Payment Transmittal Document, Form PT-HWHREM.

(2) The pass-through entity is not required to attach new agreements each year, but must attach a currently effective agreement for each new nonresident individual owner.

(3) through (4)(b) remain the same.

AUTH: 15-30-305 and 15-30-1112, MCA

IMP: 15-30-1113, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.9.104 for housekeeping purposes to clarify the correct titles of forms used by pass-through entities.

42.9.202 FILING REQUIREMENT (1) remains the same.

(2) The composite return must include the name, address, social security or federal employer identification number, interest in the entity, and composite return liability of each consenting eligible participant included in the filing.

AUTH: Sec. 15-30-305 and 15-30-1112, MCA

IMP: Sec. 15-30-105 and 15-30-1112, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.9.202 to implement changes made by the 2003 legislature in Ch. 225, Laws of Montana, which expanded the class of owners eligible to elect to file a composite return beyond individuals.

42.9.203 COMPUTATION OF COMPOSITE TAX (1) remains the same.

(2) The composite return liability of each eligible consenting participant is the product obtained by:

(a) determining the tax that would be imposed, using the rates specified in 15-30-103, MCA, on the sum obtained by subtracting the allowable standard deduction for a single individual, an amount adjusted annually, and one exemption allowance (~~\$800~~), from the participant's share of the entity's income from all sources as determined for federal income tax purposes; and

(b) multiplying that amount by the ratio of the entity's Montana source income to the entity's income from all sources for federal income tax purposes.

(3) The entity is required to make quarterly estimated tax payments as prescribed by 15-30-241, MCA, computed separately for each participant included in the filing of a composite return.

Example:

Assume an S corporation's federal return shows income from all sources of \$60,000, \$20,000 of which is Montana source income, and that an eligible participant's share of the S corporation's income is one-fourth, or \$15,000. The eligible participant's composite return liability is ~~\$189~~ 161:

<u>Participant's sShare of entity income from all sources</u>	\$15,000
Standard deduction (2001) (2003)	(3,230) (3,330)
Exemption allowance (2003)	(800) (1,780)
	<u>\$10,970</u> <u>\$ 9,890</u>

Assume the tax on the \$9,890, using the rates set forth in 15-30-103, MCA, is \$482.

Participant's composite return liability would be \$482 x \$20,000/\$60,000 = \$161.

~~Tax rate on:~~

first	\$1,000	2%	\$ 20
next	\$1,000	3%	\$ 30
next	\$2,000	4%	\$ 80
next	\$2,000	5%	\$100
next	\$2,000	6%	\$120
next	\$2,000	7%	\$140
	\$ 970	8%	\$ 78

~~\$568 x 1/3 (20,000/60,000) = \$189~~

AUTH: 15-30-305 and 15-30-1112, MCA
IMP: 15-30-1112, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.9.203 for housekeeping purposes and in contemplation of prospectively effective amendments made by the 2003 legislature in Ch. 225, Laws of Montana, which changed the personal exemption amounts.

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

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

and must be received no later than October 1, 2004.

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

7. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at <http://www.discoveringmontana.com/revenue>, under "for your reference;" "DOR administrative rules;" and "upcoming events and proposed rule changes." The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Don Hoffman
DON HOFFMAN
Acting Director of Revenue

Certified to Secretary of State August 9, 2004

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed)
amendment of ARM 42.31.101,)
42.31.102, 42.31.107, 42.31.108,))
42.31.109, 42.31.111, 42.31.121,))
42.31.131, 42.31.201, 42.31.202,))
42.31.204, 42.31.205, 42.31.221,))
42.31.302, 42.31.303, 42.31.305,))
42.31.308, 42.31.309, 42.31.310,))
42.31.311, 42.31.312, 42.31.313,))
42.31.325, 42.31.330, 42.31.335,))
42.31.340, 42.31.345, 42.31.701,))
42.31.703, and 42.31.705 and)
repeal of ARM 42.31.122,)
42.31.213, 42.31.314, 42.31.315,))
42.31.316, 42.31.317, 42.31.704,))
and 42.31.706 relating to)
cigarette and tobacco taxes)

NOTICE OF PUBLIC HEARING
ON PROPOSED AMENDMENT AND
REPEAL

TO: All Concerned Persons

1. On September 20, 2004, at 2:30 p.m., a public hearing will be held in the Fourth Floor Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment and repeal of above-stated rules relating to cigarette and tobacco taxes.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue not later than 5:00 p.m., September 13, 2004, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 459-2646; fax (406) 444-3696; or e-mail canderson@state.mt.us.

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

42.31.101 AFFIXING CIGARETTE TAX INSIGNIA (1) Only those licensed wholesalers who have obtained approval from the department to use tax stamping equipment may affix Montana cigarette tax insignia. Cigarette tax insignia may be applied only to products listed on the Montana department of justice current list of approved brand families. Unstamped cigarettes must be obtained directly from cigarette manufacturers, sole distributors or licensed wholesalers.

AUTH: Sec. 16-11-103, MCA

IMP: Sec. 16-11-113 and 16-11-115, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.31.101 because implementation of 16-11-504, MCA required the Department of Justice to maintain a list.

42.31.102 MARKING UNSTAMPED CIGARETTES (1) through (1)(c) remain the same.

(2) The method of marking may either be by roll stamps or by hand-applied decals. The system of marking must be uniform and consistent. The marking system must facilitate a visible review to ~~insure~~ ensure that cigarettes are stamped as required by 16-11-111, MCA. The evidence of the tax insignia must clearly indicate that there is one Montana tax insignia per package.

AUTH: Sec. 16-11-103, MCA

IMP: Sec. 16-11-111, 16-11-113, and 16-11-156, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.31.102 in order to make it easier to perform field audits.

42.31.107 ACCOUNTING CONTROL OF CIGARETTE DISTRIBUTION

(1) ~~Each wholesaler, shall prepare form CT 205 and Schedule A or a computerized version of Schedule A approved by the department. When appropriate, form CT 206 and Schedule C are to be filed with the form CT 205. These forms are to be filed with the department by a wholesaler on or before the 15th day of each month, shall provide a report to the department listing all sales into Montana for the preceding month's activities on forms provided and/or approved by the department. Form CT 205 is a reconciliation of the purchase and distribution of cigarettes and the consumption of cigarette tax indicia. The back of form CT 205 reflects exempt military reservation, out of state, and wholesaler to wholesaler purchases for the month. Form CT 205 and supporting forms are hereby incorporated by reference and may be obtained by contacting the Department of Revenue at P.O. Box 5835, Helena, Montana 59604 5835.~~

(2) ~~Each out of state wholesaler shall prepare form CT 205 and submit a listing of all sales into Montana. The listing must include the quantity sold, the business name of the purchaser, and the invoice number and date.~~

(3) ~~Sales of unstamped cigarettes must be itemized on form CT 206 which is then used as a supporting document for form CT 205.~~

(4) ~~Sales of untaxed stamped exempt cigarettes made to an authorized tribal cigarette retailer on an Indian reservation shall be reported on forms provided and approved by the department CT 206. ~~Form CT 206 must be completely filled out and contain the original signature of the purchaser and wholesaler on the date of delivery.~~~~

(a) The tribal government may provide the department

with a list showing the names of ~~qualified~~ authorized retailers and their portion of the quota. The tribal government must notify the department of any change in the requested allocations.

(b) If the tribal government does not provide direction on allocation among Indian retailers, the department will approve sales of allocated untaxed cigarettes until the respective Indian reservation quota is depleted. The allocation to retailers will be on a first-to-ship basis unless particular circumstances indicate another basis.

~~(5)~~(3) ~~A~~ ~~W~~wholesaler must contact the department prior to all ~~non-untaxed~~ sales on a reservation. The department will issue permission to ship the cigarettes, ~~will~~ track quota allocations, and notify the wholesalers when the quota has been reached. Once the quota for any particular retailer/reservation has been reached, sales to that retailer/reservation will include tax.

AUTH: Sec. 16-11-103, MCA

IMP: Sec. 16-11-104, 16-11-111, and 16-11-156, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.31.107 because the form names and instructions described within this rule are not necessary in the rule and will be noted in department procedures.

42.31.108 SALES OF UNSTAMPED CIGARETTES (1) Any person who purchases unstamped cigarettes, claiming that Montana lacks jurisdiction over ~~his~~ that person's cigarette sales activities, must be fully identified by name, address of residence, address and location of business, and federal tax or tribal government identification number. The required information will be entered on forms CT 206, ~~which will also be a receipt requiring the signature of the person purchasing the cigarettes to acknowledge the purchase and physical possession of the unstamped cigarettes itemized thereon provided and/or approved by the department.~~

(2) and (3) remain the same.

AUTH: Sec. 16-11-103, MCA

IMP: Sec. 16-11-132 and 16-11-156, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.31.108 because the form names and instructions described within this rule are not necessary in the rule and will be noted in department procedures.

42.31.109 SALE OF OTHER STATE-STAMPED CIGARETTES

(1) remains the same.

(2) Cigarettes with other state stamps and distributed outside of Montana must be reported to the department on Schedule C ~~listing the name and address of purchaser, name of carrier, method of shipment, invoice date, invoice number and total cigarettes shipped. This forms must be submitted along with form CT 205 by the 15th day of the month following the sale provided and/or approved by the department.~~

AUTH: Sec. 16-11-103, MCA
IMP: Sec. 16-11-132, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.31.109 because the form names and instructions described within this rule are not necessary in the rule and will be noted in department procedures.

42.31.111 PURCHASING ROLL OR HAND-APPLIED CIGARETTE TAX INSIGNIA (1) Roll or hand-applied stamp orders shall be submitted on forms CT 201, ~~directly to the department on a cash or credit basis provided and/or approved by the department.~~

~~(a) A cigarette tax surety bond, as referenced in 16-11-117, MCA, must be on file with the department before credit purchases are allowed.~~

AUTH: Sec. 16-11-103, MCA
IMP: Sec. 16-11-115 and 16-11-117, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.31.111 because the form names and instructions described within this rule are not necessary in the rule and will be noted in department procedures.

42.31.121 CORPORATE APPLICANTS FOR CIGARETTE LICENSES
(1) The requirements of 16-11-120, MCA, for names and home addresses of owners on applications for cigarette licenses will be met in the case of a corporation with when the corporation ~~the furnishinges of the~~ names and home addresses of the corporation's principal executive officers (president, vice-president, secretary, and treasurer) and members of the board of directors.

(2) remains the same.

AUTH: Sec. 16-11-103, MCA
IMP: Sec. 16-11-120 and 16-11-301, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.31.121 for housekeeping purposes.

42.31.131 CIGARETTE TAX REFUNDS/DISTRIBUTIONS
(1) Cigarette tax refunds/~~distributions~~ will be issued as provided in (2), (3) and (4). All cigarette tax refunds will be calculated assuming the lowest current statutory discount rate unless documentation is provided supporting a higher discount rate.

(2) Refund claims by a cigarette manufacturer or wholesaler must contain ~~a notarized affidavit that:~~

~~(a) a notarized affidavit attesting the cigarette tax refund claimed is for state of Montana cigarette tax insignia, which are affixed to the unsaleable cigarettes;~~

~~(b) credit or refund for the net cost of the tax insignia has been given to a Montana cigarette wholesaler; and~~

~~(c) the cigarettes have been destroyed or will not be sold at any time.~~

(3) Refund claims must be accompanied by a copy of the manufacturer or other vendor credit memo or invoice issued to the Montana wholesaler. In lieu of the credit memo or invoice, the manufacturer or wholesaler may submit a printout showing each customer name, customer credit invoice number, number of Montana stamped cigarettes, tax amount and the date the cigarettes were returned for credit.

~~(4)~~ Refunds will be allowed for stale or damaged merchandise ~~during the first 90 days~~ after a change in the tax rate at the previous rate of tax unless it can be verified conclusively that the new tax has been paid on the specific product for which such refund is claimed.

(4) remains the same but is renumbered (5).

~~(5)~~(6) Cigarette tax credits or refunds for indicia used in sales made on an Indian reservation are made to wholesalers pursuant to the established quota for a particular Indian reservation. The wholesaler can request a credit or a cash refund by filing forms CT 207 with a copy of form CT 206 supplied by the department. Upon receipt, ~~of forms CT 206 and CT 207~~ the department will process ~~approve the credit or mail~~ the refund within 10 working days.

~~(6)~~(7) No credit or refund Only a preauthorized credit or refund for ~~non-untaxed~~ (quota) sales on an Indian reservation will be allowed to a wholesaler ~~once the retailer/reservation has depleted the quota amount.~~

AUTH: Sec. 16-11-103, MCA

IMP: Sec. 15-1-503, 16-11-112, and 16-11-156, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.31.131 to ensure that the department will not refund more taxes than what was paid or collected. ARM 42.31.131(5) was modified because the form names and instructions described within the rule are not necessary in the rule and will be incorporated into the department procedures.

42.31.201 DEFINITIONS The following definitions apply to this sub-chapter:

(1) "Montana department of justice current tobacco product directory" means the cigarette and tobacco manufacturer and brand directory as required by 16-11-504, MCA.

(2) "Statutory discount" means the amount the wholesaler or retailer is allowed to defray their administrative expenses.

~~(3) "Tobacco products" are defined by the following list include, but are not limited to this list:~~

~~(a) cigars (large and small); and~~

~~(b) smoking, chewing, and snuff tobaccos; and~~

~~(c) moist snuff.~~

(2) remains the same but is renumbered (4).

AUTH: Sec. 16-11-103, MCA

IMP: Sec. 16-11-102 and 16-11-202, MCA

REASONABLE NECESSITY: The department is proposing to amend

ARM 42.31.201 to add definitions used in this sub-chapter.

42.31.202 PAYMENT OF TAX — BOND (1) The wholesaler or retailer shall remit the appropriate tax calculated at the statutory rate on the wholesale price paid for all untaxed tobacco products purchased and delivered from manufacturers, to Montana for retail sale less 2 1/2% of the computed tax for collection statutory discount.

(2) All wholesalers or retailers shall remit the tax on forms provided and/or approved by the department TP 101, tobacco products tax reporting form, together with copies of the itemized invoices procured from the manufacturers or from another the wholesalers of all tobacco products or on a computerized print-out preapproved by the department that must contain roll your own product by the number of ounces received and the brand name, manufacturer name and address.

(3) All such remittance shall be made to the department by the 15th of each month covering purchases of tobacco products made during the previous month. Form TP 101 is hereby incorporated by reference and may be obtained by contacting the Department of Revenue at P.O. Box 1712, Helena, Montana 59604 1712.

(4) The department may in its discretion require that wholesalers be bonded under the provisions of these rules Failure to provide all the required information in this rule may result in a late filing penalty.

AUTH: Sec. 16-11-103, MCA

IMP: Sec. 16-11-203, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.31.202 to bring the rule into conformance with the current practice. The form names and instructions described within the rule are not necessary and will be noted in department procedures.

42.31.204 PAYMENT OF TAX BY RETAILER (1) Before offering to sell tobacco products, as defined in ARM 42.31.201, a retailer who purchases tobacco products for which the statutory tobacco products tax has not been pre-collected and paid to the department, must comply with all the provisions of Title 16, chapter 11, part 2, MCA, and these rules by prepaying the tax.

(2) A retailer must assume that the tobacco products tax has not been pre-collected and paid to the department in the absence of the statement required by ARM 42.31.212 on his the invoice or sales slip for tobacco products.

AUTH: Sec. 16-11-103, MCA

IMP: Sec. 16-11-202 and 16-11-205, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.31.204 for housekeeping purposes only.

42.31.205 DISPLAY OF NOTICE OF TAX (1) remains the same.

(2) Below is a sample format of the notice:

NOTICE

NOTICE is hereby given that a Montana tax, calculated at the statutory rate ~~on the wholesale price of tobacco products to the wholesaler~~ is included in the price of all tobacco products sold in this store.

AUTH: Sec. 16-11-103, MCA

IMP: Sec. 16-11-202, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.31.205 for housekeeping purposes only.

42.31.221 CREDITS FOR UNSALEABLE TOBACCO PRODUCTS OTHER THAN CIGARETTES (1) ~~Credits of the 25% tobacco products tax, less the 2 1/2% collection expense discount, Credits of the statutory rate for tobacco products shall be granted in accordance with the provisions of 15-1-503, MCA, in cases where the tobacco products purchased and delivered become unsaleable. A manufacturer's credit memo will be required for proof of returned merchandise. Credits or refunds will not be allowed for stale or damaged merchandise during the first 90 days the tobacco products tax is in effect. During the first 90 days of a tax rate change, refund applications will be issued using the previous tax rate unless it the department receives evidence can be verified conclusively that the tax paid on the application has been was paid on the specific product for which such refund or credit is claimed at the new tax rate.~~

(2) Credits will also be granted for tobacco products shipped from Montana and destined for retail sale and consumption outside Montana on which the tax has been paid. ~~Duplicates or copies~~ Evidence of the original sales slips or invoices will be required for proof of sales to out-of-state retailers.

~~(3) Credits must be claimed by filing form TP 102, Claim for Credit on Tobacco Products Tax. Forms will be supplied by the department upon request.~~

~~(4) In lieu of submitting individual sales slips or invoices, wholesalers may apply to the department for permission to submit monthly computer print out summaries or other approved summaries which would provide an audit trail. These requests will be considered by the department on an individual basis as to whether the proposed system provides sufficient verification for granting credits. If, after a field audit, a previously approved system does not meet department requirements, system approval will be withdrawn.~~

AUTH: Sec. 16-11-103, MCA

IMP: Sec. 16-11-206, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.31.221 because the form names and instructions described within the rule are no longer necessary in the rule but will be noted in department procedures.

42.31.302 COMPLAINTS, INVESTIGATIONS, AND PENALTIES

(1) remains the same.

(2) Upon receipt of a written and verified complaint from a person, an investigation will be conducted of the wholesaler's and retailer's entire records for the applicable period. If the department finds sufficient cause and believes prosecution of the alleged violation will aid in collection of cigarette and tobacco products taxes or assist in the regulating and enforcement of the tobacco master settlement agreement, the department will proceed pursuant to 16-10-403, MCA, and ARM 42.2.613 through 42.2.621.

AUTH: Sec. 16-10-104 and 16-11-103, MCA

IMP: Sec. 16-10-403 and 16-11-118, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.31.302 to clarify that all complaints must be verified and submitted in writing in order to be considered by the department.

42.31.303 WHOLESALE AND RETAILER RECORDS (1) through (1)(e) remain the same.

(2) Commercial records or invoices may be used if they contain the information listed in (1)(a) through (e) ~~above~~.

~~(3) The records or invoices shall be maintained for five years.~~ Cigarette and tobacco product retailers shall keep and maintain records at their place of business of all cigarette or tobacco products furnished or sold to consumers. The records must contain the following information:

(a) name and address of each wholesaler;

(b) date the cigarette or tobacco products were purchased; and

(c) balance of product inventory to establish the number of packs of cigarettes on hand.

(4) All records must be preserved for a period of five years from the date of purchase or from the date of last entry in the records. The records must include the information required by 16-11-118, MCA.

(5) The department may inspect all records in accordance with the provisions of ARM 42.2.305.

AUTH: Sec. 16-10-104 and 16-11-103, MCA

IMP: Sec. 16-11-118, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.31.303 to change the title and blend text that was previously found in ARM 42.31.213 into this rule for better clarification of the requirements to retain records for both wholesalers and retailers.

42.31.305 PRICING TO MEET COMPETITION (1) Any retailer or wholesaler may advertise or sell cigarettes ~~priced to meet a competitive price~~ as long as the advertised or sale price is not below the minimum price set by the department as required by statute.

(2) and (3) remain the same.

AUTH: Sec. 16-10-104, MCA

IMP: Sec. 16-10-203, 16-10-303, and 16-10-304, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.31.305 for housekeeping purposes only.

42.31.308 WHOLESALE/RETAIL PRICES (1) ~~Wholesaler prices to the retailer could be affected by tax increases enacted by the Montana legislature.~~

~~(2) When tax increases occur, the department may conduct audits may be done on cigarette inventories located at the wholesaler's and/or retailer's premises in order to comply with the tax increase. These audits may be done by the department or on a voluntary system basis by the wholesaler.~~

~~(3) Field or voluntary audits may also be required on inventories located at retail businesses in order to comply with tax increases.~~

(4)(2) There is only one basic cost for each brand or style of cigarettes. The minimum price computation for Montana taxed cigarettes is:

~~Manufacturer's base cost.....xxxxxx
(ADD) Federal tax.....xxxxxx
State tax.....xxxxxx~~

~~Manufacturer base cost plus taxes.....xxxxxx~~

~~Multiply the manufacturer base cost plus tax by wholesale presumed cost of doing business and by cartage.~~

~~(ADD)
Presumed cost of doing business.....xxxxxx
Cartage.....xxxxxx~~

~~The minimum wholesale cost/
cost to retailer.....xxxxxx~~

~~Multiply the minimum wholesale cost by the retail presumed cost of doing business.~~

~~(ADD)
Presumed cost of doing business.....xxxxxx~~

~~The minimum retail cost/
cost to consumer.....xxxxxx~~

Basic cost of cigarettes as defined in 16-10-103, MCA.....xxxxxx
(ADD) Federal tax.....xxxxxx
(ADD) State tax.....xxxxxx

Basic cost of cigarettes plus taxes.....xxxxxx

Multiply the basic cost of cigarettes
plus taxes by wholesale cost of doing
business and by cartage.

