

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 19

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

COMMERCE, Department of, Title 8

8-57-16 (Board of Real Estate Appraisers) Notice of Public Hearing on Proposed Amendment - Examinations - Experience - Qualifying Education Requirements - Continuing Education - Fees - Adoption of USPAP by Reference - Ad Valorem Tax Appraisal Experience - Qualifying Experience - Inactive License Certification - Reactivation of License - Regulatory Reviews - Appraisal Review. 2560-2567

EDUCATION, Title 10

10-3-218 (Board of Public Education) Notice of Public Hearing on Proposed Amendment - Contents of the Contract Between the Board of Public Education and the Montana School for the Deaf and Blind Foundation. 2568-2569

FISH, WILDLIFE AND PARKS, Department of, Title 12

12-260 Notice of Public Hearing on Proposed Repeal, Adoption and Amendment - License Agents. 2570-2577

LIVESTOCK, Department of, Title 32

32-3-148 (Board of Livestock) Notice of Proposed Repeal and Adoption - Rules Relating to the Montana Environmental Policy Act. No Public Hearing Contemplated. 2578-2599

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-173 Notice of Proposed Amendment - IV-E Foster Care Eligibility. No Public Hearing Contemplated. 2600-2602

REVENUE, Department of, Title 42

42-2-661 Notice of Public Hearing on Proposed Adoption, Amendment and Repeal - Public Participation - General Application of Tax Payments. 2603-2613

42-2-662 Notice of Public Hearing on Proposed Adoption, Amendment and Repeal - Liquor Licensing. 2614-2639

42-2-663 Notice of Public Hearing on Proposed Amendment - Lodging Facility Use Taxes. 2640-2641

42-2-664 Notice of Public Hearing on Proposed Amendment and Repeal - Appraisal of Agricultural and Forest Land - Commercial - Industrial and Residential Property. 2642-2656

42-2-665 Notice of Public Hearing on Proposed Adoption, Amendment and Repeal - Tobacco and Contractor's License Taxes. 2657-2680

RULE SECTION

COMMERCE, Department of, Title 8

AMD (Board of Nursing) Temporary Practice Permits - General Requirements for Licensure - Re-examination - Licensure for Foreign Nurses - Temporary Practice Permits - Renewals - Conduct of Nurses. 2681-2682

AMD (Board of Nursing) Licensure by Endorsement - Temporary Practice Permits - Renewals - Standards Related to Registered Nurse's Responsibilities - Prescriptive Authority Committee - Initial Application Requirements for Prescriptive Authority - Limitations on Prescribing Controlled Substances - Quality Assurance of Advanced Practice Nursing - Renewal of Prescriptive Authority. 2683-2684

EDUCATION, Title 10

NEW (Board of Public Education) Content and Performance Standards for Social Studies, Arts, Library Media - Workplace Competencies. 2685-2695

ENVIRONMENTAL QUALITY, Department of, Title 17

(Board of Environmental Review)

AMD	(Air Quality) Air Quality Incorporation by Reference.	2696
AMD	(Air Quality) Air Quality Fees.	2697
AMD	(Public Water Supply) Administrative Penalties.	2698-2700

LABOR AND INDUSTRY, Department of, Title 24

AMD	Workers' Compensation Matters.	
REP		2701-2706

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

AMD	Low Income Energy Assistance Program (LIEAP) - Low Income Weatherization Assistance Program (LIWAP).	2707
-----	--	------

REVENUE, Department of, Title 42

	Corrected Notice of Amendment - Liquor Licenses - Definitions.	2708
--	--	------

INTERPRETATION SECTION

Before the Department of Commerce, Board of Nursing.

Declaratory Ruling.

	In the Matter of the Petition for Declaratory Ruling on the Use of Vaginal Speculums by RN(s) for Specimen Collection.	2709-2710
--	--	-----------

Before the Department of Commerce, Board of Nursing.

Declaratory Ruling.

	In the Matter of the Petition for Declaratory Ruling on the Use of Vaginal Speculums by RN(s) to Obtain Forensic Evidence from Sexual Assault Victims.	2711-2713
--	--	-----------

Before the Department of Commerce, Board of Nursing.

Declaratory Ruling.

In the Matter of the Petition for Declaratory Ruling on the Management of Continuous Infusion of Epidural Catheter for Analgesia in the Obstetric Setting.

2714-2716

SPECIAL NOTICE AND TABLE SECTION

Functions of Administrative Rule Review Committee.

2717-2718

How to Use ARM and MAR.

2719

Accumulative Table.

2720-2731

BEFORE THE BOARD OF REAL ESTATE APPRAISERS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING ON  
amendment of rules pertaining ) THE PROPOSED AMENDMENT OF ARM  
to examinations, experience, ) 8.57.403 EXAMINATION, 8.57.405  
qualifying education ) EXPERIENCE - NUMBER OF HOURS  
requirements, continuing ) REQUIRED, 8.57.406 QUALIFYING  
education, fees, adoption of ) EDUCATION REQUIREMENTS,  
USPAP by reference, ad valorem) 8.57.407 QUALIFYING  
tax appraisal experience, ) EDUCATIONAL REQUIREMENTS FOR  
qualifying experience, in- ) LICENSED APPRAISERS, 8.57.408  
active license certification, ) QUALIFYING EDUCATION  
reactivation of license, ) REQUIREMENTS FOR RESIDENTIAL  
regulatory reviews and ) CERTIFICATION, 8.57.409  
appraisal review ) QUALIFYING EDUCATIONAL  
 ) REQUIREMENTS FOR GENERAL  
 ) CERTIFICATION, 8.57.411  
 ) CONTINUING EDUCATION, 8.57.412  
 ) FEES, 8.57.413 ADOPTION OF  
 ) USPAP BY REFERENCE, 8.57.417  
 ) AD VALOREM TAX APPRAISAL  
 ) EXPERIENCE, 8.57.418  
 ) QUALIFYING EXPERIENCE,  
 ) 8.57.419 INACTIVE LICENSE/  
 ) CERTIFICATION, 8.57.420  
 ) REACTIVATION OF LICENSE,  
 ) 8.57.421 REGULATORY REVIEWS  
 ) AND 8.57.422 APPRAISAL REVIEW

TO: All Concerned Persons

1. On October 25, 2000, at 9:00 a.m., a public hearing will be held in conference room 285, 2nd Floor, Federal Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Real Estate Appraisers no later than 5:00 p.m., on October 13, 2000, to advise us of the nature of the accommodation that you need. Please contact Becky Salminen, Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2386; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail compolrea@state.mt.us.

3. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

8.57.403 EXAMINATION (1) through (3) will remain the same.

(4) Applicants for licensure or certification may not retake the examination for six months after having failed it a second or subsequent time.

Auth: Sec. 37-1-131, 37-54-105, MCA  
IMP: Sec. 37-54-105, MCA

REASON: The Board is proposing the amendments to this rule to clarify the requirement that applicants for licensure or certification may not retake the examination for six months after having failed it a second or subsequent time.

8.57.405 EXPERIENCE - NUMBER OF HOURS REQUIRED (1) An applicant for licensure as a licensed real estate appraiser must present evidence of 2000 hours of appraisal experience obtained over a period of not less than 18 months.

(2) An applicant for ~~residential~~ certification as a certified residential real estate appraiser must present evidence of 2500 hours of appraisal experience obtained ~~continuously~~ over a period of not less than 24 months. Hours may be treated as cumulative in order to achieve the necessary 2500 hours of appraisal experience.

(3) Applicants for ~~general~~ certification as a certified general real estate appraiser must present evidence of 3000 hours of appraisal experience, obtained ~~continuously~~ over a period of not less than 30 months. Hours may be treated as cumulative in order to achieve the necessary 3000 hours of appraisal experience. The applicant must have accumulated a total of 3000 hours of appraisal experience of which at least 1500 hours must be in non-residential appraisal work.

Auth: Sec. 37-1-131, 37-54-105, MCA  
IMP: Sec. 37-54-105, MCA

REASON: The Board is proposing the amendments to this rule to clarify that applicants for licensure must obtain experience over a period of 18 months before submitting an application for licensure. Other amendments are made solely for clarification purposes.

8.57.406 QUALIFYING EDUCATION REQUIREMENTS

(1) Educational and training courses ~~offered on or after the adoption of these rules~~ must receive prior approval by the board. Each course shall be approved for a three-year period only, and must be resubmitted, with all updated information required in (4) below, for reapproval at the end of the three-year period.

(2) through (3) will remain the same.

(4) To apply for approval a course provider must make application in the manner prescribed by the board and pay the proper fee ~~45~~ 30 days prior to offering the course. The application shall include, but not be limited to:

(a) through (13) will remain the same.

Auth: Sec. 37-1-131, 37-54-105, MCA  
IMP: Sec. 37-54-105, MCA

REASON: The board feels that the language in subsection (1) is outdated and unnecessary and in connection with subsection (4) that 30 days is adequate time for an application to be reviewed and a response back to the education provider.

8.57.407 QUALIFYING EDUCATIONAL REQUIREMENTS FOR LICENSED REAL ESTATE APPRAISERS (1) Applicants for original licensure as a licensed real estate appraiser shall complete at least 90 classroom hours of instruction, 15 hours of which must cover the uniform standards of professional appraisal practice as promulgated by the appraisal foundation at the time the educational offering was completed and at least 15 hours of which must cover report writing. Applicants must demonstrate that their education involves coverage of all topics listed below with particular emphasis on the appraisal of one- to four-unit residential properties:

(a) through (p) will remain the same.

Auth: Sec. 37-1-131, 37-54-105, MCA  
IMP: Sec. 37-54-105, MCA

REASON: The Board is proposing these amendments for clarification purposes and consistency with other board rules.

8.57.408 QUALIFYING EDUCATION REQUIREMENTS FOR RESIDENTIAL CERTIFICATION (1) Applicants for residential certification as a certified residential real estate appraiser shall provide evidence of completion of 120 classroom hours, 15 hours of which must cover the uniform standards of professional appraisal practice as promulgated by the appraisal foundation and at least 15 hours of which must cover report writing and which may include the 75 ~~hour~~ classroom hours requirement for the license classification required for licensure as a licensed real estate appraiser.