(ADD) Wholesale cost of doing business
or as established by department
approved cost survey.....XXXXXX

Cartage...current statutory rate
or as established by department
approved cost survey.....XXXXXX

The minimum wholesale price/
cost to retailer.....XXXXXX

Multiply the minimum wholesale
price by the retail cost of
doing business.

(ADD) Retail cost of doing business
current statutory rate
or as established by department
approved cost survey.....XXXXXX

The minimum retail price/cost to consumer.....XXXXXX

(5)(3) The minimum price computation for Montana untaxed
cigarettes is:

~~Manufacturer's base cost.....XXXXXX
(ADD)~~

~~Federal tax.....XXXXXX~~

~~Manufacturer base cost plus tax.....XXXXXX~~

~~Multiply the manufacturer base cost
plus tax by wholesale presumed cost
of doing business and by cartage.~~

~~(ADD)
Presumed cost of doing business.....XXXXXX
Cartage.....XXXXXX~~

~~The minimum wholesale cost/
cost to retailer.....XXXXXX~~

~~Multiply the minimum wholesale
cost by the retail presumed cost of
doing business.~~

~~(ADD)
Presumed cost of doing business.....XXXXXX~~

~~The minimum retail cost/
cost to consumer.....XXXXXX~~

Basic cost of cigarettes as defined in 16-10-103, MCA.....xxxxx
(ADD) Federal tax.....xxxxx

Basic cost of cigarettes plus tax.....xxxxx

Multiply the basic cost of cigarettes by wholesale cost of doing business and by cartage.
(ADD) Wholesale cost of doing business
...current statutory rate or as established by department approved survey.....xxxxx

Cartage.....current statutory rate

The minimum wholesale price/cost to tax exempt retailer.....xxxxx

Multiply the minimum wholesale cost by the retail cost of doing business.

(ADD) Retail cost of doing business
current statutory rate or as established by department approved cost survey.....xxxxx

The minimum tax-exempt retail price/cost to tax exempt consumer.....xxxxx

AUTH: Sec. 16-11-103, MCA
IMP: Sec. 16-11-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.31.308 for housekeeping purposes, and to make the terms consistent with the statutes.

42.31.309 DEFINITIONS In addition to the definitions found in 16-10-103, MCA, the following definitions apply to this sub-chapter:

(1) ~~"Affected person" means a licensed Montana wholesaler or retailer of cigarettes.~~

(2) "Cash discount" means a reduction in the invoice or purchase price attributable to payment within a prescribed time period.

(3) ~~"Conspicuous" means a term or clause when it is so written that a reasonable person against whom it is to operate ought to have noticed it.~~

(4) ~~"Manufacturer's base cost" means the manufacturer's list cost per unit, before any cash or trade discounts are applied. There is only one base cost for each brand/style of cigarette.~~

(5) and (6) remain the same but are renumbered (2) and (3).

~~(7) "Trade discounts" represent adjustments to the purchase price granted by a vendor. The discount may vary depending upon the quantity of purchases, or other factors established by the vendor. If a discount is always allowed irrespective of time of payment, it is considered to be a trade discount.~~

AUTH: Sec. 16-10-104, MCA

IMP: Sec. 16-10-103 and 16-10-301, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.31.309 for housekeeping purposes. The terms repealed are no longer used in the sub-chapter.

42.31.310 PETITION REQUIREMENTS COST SURVEY (1) Any wholesaler or retailer who desires to prove that its cost of doing business is less than the statutory presumptive cost of doing business, as set forth in the Montana Cigarette Sales Act, shall submit to the department form CT 210 and all supporting documentation to the department for consideration which shall be the petition for approval of lower cost. Form CT 210 is hereby incorporated by reference and may be obtained by contacting the Department of Revenue, at P.O. Box 5835, Helena, Montana 59604 5835.

(a) Documents that support the petition must reflect actual cost data for a period ending not more than 90 days prior to the submission of the cost survey petition.

~~(2) A wholesaler or retailer who is licensed for business in Montana, may submit a petition for approval of lower cost and actual cost data for a period ending no more than 90 days prior to the submission of the petition. The actual cost data must be in sufficient detail to determine the petitioner's true costs of doing business in Montana. Unless determined to be confidential pursuant to ARM 42.31.317, petitioner must timely provide complete copies and all supporting documentation to all interested parties upon request.~~

AUTH: Sec. 16-10-104, MCA

IMP: Sec. 16-10-103 and 16-10-301, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.31.310 to change the title to better suit the contents of the rule. The department further proposes to amend the rule to clarify the department petition requirement.

42.31.311 APPEALS AND HEARINGS (1) Disputes concerning cost surveys for cigarettes will be heard by the department's office of dispute resolution. For this purpose, appeal rights contained in 15-1-211, MCA, and ARM 42.2.613 through 42.2.621, effective December 17, 1999 and November 1, 2002, are incorporated by reference. Copies may be obtained by contacting the Department of Revenue, P.O. Box 5805 7701, Helena, Montana 59604 5805 59604-7701.

AUTH: Sec. 16-10-104, MCA

IMP: Sec. 16-10-103 and 16-10-301, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.31.311 for clarification and to correct the mailing address for obtaining copies of the administrative rules regarding appeals and hearings. The applicable effective dates for the rules adopted by reference have also been added.

42.31.312 ORDER OF APPROVAL OF A LOWER COST (1) Any order of approval shall contain an effective date and the approved lower cost of doing business. The approved lower "cost of doing business" by the petitioner shall be the minimum cost used in establishing ~~its~~ the selling price for cigarettes sold in the state of Montana.

(2) The state of Montana is considered one market. Any wholesaler or retailer may adjust their prices to meet those of ~~any of their~~ competitors if a lower price is approved through this cost ~~showing~~ survey process. Absent a ~~certified lower cost, an approved lower cost survey,~~ the minimum price ~~presumptions~~ contained in current law are is controlling.

~~(3) Appeal rights are contained in 15-1-211, MCA, and ARM 42.2.613 through 42.2.621, effective December 17, 1999. Copies may be obtained by contacting the Department of Revenue, P.O. Box 5805, Helena, Montana 59604-5805.~~

AUTH: Sec. 16-10-104, MCA

IMP: Sec. 16-10-103 and 16-10-301, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.31.312 for housekeeping purposes and to delete (3) because the appeal process is already described in ARM 42.31.311.

42.31.313 COST DATA AND ANALYSIS (1) remains the same.

(2) The cost data to be submitted shall contain the petitioner's basic proposed cost of cigarettes sold ~~for the specific Montana location~~ followed by a listing of all ~~other~~ direct costs ~~paid or incurred~~ and all ~~allocated~~ indirect ~~overhead~~ costs ~~paid or incurred in the purchase and ultimate sale of cigarettes, as required in (1) above.~~ The petitioner's cost of doing business shall be divided by basic cost to determine the actual percentage cost of doing business.

(3) When submitting the actual cost data, as required by (2) ~~above,~~ the petitioner must provide supporting documentation including, ~~but not limited to:~~

~~(a) the petitioner's cigarette cost of doing business as proportionate to petitioner's total cost of doing business, as provided in (1) above, or a written explanation of the difference between the petitioner's overall cost of doing business from their cigarette cost of doing business for the specific Montana location(s);~~

~~(b) a representative sample of invoices issued for cigarettes purchased from each cigarette manufacturer or~~

~~wholesaler for the period as provided in 16-10-103, MCA;~~

~~(c) proof of total state cigarette tax stamp indicia purchased by petitioner during the period covered in the petition;~~

~~(d) copies of the latest filed Montana state and federal income tax return including all schedules and all attachments;~~

~~(e) Schedule K-1 (Form 1065);~~

~~(f) Form 4562;~~

~~(g) latest available audited financial income statement;~~

~~(h) latest available annual report(s); and~~

~~(i) any other financial statements or information necessary to substantiate the actual cost data.~~

AUTH: Sec. 16-10-104, MCA

IMP: Sec. 16-10-103 and 16-10-301, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.31.313 to simplify the cost analysis process and the proofs required within the rule are already described in statute.

42.31.325 LICENSE (1) remains the same.

~~(2) In the case where the retailer contracts with a vending machine operator to place a vending machine for the sale of tobacco products in the establishment, the retailer must obtain a retail license to sell tobacco products. The anniversary dates for preexisting licenses administered under Title 30, chapter 16, MCA, shall be the date originally issued by the department.~~

~~(3) The license covers one fiscal year, July 1 to June 30.~~

~~(4) The license cannot be transferred.~~

~~(5)(4) The department will issue the applicable license as required under 16-11-120 or 16-11-303, MCA, together on one form.~~

AUTH: Sec. 16-11-312, MCA

IMP: Sec. 16-11-303 and 16-11-306, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.31.325 because cigarette and tobacco licenses are issued under the One-Stop Licensing system and the deleted text is no longer applicable.

42.31.330 DECALS ON VENDING MACHINES (1) Decals issued as part of the annual vendor license must be affixed to the front of all vending machines within full view of tobacco products purchasers, within 30 days from the date of receipt by the vendor.

~~(2) In the case where the retailer contracts with a licensed vending machine operator to place a vending machine containing tobacco products in the establishment, the retailer must obtain a retail license to sell tobacco products.~~

~~(3) The following message must be printed on each decal: "MONTANA LAW PROHIBITS THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER 18 YEARS OF AGE."~~

AUTH: Sec. 16-11-312, MCA

IMP: Sec. 16-11-304 and 16-11-306, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.31.330(2) to clarify the retail location responsibility as mandated by statute.

42.31.335 SIGNS (1) The retailer must ~~conspicuously visibly~~ display a sign at each place on the premises that tobacco products are sold or displayed; each sign must include the language shown in ARM 42.31.330. This includes all cash registers, display racks, vending machines or other places where tobacco products are available to the consumer or where the consumer pays for the tobacco product.

~~(2) The department will furnish the signs. However, if the retailer wishes to furnish the sign(s), the sign must contain the language shown in ARM 42.31.330.~~

~~(3) Signs must be conspicuously placed at each place tobacco products are displayed and sold. To determine whether signage is conspicuous, the reasonableness test must be applied, i.e., would a reasonable person get the message? Some examples of conspicuously displayed signs are:~~

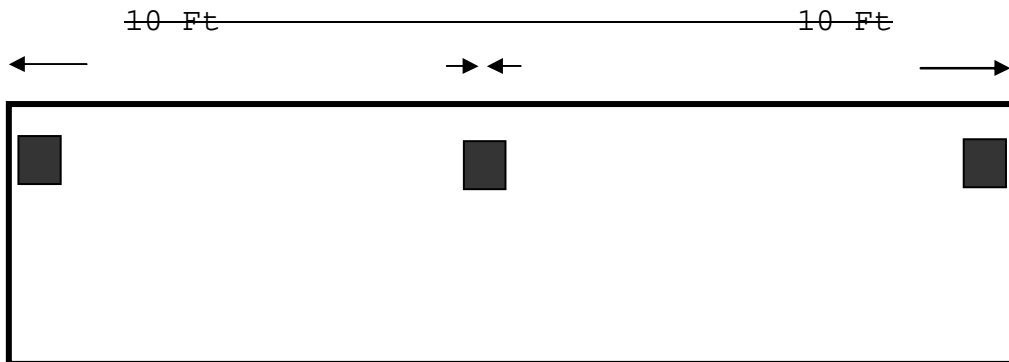
~~(a) Linear displays: signs posted at least every 10 feet. If a display area is 10 feet long, a sign placed in the center, not less than 4 feet or more than 8 feet above the floor should meet the reasonableness test.~~

~~(b) If the display area is 20 feet long, signs placed in the center and two feet from each end and not less than 4 feet or more than 8 feet above the floor should be adequate.~~

~~(c) Non linear displays: signs posted on each side of a square display area where tobacco products are offered; signs posted every 5 feet in a circular display should be adequate.~~

Example:

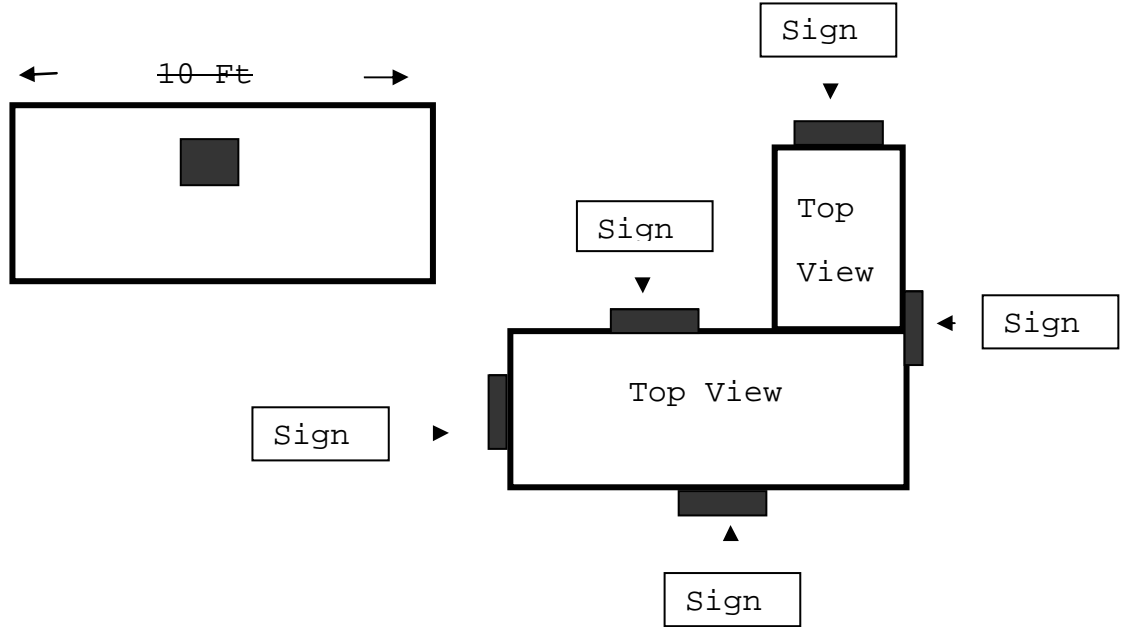
Front View of Display



Top View of Display

(all sides are less than 10 ft long)

Front View of Display



AUTH: Sec. 16-11-312, MCA

IMP: Sec. 16-11-304, 16-11-305, and 16-11-306, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.31.335 to delete language already in statute and to remove sign display examples that are unnecessary.

42.31.340 PACKAGING OF TOBACCO PRODUCTS (1) All tobacco products must be sold or distributed in the manufacturers' sealed package and must contain the health warning required by federal law. The only exception is in the case of a bulk product that is intended to be repackaged and sold in smaller, variable units at retail. The retailer must package these smaller units and label the package with the health warning required by federal law.

~~(2) The sale or distribution of single cigarettes is prohibited.~~

AUTH: Sec. 16-11-312, MCA

IMP: Sec. 16-11-307, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.31.340 because 16-11-307, MCA, was amended by the 2001 legislature and the language being deleted is now in that statute.

42.31.345 PENALTIES (1) The penalties mandated under 16-11-308, MCA, will be enforced and collected by the department of revenue.

(2) remains the same.

AUTH: Sec. 16-11-312, MCA

IMP: Sec. 16-11-308, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.31.345 for housekeeping purposes.

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

(1) ~~"Cigarette" means the definition found in 16-11-402, MCA.~~

(2) ~~"Non participating manufacturer (NPM) report form" means the form prescribed or approved by the department to report cigarette products sold in Montana by tobacco product manufacturers as defined in 16-11-402, MCA, that are not participating manufacturers as defined in 16-11-402, MCA.~~

(3) "Reporting agency entity" means any Montana cigarette wholesaler or licensed Montana retailer acting as a tobacco wholesaler who brings cigarettes or other tobacco products, including roll your own tobacco, into Montana for sale to consumers.

(4)(2) "Retailer acting as a tobacco wholesaler" means a licensed Montana retailer who purchases other tobacco products from a manufacturer, distributor, or importer, ~~and~~ who has ~~does~~ not prepay prepaid the tax on tobacco products.

AUTH: Sec. 16-11-402, MCA

IMP: Sec. 16-11-201 and 16-11-402, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.31.701 because changes in 16-11-504, MCA, eliminated the need of the department to collect the report. The reports are collected by the Department of Justice as stated in 16-11-501, MCA.

42.31.703 DEPARTMENT EXAMINATIONS AND PRESERVATION OF RECORDS

(1) At any time during usual business hours the department or its duly authorized agents may enter a reporting ~~agency's~~ entity's place of business to examine the copies of reports required to be kept under this chapter. The department may examine the inventory of cigarette products contained at the premise to determine compliance ~~with this chapter.~~

(2) ~~All copies of reports required under this chapter must be preserved for a period of five years unless the department authorizes their destruction or disposal in writing.~~

AUTH: Sec. 16-11-402, MCA

IMP: Sec. 16-11-118 and 16-11-403, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.31.703 to delete (2) because the requirements shown in this section are now provided in statute.

42.31.705 LATE FILING PENALTIES (1) A penalty will be assessed ~~as follows~~ when reports are not timely received. Those penalties are as follows:

(a) ~~the failure to file the required report by the due date will result in a late filing penalty of - \$50 late filing~~

penalty; and

(b) a reporting agency entity who that purposely fails to file a report shall be assessed an additional late filing penalty of - \$200 additional late filing penalty.

AUTH: Sec. 16-11-402, MCA

IMP: Sec. 15-1-216 and 16-11-402, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.31.705 for housekeeping purposes.

4. The Department proposes to repeal the following rules:

42.31.122 DECALS ON VENDING MACHINES which can be found on page 42-3111 of the Administrative Rules of Montana.

AUTH: Sec. 16-11-103, MCA

IMP: Sec. 16-11-123, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.31.122 because it is duplicated in ARM 42.31.330.

42.31.213 WHOLESALER AND RETAILER RECORDS which can be found on page 42-3125 of the Administrative Rules of Montana.

AUTH: Sec. 16-11-103, MCA

IMP: Sec. 16-11-118, 16-11-202, and 16-11-203, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.31.213 because the text is redundant to the text found in ARM 42.31.303 as amended.

42.31.314 BASIC COST which can be found on page 42-3144.3 of the Administrative Rules of Montana.

AUTH: Sec. 16-10-104, MCA

IMP: Sec. 16-10-103 and 16-10-301, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.31.314 because it is now covered in statute.

42.31.315 GUIDELINES FOR WHOLESALERS which can be found on page 42-3144.4 of the Administrative Rules of Montana.

AUTH: Sec. 16-10-104, MCA

IMP: Sec. 16-10-103 and 16-10-301, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.31.315 because it is now covered in statute.

42.31.316 GUIDELINES FOR RETAILERS which can be found on page 42-3144.5 of the Administrative Rules of Montana.

AUTH: Sec. 16-10-104, MCA

IMP: Sec. 16-10-103 and 16-10-301, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.31.316 because it is now covered in statute.

42.31.317 PROTECTIVE ORDER FOR CONFIDENTIAL INFORMATION which can be found on page 42-3144.6 of the Administrative Rules of Montana.

AUTH: Sec. 16-10-104, MCA

IMP: Article II, sec. 9 and 10, Montana Constitution, and 16-10-103 and 16-10-301, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.31.317 because it is now covered in statute.

42.31.704 CREDIT FOR GOODS RETURNED TO MANUFACTURER which can be found on page 42-3164 of the Administrative Rules of Montana.

AUTH: Sec. 16-11-402, MCA

IMP: Sec. 15-1-503, 16-11-112, 16-11-156, and 16-11-403, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.31.704 because the requirements stated in this rule are covered in ARM 42.31.221 and therefore this rule is no longer necessary.

42.31.706 DISPUTES which can be found on page 42-3164 of the Administrative Rules of Montana.

AUTH: Sec. 15-1-201, 15-1-211, and 16-11-402, MCA

IMP: Sec. 15-1-211, 16-11-143, and 16-11-403, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.31.706 because ARM 42.31.311 addresses these requirements and therefore this rule is no longer necessary.

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

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

and must be received no later than October 1, 2004.

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

7. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at <http://www.discoveringmontana.com/revenue>, under "for your reference;" "DOR administrative rules;" and "upcoming events and proposed rule changes." The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned

persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Don Hoffman
DON HOFFMAN
Acting Director of Revenue

Certified to Secretary of State August 9, 2004

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
adoption of NEW RULE I) ON PROPOSED ADOPTION
regarding the filing of)
certification authorities)

TO: All Concerned Persons

1. On September 8, 2004, a public hearing will be held at 10:00 a.m. in the Secretary of State's Office, Room 260, State Capitol Building, Helena, Montana, to consider the proposed adoption of NEW RULE I regarding the filing of certification authorities in Montana.

2. The Secretary of State 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 Secretary of State no later than 5:00 p.m. on September 1, 2004 to advise us of the nature of the accommodation that you need. Please contact Janice Doggett of the Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-5375; FAX (406) 444-3020; e-mail jdoggett@state.mt.us.

3. The proposed new rule provides as follows:

- NEW RULE I FILING FOR CERTIFICATION AUTHORITIES (1) To be registered as a certification authority, a person must:
- (a) file with the secretary of state;
 - (b) pay the fees required in Title 35, MCA; and
 - (b) pay a license fee of \$300.00 as required by 2-20-109(4), MCA.
- (2) The certification authority:
- (a) must use encryption technology that conforms to industry standards; and
 - (b) shall assume all responsibility and liability for:
 - (i) ensuring the identity of those entities they provide with digital signatures; and
 - (ii) the use of those signatures.

AUTH: Sec. 2-20-110, MCA
IMP: Sec. 2-20-109, MCA

4. This rule will be applied retroactively to September 8, 2004.

5. The new rule is proposed to be adopted to authorize certification authorities to file with the Secretary of State and pay the fee required by law. A person may not act as a certification authority without being registered with the Secretary of State. This rule implements 2-20-109, MCA as

required by 2-20-110, MCA. The fiscal impact will be an approximate increase of revenue of \$600.00, assuming registration of two certification authorities.

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 Janice Doggett, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing jdoggett@state.mt.us, and must be received no later than September 17, 2004.

7. Janice Doggett, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801 has been designated to preside over and conduct the hearing.

8. The Secretary of State 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 administrative rules, corporations, elections, notaries, records, uniform commercial code or combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Bureau, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-5833, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

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

/s/ BOB BROWN
BOB BROWN
Secretary of State

/s/ Janice Doggett
JANICE DOGGETT
Rule Reviewer

Dated this 9th day of August 2004.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of new) NOTICE OF ADOPTION
Rule I regarding trust company)
examination fees and new Rule II)
regarding required bond amounts for)
the licensing of escrow businesses)

TO: All Concerned Persons

1. On May 20, 2004, the Department of Administration, Division of Banking and Financial Institutions published MAR Notice No. 2-2-347 regarding the public hearing on the proposed adoption of the above-stated rules at page 1179 of the 2004 Montana Administrative Register, Issue Number 10.

2. The agency has adopted new Rule I, ARM 2.59.114 and new Rule II, ARM 2.59.703 exactly as proposed.

3. The agency has thoroughly considered the comments received on the proposed adoption of these rules. The following is a summary of the comments received and the agency's response.

COMMENT 1: One comment was received and noted the business maintained errors and omissions insurance and feels this should be accepted in lieu of a bond. The commenter also noted that "bonds" were discussed at a hearing in 1990 and were found to be too expensive to maintain.

RESPONSE: The division appreciates the comment. It notes that Montana law, section 32-7-109, MCA, requires applicants to be licensed as an escrow business and submit a bond in an amount to be set by department rule.

COMMENT 2: One comment was received providing that no parameters for "default" of the "bond" are set nor are there any provisions for redress or hearings, short of filing legal action.

RESPONSE: The division thanks the commenter for his concern and notes that the bond would only be utilized in accordance with law and with the intent of the escrow business act. Section 32-7-101(2), MCA provides that it is the intent of the legislature that the escrow industry be supervised in order to protect the citizens of the state and to provide that the business practices of the escrow industry are fair and orderly among the members of the industry with due regard to the ultimate consumers in this important area of property protection. A determination as to the utilization of the bond would ultimately be for the protection of Montana consumers.

By: /s/ Steve Bender
Steve Bender, Acting Director
Department of Administration

By: /s/ Dal Smilie
Dal Smilie, Rule Reviewer
Department of Administration

Certified to the Secretary of State August 9, 2004.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 17.50.410 pertaining to)
annual operating license)
required) (SOLID WASTE)

TO: All Concerned Persons

1. On April 8, 2004, the Board of Environmental Review published MAR Notice No. 17-209 regarding a notice of proposed amendment of the above-stated rule at page 700, 2004 Montana Administrative Register, issue number 7.

2. The Board has amended the rule exactly as proposed.

3. No public comment or testimony were received.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

David Rusoff
DAVID RUSOFF
Rule Reviewer

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

Certified to the Secretary of State, August 9, 2004.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF
of New Rules I through III) ADOPTION
pertaining to criminal justice)
information)

TO: All Concerned Persons

1. On April 22, 2004, the Montana Department of Justice published MAR Notice No. 23-12-147 regarding the proposed adoption of New Rules I through III pertaining to criminal justice information at page 888 of the 2004 Montana Administrative Register, Issue No. 8. On May 6, 2004, the department published MAR Notice No. 23-12-148 regarding the amended notice of public hearing on proposed adoption at page 1105 of the 2004 Montana Administrative Register, Issue No. 9.

2. New rule III (23.12.204) is adopted as proposed.

3. The Department of Justice has adopted new rules I and II with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (23.12.201) DEFINITIONS (1) "Criminal justice agency" means any ~~federal~~, state, or local government agency that performs as its principal function the administration of criminal justice, including a fire agency or fire marshal that conducts criminal investigations of fires.

(2) "Initial arrest record" means the first record made by a criminal justice agency indicating the facts of a particular person's arrest and includes: ~~the initial facts associated with that arrest~~

- (a) name of the accused;
- (b) time and place of the arrest;
- (c) location of the accused;
- (d) pending charges against the accused; and
- (e) any available information regarding bail and court appearances.

(3) "Initial offense report" means the first record of a criminal justice agency that indicates that a criminal offense may have been committed and includes the initial facts associated with that offense.

~~(4) "Initial report" means an initial offense report or the initial arrest record.~~

~~(5)~~(4) "Juvenile records" means records maintained by youth court, department of corrections, or a criminal justice agency relating to a juvenile.

AUTH: 44-5-105, MCA
IMP: 44-5-105, MCA

NEW RULE II (23.12.202) INITIAL REPORTS PUBLIC CRIMINAL JUSTICE INFORMATION (1) Pursuant to the Criminal Justice Information Act, 44-5-101 through 44-5-602, MCA, initial offense reports and initial arrest records are public criminal justice information.

~~(2) Initial reports should contain the following:~~

~~(a) the general nature of the charges against the accused;~~

~~(b) the location of the crime scene;~~

~~(c) the name, age and residence of the accused;~~

~~(d) the name of the victim, unless the alleged offense was a sex crime;~~

~~(e) information necessary to aid in the apprehension of the accused or to warn the public of any dangers that may exist;~~

~~(f) a request, if appropriate, for assistance in obtaining evidence;~~

~~(g) the facts and circumstances of an arrest, including the time and place, and the identity of the arresting officer or agency;~~

~~(h) the identity of a witness unless the witness is involved in the case only by virtue of their employment or has requested confidentiality;~~

~~(i) information contained within a public record; and~~

~~(j) the scheduling or result of any stage in the judicial process.~~

~~(3) Initial reports should not contain:~~

~~(a) driver's license numbers;~~

~~(b) social security numbers;~~

~~(c) medical records, including but not limited to, mental health records and records relating to drug and alcohol addiction or treatment; and~~

~~(d) with respect to the victim of an offense committed under 45-5-502, 45-5-503, 45-5-504, or 45-5-507, MCA, any information other than the location of the crime scene that may directly or indirectly identify the victim;~~

~~(e) with respect to the victim of any offense other than those described in (3)(d) who requests confidentiality, any information other than the location of a crime scene that may directly or indirectly disclose the address, telephone number, or place of employment of the victim or a member of the victim's family.~~

~~(4) Requests for initial reports should be reviewed on a case by case basis and nothing in this rule should be construed to preclude a balancing test between the public's right to know and any privacy interests that may exist.~~

AUTH: 44-5-105, MCA

IMP: 44-5-103, 44-5-301, MCA

4. In response to comments received, the department is adopting NEW RULE IV.

NEW RULE IV (23.12.203) INITIAL OFFENSE REPORTS

(1) Initial offense reports should contain the following:

(a) the general nature of the charges against the accused;

(b) the offense location;

(c) the name, age and residence of the accused;

(d) the name of the victim, unless the offense charged was a sex crime; and

(e) the identity of a witness unless the witness has requested confidentiality.

(2) Initial offense reports should not contain:

(a) driver's license numbers;

(b) social security numbers;

(c) medical records, including but not limited to, mental health records and records relating to drug and alcohol addiction or treatment;

(d) with respect to the victim of an offense committed under 45-5-502, 45-5-503, 45-5-504, or 45-5-507, MCA, any information other than the offense location that may directly or indirectly identify the victim; and

(e) with respect to the victim of any offense other than those described in (2)(d) who requests confidentiality, any information other than the offense location that may directly or indirectly disclose the address, telephone number, or place of employment of the victim or a member of the victim's family.

AUTH: 44-5-105, MCA

IMP: 44-5-103, 44-5-301, MCA

5. The Department of Justice has thoroughly considered the written comments and testimony received on the proposed adoption of these rules. The following is a summary of the comments received and the Department's responses.

COMMENT 1: John Shontz testified as an opponent to the proposed rules and submitted written comments in opposition on behalf of the Montana Newspaper Association. Mr. Shontz objects to the rules because he believes the Department does not have rulemaking authority to adopt the proposed rules. Mr. Shontz further objects to the rules because he believes the rules do not clarify the current issues surrounding criminal justice information. Mr. Shontz requested that the Department participated in negotiated rulemaking to address his concerns.

RESPONSE 1: The Department has clear rulemaking authority pursuant to Mont. Code Ann. 44-5-105. The rules were reviewed by the Law and Justice Interim Committee. The Committee raised no concerns about the Department's authority to adopt the proposed rules. The Attorney General, exercising his authority as director of the Department, has considered the suggestion for a negotiated rulemaking process. The Attorney General does not believe a negotiated rulemaking process would

improve the quality of public involvement in considering these rules. Interested parties have participated fully in the process, and it is apparent that some parties disagree with the Department's view of its legal authority and the substantive scope of the applicable law, making achievement of the consensus required for a negotiated rulemaking unlikely. Accordingly, there is a substantial probability that a negotiated rulemaking process would significantly delay the adoption of the rules with no substantial benefit in terms of the quality of the rules or of public involvement in their adoption. The rules were properly noticed and the public was given multiple opportunities to participate in the rulemaking process. Finally, the Department disagrees that the proposed rules will not help clarify the proper release of public criminal justice information.

COMMENT 2: John Kuglin submitted written comments on behalf of the Associated Press. Mr. Kuglin opposed the provisions of the proposed rules granting confidentiality to witnesses.

RESPONSE 2: The Department considered Mr. Kuglin's comments but disagrees with his conclusion that granting confidentiality to a witness who has requested it violates the public's constitutional right to know. Pursuant to Article II, section 9, of the Montana Constitution the public's right to know must be weighed against individual privacy interests.

COMMENT 3: The Montana Freedom of Information Hotline submitted comments echoing Mr. Kuglin's concerns about witness confidentiality and also requesting that the Department engage in negotiated rulemaking.

RESPONSE 3: See the Department's Responses to Comments 1 and 2.

COMMENT 4: Missoula County Attorney Fred Van Valkenburg submitted written comments outlining his concerns that the rules as proposed were overly broad.

RESPONSE 4: The Department appreciates Mr. Van Valkenburg's comments and amended the proposed rules to more carefully define initial offense reports and initial arrest records.

COMMENT 5: Assistant City Attorney Judy Wang submitted written comments suggesting potential options to clarify and simplify the proposed rules.

RESPONSE 5: The Department appreciates Ms. Wang's comments and made editing changes where the Department determined appropriate.

COMMENT 6: Patrol Captain Carl Isben submitted written comments endorsing the changes suggested by Ms. Wang.

RESPONSE 6: See Department's response to Comment 5.

By: /s/ Mike McGrath
MIKE MCGRATH
Attorney General

/s/ Ali Bovington
ALI BOVINGDON, Rule Reviewer

Certified to the Secretary of State August 9, 2004.

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

In the matter of the amendment of ARM	)	NOTICE OF AMENDMENT
24.138.301, definitions, 24.138.402,	)	AND ADOPTION
fee schedule, 24.138.508, dental)	
hygiene local anesthetic agent)	
certification, 24.138.514, application)	
to convert an inactive status license)	
to an active status license, 24.138.519,)	
grounds for denial of a license, and the)	
adoption of new rules I-VI regarding)	
dentist licensure by credentials for)	
specialists, reinstatement of a license)	
for non-payment of renewal fee, and)	
licensure of retired or nonpracticing)	
dentist or dental hygienist for)	
volunteer service)	

TO: All Concerned Persons

1. On May 20, 2004, the Board of Dentistry published MAR Notice No. 24-138-60 regarding the proposed amendment and adoption of the above-stated rules at page 1189 of the 2004 Montana Administrative Register, issue no. 10.

2. A public hearing on the proposed amendment and adoption was held on June 15, 2004. Public comments were received concerning the proposed rule changes. The Board has thoroughly considered the comments and the Board's responses are as follows:

COMMENT 1: One commenter stated that although the 2003 Montana Legislature assured "intimate" involvement of the dental community in the rule making process to define the scope of practice of Limited Access Permit (LAP) dental hygienists, this rule notice was "hastily put together" and never fully considered by the Board as a whole.

RESPONSE 1: During the 2003 Legislative session, both licensed dentists and dental hygienists collaborated at the request of legislators to compose language for LAP licensure and practice, as a part of Senate Bill 190. From the passage of the legislation, the Board hygiene committee, in conjunction with the full Board, met on approximately six occasions to discuss and draft language for the proposed administrative rules. The Montana Dental Association (MDA) and the Montana Dental Hygiene Association (MDHA) were both represented on the committee, as well as other interested parties such as representatives from the Department of Public Health and Human Services. The full Board received the recommendations of the committee, discussed the issues

thoroughly, and voted to accept the committee's draft during the February 27, 2004 Board meeting.

COMMENT 2: One commenter stated that the rules regarding advertisement should apply to all licensees and not just dentists.

RESPONSE 2: The Board has previously discussed the issue of advertisement by all licensees and has decided to take no action at this time. Currently, dental hygienists do not maintain independent practices.

COMMENT 3: One commenter suggested adding language to New Rule IV to allow the Board to revoke a volunteer license upon proof that services outside the scope of the license had been provided.

RESPONSE 3: The Board has the authority under current statutes to discipline licensees for practice outside the scope of licensure.

COMMENT 4: Several commenters stated that LAP hygienists should be required to file annual reports with the Board so the effectiveness of the LAP licensure could be monitored.

RESPONSE 4: The Board discussed this issue at length during the February 2004 meeting. The Board will seek to gather information on the use of LAP hygienists in Montana through informational surveys and possibly with the assistance of the MDHA and/or the Department of Public Health and Human Services. No reporting requirement will be put into rule at this time.

COMMENT 5: Two commenters suggested changing the proposed qualifications for LAP hygienists under New Rule V. Suggestions included increasing the 350 hours of active practice, specifying the types of acceptable continuing education, and requiring letters of recommendation from licensed dentists and certification of where the LAP hygienist would practice.

RESPONSE 5: The committee studied numerous other states' qualifications for LAP hygienists. The committee considered that most hygienists interested in obtaining LAP licensure only practice part-time and recommended the proposed hours of continuing education and active practice accordingly. An increase in practice hours would likely be a deterrent to LAP applicants and the current hour requirements were determined to be sufficient to qualify for a LAP. Current rules on continuing education sufficiently address what are acceptable continuing education courses. The committee had considered whether to require letters of recommendation from dentists and determined the requirement may be more of an impediment to LAP

applicants and would not necessarily prove the applicant's qualifications.

COMMENT 6: A commenter asked who would be responsible to train the LAP hygienists to work independent of their current environments.

RESPONSE 6: All dental hygienists must practice within the scope of their license, and this includes the LAP hygienists. Available continuing education courses would round out the LAP hygienists' scope of practice and the required 3,000 hours of active practice would be their training.

COMMENT 7: Several commenters expressed concern that New Rule VI would allow LAP hygienists to diagnose medical conditions. They suggested allowing LAP hygienists to practice only when there is no disease present in patients and no adverse patient medical history, and for the Board to state in rule an acceptable level of blood pressure.

RESPONSE 7: Section 37-4-405, MCA, provides that LAP hygienists practicing under public health supervision are able to provide treatment based upon medical and dental health guidelines adopted by the Board in rule. New Rule VI provides these guidelines. The Board determined that LAP hygienists practicing within the guidelines would not be diagnosing medical conditions. Requiring the absence of all disease would effectively prohibit the LAP hygienists from practicing and would defeat the purpose of increasing access to dental hygiene preventative services. The Board determined it is not necessary to specify an acceptable level of blood pressure in rule.

COMMENT 8: Several commenters requested the Board address the placement of sealants by LAP hygienists.

RESPONSE 8: Section 37-4-405, MCA, allows LAP hygienists to provide limited dental hygiene preventative services, including sealant placement, in public health facilities without the prior authorization or presence of a licensed dentist. Further explanation and definition of sealant placement by LAP hygienists will be reviewed by the Board and if necessary, addressed at a future date through the rule making process.

COMMENT 9: Commenters stated that the Board should define exactly when LAP hygienists are required to refer patients to dentists.

RESPONSE 9: Section 37-4-405, MCA, provides that a LAP hygienist practicing under public health supervision shall refer all patients who need treatment falling outside the LAP

hygienist's scope of practice as described in subsection (4) of the statute.

COMMENT 10: One commenter asked for the Board to define "dental hygiene preventative services" and questioned who would be paid for x-rays taken by LAP hygienists.

RESPONSE 10: Section 37-4-405, MCA, defines the allowable dental hygiene preventative services as provided under public health supervision. The Board has no jurisdiction to mandate who would receive payment for x-ray services provided by either a dentist or a LAP hygienist.

COMMENT 11: Two commenters stated that patients should be examined by dentists prior to the taking of x-rays by LAP hygienists.

RESPONSE 11: Section 37-4-405, MCA, states that it is within the practice of LAP hygienists to expose x-rays in public health facilities without the prior approval or presence of licensed dentists. Proposed New Rule VI requires that a licensed dentist review x-rays exposed by a LAP hygienist within 30 days of such exposure.

COMMENT 12: One commenter stated that LAP hygienists should be responsible for maintaining and safeguarding patient records.

RESPONSE 12: The committee had discussed this issue at length and noted that patient records generally stay at the facilities where the services are rendered. The committee and Board determined that because LAP hygienists may move between facilities, keeping the records with the facilities would provide greater stability and better security.

COMMENT 13: Commenters asked the Board to define "public health facility" and "public health supervisor" and to instruct the "public health supervisors" of their responsibilities regarding the practice of the LAP hygienists. The commenters also asked for samples of the disclaimer required in (2)(a) of proposed New Rule VI.

RESPONSE 13: "Public health facility" is defined in 37-4-405, MCA, for the purpose of the LAP hygienists' practice. The statute allows the Board to identify by rule other public health facilities and programs at which LAP services may be provided. At this time, the Board is not proposing to identify any facilities in addition to those already provided in statute.

The term "public health supervisor" is not used in the implemented legislation and there is no need to define the term in rule. The Board has no jurisdiction to create and place any responsibilities upon employees of public health

facilities. The Board's jurisdiction extends only to its licensees.

The intent of the disclaimer requirement in this rule is clear. The Board intentionally left the choice of the specific wording of the disclaimers to the licensed LAP hygienists.

3. After considering the comments, the Board has amended 24.138.301, 24.138.402, 24.138.508, 24.138.514, and 24.138.519, and has adopted New Rules I (24.138.507), II (24.138.516), III (24.138.530), IV (24.138.420), V (24.138.509) and VI (24.138.425) exactly as proposed.

BOARD OF DENTISTRY
PAUL SIMS, DDS, PRESIDENT

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

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State August 9, 2004.

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

In the matter of the adoption)
of new rules I through LXXVI) CORRECTED NOTICE OF
pertaining to the outdoor) ADOPTION
behavioral program)

TO: All Interested Persons

1. On April 22, 2004, the Department of Public Health and Human Services published notice of the proposed adoption of the above-stated rules at page 903 of the 2004 Montana Administrative Register, issue number 8, and on August 5, 2004 published notice of the adoption on page 1818 of the 2004 Montana Administrative Register, issue number 15.

2. This corrected notice is being filed to correct an error in the proposed location and numbering of the adopted rules in Title 37. The new location and numbering of the rules is outlined in paragraph 3 of this notice.