(2) In addition to the topics listed in ARM 8.57.407, applicants for residential certification as a certified residential real estate appraiser shall demonstrate that their education involved coverage of narrative report writing and direct capitalization within the income approach. The education for this class shall place particular emphasis on the appraisal of one- to four-unit residential properties.

(3) To upgrade from a licensed residential real estate appraiser to residential certification as a certified residential real estate appraiser, an applicant may use education obtained for licensed residential licensure as a licensed real estate appraiser.

Auth: Sec. 37-1-131, 37-54-105, MCA  
IMP: Sec. 37-54-105, MCA

REASON: The Board is proposing the amendments to this rule for clarification and consistency.

8.57.409 QUALIFYING EDUCATIONAL REQUIREMENTS FOR GENERAL CERTIFICATION (1) Applicants for ~~original general~~ certification as a certified general real estate appraiser shall provide evidence of 180 classroom hours of instruction, 15 hours of which must cover the uniform standards of professional appraisal practice, as promulgated by the appraisal foundation and at least 15 hours of which must cover report writing.

(2) will remain the same.

(3) The education for ~~this classification~~ certification as a certified general real estate appraiser shall place particular emphasis on the appraisal of non-residential properties.

(4) To upgrade from a licensed real estate appraiser or residential certification a certified residential real estate appraiser an appraiser may use education obtained for licensing or residential certification with the additional 60 hours being obtained from non-residential courses.

Auth: Sec. 37-1-131, 37-54-105, MCA

IMP: Sec. 37-54-105, MCA

REASON: The Board is proposing the amendments to this rule for clarification and consistency.

8.57.411 CONTINUING EDUCATION (1) through (4) will remain the same.

(a) A minimum score of 70% is required for passage of the USPAP examination in order to claim credit for the course. Failing to obtain a score of 70% or better on the examination requires the person to retake the course again before retaking the examination.

(5) Up to and including the renewal year ending March 31, 2001, a maximum of 30 continuing education hours in excess of the 45 hours needed, can be carried over to the next renewal cycle. Continuing education hours will not be accepted for carry over for the renewal year ending March 31, 2002 and thereafter. (The uniform standards of professional appraisal practice cannot be carried over.)

Auth: Sec. 37-1-131, 37-54-105, MCA

IMP: Sec. 37-54-105, MCA

REASON: The Board is proposing the amendments to this rule to clarify what the Board considers as passage of the course and when the course must be retaken.

8.57.412 FEES (1) through (k) will remain the same.

(l) license/ or certification renewal fee 200 300

(m) will remain the same.

Auth: 37-1-131, 37-54-105, MCA  
IMP: 37-54-105, MCA

REASON: The Board is proposing the amendment to this rule and the amendment to ARM 8.57.419 to generate sufficient revenue to operate for fiscal year 2001, based on appropriation projections. The board's current fund balance is \$52,111.91. The projected appropriation for fiscal year 2001 is \$146,331.00. The total revenue generated from fees for the last full fiscal year was \$116,030.00. The Board anticipates that it will receive additional revenue in the sum of \$43,400 as a result of the proposed fee increase and the change from a three year to an annual renewal for inactive licensees. Approximately 467 licensees will be affected by the proposed increase.

8.57.413 ADOPTION OF USPAP BY REFERENCE (1) The board hereby adopts and incorporates by reference the uniform standards of professional appraisal practice (USPAP) ~~of~~ as promulgated by the appraisal foundation. Copies of USPAP may be obtained from the Appraisal Foundation, 1029 Vermont Avenue N.W., Suite 900, Washington, D.C. 20005-3317, or may be reviewed in the office of the board at the Federal Building, 301 South Park, Helena, Montana 59620.

Auth: Sec. 37-1-131, 37-54-105, MCA  
IMP: Sec. 37-54-105, MCA

REASON: The Board is proposing the amendment to this rule for clarification and consistency.

8.57.417 AD VALOREM TAX APPRAISAL EXPERIENCE

(1) through (3)(a) will remain the same.

(b) The documentation shall include 500 hours of single property appraisals which have been completed, according to standards, within the last five years. For ~~licensing and residential certification~~ licensure as a licensed real estate appraiser and certification as a certified residential real estate appraiser, the appraisals would be for residential properties. For ~~general certification~~ as a certified general real estate appraiser, the appraisals would be for non-residential properties.

(4) Applicants shall hold, at a minimum, the following certification(s) issued by the Montana department of revenue, or equivalent from another state, as verified on supervisor's affidavit, or by separate documentation issued to applicant:

(a) Applicants for licensure as a licensed real estate appraiser and residential certification as a certified residential real estate appraiser shall hold a department of revenue residential certification.

(b) Applicants for general certification as a certified general real estate appraiser shall hold a department of revenue commercial, industrial or agricultural certification.

(5) will remain the same.

(6) Mass appraisals shall be performed in accordance with Standards Rule 6 of the USPAP.

Auth: Sec. 37-1-131, 37-54-105, MCA  
IMP: Sec. 37-54-105, MCA

REASON: The Board is proposing these amendments for clarification and consistency.

8.57.418 QUALIFYING EXPERIENCE (1) through (1)(b) will remain the same.

(c) ~~technical~~ review appraisals;  
(d) through (h) will remain the same.

(2) All applicants claiming appraisal experience shall have made a substantial contribution in arriving at a value conclusion as evidenced by the applicant's signature on the report or the applicant's name listed ~~on~~ in the report as someone who provided significant professional assistance in the appraisal process.

(3) and (4) will remain the same.

(5) All experience submitted to the board must be done in conformance with the uniform standards of professional appraisal practice as promulgated by the appraisal foundation that is current at the time the appraisal is completed.

(6) through (9) will remain the same.

Auth: Sec. 37-1-131, 37-54-105, MCA  
IMP: Sec. 37-54-105, MCA

REASON: The Board is proposing these amendments for clarification and consistency and to provide in subsection (1)(c) that the board will accept any appraisal review experience.

8.57.419 INACTIVE LICENSE/ OR CERTIFICATION (1) A licensed/ or certified appraiser can place his/her their license/ or certification in an inactive status by:

(a) and (b) will remain the same.

(2) A licensed or certified appraiser who has placed his/her their license on an inactive status with the board has the sole responsibility to keep the board informed as to any change of residency or mailing address during the period of time the license/ or certification remains on inactive status.

(3) A licensed/ or certified appraiser may remain inactive for a period ~~not to exceed three years~~ of one year. ~~After three years in an inactive status the appraiser will be required to renew his/her inactive status or become active.~~ Failure to renew the inactive status or become active will result in the lapsing of his/her their license/ or certification.

Auth: Sec. 37-1-131, 37-54-105, MCA  
IMP: Sec. 37-54-105, MCA

REASON: The Board is proposing the amendment to subsection (3) to change inactive status to an annual renewal rather than a three year renewal. This will generate additional revenue for the board and will make tracking of this status less difficult. Other amendments are for clarification and consistency. The fee justification is stated in the reason for the amendment of ARM 8.57.412.

8.57.420 REACTIVATION OF LICENSE OR CERTIFICATION

(1) For a licensed/ or certified real estate appraiser to become active, he/she the appraiser must:

(a) and (b) will remain the same.

Auth: 37-1-131, 37-54-105, MCA

IMP: 37-54-105, MCA

REASON: The Board is proposing the amendments to this rule for clarification and consistency.

8.57.421 REGULATORY REVIEWS (1) The board may request, by a random selection, that licensed/ or certified real estate appraisers submit a copy of an appraisal report for review for compliance with the uniform standards of professional appraisal practice as promulgated by the appraisal foundation.

(2) All licensed/ or certified real estate appraisers shall comply with a request of the board. Failure to comply with a request constitutes grounds for unprofessional conduct under 37-1-316, MCA.

Auth: Sec. 37-1-131, 37-54-105, MCA

IMP: Sec. 37-54-105, MCA

REASON: The Board is proposing amendments to this rule for clarification and consistency.

8.57.422 APPRAISAL REVIEW (1) A licensed or certified appraiser who serves on the screening panel or adjudication panel for the board of real estate appraisers is exempt from writing an appraisal review in accordance with uniform standards of professional appraisal practice (USPAP) ~~of~~ as promulgated by the appraisal foundation ~~sStandards~~ ~~Rule three~~ 3 in the performance of their screening or adjudication panel duties.

(2) will remain the same.

Auth: 37-1-131, 37-54-105, MCA

IMP: 37-54-105, MCA

REASON: The Board is proposing the amendment to this rule for clarification and consistency.

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 the Board of

Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to compolrea@state.mt.us and must be received no later than 5:00 p.m., November 2, 2000.

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

6. The Board of Real Estate Appraisers maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Real Estate Appraisers administrative rule making proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to compolrea@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

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

BOARD OF REAL ESTATE APPRAISERS  
TIMOTHY MOORE, CHAIRMAN

By: /s/ Annie M. Bartos  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, September 25, 2000.

BEFORE THE BOARD OF PUBLIC EDUCATION  
STATE OF MONTANA

In the matter of the amendment )  
of ARM 10.59.103 pertaining ) NOTICE OF PUBLIC HEARING  
to the contents of the contract) ON PROPOSED AMENDMENT  
between the Board of Public )  
Education and the Montana )  
School for the Deaf and Blind )  
Foundation )

TO: All Concerned Persons

1. On November 9, 2000, at 9:00 a.m., a public hearing will be held in the conference room of the Office of the Montana Attorney General, Justice Building, 215 North Sanders, Helena, Montana to consider the proposed amendment of ARM 10.59.103.

2. The Board of Public Education will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Public Education, 2500 Broadway, P.O. Box 200601, Helena, MT 59620-0601 no later than November 1, 2000 to advise the Board of the nature of the accommodation.

3. Statement of Reasonable Necessity. The Board of Public Education (Board) is amending ARM 10.59.103 in order to clarify that the Montana School for the Deaf and Blind Foundation (Foundation) is a private, non-profit corporation that is independent of the Board. In addition to proposing this amendment to ARM 10.59.103, the Board intends to renegotiate the agreement between the Board and the Foundation.

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

10.59.103 CONTENTS OF THE CONTRACT (1) The contract between the Board of Public Education and the Foundation must require the Foundation to have:

(a) Articles of incorporation which without limitation stipulate that:

(i) The Board of Public Education shall have one of its members serve as a member of the Board of directors of the Foundation for the duration of his term as Board of Public Education member; and

~~(ii) The Board of Public Education shall appoint the directors of the Foundation;~~

~~(iii) The Board of Public Education shall have the right to increase or decrease the number of Foundation directors; and~~

(iv) (ii) The Superintendent of the School for the Deaf and Blind shall by virtue of his office be one of the directors of the Foundation until his successor is duly appointed;

(b) Bylaws which without limitation cover selection of officers, meetings, compensation for services and amendment procedures;

(c) Policy which covers the acceptance, management and expenditure of F~~f~~oundation property, proceeds, interest and income.

AUTH: 20-8-103, MCA  
IMP: 20-8-111, MCA

5. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or argument may also be submitted by mail to the Board of Public Education, 2500 Broadway, P.O. Box 200601, Helena, MT 59620-0601, and must be received no later than 5:00 p.m., November 2, 2000.

6. Elizabeth L. Griffing has been designated to preside over and conduct the hearing.

7. The Board of Public Education 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 this 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 the Montana School for the Deaf and Blind and the Board of Public Education. Such written requests may be mailed or delivered to the Board of Public Education, 2500 Broadway, P.O. Box 200601, Helena, MT 59620-0601, telephone number (406) 444-6576, FAX (406) 444-0684.

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

/s/ Wayne Buchanan  
Wayne Buchanan  
Rule Reviewer

Certified to the Secretary of State September 25, 2000.

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

In the matter of the	)	
proposed repeal of ARM	)	
12.3.203, 12.3.204, and	)	
12.3.206; the proposed	)	NOTICE OF PUBLIC HEARING
adoption of new rules	)	ON PROPOSED REPEAL,
pertaining to license	)	ADOPTION AND AMENDMENT OF
agents; and the proposed	)	RULES
amendment of ARM 12.3.106	)	
12.3.202, 12.3.205,	)	
12.3.209, and 12.3.403	)	

TO: All Concerned Persons

1. On November 2, 2000, at 7:00 p.m. a public hearing will be held in the Commission Room of the Department of Fish, Wildlife and Parks in Helena, Montana, to consider the repeal of ARM 12.3.203, 12.3.204, and 12.3.206, the adoption of new rules I through VI, pertaining to license agents, and the amendment of ARM 12.3.106, 12.3.202, 12.3.205, 12.3.209, and 12.3.403.

2. The Department of Fish, Wildlife and Parks (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 of Fish, Wildlife and Parks no later than 5:00 p.m. on October 17, 2000, to advise us of the nature of the accommodation that you need. Please contact Barney Benkelman, Fish, Wildlife and Parks, 1420 East 6th Ave., P.O. Box 200701, Helena, Montana 59620-0701; telephone (406) 444-4558; fax (406) 444-7456.

3. The rules proposed to be repealed are as follows:

12.3.203 is on page 12-120 of the Administrative Rules of Montana.

AUTH: 87-1-201, 87-2-901, MCA  
IMP: 87-2-901, MCA

12.3.204 is on page 12-121 of the Administrative Rules of Montana.

AUTH: 87-1-201, 87-2-901, MCA  
IMP: 87-2-901, MCA

12.3.206 is on page 12-122 of the Administrative Rules of Montana.

AUTH: 87-1-201, 87-2-901, MCA  
IMP: 87-2-901, MCA

4. The proposed new rules provide as follows:

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

(1) "License agent" means an entity that has received an appointment as defined in (3).

(2) "Provider" is an entity that is authorized to process items and/or update related automated licensing system (ALS) database activity and includes license agent as defined in (1).

(3) "Appointment," "appointed," or "appointee" means to be authorized by the department to sell or issue hunting or fishing licenses under this chapter and 87-2-901, MCA.

(4) "Department" means the department of fish, wildlife and parks and includes the director as used in this chapter and 87-2-901, MCA.

(5) This rule will be implemented when the automated license system is operational as authorized by the director.

AUTH: 87-1-201, 87-2-901, MCA

IMP: 87-2-901, MCA

NEW RULE II PLACES OF SALE (1) Hunting and fishing licenses may be sold at any place of business in Montana:

(a) that is appointed by the director;

(b) that is financially responsible;

(c) that is accessible to the public; and

(d) whose owner or principal manager has not been convicted of a felony or two hunting or fishing related offenses.

(2) This rule will be implemented when the automated license system is operational as authorized by the director.

AUTH: 87-1-201, 87-2-901, MCA

IMP: 87-2-901, MCA

NEW RULE III LICENSE AGENT APPLICATIONS (1) A person interested in being appointed as a license agent shall file at the nearest regional office on an application form provided by the department.

(2) The application must be signed and provide sufficient information for the department to determine the eligibility for an appointment as set forth in (3) of this rule and for the department, for security, to perform sufficient background checks to insure that applicants and appointees conform to the law and rules.

(3) Before making an appointment, the department shall consider the following:

(a) the financial responsibility and security of the applicant and the applicant's business or activity;

(i) the applicant shall have satisfactory credit ratings and must meet the bonding or security requirements of ARM 12.3.208;

(ii) an applicant shall have conducted business for at least one year at the location for which the license agent appointment is requested, unless a waiver is approved by the department;

(b) unless a waiver is approved by the department, the type of business or accessibility of the applicant's place of business to the public, including but not limited to:

(i) location of the business;

(ii) sporting goods stores;

(iii) hours the business is open to the public;

(c) the availability of existing license agents to serve the public convenience and the volume of the expected sales;

(d) applicant's willingness to reimburse the department for the cost of the required electronic device and willingness to provide a dedicated telephone line to be attached to the device; and

(e) first in time, first in consideration.

(4) This rule will be implemented when the automated license system is operational as authorized by the director.

AUTH: 87-1-201, 87-2-901, 87-2-902, MCA

IMP: 87-1-901, MCA

NEW RULE IV LICENSE AGENT ELECTRONIC FUNDS TRANSFER (1) As a condition of appointment, an agent shall agree to participate in the department's electronic funds transfer system.

(2) A license agent shall, before being appointed, authorize the debiting and crediting of an account in the license agent's name for the purpose of electronic funds transfer to or from the state's collection account, as provided in this rule.

(3) The license agent shall execute all forms required by the department, the license agent's bank or the initiating bank.

(4) The department may determine the schedule for debiting or crediting (sweeping) the license agent account. The department may allow deviation from the schedule in special circumstances.

(5) The license agent shall bring any error or dispute to the attention of the department before the sweep.

(6) A license agent must pay the amount of any nonsufficient fund (NSF) sweep within 48 hours after notification by certified check, cashier's check, or money order. If a NSF is not covered, the license agent shall immediately surrender licensing material and is subject to revocation proceedings.

(7) Two or more sweeps that result in nonsufficient funds are cause for revocation or suspension.

(8) This rule will be implemented when the automated license system is operational as authorized by the director.

AUTH: 87-1-201, 87-2-901, MCA

IMP: 87-2-901, MCA

NEW RULE V LICENSE AGENT DUTIES (1) Each license agent shall maintain a license agent manual, materials, displays, and electronic devices in accordance with instructions from the department.

(2) Each license agent shall sell licenses via the department approved electronic device or back enter data if the department provided generic form is used due to system failure.

(3) Each license agent shall electronically transfer to the department's bank account the department's portion of license sale proceeds as provided for in [NEW RULE III].

(4) This rule will be implemented when the automated license system is operational as authorized by the director.

AUTH: 87-1-201, 87-2-901, MCA  
IMP: 87-2-901, MCA

NEW RULE VI REVOCATION OR SUSPENSION OF LICENSE AGENT

(1) The department may suspend or revoke an appointment for any of the following reasons:

- (a) a change of business location;
- (b) an insufficient sales volume;
- (c) a delinquency in remitting money owed to the department;
- (d) a violation of any rule adopted by the department or commission;
- (e) the refusal to acquire or display any materials required by the department; or
- (f) the appointee is ineligible for appointment under [NEW RULE I] and the facts giving rise to such ineligibility occurred or were discovered subsequent to the appointment.

(2) After notice in writing, the department shall revoke the license agency appointment for the following reasons:

- (a) knowingly providing false or misleading information to the department or any other agency conducting an investigation on behalf of the department;
- (b) the owner or principal manager of a license agent being convicted of a felony or two hunting or fishing offenses;
- (c) endangering the security of the automated license system; or
- (d) upon suspension, failing to rectify the problems which led to the suspension.

(3) Upon notice of revocation, the license agent shall give a final accounting to the department and surrender all department materials, including any department owned electronic devices. The license agent is liable for all money still owed the department.

(4) This rule will be implemented when the automated license system is operational as authorized by the director.

AUTH: 87-1-201, 87-2-901, 87-2-904, MCA  
IMP: 87-2-901, 87-2-904, MCA

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

12.3.106 DISABLED PERSONS (1) through (3)(a)(ii)(C) remain the same.

(b) Upon granting an application the department will stamp endorse all licenses and tags issued to the applicant with the words "Permit to hunt from a vehicle."

(c) provided that participation criteria for the program has not changed, An applicant for renewal must submit the previous year's conservation license stamped as provided for in subsection (3)(b). may obtain licenses at any authorized provider location.

(3)(d) through (3)(e)(v) remain the same.

AUTH: 87-2-803, MCA

IMP: 87-2-803, MCA

12.3.202 CLASSES OF LICENSE AGENTS (1) There are four two classes of license agents.

(2) Class I: general license agents are authorized by the department to sell more than \$2,000 of licenses per license year. Class I agents must remit all moneys and submit all duplicates on or before the 10th of the month following the sale of the licenses hunting, fishing, and recreational licenses through an automated licensing system and are required to remit monies according to a schedule set by the department.

(b) Class II license agents sell less than \$2,000 of licenses per license year and serve at the request of the department. Class II agents must remit all moneys and submit all duplicates on or before June 10, September 10, December 10, and March 10 of each license year, or when \$500 in sales is accumulated.

(c) Class III license agents are limited to selling specific licenses as determined by the department. Class III agents must remit all moneys and submit all duplicates on or before the 10th of the month following the sale of the licenses.