3. The rules are corrected as follows:

RULE #:	ADOPTED #:	CORRECTED #:	
I	37.106.1701	37.98.102	Definitions
II	37.106.1703	37.98.301	License Application Process
III	37.106.1704	37.98.303	License Restrictions
IV	37.106.1705	37.98.304	License Denial, Suspension, Restriction, Revocation, or Reduction to Provisional Status and Hearing Procedures
V	37.106.1708	37.98.401	Administrator Qualifications
VI	37.106.1709	37.98.308	Administrative Policies and Procedures
VII	37.106.1710	37.98.312	Quality Assessment
VIII	37.106.1711	37.98.315	Confidentiality of Records and Information
IX	37.106.1712	37.98.316	Reports
X	37.106.1713	37.98.319	Child Abuse or Neglect and Serious Incidents

XI	37.106.1717	37.98.403	Staff
XII	37.106.1718	37.98.404	Program Professional Staff and Qualifications
XIII	37.106.1719	37.98.405	Program Expedition Field Director Qualifications
XIV	37.106.1720	37.98.406	Program Staff Background Checks
XV	37.106.1721	37.98.411	Staff Training
XVI	37.106.1723	37.98.415	Youth/Staff Ratios
XVII	37.106.1724	37.98.1201	Therapeutic Treatment Program
XVIII	37.106.1725	37.98.1202	Social Services
XIX	37.106.1726	37.98.1203	Care and Guidance
XX	37.106.1727	37.98.1204	Nutrition
XXI	37.106.1730	37.98.1208	Religion and Culture
XXII	37.106.1731	37.98.1209	Personal Needs
XXIII	37.106.1732	37.98.1210	Privacy and Individualism
XXIV	37.106.1733	37.98.1215	Money
XXV	37.106.1734	37.98.1216	Training and Employment
XXVI	37.106.1735	37.98.1220	Youth Orientation
XXVII	37.106.1736	37.98.1221	Placement Agreements
XXVIII	37.106.1737	37.98.1225	Education
XXIX	37.106.1738	37.98.1226	Recreation
XXX	37.106.1739	37.98.701	Youth Case Records
XXXI	37.106.1740	37.98.702	Youth Rights
XXXII	37.106.1741	37.98.705	Physical Examination
XXXIII	37.106.1745	37.98.706	Assessments
XXXIV	37.106.1746	37.98.707	Development and Content of the Case Plan
XXXV	37.106.1747	37.98.715	Discharge Summary

XXXVI	37.106.1748	37.98.801	Behavior Management Policies
XXXVII	37.106.1749	37.98.802	Use of Nonviolent Crisis Intervention Strategies
XXXVIII	37.106.1750	37.98.803	Time Out
XXXIX	37.106.1751	37.98.806	Animals and Pets
XL	37.106.1752	37.98.811	Potential Weapons
XLI	37.106.1753	37.98.812	Contraband
XLII	37.106.1754	37.98.813	Program Requirements: Searches
XLIII	37.106.1755	37.98.1001	Emergency and Evacuation Plans
XLIV	37.106.1756	37.98.1003	Health Care
XLV	37.106.1757	37.98.1004	Infection Control
XLVI	37.106.1758	37.98.1005	Medication Storage and Administration
XLVII	37.106.1759	37.98.1010	Safety Policy
XLVIII	37.106.1763	37.98.1503	Residential Outdoor Services: Fire Safety Requirements
XLIX	37.106.1764	37.98.1504	Residential Outdoor Services: Water
L	37.106.1765	37.98.1505	Residential Outdoor Services: Sewage and Waste Disposal
LI	37.106.1766	37.98.1506	Residential Outdoor Services: Physical Environment
LII	37.106.1767	37.98.1016	Transportation
LIII	37.106.1770	37.98.1701	Outdoor Behavioral Program: High Adventure General Requirements
LIV	37.106.1771	37.98.1703	High Adventure Requirements: Swimming
LV	37.106.1772	37.98.1705	High Adventure Requirements: Boating, Canoeing, Sailing,

			Tubing, Kayaking and White Water Rafting
LVI	37.106.1773	37.98.1707	High Adventure Requirements: Archery
LVII	37.106.1774	37.98.1709	High Adventure Requirements: Horseback Riding
LVIII	37.106.1775	37.98.1711	High Adventure Requirements: Trampoline
LIX	37.106.1776	37.98.1713	High Adventure Requirements: Requirements for All Rock Climbing
LX	37.106.1777	37.98.1715	High Adventure Requirements: Basic/Single-Pitched Rock Climbing and Rappelling
LXI	37.106.1778	37.98.1717	High Adventure Requirements: Advanced/Multi-Pitched Rock Climbing
LXII	37.106.1779	37.98.1719	High Adventure Requirements: Rope Courses
LXIII	37.106.1780	37.98.1721	High Adventure Requirements: Hiking and Backpacking
LXIV	37.106.1781	37.98.1723	High Adventure Requirements: Bicycling
LXV	37.106.1785	37.98.1801	Expedition: Field Office Requirements
LXVI	37.106.1786	37.98.1804	Expedition: Staff Training
LXVII	37.106.1787	37.98.1805	Expedition: Youth/Staff Ratio
LXVIII	37.106.1788	37.98.1810	Expedition: Basic Requirements
LXIX	37.106.1789	37.98.1811	Expedition: Policies and Procedures
LXX	37.106.1790	37.98.1803	Expedition: Staff
LXXI	37.106.1791	37.98.1821	Expedition: Solo Experience
LXXII	37.106.1792	37.98.1822	Expedition: Participant Clothing, Equipment and Supplies

LXXIII	37.106.1793	37.98.1812	Expedition: Communications
LXXIV	37.106.1794	37.98.1815	Expedition: Health Care
LXXV	37.106.1795	37.98.1816	Expedition: Nutritional Requirements
LXXVI	37.106.1796	37.98.1817	Expedition: Water Requirements

4. The Department is changing the location of the new outdoor behavioral program rules as set forth in the notice of adoption for several reasons. The rules were initially proposed to be placed in ARM Title 37, chapter 106 because they pertain to the licensing of a health care facility and the provisions of ARM Title 37, chapter 106, subchapter 3 apply to these new rules.

However, the Department has determined that chapter 106 of Title 37 is already extremely large and unwieldy. This program currently has 76 rules pertaining to outdoor behavioral programs and there is a possibility that there may be an expansion of the rules in the future should additional types of activities for youth be added. Also, by placing the outdoor behavioral program rules in chapter 106, it would be necessary to shift a large portion of existing rules in chapter 106 to other pages or resort to a large number of decimal point pages.

As a result, the Department has decided to relocate the outdoor behavioral program rules to new ARM Title 37, chapter 98 instead, where it will be next to chapters with other youth-related programs. The chapter placement allows for additional rules as may be adopted in the future and eliminates the need to shift other existing rules to accommodate this program. Although the outdoor behavioral program rules have been relocated to another chapter, the provisions of subchapter 3 of chapter 106 still apply to this program. The Department will propose an additional new rule in the near future to clarify the applicability of this subchapter to the program.

5. All other rule changes adopted remain the same.

Dawn Sliva
Rule Reviewer

Mike Billings for
Director, Public Health and
Human Services

Certified to the Secretary of State August 9, 2004.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of) NOTICE OF ADOPTION;
New Rule I (42.4.4101), II) AMENDMENT; AMENDMENT AND
(42.4.201), III (42.4.202),) TRANSFER; TRANSFER; AND
IV (42.4.2601), V (42.4.2701),) REPEAL
VI (42.4.301), VII (42.4.1601),)
VIII (42.4.401), IX (42.4.601),)
X (42.4.602), XI (42.4.603);)
amendment of ARM 42.4.104,)
42.4.105, 42.4.110 and 42.4.118;)
amendment and transfer of ARM)
42.4.103 (42.19.1104), 42.4.107)
(42.4.4102), 42.4.108 (42.4.4103),)
42.4.109 (42.4.4104), 42.4.111,)
(42.4.4105), 42.4.112 (42.4.4106),)
42.4.113 (42.4.4107), 42.4.114,)
(42.4.4108), 42.4.115 (42.4.4109),)
42.4.116 (42.4.4110), 42.4.117,)
(42.4.4111), 42.4.119 (42.4.4112),)
42.4.120 (42.4.4113), 42.15.211)
(42.2.307), 42.15.416 (42.4.2602),)
42.15.422 (42.4.404), 42.15.501)
(42.4.402), 42.15.502 (42.4.403),)
42.15.503 (42.4.3102), 42.15.506)
(42.4.302), 42.15.508 (42.4.2604),)
42.15.509 (42.4.2605), 42.15.513)
(42.4.2703), 42.15.514 (42.4.2704),)
42.15.518 (42.4.2707), 42.15.520)
(42.4.2902), 42.15.521 (42.4.2903),)
42.15.522 (42.4.2904), 42.23.513)
(42.4.1604), 42.23.516 (42.4.1607),)
42.23.518 (42.4.1608), 42.23.519)
(42.4.1609), and 42.23.521)
(42.4.1611); transfer of ARM)
42.4.130 (42.4.203), 42.4.131)
(42.4.204), 42.15.515 (42.4.2705),)
42.15.516 (42.4.2706), 42.15.519)
(42.4.2708), 42.23.501 (42.4.3103),)
42.23.503 (42.4.2802), 42.23.504)
(42.4.3002), 42.23.505 (42.4.3003),)
42.23.506 (42.4.3004), 42.23.511)
(42.4.1602), 42.23.512 (42.4.1603),)
42.23.514 (42.4.1605), 42.23.515)
(42.4.1606), 42.23.520 (42.4.1610),)
and 42.23.522 (42.4.1612); and)
repeal of ARM 42.15.104, 42.15.106,)
42.15.302, 42.15.411, 42.15.412,)
42.15.413, 42.15.428, 42.15.433,)
42.15.507, 42.15.706, 42.23.502,)
and 42.23.517 relating to personal)
income taxes, credits, incentives)
and exemptions)

TO: All Concerned Persons

1. On February 26, 2004, the department published MAR Notice No. 42-2-731 regarding the proposed adoption, amendment, amendment and transfer, transfer and repeal of the above-stated rules relating to personal income taxes, credits, incentives, and exemptions at page 429 of the 2004 Montana Administrative Register, issue no. 4.

2. A public hearing was held on March 25, 2004, to consider the proposed adoption, amendment, amendment and transfer, transfer, and repeal. No one appeared at the hearing to testify. However, extensive written comments were received from Mary Whittinghill, Executive Director, Montana Taxpayers' Association (MTA). The comments provided by MTA are statements or questions for each individual rule. It would have been difficult to respond to these comments without knowing the intent behind them, therefore the department contacted Ms. Whittinghill and she suggested we convene a meeting to discuss the comments. The department agreed to meet with Ms. Whittinghill.

Based on that meeting and the some of the comments provided by MTA, the department has decided to place the transferred rules in the sub-chapters as stated above rather than in the proposed sub-chapters stated in the notice published on February 26, 2004.

In addition, ARM 42.4.104 and 42.4.105 were not part of the original proposal notice but it is clear that those two rules should be amended and ARM 42.4.110, which was proposed to be repealed, should be amended rather than repealed.

3. The following amendments reflect some revisions based on further review of the rules and the discussions with MTA:

42.4.104 ENERGY GENERATING SYSTEMS INSTALLED TO EXISTING STRUCTURES (1) through (2)(d) remain the same.

(3) ~~ENERGY GENERATING SYSTEMS WHICH ARE Standard STANDARD components of conventional structures are those that are generally necessary for structured support, shelter, ventilation, temperature control, lighting, or maintenance of the occupant's regular life style~~ DO NOT QUALIFY FOR THE PROPERTY TAX EXEMPTION OR THE INCOME TAX CREDIT. Components recognized as nonstandard include, but are not limited to, the following:

(a) through (4)(e) remain the same.

(5) In determining the amount of PROPERTY TAX exemption AND THE CALCULATION OF THE INCOME TAX CREDIT for energy generating systems installed to existing structure, the following criteria must be met:

(a) The system must qualify for THE PROPERTY TAX exemption AND THE INCOME TAX CREDIT.

(b) The system description should be recorded on the property diagram located on the appraisal record card FOR

PROPERTY TAX EXEMPTION PURPOSES.

(c) No value for the system should be recorded on the appraisal record card FOR THE PROPERTY TAX EXEMPTION.

(6) The PROPERTY TAX exemption will apply by excluding the energy system from valuation for a period as determined in ARM ~~42.4.103~~ 42.19.1104.

AUTH: Sec. 15-1-201 and 15-32-203, MCA

IMP: Sec. 15-6-201, 15-32-102, 15-32-201, and 15-32-202, MCA

REASONABLE NECESSITY: The department has amended ARM 42.4.104 to make reference to both the property tax exemption and the income tax credit for the installation of an alternative energy system and to amend the reference to ARM 42.4.103, which is being transferred to ARM 42.19.1104. In addition the department is amending ARM 42.4.104 to delete the definition of standard components of conventional structures as this is being defined in ARM 42.4.110.

42.4.105 ENERGY GENERATING SYSTEMS INTEGRAL TO A STRUCTURE'S ORIGINAL CONSTRUCTION (1) through (2)(b) remain the same.

(3) ENERGY GENERATING SYSTEMS WHICH ARE ~~Standard STANDARD~~ components of conventional structures ~~are those that are generally necessary for structural support, shelter, ventilation, temperature control, lighting, or maintenance of the occupant's regular life style~~ DO NOT QUALIFY FOR THE PROPERTY TAX EXEMPTION OR THE INCOME TAX CREDIT.

(4) and (5) remain the same.

(6) In determining the amount of PROPERTY TAX exemption AND THE CALCULATION OF THE INCOME TAX CREDIT for energy generating systems that are integral to a structure's original construction, the following criteria must be met:

(a) The system must qualify for THE PROPERTY TAX exemption AND THE INCOME TAX CREDIT.

(b) The size, quality, grade, condition, and other characteristics of the structure should be determined and the structure valued as a conventional building with the energy system excluded from the appraisal.

(c) The energy components should be recorded on the property diagram on the appraisal record card FOR PROPERTY TAX EXEMPTION PURPOSES.

(d) A notation should be made on the appraisal record card that ~~a~~ PROPERTY TAX exemption for the energy generating portion of the system has been applied.

(7) The PROPERTY TAX exemption will apply by excluding the energy system from valuation for a period as determined in ARM ~~42.4.103~~ 42.19.1104.

AUTH: Sec. 15-1-201 and 15-32-203, MCA

IMP: Sec. 15-6-201, 15-32-102, 15-32-201, and 15-32-202, MCA

REASONABLE NECESSITY: The department has amended ARM 42.4.105 to make reference to both the property tax exemption and the

income tax credit for the installation of an alternative energy system and to amend the reference to ARM 42.4.103, which is being transferred to 42.19.1104. In addition the department is amending ARM 42.4.105 to delete the definition of standard components of conventional structures as this is being defined in ARM 42.4.110.

42.4.110 DEFINITIONS The following definitions apply to terms used in this sub-chapter:

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

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

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

(4) ~~"New construction" means construction of, or additions to, buildings, living areas, or attached garages that comply with the established standards of new construction as determined by the building code statutes in Title 50, MCA. "STANDARD COMPONENTS OF CONVENTIONAL STRUCTURES" ARE THOSE STRUCTURES THAT ARE GENERALLY NECESSARY FOR STRUCTURAL SUPPORT, SHELTER, VENTILATION, TEMPERATURE CONTROL, LIGHTING, OR MAINTENANCE OF THE OCCUPANT'S REGULAR LIFE STYLE.~~

AUTH: Sec. 15-1-201, ~~15-30-305, 15-32-407,~~ and 15-32-203 15-35-122, MCA

IMP: Sec. ~~15-24-3001, 15-32-109, 15-32-404,~~ 15-6-201, 15-32-102, 15-32-201, and ~~15-35-103~~ 15-32-202, MCA

REASONABLE NECESSITY: The department has determined that it is necessary to amend ARM 42.4.110 to delete definitions, which are not used in this sub-chapter and to include the definition of "standard components of conventional structures" which is used in ARM 42.4.104 and 42.4.105 rather than repeal this rule.

~~42.15.422 (42.4.404) TREATMENT OF INCOME TAXES PAID TO OTHER STATES OR COUNTRIES DEDUCTIONS NOT ALLOWED WHEN CREDIT CLAIMED~~

(1) ~~Income taxes paid to another state or to a foreign country are not allowable deductions if claimed as direct credit against Montana income tax liability as provided in ARM 42.15.501 [42.4.1602] and 42.15.502 [42.4.1603] EXCEPT AS PROVIDED IN (2), A TAXPAYER MAY NOT CLAIM A DEDUCTION FOR ANY ITEM FOR WHICH A CREDIT IS CLAIMED.~~

(2) ~~THE TOTAL AMOUNT OF WAGES AND SALARIES PAID MAY BE CLAIMED AS A DEDUCTION BY A TAXPAYER WHO, IN DETERMINING FEDERAL ADJUSTED GROSS INCOME, HAS REDUCED THE TAXPAYER'S BUSINESS DEDUCTIONS BY THE AMOUNT OF WAGES AND SALARIES FOR WHICH A FEDERAL WORK OPPORTUNITY TAX CREDIT WAS ELECTED UNDER SECTIONS 38 AND 51(A) OF THE IRC.~~

AUTH: Sec. 15-30-305, MCA

IMP: Sec. ~~15-30-124~~ 15-30-111, MCA

42.15.502 (42.4.403) COMPUTATION OF CREDIT FOR TAX PAID TO ANOTHER STATE OR COUNTRY (1) through (3)(c) remain as proposed.

(4) Examples of how to calculate these credits paid to another state or country are:

(a) Example 1 - Taxpayer, a full-year Montana resident, sold real property in Idaho in 2002. Idaho does not provide nonresidents a credit for income earned in that state if that income is taxable in another state. In 2003, the taxpayer was legally required to, and did, file a 2002 Idaho income tax return reporting the transaction and paying Idaho an income tax of \$700. The taxpayer's \$5,000 gain on the sale of the Idaho property was included in the TAXABLE INCOME REPORTED ON THE ~~year~~ 2002 Montana income tax return. The taxpayer's 2002 Montana income tax liability was \$3,400. The taxpayer's total 2002 Montana adjusted gross income was \$23,000, which included the \$5,000 gain ~~on the sale of the Idaho property~~. The taxpayer calculates the amount of credit the taxpayer may claim against the 2003 Montana income tax liability as follows:

$$\begin{aligned} & \del{\$3,400 \times (4) \$5,000 / e. \$23,000 = \$739} \\ & \underline{\$3,400 \times \$5,000 / \$23,000 = \$739} \end{aligned}$$

Montana income tax liability multiplied by taxpayer's income from the other state or foreign country included in the taxpayer's Montana adjusted gross income divided by taxpayer's total Montana adjusted gross income. Lower of tax paid (\$700) or result of calculation (\$739) = \$700. The taxpayer may claim a credit of up to \$700 against the 2003 Montana income tax liability.

(b) through (D)(III) remain as proposed.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-124, MCA

42.23.503 (42.4.2802) DISABILITY INSURANCE PREMIUMS CREDIT (1) ~~Effective for tax years beginning after December 31, 1990, disability insurance premiums paid by an employer for his employees may entitle the employer to a credit against the corporation license tax. To qualify for the credit, the employer must have~~ EXCEPT AS PROVIDED IN (2), DISABILITY INSURANCE IS SYNONYMOUS WITH HEALTH INSURANCE AND INCLUDES INSURANCE OF HUMAN BEINGS:

(a) ~~been in business in Montana for at least 12 months~~ AGAINST BODILY INJURY, DISABLEMENT, OR DEATH BY ACCIDENT OR ACCIDENTAL MEANS OR THE MEDICAL EXPENSE OR INDEMNITY INVOLVED; OR

(b) ~~employed 20 or fewer employees working at least 20 hours per week; and~~

(c) ~~paid at least 50% of each employee's insurance premium~~ AGAINST DISABLEMENT OR MEDICAL EXPENSE OR INDEMNITY RESULTING FROM SICKNESS.

(2) ~~The amount of credit that may be allowed is \$25 per month, per each employee, up to a maximum of ten employees,~~

~~for whom the employer pays 100% of the premium. If the employer pays less than 100% of the premium, the percentage of the premium paid by the employer multiplied by \$25 per month would constitute the credit. In either case, the total credit claimed per employee may not exceed 50% of the total premium cost. This credit may not be claimed for a period of more than 36 consecutive months~~ DISABILITY INSURANCE DOES NOT INCLUDE CREDIT DISABILITY INSURANCE OR WORKERS' COMPENSATION INSURANCE.

~~(3) This credit is not refundable nor is it eligible for carryover or carryback provisions.~~

~~(4) The insurance policy must meet the definition of a "limited benefit disability insurance policy"~~ REQUIREMENTS OF THE SMALL EMPLOYER HEALTH INSURANCE AVAILABILITY ACT ~~as defined~~ DESCRIBED in 33-22-1202 1801, through ~~33-22-1204~~, MCA, EXCEPT TO THE EXTENT THAT PART OF TITLE 33 IS INCONSISTENT WITH THE PROVISIONS OF 15-31-132, MCA, before the insurance premiums paid by the employer are eligible for the credit.

~~(5)~~(4) If a corporation qualifies for the credit and has elected S-corporation status, the credit may be claimed by the individual shareholders based upon the ~~percentage of stock~~ PRORATA SHARE OF ownership in the corporation.