(d) (3) Class IV II: special application license agents may are authorized to prepare hunting license and permit applications for clients and receive compensation from clients for services rendered under the following conditions:

(i) (a) all applications for permits must be signed by the applicants;

(ii) (b) class IV II agents shall attach a copy of the client contract listing the client's home address with each application submitted;

(iii) (c) class IV II agents shall notify the department of any:

(i) contract default;

(ii) permit which does not reach its intended destination; or any other problem that could result in the

(iii) suspected violation of residency;

(iv) unlawful use of permits; or

(v) potential unlawful use of a permit processed through their service;

(iv) (d) class IV II agents shall provide as the address on the application the term "doing business as" (DBA) together with the agent's name and address;

(v) (e) class IV II agents shall turn back by September 15 of each year to the department any permit unclaimed because of contract default by or non-deliverable to the permittee for any reason; and

(vi) (f) class IV II agents shall allow the department to inspect at any time during regular business hours all records relating to their business of providing hunting license and application service.

AUTH: 87-1-201, 87-2-901, MCA  
IMP: 87-2-901, 87-2-901, MCA

12.3.205 REVIEW OF APPOINTMENTS (1) A license agent's appointment shall be reviewed annually. In considering review, the director department will evaluate the following:

(a) through (e) remain the same.

(2) When a general license agent sells less than 500 licenses or when the total license sales is less than \$1,000 during a license year in an area where there are other license agents, then the agency appointment will may not be renewed.

(3) through (4) remain the same.

AUTH: 87-1-201, 87-2-901, MCA  
IMP: 87-2-901, 87-2-904, MCA

12.3.209 REGULATIONS FOR ISSUANCE OF FISH AND GAME LICENSES (1) remains the same.

(2) It is prohibited for any license agent to date a license with any date other than the actual date the license is issued, except for the following:

(a) nonresident 2-day fishing licenses which may be postdated for the dates the applicant wishes to fish; and

(b) nonresident 3-day shooting preserve bird stamps which may be postdated for the dates the applicant wishes to hunt.

(3) through (4) remain the same.

AUTH: 2-15-112, 87-1-201, MCA  
IMP: 87-2-106, MCA

12.3.403 DUPLICATE REPLACEMENT LICENSES (1) Duplicate Replacement licenses or permits may be issued as follows: by authorized license agents

(a) ~~if~~ the original license is lost, stolen or destroyed.

(b) ~~With the approval of the regional supervisor, duplicate general licenses may be issued by game wardens, license agents, biologists, ex officio wardens, sheriff offices and police departments;~~

(c) ~~Duplicate special licenses, permits and non-resident combination licenses are issued only by the regional and Helena office.~~

(2) The fee for each duplicate replacement license or permit issued under this rule (a), (b) and (c) is the original cost of the license, not to exceed \$5.

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

6. It is intended that the rule amendments of ARM 12.3.106, 12.3.202, 12.3.205, and 12.3.402 will be implemented when the automated licensing system is operational as authorized by the director. ARM 12.3.209 is intended to become effective the day following publication of the adoption notice.

7. The repeal, adoption and amendment of these rules are necessary to implement the department's automated licensing system. The 1999 legislature made provisions for the department to change from the current way of issuing licenses to a computerized, automated method, requiring a specialized electronic device to be utilized by license agents. To be most effective, electronic funds transfers needed to be provided for in the department's license agent rules. Some of the department rules needed to be rewritten and reorganized to such an extent that the department decided to repeal them and adopt newer, clearer, consistently worded rules.

New rules I and II are general rules that pertain to places licenses may be sold and license agent appointments. It is necessary to adopt these rules and repeal ARM 12.3.203, 12.3.204, and 12.3.206 as these existing rules were likely to generate confusion for the agents and the public if kept in current form.

New rules III through VI were proposed to provide for electronic funds transfer and use of authorized electronic equipment under the automated licensing system. In addition, these new rules incorporate some provisions contained in the repealed rules.

The department proposes to amend ARM 12.3.106 to allow disabled hunters, once certified, to purchase licenses at locations other than department offices.

The department proposes to amend ARM 12.3.205 to allow for more flexibility in the volume of license sales that the department may require since the automated licensing may allow the department to appoint a larger number of license agents than previously were appointed.

As clean up, and to align with current and reasonable practice, the department believes it is necessary to amend ARM 12.3.209 to allow license agents to postdate 3-day shooting preserve licenses. Currently, the department allows a license agent to postdate 2-day fishing licenses, and it is consistent to allow a license agent to postdate 3-day shooting preserve licenses as well. This is a housekeeping measure and should be necessary regardless of the implementation of the automated licensing system.

Finally, the department would like to amend ARM 12.3.403 for the convenience of the public. This amendment would enable authorized license agents to issue duplicate licenses when the automated system is operational. Instead of trying to find a warden, biologist, etc, to issue a duplicate license, any license agent could serve the public in this manner.

8. 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 Nancy Kraft, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701, or email to nkraft@state.mt.us no later than November 10, 2000.

9. John F. Lynch, 1420 East Sixth Avenue, Helena, MT 59620 has been designated to preside over and conduct the hearing.

10. The agency 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 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 6th 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.

11. The bill sponsor notice requirements of 2-4-302, MCA have been met.

By:

/s/ Patrick J. Graham

---

PATRICK J. GRAHAM  
Director, Department of Fish,  
Wildlife and Parks

By:

/s/ John F. Lynch

---

JOHN F. LYNCH  
Rule Reviewer

Certified to the Secretary of State September 25, 2000

BEFORE THE BOARD OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of repeal	)	
of ARM 32.2.201 through	)	NOTICE OF PROPOSED
32.2.220 and the adoption	)	REPEAL AND ADOPTION
of New Rules I through	)	
XXVI as they relate to	)	NO PUBLIC HEARING
the Montana Environmental	)	CONTEMPLATED
Policy Act.	)	

TO: All Concerned Persons

1. On November 13, 2000, the board of livestock proposes to repeal ARM 32.2.201 through 32.2.220 as they relate to the Department of Livestock's compliance with the Montana Environmental Policy Act (MEPA), and to adopt new rules that relate to the department's compliance with MEPA.

2. The board of livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the department of livestock no later than 5:00 p.m. on November 1, 2000, to advise us of the nature of the accommodation that you need. Please contact Sharon Stein, 301 N. Roberts St. - Rm. 323, PO Box 202001, Helena, MT 59620-2001; phone: (406)444-2045; TTD number: 1-800-253-4091; fax: (406)444-2877.

3. ARM 32.2.201 through 32.2.220 which are found on pages 32-15 through 32-26 of the Administrative Rules of Montana are proposed for repeal.

AUTH: 2-4-201, MCA  
IMP: 2-4-201, 75-1-201, MCA

4. The rules proposed for adoption are as follows:

NEW RULE I POLICY STATEMENT CONCERNING MEPA RULES

(1) The purpose of these rules is to implement Title 75, chapter 1, MCA, the Montana Environmental Policy Act (MEPA), through the establishment of administrative procedures. MEPA requires that state agencies comply with its terms "to the fullest extent possible." In order to fulfill the stated policy of that act, the agency shall conform to the following rules prior to reaching a final decision on proposed actions covered by MEPA.

AUTH: 2-3-104, MCA  
IMP: 2-3-104, MCA

NEW RULE II DEFINITIONS (1) "Action" means a project, program or activity directly undertaken by the agency; a

project or activity supported through a contract, grant, subsidy, loan or other form of funding assistance from the agency, either singly or in combination with one or more other state agencies; or a project or activity involving the issuance of a lease, permit, license, certificate, or other entitlement for use or permission to act by the agency, either singly or in combination with other state agencies.

(2) "Alternative" means:

(a) an alternate approach or course of action that would appreciably accomplish the same objectives or results as the proposed action;

(b) design parameters, mitigation, or controls other than those incorporated into a proposed action by an applicant or by an agency prior to preparation of an EA or draft EIS;

(c) no action or denial; and

(d) for agency-initiated actions, a different program or series of activities that would accomplish other objectives or a different use of resources than the proposed program or series of activities.

(e) The agency is required to consider only alternatives that are realistic, technologically available, and that represent a course of action that bears a logical relationship to the proposal being evaluated.

(3) "The agency" means the Montana department of livestock.

(4) "Applicant" means a person or any other entity who applies to the agency for a grant, loan, subsidy, or other funding assistance, or for a lease, permit, license, certificate, or other entitlement for use or permission to act.

(5) "Categorical exclusion" refers to a type of action which does not individually, collectively, or cumulatively require an EA or EIS, as determined by rulemaking or programmatic review adopted by the agency, unless extraordinary circumstances, as defined by rulemaking or programmatic review, occur.

(6) "Compensation" means the replacement or provision of substitute resources or environments to offset an impact on the quality of the human environment. The agency may not consider compensation for purposes of determining the significance of impacts (see [NEW RULE III(4)]).

(7) "Cumulative impact" means the collective impacts on the human environment of the proposed action when considered in conjunction with other past and present actions related to the proposed action by location or generic type. Related future actions must also be considered when these actions are under concurrent consideration by any state agency through pre-impact statement studies, separate impact statement evaluation, or permit processing procedures.

(8) "Emergency actions" include, but are not limited to:

(a) projects undertaken, carried out, or approved by the agency to repair or restore property or facilities damaged or destroyed as a result of a disaster when a disaster has been declared by the governor or other appropriate government

entity;

(b) emergency repairs to public service facilities necessary to maintain service; and

(c) projects, whether public or private, undertaken to prevent or mitigate immediate threats to public health, safety, welfare, or the environment.

(9) "Environmental assessment" (EA) means a written analysis of a proposed action to determine whether an EIS is required or to serve one or more of the other purposes described in [NEW RULE III(2)].

(10) "Environmental impact statement" (EIS) means the detailed written statement required by 75-1-201, MCA, which may take several forms:

(a) "Draft environmental impact statement" means a detailed written statement prepared to the fullest extent possible in accordance with 75-1-201(1)(b)(iii), MCA, and these rules;

(b) "Final environmental impact statement" means a written statement prepared to the fullest extent possible in accordance with 75-1-201, MCA, and [NEW RULES IX or X] and which responds to substantive comments received on the draft environmental impact statement;

(c) "Joint environmental impact statement" means an EIS prepared jointly by more than one agency, either state or federal, when the agencies are involved in the same or a closely related proposed action.

(11) "Environmental quality council" (EQC) means the council established pursuant to Title 75, chapter 1, MCA, and 5-16-101, MCA.

(12) "Human environment" includes, but is not limited to biological, physical, social, economic, cultural, and aesthetic factors that interrelate to form the environment. As the term applies to the agency's determination of whether an EIS is necessary (see [NEW RULE III(1)]), economic and social impacts do not by themselves require an EIS. However, whenever an EIS is prepared, economic and social impacts and their relationship to biological, physical, cultural and aesthetic impacts must be discussed.

(13) "Lead agency" means the state agency that has primary authority for committing the government to a course of action or the agency designated by the governor to supervise the preparation of a joint environmental impact statement or environmental assessment.

(14) "Mitigation" means:

(a) avoiding an impact by not taking a certain action or parts of an action;

(b) minimizing impacts by limiting the degree or magnitude of an action and its implementation;

(c) rectifying an impact by repairing, rehabilitating, or restoring the affected environment; or

(d) reducing or eliminating an impact over time by preservation and maintenance operations during the life of an action or the time period thereafter that an impact continues.

(15) "Programmatic review" means an analysis (EIS or EA)

of the impacts on the quality of the human environment of related actions, programs, or policies.

(16) "Residual impact" means an impact that is not eliminated by mitigation.

(17) "Scope" means the range of reasonable alternatives, mitigation, issues, and potential impacts to be considered in an environmental assessment or an environmental impact statement.

(18) "Secondary impact" means a further impact to the human environment that may be stimulated or induced by or otherwise result from a direct impact of the action.

(19) "State agency" means an office, commission, committee, board, department, council, division, bureau, or section of the executive branch of state government.

AUTH: 2-3-104, MCA

IMP: 2-3-104, MCA

NEW RULE III GENERAL REQUIREMENTS OF THE ENVIRONMENTAL REVIEW PROCESS

(1) Section 75-1-201, MCA requires state agencies to integrate use of the natural and social sciences and the environmental design arts in planning and in decision-making, and to prepare a detailed statement (an EIS) on each proposal for projects, programs, legislation, and other major actions of state government significantly affecting the quality of the human environment. To determine the level of environmental review for each proposed action that is necessary to comply with 75-1-201, MCA, the agency shall apply the following criteria:

(a) The agency shall prepare an EIS as follows:

(i) whenever an EA indicates that an EIS is necessary;

or

(ii) whenever, based on the criteria in [NEW RULE IV], the proposed action is a major action of state government significantly affecting the quality of the human environment.

(b) An EA may serve any of the following purposes:

(i) to ensure that the agency uses the natural and social sciences and the environmental design arts in planning and decision-making. An EA may be used independently or in conjunction with other agency planning and decision-making procedures;

(ii) to assist in the evaluation of reasonable alternatives and the development of conditions, stipulations or modifications to be made a part of a proposed action;

(iii) to determine the need to prepare an EIS through an initial evaluation and determination of the significance of impacts associated with a proposed action;

(iv) to ensure the fullest appropriate opportunity for public review and comment on proposed actions, including alternatives and planned mitigation, where the residual impacts do not warrant the preparation of an EIS; and

(v) to examine and document the effects of a proposed action on the quality of the human environment, and to provide the basis for public review and comment, whenever statutory

requirements do not allow sufficient time for an agency to prepare an EIS. The agency shall determine whether sufficient time is available to prepare an EIS by comparing statutory requirements that establish when the agency must make its decision on the proposed action with the time required by [NEW RULE VII] to obtain public review of an EIS plus a reasonable period to prepare a draft EIS and, if required, a final EIS.

(c) The agency shall prepare an EA whenever:

(i) the action is not excluded under (1)(e) and it is not clear without preparation of an EA whether the proposed action is a major one significantly affecting the quality of the human environment;

(ii) the action is not excluded under (1)(e) and although an EIS is not warranted, the agency has not otherwise implemented the interdisciplinary analysis and public review purposes listed in (1)(b)(i) and (iv) through a similar planning and decision-making process; or

(iii) statutory requirements do not allow sufficient time for the agency to prepare an EIS.

(d) The agency may, as an alternative to preparing an EIS, prepare an EA whenever the action is one that might normally require an EIS, but effects which might otherwise be deemed significant appear to be mitigable below the level of significance through design, or enforceable controls or stipulations or both imposed by the agency or other government agencies. For an EA to suffice in this instance, the agency must determine that all of the impacts of the proposed action have been accurately identified, that they will be mitigated below the level of significance, and that no significant impact is likely to occur. The agency may not consider compensation for purposes of determining that impacts have been mitigated below the level of significance.

(e) The agency is not required to prepare an EA or an EIS for the following categories of action:

(i) actions that qualify for a categorical exclusion as defined by rule or justified by a programmatic review. In the rule or programmatic review, the agency shall identify any extraordinary circumstances in which a normally excluded action requires an EA or EIS;

(ii) administrative actions such as routine, clerical or similar functions of a department, including but not limited to administrative procurement, contracts for consulting services, and personnel actions;

(iii) minor repairs, operations, or maintenance of existing equipment or facilities;

(iv) investigation and enforcement such as data collection, inspection of facilities or enforcement of environmental standards;

(v) ministerial actions such as actions in which the agency exercises no discretion, but rather acts upon a given state of facts in a prescribed manner; and

(vi) actions that are primarily social or economic in nature and that do not otherwise affect the human environment.

AUTH: 2-3-104, MCA  
IMP: 2-3-104, MCA

NEW RULE IV DETERMINING THE SIGNIFICANCE OF IMPACTS

(1) In order to implement 75-1-201, MCA, the agency shall determine the significance of impacts associated with a proposed action. This determination is the basis of the agency's decision concerning the need to prepare an EIS and also refers to the agency's evaluation of individual and cumulative impacts in either EAs or EISs. The agency shall consider the following criteria in determining the significance of each impact on the quality of the human environment:

- (a) the severity, duration, geographic extent, and frequency of occurrence of the impact;
- (b) the probability that the impact will occur if the proposed action occurs; or conversely, reasonable assurance in keeping with the potential severity of an impact that the impact will not occur;
- (c) growth-inducing or growth-inhibiting aspects of the impact, including the relationship or contribution of the impact to cumulative impacts;
- (d) the quantity and quality of each environmental resource or value that would be affected, including the uniqueness and fragility of those resources or values;
- (e) the importance to the state and to society of each environmental resource or value that would be affected;
- (f) any precedent that would be set as a result of an impact of the proposed action that would commit the department to future actions with significant impacts or a decision in principle about such future actions; and
- (g) potential conflict with local, state, or federal laws, requirements, or formal plans.

(2) An impact may be adverse, beneficial, or both. If none of the adverse effects of the impact are significant, an EIS is not required. An EIS is required if an impact has a significant adverse effect, even if the agency believes that the effect on balance will be beneficial.

AUTH: 2-3-104, MCA  
IMP: 2-3-104, MCA

NEW RULE V PREPARATION AND CONTENTS OF ENVIRONMENTAL ASSESSMENTS

(1) The agency shall prepare an EA, regardless of its length or the depth of analysis, in a manner which utilizes an interdisciplinary approach. The agency may initiate a process to determine the scope of issues to be addressed in an EA. Whenever the agency elects to initiate this process, it shall follow the procedures contained in [NEW RULE VII].

(2) For a routine action with limited environmental impact, the contents of an EA may be reflected on a standard checklist format. At the other extreme, whenever an action is one that might normally require an EIS, but effects that

otherwise might be deemed significant are mitigated in project design or by controls imposed by the agency, the analysis, format, and content must all be more substantial. The agency shall prepare the evaluations and present the information described in (3) as applicable and in a level of detail appropriate to the following considerations:

- (a) the complexity of the proposed action;
- (b) the environmental sensitivity of the area affected by the proposed action;

- (c) the degree of uncertainty that the proposed action will have a significant impact on the quality of the human environment;

- (d) the need for and complexity of mitigation required to avoid the presence of significant impacts.

(3) To the degree required in (2) above, an EA must include:

- (a) a description of the proposed action, including maps and graphs;

- (b) a description of the benefits and purpose of the proposed action. If the agency prepares a cost/benefit analysis before completion of the EA, the EA must contain the cost/benefit analysis or a reference to it;

- (c) a listing of any state, local, or federal agencies that have overlapping or additional jurisdiction or environmental review responsibility for the proposed action and the permits, licenses, and other authorizations required;

- (d) an evaluation of the impacts, including cumulative and secondary impacts, on the physical environment. This evaluation may take the form of an environmental checklist and/or, as appropriate, a narrative containing more detailed analysis of topics and impacts that are potentially significant, including, where appropriate:

- (i) terrestrial and aquatic life and habitats;
- (ii) water quality, quantity, and distribution;
- (iii) geology;
- (iv) soil quality, stability, and moisture;
- (v) vegetation cover, quantity and quality;
- (vi) aesthetics;
- (vii) air quality;
- (viii) unique, endangered, fragile, or limited environmental resources;

- (ix) historical and archaeological sites; and
- (x) demands on environmental resources of land, water, air and energy;

- (e) an evaluation of the impacts, including cumulative and secondary impacts, on the human population in the area to be affected by the proposed action. This evaluation may take the form of an environmental checklist and/or, as appropriate, a narrative containing more detailed analysis of topics and impacts that are potentially significant, including where appropriate:

- (i) social structures and mores;
- (ii) cultural uniqueness and diversity;
- (iii) access to and quality of recreational and

wilderness activities;

- (iv) local and state tax base and tax revenues;
- (v) agricultural or industrial production;
- (vi) human health;
- (vii) quantity and distribution of employment;
- (viii) distribution and density of population and

housing;

- (ix) demands for government services;
- (x) industrial and commercial activity;
- (xi) locally adopted environmental plans and goals; and
- (xii) other appropriate social and economic

circumstances;

(f) a description and analysis of reasonable alternatives to a proposed action whenever alternatives are reasonably available and prudent to consider and a discussion of how the alternative would be implemented;

(g) a listing and appropriate evaluation of mitigation, stipulations, and other controls enforceable by the agency or another government agency;

(h) a listing of other agencies or groups that have been contacted or have contributed information;

(i) the names of persons responsible for preparation of the EA; and

(j) a finding on the need for an EIS and, if appropriate, an explanation of the reasons for preparing the EA. If an EIS is not required, the EA must describe the reasons the EA is an appropriate level of analysis.