(5) IF A PARTNERSHIP QUALIFIES FOR THE CREDIT, THE CREDIT MUST BE ATTRIBUTED TO THE PARTNERS IN THE SAME PROPORTION USED TO REPORT THE PARTNERSHIP'S INCOME OR LOSS FOR MONTANA INCOME TAX PURPOSES.

(6) Form ~~DIPC-CT~~ HI must be completed FOR THE YEAR THE CREDIT IS CLAIMED and attached to MONTANA FORM 2, FOR AN INDIVIDUAL TAXPAYER, AND TO form CLT-4, FOR A C CORPORATION ~~in the year in which the credit is claimed.~~

(7) A TAXPAYER WHO FILES A TAX RETURN ELECTRONICALLY MUST COMPLETE FORM HI AND RETAIN THE FORM AND SUBMIT IT TO THE DEPARTMENT UPON REQUEST.

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-30-129 and 15-31-132, MCA

4. Therefore, the department amends ARM 42.4.104, 42.4.105 and 42.4.110 and amends and transfers ARM 42.15.422 (42.4.404), 42.15.502 (42.4.403), and 42.23.503 (42.4.2802) with the amendments listed above and adopts New Rule I (42.4.4101), II (42.4.201), III (42.4.202), IV (42.4.2601), V (42.4.2701), VI (42.4.301), VII (42.4.1601), VIII (42.4.401), IX (42.4.601), X (42.4.602), XI (42.4.603); amends ARM 42.4.118; amends and transfers ARM 42.4.103 (42.19.1104), 42.4.107 (42.4.4102), 42.4.108 (42.4.4103), 42.4.109 (42.4.4104), 42.4.111 (42.4.4105), 42.4.112 (42.4.4106), 42.4.113 (42.4.4107), 42.4.114 (42.4.4108), 42.4.115 (42.4.4109), 42.4.116 (42.4.4110), 42.4.117 (42.4.4111), 42.4.119 (42.4.4112), 42.4.120 (42.4.4113), 42.15.211 (42.2.307), 42.15.416 (42.4.2602), 42.15.501 (42.4.402), 42.15.503 (42.4.3102), 42.15.506 (42.4.302), 42.15.508 (42.4.2604), 42.15.509 (42.4.2605), 42.15.513 (42.4.2703), 42.15.514 (42.4.2704), 42.15.518 (42.4.2707), 42.15.520 (42.4.2902), 42.15.521 (42.4.2903), 42.15.522 (42.4.2904),

42.23.513 (42.4.1604), 42.23.516 (42.4.1607), 42.23.518 (42.4.1608), 42.23.519 (42.4.1609), and 42.23.521 (42.4.1611); transfers ARM 42.4.130 (42.4.203), 42.4.131 (42.4.204), 42.15.515 (42.4.2705), 42.15.516 (42.4.2706), 42.15.519 (42.4.2708), 42.23.501 (42.4.3103), 42.23.504 (42.4.3002), 42.23.505 (42.4.3003), 42.23.506 (42.4.3004), 42.23.511 (42.4.1602), 42.23.512 (42.4.1603), 42.23.514 (42.4.1605), 42.23.515 (42.4.1606), 42.23.520 (42.4.1610), and 42.23.522 (42.4.1612); and repeals ARM 42.15.104, 42.15.106, 42.15.302, 42.15.411, 42.15.412, 42.15.413, 42.15.428, 42.15.433, 42.15.507, 42.15.706, 42.23.502, and 42.23.517 as proposed.

5. An electronic copy of this Adoption Notice is available through the Department's site on the World Wide Web at <http://www.discoveringmontana.com/revenue>, under "for your reference;" "DOR administrative rules;" and "upcoming events and proposed rule changes." The Department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Don Hoffman
DON HOFFMAN
Acting Director of Revenue

Certified to Secretary of State August 9, 2004

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 42.12.104; 42.12.106;)
42.12.117; 42.12.133; 42.12.205;))
42.12.206; 42.12.209; 42.12.211;))
42.12.323; 42.12.324; 42.13.105;))
42.13.106; 42.13.107; 42.13.111;))
and 42.13.221 relating to liquor))
licensing)

TO: All Concerned Persons

1. On June 3, 2004, the department published MAR Notice No. 42-2-734 regarding the proposed amendment of ARM 42.12.104, 42.12.106, 42.12.117, 42.12.133, 42.12.205, 42.12.206, 42.12.209, 42.12.211, 42.12.323, 42.12.324, 42.13.105, 42.13.106, 42.13.107, 42.13.111, and 42.13.221 relating to liquor licensing at page 1303 of the 2004 Montana Administrative Register, issue no. 11.

2. A public hearing was held on June 25, 2004, to consider the proposed amendment. No one appeared at the hearing to testify. Written comments are summarized as follows along with the response of the department:

COMMENT NO. 1: Stephen Turkiewicz, President/CEO, Montana Bankers Association submitted a letter supporting the department's amendments regarding nonjudicial foreclosure sales by a secured party.

RESPONSE NO. 1: The support is greatly appreciated.

3. The department amends ARM 42.12.104, 42.12.106, 42.12.117, 42.12.133, 42.12.205, 42.12.206, 42.12.209, 42.12.211, 42.12.323, 42.12.324, 42.13.105, 42.13.106, 42.13.107, 42.13.111, and 42.13.221 as proposed.

4. An electronic copy of this Adoption Notice is available through the Department's site on the World Wide Web at <http://www.discoveringmontana.com/revenue>, under "for your reference;" "DOR administrative rules;" and "upcoming events and proposed rule changes." The Department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Don Hoffman
DON HOFFMAN
Acting Director of Revenue

Certified to Secretary of State August 9, 2004

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION AND
of New Rule I (42.15.605) and) AMENDMENT
amendment of ARM 42.15.601,)
42.15.602, 42.15.603, and)
42.15.604 relating to medical)
savings accounts for personal)
income taxes)

TO: All Concerned Persons

1. On March 11, 2004, the department published MAR Notice No. 42-2-732 regarding the proposed adoption and amendment of the above-stated rules relating to medical savings accounts for personal income taxes at page 551 of the 2004 Montana Administrative Register, issue no. 5.

2. A public hearing was held on April 1, 2004, to consider the proposed adoption and amendments. No oral comments were received during the hearing. Written comments were received subsequent to the hearing and are summarized as follows along with the response of the department:

COMMENT NO. 1: Marsha Goetting, Ph.D., CFP, CFCS, Professor and Extension Family Economics Specialist with the Montana State University offered comments stating that there are about 6,053 grandparents in Montana who are raising their grandchildren for various reasons. The present rules only allow a "parent" to open a medical savings account to provide medical expenses for their dependent children. She suggested that the definition of "dependent" be expanded to include grandparents who have a financial responsibility for minors. She further stated that in most cases grandparents do not have legal custody of the children; the care is often temporary while a parent is recovering from an addiction, prison sentence, or financial hard times.

In some instances, the grandparents may have a state child protective order stating the grandparents have been appointed as foster kin care. In those instances, they should be allowed to open a medical savings account. She suggested that the grandparents could use the current department form and add a statement similar to: "medical expenses herein are for a grandchild for whom [name of grandparent(s)] paid medical expenses during the tax year.

RESPONSE NO. 1: The department has reviewed the legislative hearing summaries on the Medical Care Savings Account statutes held in 1995 and found that no discussions were held referencing that grandchildren were to be included in the definition of "dependent" as stated in 15-61-102, MCA. The department must look at the definition of "dependent" as defined in 15-61-102, MCA, when applying the term to Medical

Care Savings Accounts and not the definition of "dependent" as found in 15-30-113, MCA, or that which is referenced in 26 U.S.C. 213, which references a dependent as defined in 26 U.S.C. 152. When comparing these definitions the key word, or phrase, which is not found in 15-61-102, MCA is "a son or daughter or the taxpayer, or a descendant of either". In fact 15-61-102, MCA, states that a dependent means the spouse of an account holder or a child of an account holder. The department does not dispute the data provided by Dr. Goetting, in as much as, over 6,000 grandparents are currently raising their grandchildren in Montana. Unless the grandparents legally adopt their grandchildren, including medical expenses paid on behalf of such children by grandparents would be outside the scope of our authority and could not be authorized through the administrative rule process.

COMMENT NO. 2: Dr. Goetting further stated that the "Montana form MSA-P" states: "If you made withdrawals from a self-administered MSA that were not used to pay qualifying medical expenses, including withdrawals made on the last business day of the tax year, you must complete the worksheet below." If a person is withdrawing from a MSA on the last business day for a non-eligible expense there is no penalty. Since the law allows for the non-penalty withdrawal, why should the account holder be required to complete the form? Confusion may result if one completes the form having made a non-penalty withdrawal. For example, John placed \$3,000 in his MSA in 2004. He doesn't make a deposit in 2005. On the last business day in December 2005 John withdraws \$3,000 for repairs on his tractor. He can't enter an amount on line 1 because the deposit was made during the prior tax year. He enters \$3,000 on line 2 and the result is a negative \$3,000 on line 3. Line 4 indicates John has a penalty. This is incorrect because John made the withdrawal on the last business day of the year.

RESPONSE NO. 2: The department has reviewed Form MSA-P and concurs that the instructions may be misleading but disagree that the calculations are incorrect. Dr. Goetting's example, which states that the non-qualified withdrawal made in a subsequent year of funds deposited in a prior year, is incorrect. Line 1 requires an account holder to enter the total from column D that represents the amount of withdrawals from a Medical Care Savings Account that was for non-qualified expenses. In Dr. Goetting's example, John did withdraw \$3,000 from his MSA in 2004. The fact that John did not make a contribution in 2004 is irrelevant to withdrawals made in the same year. The fact here is that John had \$3,000 in his MSA, which was deducted in a prior year and was withdrawn for non-qualifying expenses in 2004. John would enter \$3,000 on line 1. Line 2 requires the account holder to report the non-qualifying withdrawals that were made on the last business day of the year. Because John made this \$3,000 non-qualifying

withdrawal on the last business day, John would enter \$3,000 on line 2. Thus line 3 would be zero and no penalty.

The department will review the instructions on Montana Form MSA-P in 2004 within their annual review of tax forms, and if necessary make instructional changes.

COMMENT NO. 3: Dr. Goetting asked the purpose of defining a "household" for medical saving accounts. She stated her concern in this area is, what if a husband and wife separated in January 2004 after each has opened a MSA? What if they divorced? Does this new definition mean that they are not eligible for the MSA? What if the couple is not "living" together because one has stayed home on the ranch while the spouse is attending a university in state or out of state? What if a husband and wife have jobs in two different communities within Montana?

Often in marriage dissolutions, one or both parents may be required to pay for medical expenses for a child or for health insurance. Yet the child may not be living with that particular parent. Shouldn't that parent be able to open a MSA and have those expenses considered eligible medical care expenses?

RESPONSE NO. 3: The term "household" is not used in the medical care savings account subchapter of the administrative rules and is being deleted.

COMMENT NO. 4: Dr. Goetting pointed out that the rules are silent regarding the taxation issue of medical savings accounts that are inherited by a payable on death beneficiary. She suggested that a Montana payable on death beneficiary be able to transfer the funds to his or her medical savings account without the amount being included as taxable income. This would apply to a beneficiary regardless of relationship to the original account holder (spouse, child, or other person). Such an arrangement would be similar to the method of transferring a federal IRA to payable-on-death beneficiaries.

RESPONSE NO. 4: The department agrees that administrative rules are necessary to clarify the tax effects of death of an account holder, including transfers to an immediate family member. The department will not adopt those rules at this time, but at a later date, in order to provide a meaningful opportunity for full public comment.

3. Based on further review of the legislative history, the issue of exempting interest on the total deposits made to a medical care savings account was researched and the intent of the legislature is clear that the full amount of interest earned is exempt from Montana adjusted gross income. It is also clear that this exempt interest then becomes subject to recapture and penalties if not withdrawn for eligible medical expenses.

Also, based on the comments received the department believes there are other definitions that need to be provided in the new definition rule. These definitions, of descendent and immediate family member, currently located in ARM 42.15.401 were inadvertently not transferred with the remaining medical savings account rules. Therefore, the department proposes to further amend the following rules:

42.15.602 MEDICAL SAVINGS ACCOUNT ADMINISTRATOR REPORTING AND PAYMENTS (1) through (6) remain as proposed.

~~(7) For the purpose of determining the amount of interest or other income earned on the principal which is excluded from Montana adjusted gross income, when interest or other income earned is on principal and excess contributions, the account administrator must:~~

~~(a) allocate the total interest or other income earned to that of principal and excess contributions; and~~

~~(b) exclude from Montana adjusted gross income only that amount of interest or other income earned on the principal. Interest or other income earned in the taxpayer's taxable year on the excess contributions is taxable and reported in Montana adjusted gross income for the taxable year it is received; and~~

~~(c) interest or other income earned is not excluded for Montana adjusted gross income on excess contributions until such time as the excess contribution is reclassified as principal. Excess contributions are reclassified as principal in the year the excess contributions are excluded from Montana adjusted gross income.~~ ANNUAL INTEREST EARNED ON EXCESS CONTRIBUTIONS AND PRINCIPAL IN A MONTANA MEDICAL CARE SAVINGS ACCOUNT IS EXCLUDED FROM MONTANA ADJUSTED GROSS INCOME AND MAY ONLY BE WITHDRAWN FROM AN ACCOUNT TO PAY FOR ELIGIBLE MEDICAL EXPENSES.

(8) through (13) remain as proposed.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-61-202 and 15-61-204, MCA

NEW RULE I (42.15.605) DEFINITIONS The following definitions apply to this sub-chapter:

(1) remains as proposed.

(2) ~~"Household" shall mean a family living together~~ "CHILD" MEANS A SON, STEPSON, DAUGHTER, STEPDAUGHTER, OR LEGALLY ADOPTED SON OR DAUGHTER OF THE TAXPAYER.

(3) "DESCENDANT" MEANS A LINEAL DESCENDANT AND A COLLATERAL DESCENDANT RELATED BY BLOOD. SECTIONS 72-11-102, 72-11-103, AND 72-11-104, MCA, DESCRIBE HOW KINSHIP AND DEGREES OF KINSHIP ARE DETERMINED.

(4) "IMMEDIATE FAMILY MEMBER" MEANS ANY INDIVIDUAL WHO IS A LINEAL DESCENDENT OF THE ACCOUNT HOLDER AND ALSO INCLUDES THEIR SPOUSE. STEPCHILDREN ARE CONSIDERED LINEAL DESCENDENTS IF THAT RELATIONSHIP WAS CREATED BEFORE THE CHILD'S EIGHTEENTH BIRTHDAY.

(3) remains as proposed but is renumbered (5).

~~(4)(6) "Long-term care" means a period of not less than 12 consecutive months in which a necessary or medically~~

necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care ~~service is~~ provided FOR A PERIOD OF NO FEWER THAN 12 CONSECUTIVE MONTHS in a setting other than an acute care unit of a hospital.

(5) and (6) remain as proposed but are renumbered (7) and (8).

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-112, 15-61-102, and 15-61-201, MCA

4. Therefore, the department adopts New Rule I (42.15.605) and amends ARM 42.15.602 with the amendments listed above and amends ARM 42.15.601, 42.15.603, and 42.15.604 as proposed.

5. An electronic copy of this Adoption Notice is available through the Department's site on the World Wide Web at <http://www.discoveringmontana.com/revenue>, under "for your reference;" "DOR administrative rules;" and "upcoming events and proposed rule changes." The Department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Don Hoffman
DON HOFFMAN
Acting Director of Revenue

Certified to Secretary of State August 9, 2004

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the amendment)	
of ARM 44.12.101A, 44.12.102,)	
44.12.103, 44.12.104, 44.12.105,)	
44.12.106, 44.12.106A, 44.12.107,	)	NOTICE OF AMENDMENT
44.12.202, 44.12.203, 44.12.205,	)	AND ADOPTION
44.12.207, 44.12.209, 44.12.211,)	
44.12.212, and the adoption of)	
New Rules I and II, all related)	
to lobbying and the regulation)	
of lobbying)	

TO: All Concerned Persons

1. On February 26, 2004, the Commissioner of Political Practices published MAR Notice No. 44-2-124 pertaining to the public hearing on the proposed amendment and adoption of the above-stated rules relating to lobbying and the regulation of lobbying, at page 463 of the 2004 Montana Administrative Register, issue number 4.

2. The Commissioner has adopted rules I (44.12.108) and II (44.12.217) and amended ARM 44.12.101A, 44.12.106, 44.12.106A, and 44.12.212 as proposed.

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

44.12.102 LOBBYING--DEFINITIONS AND SCOPE--REPORTABLE ACTIVITIES For purposes of Title 5, chapter 7, MCA, and this chapter:

(1) remains as proposed.

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

(b) the term "compensation" does not include personal living expenses of a lobbyist or an ~~employed or retained~~ individual engaged in lobbying activities that are reimbursed by a principal.

(2) remains as proposed.

~~(3) "Employed or retained individual" means an individual who is employed, paid, or retained by a principal to promote or oppose the introduction or enactment of legislation before the legislature or the members of the legislature, but who is not required to obtain a lobbyist license because the individual does not receive payments from one or more persons that equal or exceed the amount specified in 5-7-112, MCA, in a calendar year.~~

~~(4)~~(3) "Lobbying" shall have the definition set forth in 5-7-102(11)(a), MCA. Unless otherwise exempted from the definition of "lobbying" by Title 5, chapter 7, MCA, or this chapter, lobbying shall include:

(a) any direct communication by a lobbyist or an ~~employed or retained~~ individual engaged in lobbying activities with a public official to promote or oppose official action;

(b) all time spent by a lobbyist or an ~~employed or retained~~ individual engaged in lobbying activities to present oral or written testimony to one or more public officials promoting or opposing official action by any public official or group of public officials, including the legislature or a committee of the legislature; or

(c) remains as proposed.

~~(5)~~(4) "Lobbying activity" or "lobbying activities" mean actions or efforts by a lobbyist or an ~~employed or retained~~ individual to lobby or to support or assist lobbying, including preparation and planning activities after a decision has been made to support or oppose official action, and research and other background work that is intended, at the time it is performed, for use in lobbying or to support or assist lobbying activities. The terms "lobbying activity" or "lobbying activities" do not include:

(a) through (g) remain as proposed.

~~(6)~~(5) "Lobbyist" shall have the definition set forth in 5-7-102(12), MCA. The term "lobbyist" does not include:

(a) through (d) remain as proposed.

~~(7)~~(6) "Major effort to support, oppose, or modify official action" in 5-7-208(5)(d), MCA, means any official action on which a principal's lobbyist, employee, officer, agent, attorney, or representative engages in direct communication with any public official on two or more occasions to support, oppose, or modify the official action.

~~(8)~~(7) "Official action" means a vote, decision, recommendation, approval, disapproval, or other action, including inaction, that involves the use of discretionary authority by the legislature or a member of the legislature concerning the introduction or enactment of legislation.

~~(9)~~(8) "Payment" shall have the definition set forth in 5-7-102(13), MCA. The term includes salary, fees, compensation, or anything of value to be paid to a lobbyist or an ~~employed or retained~~ individual engaged in lobbying activities, pursuant to a contract, including payments to be made in the future, after services are rendered by the lobbyist or the ~~employed or retained~~ individual engaged in lobbying activities. The term does not include payments or

reimbursements for personal and necessary living expenses, but includes travel expenses if a principal is required to report payments pursuant to 5-7-208, MCA.

~~(10)~~(9) "Personal and necessary living expenses" means payments or reimbursement by a principal ~~for a lobbyist's or an employed or retained individual's~~ to a lobbyist or an individual engaged in lobbying activities for meals, food, lodging, or residential utilities.

~~(11)~~(10) "Principal" shall have the definition set forth in 5-7-102(15), MCA.

~~(12)~~(11) "Public official" shall have the definition set forth in 5-7-102~~(15)~~(16), MCA, and as specifically designated in ARM 44.12.106 and 44.12.106A.

~~(13)~~(12) "Travel expenses" means payments or reimbursement for transportation costs, including rental car payments.

AUTH: 5-7-111, MCA

IMP: 5-7-102, MCA

44.12.103 LOBBYISTS AND LOBBYING SUPPORT PERSONNEL--
REPORTING OF INFORMATION TO PRINCIPAL (1) It is the duty of each individual lobbyist or ~~employed or retained~~ individual whose activities are covered by Title 5, chapter 7, MCA, to maintain records relating to information required to be reported and exemptions claimed. Each individual lobbyist and ~~employed or retained~~ individual engaged in lobbying activities must timely transmit such information to the lobbyist's or individual's principal to allow timely reporting by the principal.