AUTH: 2-3-104, MCA

IMP: 2-3-104, MCA

NEW RULE VI PUBLIC REVIEW OF ENVIRONMENTAL ASSESSMENTS

(1) The level of analysis in an EA will vary with the complexity and seriousness of environmental issues associated with a proposed action. The level of public interest will also vary. The agency is responsible for adjusting public review to match these factors.

(2) An EA is a public document and may be inspected upon request. Any person may obtain a copy of an EA by making a request to the agency. If the document is out-of-print, a copying charge may be levied.

(3) The agency is responsible for providing additional opportunities for public review consistent with the seriousness and complexity of the environmental issues associated with a proposed action and the level of public interest. Methods of accomplishing public review include:

(a) publishing a news release or legal notice to announce the availability of an EA, summarizing its content and soliciting public comment;

(b) holding public meetings or hearings;

(c) maintaining mailing lists of persons interested in a particular action or type of action and notifying them of the availability of EAs on such actions; and

(d) distributing copies of EAs for review and comment.

(4) For an action with limited environmental impact and little public interest, no further public review may be warranted. However, where an action is one that normally requires an EIS, but effects that otherwise might be deemed significant are mitigated in the project proposal or by controls imposed by the agency, public involvement must include the opportunity for public comment, a public meeting or hearing, and adequate notice. The agency is responsible for determining appropriate methods to ensure adequate public review on a case by case basis.

(5) The agency shall maintain a log of all EAs completed by the agency and shall submit a list of any new EAs completed to the office of the governor and the EQC on a quarterly basis. In addition, the agency shall submit a copy of each completed EA to the EQC.

(6) The agency shall consider the substantive comments received in response to an EA and proceed in accordance with one of the following steps, as appropriate:

(a) determine that an EIS is necessary;

(b) determine that the EA did not adequately reflect the issues raised by the proposed action and issue a revised document; or

(c) determine that an EIS is not necessary and make a final decision on the proposed action, with appropriate modification resulting from the analysis in the EA and analysis of public comment.

AUTH: 2-3-104, MCA

IMP: 2-3-104, MCA

NEW RULE VII DETERMINING THE SCOPE OF AN ENVIRONMENTAL IMPACT STATEMENT (1) Prior to the preparation of an EIS, the agency shall initiate a process to determine the scope of the EIS.

(2) To identify the scope of an EIS, the agency shall:

(a) invite the participation of affected federal, state, and local government agencies, Indian tribes, the applicant, if any, and interested persons or groups;

(b) identify the issues related to the proposed action that are likely to involve significant impacts and that will be analyzed in depth in the EIS;

(c) identify the issues that are not likely to involve significant impacts, thereby indicating that unless unanticipated effects are discovered during the preparation of the EIS, the discussion of these issues in the EIS will be limited to a brief presentation of the reasons they will not significantly affect the quality of the human environment; and

(d) identify those issues that have been adequately addressed by prior environmental review, thereby indicating that the discussion of these issues in the EIS will be limited to a summary and reference to their coverage elsewhere; and

(e) identify possible alternatives to be considered.

AUTH: 2-3-104, MCA

IMP: 2-3-104, MCA

NEW RULE VIII ENVIRONMENTAL IMPACT STATEMENTS--GENERAL REQUIREMENTS (1) The following apply to the design and preparation of EISs:

(a) The agency shall prepare EISs that are analytic rather than encyclopedic.

(b) The agency shall discuss the impacts of a proposed action in a level of detail that is proportionate to their significance. For other than significant issues, an EIS need only include enough discussion to show why more study is not warranted.

(c) The agency shall prepare with each draft and final EIS a brief summary that is available for distribution separate from the EIS. The summary must describe:

(i) the proposed action being evaluated by the EIS, the impacts, and the alternatives;

(ii) areas of controversy and major conclusions;

(iii) the tradeoffs among the alternatives; and

(iv) the agency's preferred alternative, if any.

AUTH: 2-3-104, MCA

IMP: 2-3-104, MCA

NEW RULE IX PREPARATION AND CONTENTS OF DRAFT ENVIRONMENTAL IMPACT STATEMENTS (1) If required by these rules, the agency shall prepare a draft environmental impact statement using an interdisciplinary approach and containing the following:

(a) a description of the proposed action, including its purpose and benefits;

(b) a listing of any state, local, or federal agencies that have overlapping or additional jurisdiction and a description of their responsibility for the proposed action;

(c) a description of the current environmental conditions in the area affected by the proposed action or alternatives, including maps and charts, whenever appropriate. The description must be no longer than is necessary to understand the effects of the action and alternatives. Data analysis must be commensurate with the importance of the impact with less important material summarized, consolidated, or simply referenced;

(d) a description of the impacts on the quality of the human environment of the proposed action including:

(i) the factors listed in [NEW RULE V(3)(d) and (e)], whenever appropriate;

(ii) primary, secondary, and cumulative impacts;

(iii) potential growth-inducing or growth-inhibiting impacts;

(iv) irreversible and irretrievable commitments of environmental resources, including land, air, water and energy;

(v) economic and environmental benefits and costs of the proposed action; and

(vi) the relationship between local short-term uses of man's environment and the effect on maintenance and enhancement of the long-term productivity of the environment. Where a cost-benefit analysis is prepared by the agency prior to the preparation of the draft EIS, it shall be incorporated by reference in or appended to the EIS;

(e) an analysis of reasonable alternatives to the proposed action, including the alternative of no action and other reasonable alternatives that may or may not be within the jurisdiction of the agency to implement, if any;

(f) a discussion of mitigation, stipulations, or other controls committed to and enforceable by the agency or other government agency;

(g) a discussion of any compensation related to impacts stemming from the proposed action;

(h) an explanation of the tradeoffs among the reasonable alternatives;

(i) the agency's preferred alternative, if any, and its reasons for the preference;

(j) a section on consultation and preparation of the draft EIS that includes the following:

(i) the names of those individuals or groups responsible for preparing the EIS;

(ii) a listing of other agencies, groups, or individuals who were contacted or contributed information; and

(iii) a summary list of source materials used in the preparation of the draft EIS;

(k) a summary of the draft EIS as required in [NEW RULE VIII]; and

(l) other sections that may be required by other statutes in a comprehensive evaluation of the proposed action, or by the National Environmental Policy Act or other federal statutes governing a cooperating federal agency.

AUTH: 2-3-104, MCA

IMP: 2-3-104, MCA

NEW RULE X ADOPTION OF DRAFT ENVIRONMENTAL IMPACT STATEMENT AS FINAL (1) Depending upon the substantive comments received in response to the draft EIS, the draft statement may suffice. The agency shall determine whether to adopt the draft EIS within 30 days of the close of the comment period on the draft EIS.

(2) In the event the agency determines to adopt the draft EIS, the agency shall notify the governor, the EQC, the applicant, if any, and all commenters of its decision and provide a statement describing its proposed course of action. This notification must be accompanied by a copy of all comments or a summary of a representative sample of comments received in response to the draft statement, together with, at minimum, an explanation of why the issues raised do not warrant the preparation of a final EIS.

(3) The agency shall provide public notice of its decision to adopt the draft EIS as a final EIS.

(4) If the agency decides to adopt the draft EIS as the final EIS, it may make a final decision on the proposed action no sooner than 15 days after complying with (1) through (3) above.

AUTH: 2-3-104, MCA  
IMP: 2-3-104, MCA

NEW RULE XI PREPARATION AND CONTENTS OF FINAL ENVIRONMENTAL IMPACT STATEMENT (1) Except as provided in [NEW RULE X], a final environmental impact statement must include:

(a) a summary of major conclusions and supporting information from the draft EIS and the responses to substantive comments received on the draft EIS, stating specifically where such conclusions and information were changed from those which appeared in the draft;

(b) a list of all sources of written and oral comments on the draft EIS, including those obtained at public hearings, and, unless impractical, the text of comments received by the agency (in all cases, a representative sample of comments must be included);

(c) the agency's responses to substantive comments, including an evaluation of the comments received and disposition of the issues involved;

(d) data, information, and explanations obtained subsequent to circulation of the draft; and

(e) the agency's recommendation, preferred alternative, or proposed decision together with an explanation of the reasons therefore.

AUTH: 2-3-104, MCA  
IMP: 2-3-104, MCA

NEW RULE XII TIME LIMITS AND DISTRIBUTION OF ENVIRONMENTAL IMPACT STATEMENTS (1) Following preparation of a draft EIS, the agency shall distribute copies to the governor, the EQC, appropriate state and federal agencies, the applicant, if any, and persons who have requested copies.

(2) The listed transmittal date to the governor and the EQC must not be earlier than the date that the draft EIS is mailed to other agencies, organizations, and individuals. The agency shall allow 30 days for reply, provided that the agency may extend this period up to an additional 30 days at its discretion or upon application of any person for good cause. When preparing a joint EIS with a federal agency or agencies, the agency may also extend this period in accordance with time periods specified in regulations that implement the National Environmental Policy Act. However, no extension which is otherwise prohibited by law may be granted.

(3) In cases involving an applicant, after the period for comment on the draft EIS has expired, the agency shall send to the applicant a copy of all written comments that were received. The agency shall advise the applicant that he has a

reasonable time to respond in writing to the comments received by the agency on the draft EIS and that the applicant's written response must be received before a final EIS can be prepared and circulated. The applicant may waive his right to respond to the comments on the draft EIS.

(4) Following preparation of a final EIS, the agency shall distribute copies to the governor, the EQC, appropriate state and federal agencies, the applicant, if any, persons who submitted comments on or received a copy of the draft EIS, and other members of the public upon request.

(5) Except as provided by [NEW RULE X(4)], a final decision must not be made on the proposed action being evaluated in a final EIS until 15 days have expired from the date of transmittal of the final EIS to the governor and the EQC. The listed transmittal date to the governor and the EQC must not be earlier than the date that the final EIS is mailed to other agencies, organizations, and individuals.

(6) All written comments received on an EIS, including written responses received from the applicant, must be made available to the public upon request.

(7) Until the agency reaches its final decision on the proposed action, no action concerning the proposal may be taken that would:

- (a) have an adverse environmental impact; or
- (b) limit the choice of reasonable alternatives, including the no-action alternative.