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

(a) identify each calendar day on which the lobbyist or the ~~employed or retained~~ individual was paid to lobby or to support or assist a lobbying activity;

(b) indicate the reportable time spent by a lobbyist or an ~~employed or retained~~ individual lobbying or assisting or supporting a lobbying activity for each calendar day identified in (2)(a); and

(c) identify each official action on which the lobbyist or the ~~employed or retained~~ individual lobbied or supported or assisted a lobbying activity during the reporting period. The official action identified under this subsection must include sufficient detail to enable a principal to file a report required by 5-7-208(5)(d), MCA, and ARM 44.12.202. The following are examples of official action descriptions that satisfy the requirements of this subsection:

(i) and (ii) remain as proposed.

(3) The daily itemization requirements of (2)(a) and (b) do not apply to a lobbyist or an ~~employed or retained~~ individual engaged in lobbying activities if all compensation

and reimbursement paid by a principal will be reported as provided in ARM 44.12.203(1)(a), 44.12.205(1) and (2), 44.12.207(2)(a), or 44.12.211(1)(a).

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

44.12.104 PERSONAL LIVING EXPENSES--LIMITATIONS AND RECORDS (1) The exemption from reporting personal living expenses in 5-7-102(13)(b)(i), MCA, is limited to actual and necessary personal living expenses incurred by a lobbyist or an ~~employed or retained~~ individual engaged in lobbying activities.

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

(3) If a lobbyist or an ~~employed or retained~~ individual engaged in lobbying activities received payments for personal living expenses from more than one principal, the total payments ~~for made to~~ the lobbyist's or the ~~employed or retained~~ individual's engaged in lobbying activities for personal living expenses may not exceed 100% of the actual and necessary personal living expenses incurred by the lobbyist or the ~~employed or retained~~ individual engaged in lobbying activities.

(4) Each principal making payments for the personal living expenses of a lobbyist or an ~~employed or retained~~ individual engaged in lobbying activities may only withhold from reporting the principal's proportional share of the ~~lobbyist's or the employed or retained individual's~~ personal living expenses paid by the principal to the lobbyist or the individual engaged in lobbying activities.

(5) A lobbyist or an ~~employed or retained~~ individual engaged in lobbying activities receiving payments for personal living expenses from more than one principal is responsible for reporting to each principal the total personal living expenses incurred by the lobbyist or the ~~employed or retained~~ individual engaged in lobbying activities in each reporting period and the proportional amount of personal living expenses that each principal is obligated to pay. For example, Lobbyist J incurs \$6,000 of personal living expenses in a legislative year. Lobbyist J is reimbursed for personal living expenses by four different principals and the four principals are responsible for paying the following proportional amounts: Principal T (50%); Principal X (20%); Principal Y (20%); and Principal Z (10%). The four principals are exempt from reporting the following payments to Lobbyist J for personal living expenses:

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

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

44.12.105 STATE GOVERNMENT AGENCIES--LOBBYING--
DEFINITIONS AND REPORTING (1) through (2)(a) remain as
proposed.

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

(i) The offices of an elected or appointed public official shall file a consolidated lobbying report covering the lobbying activities of all lobbyists or ~~employed or retained~~ individuals who lobby or assist or support a lobbying activity. If an elected public official is a member of a multi-member tribunal (e.g., the Montana supreme court) or a board or commission (e.g., the Montana public service commission), the tribunal, board, or commission shall file a consolidated report including the lobbying activities of the lobbyists or the ~~employed or retained~~ individuals engaged in lobbying activities for each elected public official who is a member of the tribunal, board, or commission.

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

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

44.12.107 LOCAL GOVERNMENT LOBBYING--DEFINITIONS AND
REPORTING (1) through (1)(e) remain as proposed.

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

(a) remains as proposed.

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

AUTH: 5-7-111, MCA

IMP: 5-7-102, 5-7-111, 5-7-208, and 5-7-211, MCA

44.12.202 PRINCIPALS--REPORTS--MAINTENANCE OF RECORDS

(1) Pursuant to 5-7-208, MCA, a principal who makes payments that exceed the amount specified in 5-7-112, MCA, to one or more lobbyists or ~~employed or retained~~ individuals engaged in lobbying activities during a calendar year shall report ~~all~~ payments made to each lobbyist or ~~employed or retained~~ individual for lobbying or to support or assist a lobbying activity- as follows:

(a) To determine whether a principal has made payments exceeding the threshold amount in 5-7-112, MCA, during a calendar year, the principal must include all payments made to lobbyists and to individuals engaged in lobbying activities, excluding payments or reimbursements for personal and necessary living and travel expenses.

(b) If a principal does not make payments that exceed the threshold amount in 5-7-112, MCA, to one or more lobbyists or individuals engaged in lobbying activities during a calendar year as provided in (1)(a), then the principal does not have to report any payments made.

(c) If a principal makes payments that exceed the threshold amount in 5-7-112, MCA, to one or more lobbyists or individuals engaged in lobbying activities during a calendar year as provided in (1)(a), then all payments (excluding personal and necessary living expenses) made to a lobbyist or an individual engaged in lobbying activities, including those payments excluded in determining whether the amount in 5-7-112, MCA, was exceeded by the principal, must be reported under 5-7-208, MCA, and these rules. Although travel expenses paid to a lobbyist or an individual engaged in lobbying activities are excluded from the threshold payment determination under (1)(a), all payments or reimbursements for travel expenses to a lobbyist or an individual engaged in lobbying activities, including travel expense payments excluded from the determination of whether the amount in 5-7-112, MCA, was exceeded by the principal, must be reported under 5-7-208, MCA, and ARM 44.12.205(5) once payments to a lobbyist or for lobbying activities exceed the threshold amount for a calendar year as provided in 5-7-112, MCA.

~~(2) Unless exempted by Title 5, chapter 7, MCA, or this chapter, reports shall include, without limitation, all payments made to a lobbyist or an employed or retained individual engaged in lobbying activities to influence official action, including payments made to support or assist any lobbying activity.~~

~~(3)(2)~~ Even if a principal declares that it made no payments for lobbying activities during a reporting period, a principal subject to the reporting requirements of 5-7-208, MCA, must file a lobbying report as provided in 5-7-208(4), MCA.

~~(4)(3)~~ Principals must report each official action on which the principal's lobbyists or ~~employed or retained~~ individuals engaged in lobbying activities exerted a major effort to support, oppose, or modify official action, together with a statement of the principal's position supporting or opposing the official action (5-7-208(5)(d), MCA).

~~(5)(4)~~ Principals must identify each official action reportable under 5-7-208(5)(d), MCA, by using descriptive phrases, legislative bill draft request numbers, or legislative bill or resolution numbers as provided in ARM 44.12.103(2)(c).

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

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

44.12.203 PRINCIPALS--REPORTING OF COMPENSATION PAID TO LOBBYISTS (1) through (1)(a) remain as proposed.

(b) If the lobbyist or the ~~employed or retained~~ individual engaged in lobbying activities is a salaried employee or officer of the principal, and his duties include lobbying or support or assistance for lobbying activities, the compensation may be allocated and reported on a daily basis or on an hourly basis based on the amount of time the lobbyist or the ~~employed or retained~~ individual is engaged in lobbying or in supporting or assisting lobbying activities.

(c) through (c)(ii) remain as proposed.

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

DATE	HOURS
1/12	3.2
1/13	4.8

1/16	2.1
1/28	1.3
Total	11.4

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

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

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

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

44.12.205 PRINCIPALS--REPORTING OF REIMBURSED EXPENSES OF LOBBYISTS (1) If a principal reimburses a lobbyist or an ~~employed or retained~~ individual for actual expenses incurred for lobbying or to support or assist a lobbying activity (excluding personal and necessary living expenses), the actual reimbursed expenses must be reported.

(2) If the lobbyist or the ~~employed or retained~~ individual engaged in lobbying activities is being paid a periodic, lump sum, or contingent fee and the primary purpose of the contract is for lobbying services, all reimbursed expenses (excluding personal and necessary living expenses) shall be reported.

(3) If the lobbyist or the ~~employed or retained~~ individual engaged in lobbying activities is being paid a fee and lobbying services are a part of the contract, only those expenses or the portion of them that are related to or incurred in lobbying or in providing support or assistance for a lobbying activity on behalf of the principal shall be reported (excluding personal and necessary living expenses).

(4) If the expenses are incurred by a salaried employee or officer of the principal whose duties include lobbying, only those reimbursed expenses (excluding personal and necessary living expenses) or the proportion of them that are related to or incurred in lobbying or in providing support or assistance for a lobbying activity on behalf of the principal shall be reported.

(5) Travel expenses of a lobbyist or an individual engaged in lobbying activities that are paid or reimbursed by a principal shall not be included by the principal in calculating whether the threshold amount in 5-7-112, MCA, has been exceeded by the principal. However, once a principal has made payments exceeding the amount in 5-7-112, MCA, all travel

expenses of a lobbyist or an individual engaged in lobbying activities that were paid or reimbursed by a principal (including those excluded in determining whether the amount in 5-7-112, MCA, was exceeded by the principal) shall be reported by the principal.

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

44.12.207 PRINCIPALS--REPORTING OF OFFICE AND MISCELLANEOUS EXPENSES (1) Principals shall report payments to influence official action, including payments to a lobbyist or an ~~employed or retained~~ individual to lobby or to support or assist a lobbying activity, for each expense category in 5-8-208(5)(a), MCA.

(2) If a principal provides at the principal's expense office space, utilities, supplies, and equipment to a lobbyist or an ~~employed or retained~~ individual to lobby or to support or assist a lobbying activity, the principal shall report the cost of providing such office space, utilities, supplies, and equipment as follows:

(a) If the actual cost of providing office space, utilities, supplies, and equipment can be determined and the actual cost is less than \$5,000 for a reporting period, then actual cost may be reported. In the alternative, a principal may report that office space, utilities, supplies, and equipment were provided to a lobbyist or an ~~employed or retained~~ individual engaged in lobbying activities during the reporting period and the cost of providing such office space, utilities, supplies, and equipment was:

(i) and (ii) remain as proposed.

(b) If the cost of providing office space, utilities, supplies, and equipment to a lobbyist or an ~~employed or retained~~ individual engaged in lobbying activities during a reporting period is \$5,000 or more, then the actual cost must be determined and provided.

(c) If the cost of providing office space, utilities, supplies, and equipment to a lobbyist or an ~~employed or retained~~ individual engaged in lobbying activities is reported as provided in ~~ARM 44.12.207(2)(a)(i) or (ii)~~, the principal must make a good faith determination of such expenses and retain all calculations and records relied on as provided in ARM 44.12.202. If the actual cost of providing office space, utilities, supplies, and equipment can be determined but is not reported as provided in ~~ARM 44.12.207(2)(a)(i) and (ii)~~, the actual cost determination must be retained as a record under ARM 44.12.202.

(3) Nothing in this rule requires a principal to report the cost of office space, utilities, supplies, and equipment for a lobbyist or an ~~employed or retained~~ individual engaged in lobbying activities if the lobbyist or the ~~employed or retained~~ individual engaged in lobbying activities is responsible for paying the cost of the ~~lobbyist's or employed or retained individual's~~ office space, supplies, equipment,

and utilities out of the amount paid to the lobbyist or ~~employed or retained~~ individual engaged in lobbying activities. If, however, the lobbyist or the ~~employed or retained~~ individual engaged in lobbying activities is reimbursed by the principal for any office space, supplies, support personnel, equipment, or utility costs incurred as part of a lobbying activity, the amount of such reimbursement must be reported.

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

44.12.209 PRINCIPALS--REPORTING OF COSTS OF ENTERTAINMENT AND SOCIAL EVENTS (1) remains as proposed.

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

(i) a principal's lobbyist, employee, officer, agent, attorney, or ~~employed or retained~~ individual engaged in lobbying activities lobbies a public official during the event;

(ii) remains as proposed.

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

(2) through (2)(b) remain as proposed.

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

44.12.211 ALLOCATION OF TIME AND COSTS--ALTERNATIVE REPORTING METHOD (1) A principal may use the following alternatives to report payments made to a lobbyist or an ~~employed or retained~~ individual to lobby or to support or assist a lobbying activity:

(a) if most or all of ~~a lobbyist's~~ the time spent by a lobbyist or an ~~employed or retained individual's~~ time during a reporting period is devoted to lobbying or supporting or assisting lobbying activities, the total sum of all compensation paid to ~~him~~ the person during the period may be reported as lobbying payments;

(b) if less than all of ~~the time spent by a lobbyist a lobbyist's~~ the time spent by a lobbyist a ~~lobbyist's~~ or an ~~employed or retained individual's~~ time is devoted to lobbying or supporting or assisting lobbying activities, then the sum reportable may be calculated as the proportion of the total compensation paid that equals the proportion of the total hours or days spent lobbying or supporting or assisting lobbying activities during the reporting period. For example, if a lobbyist or an ~~employed or retained~~ individual engaged in lobbying activities is paid

\$500 per week and spends the equivalent of two days lobbying or supporting or assisting lobbying activities, then \$200 may be reported by his principal as lobbying payments; and

(c) office space, utilities, supplies, equipment, and salary payments made to support or assist a lobbyist or an ~~employed or retained~~ individual engaged in lobbying or a lobbying activity may be reported as a proportion of total expenses for the reporting period. If it can be reasonably determined that a given proportion of total expenses during a period were related to lobbying or supporting or assisting lobbying activities, a principal may report the proportion of total expenses for the period that equals the proportion of time and budget spent on lobbying or supporting or assisting lobbying activities.

(2) remains as proposed.

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

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

COMMENT 1: The definition of the term "compensation" in the proposed rules is too broad, and is not authorized by the statutes governing lobbying.

RESPONSE: The definition of the term "compensation" was adopted in a previous rulemaking proceeding. The Commissioner does not agree that the definition is too broad or that it is not authorized by the statutes. The definition was drafted based on existing law in Montana Code Annotated 5-7-102(13)(a)(ii), which broadly defines the term "payment" as including a "distribution, transfer, loan, advance, deposit, gift, or other rendering made or to be made of money, property, or anything of value . . . directly or indirectly to a lobbyist by a principal, such as salary, fee, compensation, or reimbursement for lobbying expenses . . ." The Commissioner believes that a comprehensive definition of the term "compensation" provides necessary guidance and clarity regarding payments that must be reported by a principal.

COMMENT 2: The definition of the term "compensation" may require disclosure of employee benefit information, which is an invasion of privacy.

RESPONSE: The Commissioner disagrees with this comment. A principal is not required to publicly disclose employee benefit information when reporting payments to lobbyists or those supporting or assisting lobbying activities. A principal is required to calculate an internal amount that accurately represents "payments" made to those engaged in lobbying activities, and report that amount.

COMMENT 3: The phrase "employed or retained individual" is an attempt to revise the statutory definition of the term "lobbyist." The phrase is not authorized by the statutes, it adds unwarranted reporting requirements for principals, and it causes confusion regarding what payments must be reported by principals. In addition, the definition of the phrase is unclear.

RESPONSE: The Commissioner agrees that the inclusion of the phrase "employed or retained individual" in the rules has resulted in some confusion and questions. The phrase has been deleted and replaced with language that clarifies that payments to lobbyists and to those who engage in lobbying activities must be reported by principals who are subject to reporting requirements pursuant to Montana Code Annotated 5-7-208.

COMMENT 4: Under the statutes, a principal is only required to keep track of and report payments made to lobbyists. Payments to others who may be engaged in lobbying activities but who are not, by definition, lobbyists, are not required to be reported. Therefore, to the extent that the proposed rules seek to require reporting of such payments, the rules are invalid.

RESPONSE: The Commissioner disagrees with this comment, for the following reasons. "Lobbying" is defined in the statutes as "the practice of promoting or opposing the introduction or enactment of legislation before the legislature or the members of the legislature." Montana Code Annotated 5-7-102(11)(a)(i). Montana Code Annotated 5-7-208 requires principals to report "payments made for the purpose of lobbying" if their aggregate payments exceed the threshold amount in Montana Code Annotated 5-7-112. The definition of the term "payment" includes a distribution, transfer, etc. of money or anything of value "in support of or for assistance to a lobbyist or a lobbying activity" Montana Code Annotated 5-7-102(13)(a)(iii) (emphasis added). These statutes reflect a clear legislative intent that payments made to those other than registered lobbyists, for lobbying activities, must be reported by principals whose payments exceed the threshold amount in Montana Code Annotated 5-7-112.

COMMENT 5: The rules as proposed improperly seek to require principals to report all payments made for the purpose of lobbying if aggregate payments by principals to either lobbyists or those engaged in lobbying activities exceed the threshold amount in Montana Code Annotated 5-7-112. Under the law, payments need only be reported if a principal makes payments exceeding the statutory threshold amount to one or more lobbyists.

RESPONSE: The Commissioner disagrees with the interpretation of the law reflected in this comment. The definition of the

term "lobbying" includes "promoting or opposing the introduction or enactment of legislation." Montana Code Annotated 5-7-102(11)(a)(i). Nothing in the definition indicates that attempts to influence the legislature are limited to contacts by individuals required to register as lobbyists (individuals who receive payments of \$2,150 or more from one or more principals). Further, as noted in response to Comment 4, the definition of the term "payment" includes payment of anything of value "in support of or for assistance to a lobbyist or a lobbying activity" Montana Code Annotated 5-7-102(13)(a)(iii). Read together, these statutory provisions clearly recognize that lobbying and lobbying activities can be conducted by individuals who are paid less than \$2,150 to influence official action on behalf of a principal. Moreover, the hearing on these proposed rules had the benefit of the testimony of Representative Alan Olson. Rep. Olson was the primary sponsor of House Bill 689, which enacted the major revisions to the lobbying laws that these rules are intended to implement. Rep. Olson submitted written and oral testimony clearly indicating that the statutory threshold amount that triggers reporting requirements (currently \$2,150) can be met whether the payee is an individual or a licensed lobbyist. During his oral testimony, Rep. Olson stated:

And any person who pays more than \$2,150, excluding travel expenses, to one or more persons is a principal and subject to statutory reporting requirements. . . . The \$2,150 trigger, it is a cumulative effect. That was the legislative intent on this. If a principal hires ten people at \$500 the principal has to report it . . . that meets the trigger. That was the intent behind it. (Emphasis added).

COMMENT 6: Several comments posed the question whether travel expenses are counted in determining whether a principal has made payments exceeding the payment threshold amount.

RESPONSE: The Commissioner has added rule provisions clarifying that travel expenses paid or reimbursed by a principal are not included in calculating whether the principal has exceeded the threshold amount. However, once the principal has made payments exceeding the threshold amount (excluding travel expenses), then all payments must be reported, including the travel expense payments that were previously excluded.

COMMENT 7: Under the proposed rule amendments, if individual employees of a business or members of an organization appear and testify on their own, not using resources of the business or organization, and they are not paid or reimbursed by the business or organization to engage in those activities, does

the business or organization have to report the expenses associated with those activities?

RESPONSE: As long as an individual employee or member is acting on his or her own, using his or her own resources, and is not being paid or reimbursed by the business or organization to engage in those activities, then the business or organization does not have to report anything. The employee's or member's activities would fall within the exemption in Montana Code Annotated 5-7-102(12)(b)(i), for "an individual acting solely on the individual's own behalf."

COMMENT 8: Under the proposed rule amendments, if individual employees of a business or members of an organization contact legislators or otherwise engage in lobbying activities using the resources of the business or organization, but without the knowledge or consent of the business or organization, does the business or organization have to report the expenses associated with those activities?

RESPONSE: If the business or organization does not pay the employee or member to contact the legislator or to engage in other lobbying activities, then the business or organization has no reporting responsibilities.

COMMENT 9: The proposed rule amendments are confusing, lack clarity, and do not provide sufficient guidance regarding payments that must be reported by principals.

RESPONSE: The Montana Lobbyist Disclosure Act (the Act) requires disclosure of amounts of money spent for lobbying. Montana Code Annotated 5-7-101(1). Montana Code Annotated 5-7-111 requires that rules implementing the Act "be designed to effect and promote the purposes of [the Montana Lobbyist Disclosure Act], express or implied." As noted in response to a previous comment, HB 689 enacted significant changes to the Act. The Commissioner believes that the new and amended rules are as simple and workable as possible, given the complexity of the laws and the requirement that the rules effectuate the purposes of the existing laws.

COMMENT 10: The rules refer to "public officials" even though the Commissioner has stated the rules will not be applied to non-legislative lobbying activities.

RESPONSE: The rules refer to "public officials" because the term "public official" is defined in Montana Code Annotated 5-7-102(16). A prior rulemaking proceeding adopted rules providing guidance and clarity regarding which officials are considered elected and appointed public officials. Legislative amendments in 2003 required that this rulemaking proceeding include slight revisions to those rules (ARM 44.12.106 and 44.12.106A). Moreover, legislators are included in the list of elected public officials in ARM 44.12.106,

therefore it is appropriate to include references to public officials in rules that will be applied to legislative lobbying. The Preamble and Statement of Applicability in ARM 44.12.101A make it clear that until the non-legislative lobbying provisions of the Act are revised, either legislatively or through court decisions, the rules will not be applied to non-legislative lobbying activities.

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

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

Certified to the Secretary of State August 9, 2004.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- ▶ Department of Agriculture;
- ▶ Department of Commerce;
- ▶ Department of Labor and Industry;
- ▶ Department of Livestock;
- ▶ Office of the State Auditor and Insurance Commissioner;

and

- ▶ Office of Economic Development.

Education and Local Government Interim Committee:

- ▶ State Board of Education;
- ▶ Board of Public Education;
- ▶ Board of Regents of Higher Education; and
- ▶ Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- ▶ Department of Public Health and Human Services.

Law and Justice Interim Committee:

- ▶ Department of Corrections; and
- ▶ Department of Justice.

Energy and Telecommunications Interim Committee:

- ▶ Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- ▶ Department of Revenue; and
- ▶ Department of Transportation.

State Administration, and Veterans' Affairs Interim Committee:

- ▶ Department of Administration;
- ▶ Department of Military Affairs; and
- ▶ Office of the Secretary of State.

Environmental Quality Council:

- ▶ Department of Environmental Quality;
- ▶ Department of Fish, Wildlife, and Parks; and
- ▶ Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA
AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|-------------------------------------|---|
| Known
Subject | 1. Consult ARM topical index.
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute
Number and
Department | 2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2004. This table includes those rules adopted during the period July 1, 2004 through September 30, 2004 and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 2004, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2003 and 2004 Montana Administrative Registers.

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

ADMINISTRATION, Department of, Title 2

- I & II Trust Company Examination Fees - Required Bond Amounts for the Licensing of Escrow Businesses, p. 1179
- I-IX Definitions - Education Provider Requirements - Table Funding - License Transfers and Renewals - Letters of Credit and Surety Bonds - Revocation, Suspension or Surrender of Licenses - Complaint Process - Montana Mortgage Broker and Loan Originator Licensing Act, p. 524, 1133
- 2.21.121 and other rules - Sick Leave, p. 770, 1321
- (Public Employees' Retirement Board)
- 2.43.421 Uniformed Services Employment and Reemployment Right Act of 1994 (USERRA) and the Receipt of Service When Called to Perform Duty in the Uniformed Service, p. 2480, 561
- 2.43.437 and other rule - Purchasing Active and Reserve Military Service, p. 2484, 563
- 2.43.1002 and other rules - Investment Guidelines for the Defined Contribution Retirement Plan, p. 533, 1131
- 2.43.1802 and other rule - Investment Guidelines for the Deferred Compensation Plan, p. 537, 1132

AGRICULTURE, Department of, Title 4

- I-X Alternative Dispute Resolutions of Seed Contract Disputes, p. 1543
- 4.3.101 and other rules - Rural Development Loans, p. 1088, 1469
- 4.4.301 and other rules - Hail Insurance, p. 152, 565
- 4.6.103 and other rules - Montana Potato Research and Development Program, p. 692, 1209
- 4.13.1001A Grain Laboratory Fee Schedule, p. 1181, 1470

STATE AUDITOR, Title 6

- 6.6.503 and other rules - Medicare Supplements - Medicare Select Full Coverage - Separability - Purpose, p. 2125, 313, 1017

COMMERCE, Department of, Title 8

- 8.99.401 and other rules - Definitions Concerning Microbusiness Development Corporations - Job Investment Act - Science and Technology Development, p. 2792, 566
- 8.119.101 Tourism Advisory Council, p. 774, 1382
- (Board of Housing)
- 8.111.409 Cash Advances, p. 1096, 1612
- 8.111.502 and other rules - Loans Made from Temporary Assistance for Needy Families (TANF) Housing Assistance Funds, p. 363, 1142

EDUCATION, Title 10

- (Superintendent of Public Instruction)
- 10.7.101 and other rules - School Finance and Transportation, p. 1255, 1613
- 10.16.3136 Special Education Professional Staff Qualifications, p. 1099, 1383
- (Board of Public Education)
- 10.51.102 Board Membership, p. 695, 1755
- 10.55.907 Distance, Online, and Technology Delivered Learning, p. 157, 719
- 10.55.909 Student Records, p. 1659
- 10.57.201 and other rules - Educator Licensure, p. 1661
- (Montana State Library)
- 10.102.5102 Allocation of Funding between Federations and Grant Programs, p. 608, 1210

FISH, WILDLIFE, AND PARKS, Department of, Title 12

- (Fish, Wildlife, and Parks Commission)
- I-XII River Recreation, p. 1436

- 12.3.120 Hunter Safety Requirements, p. 540, 1322
- 12.11.640 No Wake Zone on the Swan River, p. 2348, 2679, 1019

(Department of Fish, Wildlife, and Parks and the Fish, Wildlife, and Parks Commission)

- I-XI Translocation of Prairie Dogs, p. 370, 1756
- 12.9.204 Lone Pine Game Preserve, p. 1101, 1552

ENVIRONMENTAL QUALITY, Department of, Title 17

- 17.36.345 Subdivisions - Adoption by Reference of Department Circular DEQ-4, p. 1345
- 17.40.206 and other rules - Water and Wastewater Operators - Certification - Fees, p. 543, 1143, 1619
- 17.50.215 Junk Vehicle - Disposal of Junk Vehicles through State Disposal Program, p. 885
- 17.50.802 and other rules - Septage Cleaning and Disposal - Cesspool, Septic Tank and Privy Cleaners, p. 2350, 698
- 17.56.502 and other rules - Underground Storage Tanks - Release Reporting, Investigation, Confirmation, and Corrective Action Requirements for Tanks Containing Petroleum or Hazardous Substances, p. 1, 379, 1391

(Board of Environmental Review)

- 17.8.102 and other rules - Air Quality - Incorporation by Reference of Current Federal Regulations and Other Materials into Air Quality Rules, p. 2801, 724
- 17.8.504 and other rules - Air Quality - Registration of Certain Air Contaminant Sources Including Non-metallic Mineral Processing Plants, p. 1359
- 17.8.505 and other rule - Air Quality - Air Quality Operation Fees - Open Burning Fees, p. 1355
- 17.24.301 and other rules - Montana Strip and Underground Mine Reclamation Act, p. 777
- 17.30.502 and other rules - Water Quality - Water Use Classifications - Department Circular WQB-7, p. 2808, 725, 1617
- 17.30.702 and other rule - Water Quality - Defining Nutrient Reducing Subsurface Wastewater Treatment Systems, p. 387, 1384
- 17.30.716 and other rules - Water Quality - Incorporation by Reference of DEQ-4 as It Pertains to Water Quality, p. 1347
- 17.50.410 Solid Waste - Annual Operating License Required, p. 700

TRANSPORTATION, Department of, Title 18

- 18.8.101 and other rules - Motor Carrier Services Regulations for Overdimensional Vehicles and Loads, p. 1558
- 18.9.302 and other rules - Posting a Bond by Certain Fuel Tax Licensees - Other Fuel Tax Reporting Requirements, p. 1553

CORRECTIONS, Department of, Title 20

20.9.103 and other rule - Youth Placement Committee, p. 547,
1471

(Board of Pardons and Parole)

I Training of Board of Pardons and Parole Members,
p. 239, 1186, 1621

JUSTICE, Department of, Title 23

I-III Criminal Justice Information, p. 888, 1105

I-X Implementing an Act Enhancing Enforcement of the
Tobacco Product Reserve Fund Act, 16-11-501 through
16-11-512, MCA, p. 703, 1323

23.5.101 and other rules - Incorporate Amendments to Federal
Regulations Pertaining to Motor Vehicle Standards
Previously Incorporated by Reference in Current
Rules - General Revisions to Clarify Scope of Rules,
p. 2816, 1021

23.7.101A and other rules - NFPA 1 Uniform Fire Code, p. 17,
634, 728

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in
alphabetical order following the department rules.

I Abatement of Renewal Fees, p. 1292

24.17.127 Prevailing Wage Rates for Public Works Projects -
Building Construction Services - Heavy and Highway
Construction Services, p. 1286, 1780

24.21.414 Adoption of Wage Rates for Certain Apprenticeship
Programs, p. 1289, 1785

24.29.902 and other rules - Workers' Compensation Assessments,
p. 2681, 645, 1023

24.301.131 and other rules - Building Codes - Boilers -
Pressure Vessels, p. 2695, 571

24.301.138 and other rules - Energy Conservation - Building
Codes, p. 1375

(Board of Barbers and Cosmetologists)

I-XXXVII and other rules - Licensure, Fees and Regulation of
Barbers, Cosmetologists, Electrologists,
Estheticians and Manicurists under the New Board of
Barbers and Cosmetologists - Board of Barbers -
Board of Cosmetologists - Interim Rule, p. 1666

(Board of Chiropractors)

24.126.301 and other rules - Definitions - Fee Schedule -
Unprofessional Conduct - Display of License -
Purpose of the Board, p. 169, 729

(Board of Dentistry)

24.138.301 and other rules - Definitions - Fee Schedule - Dental Hygiene Local Anesthetic Agent Certification - Application to Convert an Inactive Status License to an Active Status License - Grounds for Denial of a License - Dentist Licensure by Credentials for Specialists - Reinstatement of a License for Non-payment of Renewal Fee - Licensure of Retired or Nonpracticing Dentist or Dental Hygienist for Volunteer Service, p. 1189

(Board of Funeral Service)

24.147.302 and other rules - Definitions - Fee Schedule - Crematory Facility Regulation - Licensure as a Crematory Operator - Licensure as a Crematory Technician - Perpetual Care and Maintenance Fund Reports - Audit Expenses, p. 709, 1622

(Board of Hearing Aid Dispensers)

24.150.510 Allowable Dispensing Fees, p. 1372

(Board of Landscape Architects)

24.153.403 Fee Schedule, p. 1449

(Board of Medical Examiners)

24.156.625 and other rules - Unprofessional Conduct - Emergency Medical Technician Licensure, p. 1841, 188, 731

(Board of Nursing)

8.32.405 and other rules - Licensure by Endorsement - Licensure for Foreign Nurses - Inactive Status - Fees - Grounds for Denial of License - License Probation or Reprimand of a Licensee - Definitions - Licensure of Medication Aides, p. 1277

8.32.1118 and other rule - Nursing Education Accrediting Bodies - Nurse's Role in Cosmetic Procedures, p. 2359, 641

(Board of Occupational Therapy Practice)

8.35.407 and other rule - Fees - Abatement of Renewal Fees, p. 1107

(Board of Plumbers)

8.44.101 and other rules - Transfer from the Department of Commerce, p. 1472

(Board of Professional Engineers and Land Surveyors)

24.183.702 and other rules - Classification of Experience for Professional Engineer Applicants - Classification of Experience for Land Surveying Applicants - Branch and Project Offices, p. 1296

24.183.1001 Form of Corner Records, p. 1567

(Board of Psychologists)
8.52.624 and other rules - Record Retention - Defined Professional Relationships of Psychologists - Foreign-educated Psychologists, p. 611, 1474

(Board of Public Accountants)
8.54.410 and other rules - Fees - Examinations, p. 161, 643

(Board of Radiologic Technologists)
I-IV Radiologist Assistants - Scope of Practice - Supervision - Adoption of a Code of Ethics, p. 892

(Board of Real Estate Appraisers)
24.207.402 Adoption of USPAP by Reference, p. 2830, 732

(Board of Respiratory Care Practitioners)
24.213.301 and other rules - Definitions - Fee Schedule - Guidelines for Conscious Sedation - Abatement of Fees - Qualifications to Perform Certain Procedures, p. 2492, 568

(Board of Social Work Examiners and Professional Counselors)
8.61.101 and other rules - Transfer from the Department of Commerce, p. 1477

(Board of Veterinary Medicine)
8.64.402 and other rules - Fee Schedule - Animal Euthanasia Technicians and Agencies, p. 619, 1324

LIVESTOCK, Department of, Title 32

I & II Branding and Inspection, p. 1112, 1397
32.3.224 and other rule - Bison Imported into Montana, p. 715, 1326
32.6.712 Food Safety and Inspection Service for Meat and Poultry, p. 35, 576

(Board of Horse Racing)
32.28.502 and other rules - Annual License Fees - Racing Secretary - Chart Companies - Duties of the Licensee - Programs - Owner and Breeder Bonuses - Jockey Incentive Award Program, p. 38, 733
32.28.601 and other rules - General Provisions - Starters - Valets, p. 897, 1327

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36.23.101 and other rules - Purpose - Definitions - Use of the State Revolving Fund - Application - Evaluation of Projects and Applications - General Obligation Bonds - Revenue Bonds - Special Improvement Districts - Loans to Disadvantaged Municipalities - Other Types of Bonds or Additional Security or Covenants for Municipalities - Covenants Regarding Facilities

- Financed by Loans - Fees - Evaluation of Financial Matters and Commitment Agreement - Requirements for Disbursing of Loan - Terms of Loan and Bonds, p. 1714
- 36.24.102 and other rules - Definitions and Construction of Rules - Fees - Evaluation of Financial Matters and Commitment Agreement - Disbursing of Loan, p 1730
- (Board of Land Commissioners and the Department of Natural Resources and Conservation)
- 36.25.128 and other rules - Land Banking, p. 1452

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

- I-LXXVI Outdoor Behavioral Program, p. 903, 1818
- 37.5.123 and other rules - Child and Adult Care Food Program (CACFP) Administrative Review Procedures, p. 2841, 577
- 37.5.304 and other rules - Substantiation of Child Abuse and Neglect - Fair Hearing Rights, p. 1571
- 37.30.101 and other rules - Montana Vocational Rehabilitation Financial Standard, p. 1115, 1789
- 37.36.101 and other rules - Montana Telecommunications Access Program (MTAP), p. 2833, 1398
- 37.40.302 and other rules - Nursing Facilities - Swing-bed Hospitals, p. 994, 1479
- 37.40.406 and other rules - Medicaid Reimbursement of Hospitals, p. 2580, 482, 650
- 37.47.301 and other rules - Centralized Intake System for Reporting Child Abuse and Neglect, p. 253, 550, 1793
- 37.49.112 IV-E Foster Care Eligibility: Living with a Specified Relative, p. 1735
- 37.70.110 and other rules - Low Income Energy Assistance Program (LIEAP), p. 395, 1026
- 37.78.102 and other rules - Temporary Assistance for Needy Families (TANF), p. 977, 1482
- 37.79.101 and other rules - Children's Health Insurance Plan (CHIP), p. 2503, 330, 1027
- 37.83.805 and other rules - Medicaid Restricted Card Program - Passport to Health Program, p. 1201, 1624
- 37.85.212 Resource Based Relative Value Scale (RBRVS) Reimbursement, p. 964, 1488
- 37.85.501 and other rules - Informal Dispute Resolution and Sanctions, p. 295, 736
- 37.86.1102 Outpatient Drugs, Requirements, p. 628, 1127, 1489
- 37.86.1506 Home Infusion Therapy Services Reimbursement, p. 258, 750
- 37.86.3806 and other rules - Case Management Services for Children at Risk of Abuse and Neglect, p. 971, 1404
- 37.88.101 and other rules - Reimbursement of Inpatient Psychiatric Hospitals, p. 2725, 1328, 1625
- 37.106.313 Minimum Standards for All Health Care Facilities - Communicable Disease Control, p. 2750, 582

- 37.106.2801 and other rules - Minimum Standards for Assisted Living Facilities, p. 261, 1146
- 37.108.507 Components of Quality Assessment Activities, p. 1128, 1406

PUBLIC SERVICE REGULATION, Department of, Title 38

- I Utility Implementation of Rate Changes and Billing Practices, p. 1742
- I-VIII Energy Utility Service Standards, p. 1750
- I-XIII Transportation of High-Level Radioactive Waste and Transuranic Waste, p. 407, 1628
- 38.2.5001 and other rules - Protective Orders - Protection of Confidential Information, p. 1595
- 38.3.402 and other rule - Motor Carrier Protestant Filing Requirements - Motor Carrier Application Fees, p. 1739
- 38.5.301 and other rules - Municipality-Owned Utilities, p. 1746
- 38.5.1111 and other rule - Guarantee in Lieu of Deposit for Utility Service, p. 1748
- 38.5.3403 Operator Service Providers, p. 1744

REVENUE, Department of, Title 42

- I-VII First-Time Home Buyers, p. 422, 1033
- 42.4.103 and other rules - Personal Income Taxes, Credits, Incentives, and Exemptions, p. 429
- 42.12.104 and other rules - Liquor Licensing, p. 1303
- 42.15.601 and other rules - Medical Savings Accounts for Personal Income Taxes, p. 551
- 42.15.802 and other rules - Taxation of Family Education Savings Accounts, p. 414, 1031
- 42.19.401 and other rules - Extended Property Tax Assistance Program and Other Property Tax Rules, p. 45, 490
- 42.20.620 and other rules - Industrial, Centrally Assessed and Agricultural Property, p. 1313
- 42.20.625 and other rule - Property Taxes, p. 557, 1211
- 42.24.214 Corporation Taxes and Multi-state Tax Commission, p. 51, 1035
- 42.26.302 and other rules - Water's-Edge Election for Multinational Corporations, p. 70, 1034

SECRETARY OF STATE, Title 44

- (Commissioner of Political Practices)
- 44.12.101A and other rules - Lobbying - Regulation of Lobbying, p. 463

BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the *Montana Administrative Register* a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in July 2004, appear. Vacancies scheduled to appear from September 1, 2004, through November 30, 2004, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of August 9th, 2004.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM JULY 2004

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Aging Advisory Council (Governor)			
Ms. Chuckie Cramer Helena	Governor	reappointed	7/18/2004 7/18/2007
Qualifications (if required): public member			
Mr. Clayton Croff Billings	Governor	reappointed	7/18/2004 7/18/2007
Qualifications (if required): public member			
Ms. Julie Ebzery Billings	Governor	Clinch	7/18/2004 7/18/2007
Qualifications (if required): public member			
Ms. Pat Ludwig Chester	Governor	reappointed	7/18/2004 7/18/2007
Qualifications (if required): public member			
Board of Funeral Services (Labor and Industry)			
Mr. R.J. Dick Brown Lewistown	Governor	Fulkerson	7/12/2004 7/1/2009
Qualifications (if required): licensed mortician			
Board of Hearing Aid Dispensers (Labor and Industry)			
Dr. Paula Peterson Belgrade	Governor	King	7/12/2004 7/1/2007
Qualifications (if required): hearing aid dispenser with national certification in audiology and a master's degree			
Board of Nursing Home Administrators (Labor and Industry)			
Mr. Loren Hines Butte	Governor	Patten	7/27/2004 5/28/2009
Qualifications (if required): representative of a profession concerned with the care of the aged			

BOARD AND COUNCIL APPOINTEES FROM JULY 2004

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Pharmacy (Governor)			
Mr. Mark Meredith Helena	Governor	Fisher	7/1/2004 7/1/2009
Qualifications (if required): licensed pharmacist			
Board of Public Accountants (Labor and Industry)			
Mr. Rick Reisig Great Falls	Governor	Hanley	7/12/2004 7/1/2009
Qualifications (if required): certified public accountant			
Board of Radiologic Technologists (Labor and Industry)			
Ms. Anne Delaney Missoula	Governor	reappointed	7/12/2004 7/1/2007
Qualifications (if required): radiologic technologist			
Board of Regents of Higher Education (Education)			
Ms. Kala French Kalispell	Governor	Hur	7/1/2004 6/30/2007
Qualifications (if required): student representative			
Board of Research and Commercialization Technology (Governor)			
Mr. Michael Dolson Hot Springs	Governor	reappointed	7/1/2004 7/1/2006
Qualifications (if required): Native American			
Board of Veterans' Affairs (Military Affairs)			
Mr. Donald Kettner Glendive	not listed	not listed	7/28/2004 8/1/2008
Qualifications (if required): veteran and voting member			

BOARD AND COUNCIL APPOINTEES FROM JULY 2004

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Veterinary Medicine (Labor and Industry)			
Dr. Bruce Sorensen	Governor	Smith	7/31/2004
Belgrade			7/31/2009
Qualifications (if required): licensed veterinarian			
Board of Water Well Contractors (Natural Resources and Conservation)			
Mr. Pat Byrne	Governor	reappointed	7/15/2004
Great Falls			7/1/2007
Qualifications (if required): water well contractor			
Commission on Community Service (Governor)			
Mr. Erik Burke	Governor	reappointed	7/1/2004
Helena			7/1/2007
Qualifications (if required): representative of labor unions			
Ms. Erin Butts	Governor	reappointed	7/1/2004
Helena			7/1/2007
Qualifications (if required): youth representative			
Ms. Frances Galvin	Governor	reappointed	7/1/2004
Butte			7/1/2007
Qualifications (if required): representative of the private sector			
Ms. Wendy Keating	Governor	reappointed	7/1/2004
Helena			7/1/2007
Qualifications (if required): representative of the Department of Labor and Industry			
Economic Development Advisory Council (Commerce)			
Mr. Evan Barrett	Governor	reappointed	7/15/2004
Butte			7/23/2007
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM JULY 2004