AUTH: 2-3-104, MCA

IMP: 2-3-104, MCA

NEW RULE XIII SUPPLEMENTS TO ENVIRONMENTAL IMPACT STATEMENTS (1) The agency shall prepare supplements to either draft or final environmental impact statements whenever:

(a) the agency or the applicant makes a substantial change in a proposed action;

(b) there are significant new circumstances, discovered prior to final agency decision, including information bearing on the proposed action or its impacts that change the basis for the decision; or

(c) following preparation of a draft EIS and prior to completion of a final EIS, the agency determines that there is a need for substantial, additional information to evaluate the impacts of a proposed action or reasonable alternatives.

(2) A supplement must include, but is not limited to, a description of the following:

(a) an explanation of the need for the supplement;

(b) the proposed action; and

(c) any impacts, alternatives of other items required by [NEW RULE IX] for a draft EIS or [NEW RULE XI] for a final EIS that were either not covered in the original statement or that must be revised based on new information or circumstances concerning the proposed action.

(3) The same time periods applicable to draft and final

EISS apply to the circulation and review of supplements.

AUTH: 2-3-104, MCA

IMP: 2-3-104, MCA

NEW RULE XIV ADOPTION OF AN EXISTING ENVIRONMENTAL IMPACT STATEMENT (1) The agency shall adopt as part of a draft EIS all or any part of the information, conclusions, comments, and responses to comments contained in an existing EIS that has been previously or is being concurrently prepared pursuant to MEPA or the National Environmental Policy Act if the agency determines:

(a) that the existing EIS covers an action paralleling or closely related to the action proposed by the agency or the applicant;

(b) on the basis of its own independent evaluation, that the information contained in the existing EIS has been accurately presented; and

(c) that the information contained in the existing EIS is applicable to the action currently being considered.

(2) A summary of the existing EIS or the portion adopted and a list of places where the full text is available must be circulated as a part of the EIS and treated as part of the EIS for all purposes, including, if required, preparation of a final EIS.

(3) Adoption of all or part of an existing EIS does not relieve the agency of the duty to comply with [NEW RULE IX].

(4) The same time periods applicable to draft and final EISS apply to the circulation and review of EISS that include material adopted from an existing EIS.

(5) The agency shall take full responsibility for the portions of a previous EIS adopted. If the agency disagrees with certain adopted portions of the previous EIS, it shall specifically discuss the points of disagreement.

(6) No material may be adopted unless it is reasonably available for inspection by interested persons within the time allowed for comment.

(7) Whenever part of an existing EIS or concurrently prepared EIS is adopted, the part adopted must include sufficient material to allow the part adopted to be considered in the context in which it was presented in the original EIS.

AUTH: 2-3-104, MCA

IMP: 2-3-104, MCA

NEW RULE XV INTERAGENCY COOPERATION (1) Whenever it is the lead agency responsible for preparation of an EIS, the agency may:

(a) request the participation of other governmental agencies which have special expertise in areas that should be addressed in the EIS;

(b) allocate assignments, as appropriate, for the preparation of the EIS among other participating agencies; and

(c) coordinate the efforts of all affected agencies.

(2) Whenever participation of the agency is requested by a lead agency, the agency shall make a good-faith effort to participate in the EIS as requested, with its expenses for participation in the EIS paid by the lead agency or other agency collecting the EIS fee if one is collected.

AUTH: 2-3-104, MCA  
IMP: 2-3-104, MCA

NEW RULE XVI JOINT ENVIRONMENTAL IMPACT STATEMENTS AND ENVIRONMENTAL ASSESSMENTS (1) Whenever the agency and one or more other state agencies have jurisdiction over an applicant's proposal or major state actions that individually, collectively, or cumulatively require an EIS and another agency is clearly the lead agency, the agency shall cooperate with the lead agency in the preparation of a joint EIS. Whenever it is clearly the lead agency, the agency shall coordinate the preparation of the EIS as required by this rule. Whenever the agency and one or more agencies have jurisdiction over an applicant's proposal or major state actions and lead agency status cannot be resolved, the agency shall request a determination from the governor.

(2) The agency shall cooperate with federal and local agencies in preparing EISs when the jurisdiction of the agency is involved. This cooperation may include, but is not limited to:

- (a) joint environmental research studies;
- (b) a joint process to determine the scope of an EIS;
- (c) joint public hearings;
- (d) joint EISs; and
- (e) whenever appropriate, joint issuance of a record of decision.

(3) Whenever the agency proposes or participates in an action that requires preparation of an EIS under both the National Environmental Policy Act and MEPA, the EIS must be prepared in compliance with both statutes and associated rules and regulations. The agency may, if required by a cooperating federal agency, accede to and follow more stringent requirements, such as additional content or public review periods, but in no case may it accede to less than is provided for in these rules.

(4) The same general provisions for cooperation and joint issuance of documents provided for in this rule in connection with EISs also apply to EAs.

AUTH: 2-3-104, MCA  
IMP: 2-3-104, MCA

NEW RULE XVII PREPARATION, CONTENT, AND DISTRIBUTION OF A PROGRAMMATIC REVIEW (1) Whenever the agency is contemplating a series of agency-initiated actions, programs, or policies which in part or in total may constitute a major state action significantly affecting the human environment, it shall prepare a programmatic review discussing the impacts of

the series of actions.

(2) The agency may also prepare a programmatic review whenever required by statute, whenever a series of actions under the jurisdiction of the agency warrant such an analysis as determined by the agency, or whenever prepared as a joint effort with a federal agency requiring a programmatic review.

(3) The agency shall determine whether the programmatic review takes the form of an EA or an EIS in accordance with the provisions of [NEW RULES III and V], unless otherwise provided by statute.

(4) A programmatic review must include, as a minimum, a concise, analytical discussion of alternatives and the cumulative environmental effects of these alternatives on the human environment. In addition programmatic reviews must contain the information specified in [NEW RULE IX] for EISS or [NEW RULE V] for EAs, as applicable.

(5) The agency shall adhere to the time limits specified for distribution and public comment on EISS or EAs, whichever is applicable.

(6) While work on a programmatic review is in progress, the agency may not take major state actions covered by the program in that interim period unless such action:

(a) is part of an ongoing program;  
(b) is justified independently of the program; or  
(c) will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program if it tends to determine subsequent development or foreclose reasonable alternatives.

(7) Actions taken under (6) must be accompanied by an EA or an EIS, if required.

AUTH: 2-3-104, MCA

IMP: 2-3-104, MCA

NEW RULE XVIII RECORD OF DECISION FOR ACTIONS REQUIRING ENVIRONMENTAL IMPACT STATEMENTS

(1) At the time of its decision concerning a proposed action for which an EIS was prepared, the agency shall prepare a concise public record of decision. The record, which may be integrated into any other documentation of the decision that is prepared by the agency, is a public notice of what the decision is, the reasons for the decision, and any special conditions surrounding the decision or its implementation.

(2) The agency may include in the final EIS, in addition to a statement of its proposed decision, preferred alternative, or recommendation on the proposed action, the other items required by (1), and additional explanation as provided for in (3) below. If the final decision and the reasons for that final decision are the same as set forth in the final EIS, the agency may comply with (1) by preparing a public notice of what the decision is and adopting by reference the information contained in the final EIS that addresses the items required by (1). If the final decision or any of the items required by (1) are different from what was

presented in the final EIS, the agency is responsible for preparing a separate record of decision.

(3) There is no prescribed format for a record of decision, except that it must include the items listed in (1). The record may include the following items as appropriate:

- (a) brief description of the context of the decision;
- (b) the alternatives considered;
- (c) advantages and disadvantages of the alternatives;
- (d) the alternative or alternatives considered environmentally preferable;
- (e) short and long-term effects of the decision;
- (f) policy considerations that were balanced and considered in making the decision;
- (g) whether all practical means to avoid or minimize environmental harm were adopted, and if not, why not; and
- (h) a summary of implementation plans, including monitoring and enforcement procedures for mitigation, if any.

(4) This rule does not define or affect the statutory decision making authority of the agency.

AUTH: 2-3-104, MCA  
IMP: 2-3-104, MCA

NEW RULE XIX EMERGENCIES (1) The agency may take or permit action having a significant impact on the quality of the human environment in an emergency situation without preparing an EIS. Within 30 days following initiation of the action, the agency shall notify the governor and the EQC as to the need for the action and the impacts and results of it. Emergency actions must be limited to those actions immediately necessary to control the impacts of the emergency.

AUTH: 2-3-104, MCA  
IMP: 2-3-104, MCA

NEW RULE XX CONFIDENTIALITY (1) Information declared confidential by state law or by an order of a court must be excluded from an EA and EIS. The agency shall briefly state the general topic of the confidential information excluded.

AUTH: 2-3-104, MCA  
IMP: 2-3-104, MCA

NEW RULE XXI RESOLUTION OF STATUTORY CONFLICTS

(1) Whenever a conflicting provision of another state law prevents the agency from fully complying with these rules, the agency shall notify the governor and the EQC of the nature of the conflict and shall suggest a proposed course of action that will enable the agency to comply to the fullest extent possible with the provisions of MEPA. This notification must be made as soon as practical after the agency recognizes that a conflict exists, and no later than 30 days following such recognition.

(2) The agency has a continuing responsibility to review

its programs and activities to evaluate known or anticipated conflicts between these rules and other statutory or regulatory requirements. It shall make such adjustments or recommendations as may be required to ensure maximum compliance with MEPA and these rules.

AUTH: 2-3-104, MCA  
IMP: 2-3-104, MCA

NEW RULE XXII CONTRACTS AND DISCLOSURE (1) The agency may contract for preparation of an EIS or portions thereof. Whenever an EIS or portion thereof is prepared by a contractor, the agency shall furnish guidance and participate in the preparation, independently evaluate the statement or portion thereof prior to its approval, and take responsibility for its scope and content.

(2) A person contracting with the agency in the preparation of an EIS must execute a disclosure statement, in affidavit form prepared by the agency, specifying that he or she has no financial or other interest in the outcome of the proposed action other than a contract with the agency.