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Economic Development Advisory Council (Commerce) cont.			
Mr. Tony Rudbach	Governor	reappointed	7/15/2004
Missoula			7/23/2007
Qualifications (if required):	public member		
Mr. Paul Tuss	Governor	reappointed	7/15/2004
Havre			7/23/2007
Qualifications (if required):	public member		
Ms. Anita Varone	Governor	reappointed	7/15/2004
Helena			7/23/2007
Qualifications (if required):	public member		
Ms. Elaina Zempel	Governor	reappointed	7/15/2004
Conrad			7/23/2007
Qualifications (if required):	public member		
Mental Disabilities Board of Visitors (Governor)			
Mr. Steve Cahill	Governor	reappointed	7/1/2004
Clancy			7/1/2006
Qualifications (if required):	experienced with welfare of the mentally ill		
Ms. Joan-Nell Macfadden	Governor	reappointed	7/1/2004
Great Falls			7/1/2006
Qualifications (if required):	experienced with emotionally disturbed children		
Mr. Graydon Davies Moll	Governor	reappointed	7/1/2004
Polson			7/1/2006
Qualifications (if required):	experienced with adults with developmental disabilities		

BOARD AND COUNCIL APPOINTEES FROM JULY 2004

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Agriculture Development Council (Agriculture)			
Mr. John L. Franklin Sidney	Governor	reappointed	7/1/2004 7/1/2007
Qualifications (if required): actively engaged in agriculture			
Mr. Ervin Schlemmer Joliet	Governor	Barber	7/1/2004 7/1/2007
Qualifications (if required): actively engaged in agriculture			
Montana Health Coalition (Public Health and Human Services)			
Ms. Tanya M. Ask Missoula	Director	not listed	7/1/2004 7/1/2006
Qualifications (if required): none specified			
Mr. Jim Christenson Conrad	Director	not listed	7/1/2004 7/1/2006
Qualifications (if required): none specified			
Rep. Edith J. Clark Sweet Grass	Director	not listed	7/1/2004 7/1/2006
Qualifications (if required): none specified			
Mr. Alan Kesselheim Bozeman	Director	not listed	7/1/2004 7/1/2006
Qualifications (if required): none specified			
Mr. Kurt Kubicka Helena	Director	not listed	7/1/2004 7/1/2006
Qualifications (if required): none specified			
Mr. Garfield Little Light Billings	Director	not listed	7/1/2004 7/1/2006
Qualifications (if required): none specified			

BOARD AND COUNCIL APPOINTEES FROM JULY 2004

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Health Coalition (Public Health and Human Services) cont.			
Ms. Cindy McAfee Missoula	Director	not listed	7/1/2004 7/1/2006
Qualifications (if required):	none specified		
Ms. Mary McCue Helena	Director	not listed	7/1/2004 7/1/2006
Qualifications (if required):	none specified		
Mr. Gary Meyers Billings	Director	not listed	7/1/2004 7/1/2006
Qualifications (if required):	none specified		
Dr. Gary Mihelish Helena	Director	not listed	7/1/2004 7/1/2006
Qualifications (if required):	none specified		
Mr. Paul Peterson Missoula	Director	not listed	7/1/2004 7/1/2006
Qualifications (if required):	none specified		
Mr. Larry Robinson Ronan	Director	not listed	7/1/2004 7/1/2006
Qualifications (if required):	none specified		
Mr. Bob Ross Billings	Director	not listed	7/1/2004 7/1/2006
Qualifications (if required):	none specified		
Ms. Deborah M. Wilson Kalispell	Director	not listed	7/1/2004 7/1/2006
Qualifications (if required):	none specified		

BOARD AND COUNCIL APPOINTEES FROM JULY 2004

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Health Coalition (Public Health and Human Services) cont.			
Ms. Kristianne Wilson Billings	Director	not listed	7/1/2004 7/1/2006
Qualifications (if required): none specified			
Mr. Peter Wolfgram Butte	Director	not listed	7/1/2004 7/1/2006
Qualifications (if required): none specified			
Mr. Dave Young Bozeman	Director	not listed	7/1/2004 7/1/2006
Qualifications (if required): none specified			
Montana Historical Society Board of Trustees (Historical Society)			
Mr. Ed Henrich Fairmont	Governor	reappointed	7/1/2004 7/1/2009
Qualifications (if required): public member			
Ms. Lee Rostad Martinsdale	Governor	reappointed	7/1/2004 7/1/2009
Qualifications (if required): public member			
Mr. Thomas Siebel Wolf Creek	Governor	McRae	7/1/2004 7/1/2006
Qualifications (if required): public member			
Mr. James Utterback Helena	Governor	reappointed	7/1/2004 7/1/2009
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM JULY 2004

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Mint Committee (Agriculture)			
Mr. David Tutvedt Kalispell	Governor	reappointed	7/27/2004 7/1/2007
Qualifications (if required): mint grower			
Peace Officers Standards and Training Advisory Council (Justice)			
Col. Paul K. Grimstad Helena	Governor	Yaeger	7/21/2004 2/9/2006
Qualifications (if required): representative of the Montana Highway Patrol			
State Electrical Board (Governor)			
Mr. Rick Hutchinson Black Eagle	Governor	VanDiest	7/1/2004 7/1/2009
Qualifications (if required): licensed electrician			
State Workforce Investment Board (Labor and Industry)			
Ms. Julie Foster Stevensville	Governor	not listed	7/12/2004 0/0/0
Qualifications (if required): representative of the private sector			
Ms. Margaret Morgan Helena	Governor	Brown	7/12/2004 0/0/0
Qualifications (if required): representative of the private sector			
Mr. Michael O'Neill Butte	Governor	not listed	7/12/2004 0/0/0
Qualifications (if required): representative of the private sector			
Lt. Col. Ken Switzer Great Falls	Governor	not listed	7/12/2004 0/0/0
Qualifications (if required): representative of the public sector			

BOARD AND COUNCIL APPOINTEES FROM JULY 2004

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State Workforce Investment Board (Labor and Industry) cont.			
Mr. Joe Unterreiner Kalispell	Governor	Erickson	7/12/2004 0/0/0
Qualifications (if required): representative of the private sector			
Mr. Michael Waldenberg Great Falls	Governor	not listed	7/12/2004 0/0/0
Qualifications (if required): representative of the private sector			
State-Tribal Economic Development Commission (Governor)			
Ms. Marilyn Parsons Browning	Governor	reappointed	7/1/2004 6/30/2007
Qualifications (if required): representative of the Blackfeet Tribe			
Mr. Andy Poole Helena	Governor	reappointed	7/1/2004 6/30/2007
Qualifications (if required): representative of the Department of Commerce			
Mr. Noel Sansaver Poplar	Governor	reappointed	7/1/2004 6/30/2007
Qualifications (if required): representative of the Fort Peck Tribe			
Teachers' Retirement Board (Administration)			
Mr. Tim Ryan Great Falls	Governor	reappointed	7/21/2004 7/1/2009
Qualifications (if required): public member			
Tourism Advisory Council (Commerce)			
Ms. Maureen Averill Bigfork	Governor	reappointed	7/21/2004 7/1/2007
Qualifications (if required): representative of Glacier Country			

BOARD AND COUNCIL APPOINTEES FROM JULY 2004

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Tourism Advisory Council (Commerce) cont.			
Ms. Kathy Brown Helena	Governor	reappointed	7/21/2004 7/1/2007
Qualifications (if required): representative of Gold West Country			
Mr. Carl Kochman Helena	Governor	Donovan	7/21/2004 7/1/2007
Qualifications (if required): representative of Gold West Country			
Ms. Sharon Rau Sidney	Governor	reappointed	7/21/2004 7/1/2007
Qualifications (if required): representative of Missouri Country			
Mr. Jay Robson Missoula	Governor	not listed	7/21/2004 7/1/2007
Qualifications (if required): representative of Glacier Country			
Mr. Homer Staves Billings	Governor	reappointed	7/21/2004 7/1/2007
Qualifications (if required): representative of Custer Country			

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2004 through NOVEMBER 30, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Alternative Health Care Board (Labor and Industry) Dr. Margaret Beeson, Billings Qualifications (if required): naturopath	Governor	9/1/2004
Board of Medical Examiners (Commerce) Dr. Beth Thompson, Missoula Qualifications (if required): doctor of medicine	Governor	9/1/2004
Board of Outfitters (Governor) Mr. Jack Billingsley, Glasgow Qualifications (if required): fishing and hunting outfitter	Governor	10/1/2004
Board of Psychologists (Commerce) Dr. Paul Silverman, Missoula Qualifications (if required): licensed psychologist engaged in the teaching of psychology	Governor	9/1/2004
Board of Psychologists (Labor and Industry) Dr. George Watson, Bozeman Qualifications (if required): psychologist in private practice	Governor	9/1/2004
Family Support Services Advisory Council (Public Health and Human Services) Sen. Mike Cooney, Helena Qualifications (if required): representative of public awareness and education organizations	Governor	10/1/2004
Ms. Sylvia Danforth, Miles City Qualifications (if required): Provider/Part C Agency	Governor	10/1/2004
Ms. Elizabeth J. Harter, Glasgow Qualifications (if required): agency rep/foster care	Governor	10/1/2004

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2004 through NOVEMBER 30, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Family Support Services Advisory Council (Public Health and Human Services) cont.		
Mr. Ted Maloney, Missoula Qualifications (if required): representative at large	Governor	10/1/2004
Mr. Dan McCarthy, Helena Qualifications (if required): SEA Agency representative/preschool specialist	Governor	10/1/2004
Ms. Sandi Marisdotter, Helena Qualifications (if required): Provider/Part C Agency	Governor	10/1/2004
Ms. Cristin Volinkaty, Missoula Qualifications (if required): Provider/Part C Agency	Governor	10/1/2004
Ms. Barbara Stefanic, Laurel Qualifications (if required): LEA representative for special education cooperatives	Governor	10/1/2004
Ms. Jackie Jandt, Helena Qualifications (if required): agency rep/mental health	Governor	10/1/2004
Sen. Gerald Pease, Lodge Grass Qualifications (if required): representative of Parents Region III and the legislature	Governor	10/1/2004
Ms. Lynda Korth, Helena Qualifications (if required): agency rep/adoption programs	Governor	10/1/2004
Rep. Mary Anne Guggenheim, Helena Qualifications (if required): representative of medical/health care services	Governor	10/1/2004
Ms. Patti Russ, Helena Qualifications (if required): agency rep/child care	Governor	10/1/2004

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2004 through NOVEMBER 30, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Family Support Services Advisory Council (Public Health and Human Services) cont.		
Ms. Ann Marie Johnson, Missoula Qualifications (if required): representative of Headstart	Governor	10/1/2004
Ms. Lucy Hart-Paulson, Missoula Qualifications (if required): representative of therapists	Governor	10/1/2004
Ms. Sandy McGennis, Great Falls Qualifications (if required): Provider/Montana School for the Deaf and Blind	Governor	10/1/2004
Ms. Denise King, Helena Qualifications (if required): agency rep/EPST/ Medicaid	Governor	10/1/2004
Ms. Phyllis Astheimer, Bozeman Qualifications (if required): family support specialist	Governor	10/1/2004
Ms. Barbara Smith, Helena Qualifications (if required): agency representative from Children's Special Health Services	Governor	10/1/2004
Mr. Brian Lenhardt, Havre Qualifications (if required): representative of Parents Region II	Governor	10/1/2004
Ms. Rene Lenhardt, Havre Qualifications (if required): representative of Parents Region II	Governor	10/1/2004
Ms. Novelene Martin, Miles City Qualifications (if required): field services specialist	Governor	10/1/2004
Ms. Kelly Johnson, Frenchtown Qualifications (if required): representative of Parents at Large	Governor	10/1/2004

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2004 through NOVEMBER 30, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Family Support Services Advisory Council (Public Health and Human Services) cont.		
Mr. Ron Herman, Helena	Governor	10/1/2004
Qualifications (if required): representative of a state agency and the state insurance commissioner		
Ms. Susie Morrison, Missoula	Governor	10/1/2004
Qualifications (if required): representative of Personnel Preparation for Higher Education		
Ms. Krista Bodvig, Glendive	Governor	10/1/2004
Qualifications (if required): representative of parents in Region 1		
Ms. Micah Mitchell, Helena	Governor	10/1/2004
Qualifications (if required): parent representative in Region IV		
Mr. Matthew Rotar, Helena	Governor	10/1/2004
Qualifications (if required): parent representative in Region IV		
Ms. Diana Colgrove, Eureka	Governor	10/1/2004
Qualifications (if required): parent representative in Region V		
Ms. Becky Grey Bear, Wolf Point	Governor	10/1/2004
Qualifications (if required): parent representative from Region I		
Ms. Mary Huston, Richland	Governor	10/1/2004
Qualifications (if required): parent representative from Region 1		
Governor's Advisory Council on Disability (Administration)		
Ms. Shelley Laing, Kalispell	Governor	11/26/2004
Qualifications (if required): public member		
Mr. Gene Haire, Helena	Governor	11/26/2004
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2004 through NOVEMBER 30, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Advisory Council on Disability (Administration) cont. Mr. David Diehl, East Helena Qualifications (if required): public member	Governor	11/26/2004
Ms. Katherine Kountz, Helena Qualifications (if required): ex-officio member	Governor	11/26/2004
Mr. Brian Tocher, Great Falls Qualifications (if required): public member	Governor	11/26/2004
Ms. Bernadine Gantert, Missoula Qualifications (if required): public member	Governor	11/26/2004
Dr. Margaret J. Osika, Warm Springs Qualifications (if required): public member	Governor	11/26/2004
Mr. Edward "Ted" Robbins, Great Falls Qualifications (if required): public member	Governor	11/26/2004
Governor's HIV/AIDS Advisory Council (Public Health and Human Services) Mr. Frank Gary, Butte Qualifications (if required): public member	Governor	11/26/2004
Mr. Steven C. Yeakel, Helena Qualifications (if required): public member	Governor	11/26/2004
Mr. David Herrera, Missoula Qualifications (if required): public member	Governor	11/26/2004
Sen. John Bohlinger, Billings Qualifications (if required): legislator	Governor	11/26/2004

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2004 through NOVEMBER 30, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's HIV/AIDS Advisory Council (Public Health and Human Services) cont. Mr. Fred Zaino, Conrad Qualifications (if required): public member	Governor	11/26/2004
Ms. Annie Tavary, Helena Qualifications (if required): public member	Governor	11/26/2004
Pastor Jack Preston, Lincoln Qualifications (if required): public member	Governor	11/26/2004
Sister Mary Vincentia Maronick, Billings Qualifications (if required): public member	Governor	11/26/2004
Ms. Kathryn L. Hall, Billings Qualifications (if required): public member	Governor	11/26/2004
Ms. LeeAnn Bruisedhead, Lame Deer Qualifications (if required): Native American	Governor	11/26/2004
Mr. Steve Woodward, Missoula Qualifications (if required): public member	Governor	11/26/2004
Ms. Aimee Sandon, Helena Qualifications (if required): public member	Governor	11/26/2004
Ms. Becky Ketterling, Billings Qualifications (if required): public member	Governor	11/26/2004
Ms. Mary Jane Nealon, Missoula Qualifications (if required): public member	Governor	11/26/2004
Ms. Tonya Santoro, Helena Qualifications (if required): student representative	Governor	11/26/2004

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2004 through NOVEMBER 30, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Historical Records Advisory Council (Historical Society) Ms. Samantha K. Pierson, Libby Qualifications (if required): public member	Governor	9/24/2004
Ms. Donna McCrea, Missoula Qualifications (if required): public member	Governor	9/24/2004
Ms. Ellen Crain, Butte Qualifications (if required): public member	Governor	9/24/2004
Ms. Jodi L. Allison-Bunnell, Missoula Qualifications (if required): public member	Governor	9/24/2004
Ms. Judy Ellinghausen, Great Falls Qualifications (if required): public member	Governor	9/24/2004
Ms. Lory Morrow, Helena Qualifications (if required): public member	Governor	9/24/2004
Ms. Molly Miller, Helena Qualifications (if required): state archivist	Governor	9/24/2004
Ms. Peggy Gow, Deer Lodge Qualifications (if required): public member	Governor	9/24/2004
Homeland Security Task Force (Military Affairs) Mr. Dan McGowan, Helena Qualifications (if required): DES Administrator and Chairman	Governor	10/1/2004
K-12 Public School Renewal Commission (None) Rep. Carol C. Juneau, Browning Qualifications (if required): representing American Indian education	Governor	9/15/2004

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2004 through NOVEMBER 30, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
K-12 Public School Renewal Commission (None) cont.		
Mr. John McNeil, Savage Qualifications (if required): representing rural schools	Governor	9/15/2004
Mr. Steve Gibson, Helena Qualifications (if required): representing youth correctional facilities	Governor	9/15/2004
Rep. Pat Wagman, Livingston Qualifications (if required): representing Montana at large	Governor	9/15/2004
Ms. Carmen McSpadden, Bozeman Qualifications (if required): representing school boards of trustees	Governor	9/15/2004
Mr. Eric Feaver, Helena Qualifications (if required): representing teachers	Governor	9/15/2004
Mr. Darrell Rud, Helena Qualifications (if required): representing school administrators	Governor	9/15/2004
Mr. Tim Lund, Hamilton Qualifications (if required): representing the business community	Governor	9/15/2004
Mr. Scott Seilstad, Denton Qualifications (if required): representing taxpayers	Governor	9/15/2004
Mr. Ron Laferriere, Belgrade Qualifications (if required): representing special needs education	Governor	9/15/2004
Mr. Steve Johnson, Bozeman Qualifications (if required): representing school business officials	Governor	9/15/2004
Mr. Jules Waber, Great Falls Qualifications (if required): representing students	Governor	9/15/2004

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2004 through NOVEMBER 30, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
K-12 Public School Renewal Commission (None) cont.		
Mr. Bruce Messinger, Helena Qualifications (if required): representing large schools	Governor	9/15/2004
Ms. Cathy Day, Great Falls Qualifications (if required): representing parents	Governor	9/15/2004
Mr. Keith Allen, East Helena Qualifications (if required): representing organized labor	Governor	9/15/2004
Mr. Mike Nicosia, Columbia Falls Qualifications (if required): representing education groups	Governor	9/15/2004
Ms. Lorri Coulter, Brusett Qualifications (if required): representing Montana at large	Governor	9/15/2004
Mr. Robert Murray, Poplar Qualifications (if required): representing Montana at large	Governor	9/15/2004
Lewis and Clark Bicentennial Commission (Historical Society)		
Mr. Hal J. Stearns, Missoula Qualifications (if required): public member	Governor	10/1/2004
Mr. Wyman McDonald, Helena Qualifications (if required): representative of a Montana Indian tribe	Governor	10/1/2004
Ms. Jeanette W. Rasmussen, Choteau Qualifications (if required): public member	Governor	10/1/2004
Montana Licensed Addiction Counselor's Program Advisory Council (Labor and Industry)		
Ms. Karen Workman, Great Falls Qualifications (if required): university member	Director	11/25/2004

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2004 through NOVEMBER 30, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Licensed Addiction Counselor's Program Advisory Council (Labor and Industry)		
cont.		
Ms. Marian Scofield, Billings	Director	11/25/2004
Qualifications (if required):	representing Montana Association of Alcoholism and Drug Abuse Counselors	
Mr. Joel Wagner, Billings	Director	11/25/2004
Qualifications (if required):	public member	
Montana Organic Commodity Advisory Council (Agriculture)		
Ms. Nancy Matheson, Helena	Director	9/4/2004
Qualifications (if required):	producer	
Mr. John Hoffland, Helena	Director	9/4/2004
Qualifications (if required):	consumer	
Mr. Mikel Lund, Scobey	Director	9/4/2004
Qualifications (if required):	producer	
Montana State Historic Preservation Review Board (Historical Society)		
Mr. Steve Aaberg, Lewistown	Governor	10/1/2004
Qualifications (if required):	archeologist	
Mr. Paul Filicetti, Missoula	Governor	10/1/2004
Qualifications (if required):	historical architect	
Mr. Rafael Chacon, Lolo	Governor	10/1/2004
Qualifications (if required):	architectural historian	
Montana Vocational Rehabilitation Council (Public Health and Human Services)		
Ms. Ruth Straley, Helena	Director	11/4/2004
Qualifications (if required):	federally mandated business industry and labor position	

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2004 through NOVEMBER 30, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Trauma Care Committee (Public Health and Human Services)		
Mr. John M. Mootry, Dillon	Governor	11/2/2004
Qualifications (if required): representative of the Montana Hospital Association		
Dr. J. Bradley Pickhardt, Missoula	Governor	11/2/2004
Qualifications (if required): representative of the Western Regional Trauma Care Committee		
Ms. Jennie Catlin Nemec, Helena	Governor	11/2/2004
Qualifications (if required): representative of the Central Regional Trauma Care Committee		
Dr. Louis Kattine, Missoula	Governor	11/2/2004
Qualifications (if required): representative of the Montana Medical Association		
Water and Wastewater Operators Advisory Council (Environmental Quality)		
Ms. Joanne Hall Emrick, Kalispell	Governor	10/16/2004
Qualifications (if required): representative of a municipality		