AUTH: 2-3-104, MCA  
IMP: 2-3-104, MCA

NEW RULE XXIII PUBLIC HEARINGS (1) Whenever a public hearing is held on an EIS or an EA, the agency shall issue a news release or legal notice to newspapers of general circulation in the area to be affected by the proposed action prior to the hearing. The news release or legal notice must advise the public of the nature of testimony the agency wishes to receive at the hearing. The hearing must be held after the draft EIS has been circulated and prior to preparation of the final EIS. A hearing involving an action for which an EA was prepared must be held after the EA has been circulated and prior to any final agency determinations concerning the proposed action. In cases involving an applicant, the agency shall allow an applicant a reasonable time to respond in writing to comments made at a public hearing, notwithstanding the time limits contained in [NEW RULE XII]. The applicant may waive his right to respond to comments made at a hearing.

(2) In addition to the procedure in (1) above, the agency shall take such other steps as are reasonable and appropriate to promote the awareness by interested parties of a scheduled hearing.

(3) The agency shall hold a public hearing whenever requested within 20 days of issuance of the draft EIS by either:

(a) 10% or 25, whichever is less, of the persons who will be directly affected by the proposed action;

(b) by another agency which has jurisdiction over the action;

(c) an association having not less than 25 members who will be directly affected by the proposed action; or

(d) the applicant, if any.

(4) In determining whether a sufficient number of persons have requested a hearing as required by (3), the agency shall resolve instances of doubt in favor of holding a public hearing.

(5) No person may give testimony at the hearing as a representative of a participating agency. Such a representative may, however, at the discretion of the hearing officer, give a statement regarding his or her agency's authority or procedures and answer questions from the public.

(6) Public meetings may be held in lieu of formal hearings as a means of soliciting public comment on an EIS where no hearing is requested under (3) above. However, the agency shall provide adequate advance notice of the meeting; and, other than the degree of formality surrounding the proceedings, the objectives of such a meeting are essentially the same as those for a hearing.

AUTH: 2-3-104, MCA

IMP: 2-3-104, MCA

NEW RULE XXIV FEES: DETERMINATION OF AUTHORITY TO IMPOSE

(1) Whenever an application for a lease, permit, contract, license or certificate is expected to result in the agency incurring expenses in excess of \$2,500 to compile an EIS, the applicant is required to pay a fee in an amount the agency reasonably estimates, as set forth in this rule, will be expended to gather information and data necessary to compile an EIS.

(2) The agency shall determine within 30 days after a completed application is filed whether it will be necessary to compile an EIS and assess a fee as prescribed by this rule. If it is determined that an EIS is necessary, the agency shall make a preliminary estimate of its costs. This estimate must include a summary of the data and information needs and the itemized costs of acquiring the data and information, including salaries, equipment costs and other expenses associated with the collection of data and information for the EIS.

(3) Whenever the preliminary estimated costs of acquiring the data and information to prepare an EIS total more than \$2,500, the agency shall notify the applicant that a fee must be paid and submit an itemized preliminary estimate of the cost of acquiring the data and information necessary to compile an EIS. The agency shall also notify the applicant to prepare and submit a notarized and detailed estimate of the cost of the project being reviewed in the EIS within 15 days. In addition, the agency shall request the applicant to describe the data and information available or being prepared by the applicant which can possibly be used in the EIS. The applicant may indicate which of the agency's estimated costs of acquiring data and information for the EIS would be duplicative or excessive. The applicant must be granted, upon request, an extension of the 15-day period for submission of

an estimate of the project's cost and a critique of the agency's preliminary EIS data and information accumulation cost assessment.

AUTH: 2-3-104, MCA  
IMP: 2-3-104, MCA

NEW RULE XXV FEES: DETERMINATION OF AMOUNT (1) After receipt of the applicant's estimated cost of the project and analysis of an agency's preliminary estimate of the cost of acquiring information and data for the EIS, the agency shall notify the applicant within 15 days of the final amount of the fee to be assessed. The fee assessed must be based on the projected cost of acquiring all of the information and data needed for the EIS. If the applicant has gathered or is in the process of gathering information and data that can be used in the EIS, the agency shall only use that portion of the fee that is needed to verify the information and data. Any unused portion of the fee assessed may be returned to the applicant within a reasonable time after the information and data have been collected or the information and data submitted by the applicant have been verified, but in no event later than the deadline specified in these rules. The agency may extend the 15-day period provided for review of the applicant's submittal but not to exceed 45 days if it believes that the project cost estimate submitted is inaccurate or additional information must be obtained to verify the accuracy of the project cost estimate. The fee assessed must not exceed the limitations provided in 75-1-203(2), MCA.

(2) If an applicant believes that the fee assessed is excessive or does not conform to the requirements of this rule or Title 75, chapter 1, part 2, MCA, the applicant may request a hearing pursuant to the contested case provisions of the Montana Administrative Procedure Act. If a hearing is held on the fee assessed as authorized by this rule, the agency shall proceed with its analysis of the project wherever possible. The fact that a hearing has been requested is not grounds for delaying consideration of an application except to the extent that the portion of the fee in question affects the ability of the department to collect the data and information necessary for the EIS.

AUTH: 2-3-104, MCA  
IMP: 2-3-104, MCA

NEW RULE XXVI USE OF FEE (1) The fee assessed hereunder may only be used to gather data and information necessary to compile an EIS. No fee may be assessed if an agency intends only to compile an EA or a programmatic review. If a department collects a fee and later determines that additional data and information must be collected or that data and information supplied by the applicant and relied upon by the agency are inaccurate or invalid, an additional fee may be assessed under the procedures outlined in these rules if the

maximum fee has not been collected.

(2) Whenever the agency has completed work on the EIS, it shall submit to the applicant a complete accounting of how any fee was expended. If the money expended is less than the fee collected, the remainder of the fee shall be refunded to the applicant without interest within 45 days after work has been completed on the final EIS.

AUTH: 2-3-104, MCA

IMP: 2-3-104, MCA

5. ARM 32.2.201 through 32.3.220 are being repealed because they no longer describe, as accurately as possible, the manner in which the department of livestock intends to comply with MEPA.

6. NEW RULES I through XXVI are proposed for adoption for the following reasons:

(a) because they will allow the department's manner of compliance with MEPA to become consistent with that of other state agencies, and with current judicial interpretations and applications of MEPA; and

(b) because they provide enhanced clarity to the general public in terms of the guidance they offer relating to how the department will perform its duties and responsibilities under MEPA.

7. Concerned persons may submit their data, views, or arguments concerning the proposed repeal and adoption in writing to Mr. Marc Bridges, 301 N. Roberts St. - Room 308, PO Box 2020001, Helena, MT 59620-2001, to be received no later than November 7, 2000.

8. If persons who are directly affected by the proposed actions wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to the same address as above. The comments must be received no later than November 7, 2000.

9. If the board receives requests for a public hearing on the proposed actions from 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 more than 25 based on the population of the state.

10. The Montana department of livestock maintains a list

of interested persons who wish to receive notice of rulemaking actions proposed by the board of livestock. 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 a particular subject or subjects. Such written request may be mailed or delivered to Centralized Services Division, 301 N. Roberts Street - Room 309, PO Box 202001, Helena, MT 59620-2001.

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

12. These rules allow fees to be charged whenever costs to complete an EIS are estimated to exceed \$2,500.00. The case-by-case analysis required by this rule effectively precludes determination, at this time, of cumulative amounts of fees that may be assessed or of the number of persons that will be affected by adoption of these rules. In short, until specific agency actions are proposed or contemplated that require preparation of an EIS, there is no way to determine if preparation of any EIS will cost the agency more than \$2,500.00, thereby triggering the agency's ability to charge a fee. Similarly, there is presently no way to determine by what amount preparation of any future EIS may exceed \$2,500.00.

Unused portions of any fees that are assessed under these rules must be returned to the party from whom they were obtained. Therefore, the agency will not increase its revenues by assessing fees under these rules.

By: /s/ Marc Bridges  
Marc Bridges, Exec. Officer,  
Board of Livestock  
Department of Livestock

By: /s/ Bernard A. Jacobs  
Bernard A. Jacobs, Rule Reviewer  
Livestock Chief Legal Counsel

Certified to the Secretary of State September 25, 2000.

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

In the matter of the	)	NOTICE OF PROPOSED
amendment of ARM 37.49.413	)	AMENDMENT
and 37.49.501 pertaining to	)	
IV-E foster care eligibility	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On November 4, 2000, the Department of Public Health and Human Services proposes to amend the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you need to request an accommodation, contact the department no later than 5:00 p.m. on October 16, 2000, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

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

37.49.413 IV-E FOSTER CARE ELIGIBILITY: EARNED INCOME DISREGARDS (1) To determine the net monthly income which will be compared to the applicable NMI standard, the disregards set forth in (2)(a) and (b) below are subtracted from the total gross earned income of each member of the filing unit after the exclusions provided in ARM 37.49.412 have been applied.

(2) The following disregards will be applied in the order listed:

(a) a standard work expense disregard of \$90 for each member of the filing unit who has earned income; and

(b) \$30 plus 1/3 of the balance of earned income for each member of the filing unit who has earned income; and

~~(b)~~ (c) a dependent care disregard for payments made by a member of the filing unit for the care of a dependent child or incapacitated adult living in the same home as the filing unit, provided that:

(i) the amount disregarded may not exceed \$175 per month per person for persons 2 years of age or older or \$200 per month per child for children younger than 2 years of age;

(ii) the disregard applies only to payments for care during the time when the employed member of the filing unit is at the place of employment or en route between the place of employment and the site of the dependent care; and

(iii) only amounts paid or due for the month for which eligibility is being determined may be disregarded.

AUTH: Sec. 52-2-111, 53-2-201 and 53-6-113, MCA  
IMP: Sec. 52-2-115, 53-2-201 and 53-6-131, MCA

37.49.501 IV-E FOSTER CARE ELIGIBILITY: RESOURCE LIMITATION (1) A child is not IV-E eligible if the equity value of combined countable resources of all members of the filing unit exceeds ~~\$1,000~~ \$10,000 in the month of eligibility.

(2) After the initial determination of eligibility, the child is not eligible for IV-E benefits as specified in ARM 37.49.102(4)(a) and (b) if the equity value of the child's countable resources exceeds ~~\$1,000~~ the resource limit for medicaid.

(3) All real and personal property is counted in determining eligibility if any member of the filing unit has the legal right or actual ability to liquidate the property or the member's interest in the property for cash, unless it is a resource specifically excluded in ARM 37.49.502.

AUTH: Sec. 52-2-111, 53-2-201 and 53-6-113, MCA  
IMP: Sec. 52-2-115, 53-2-201 and 53-6-131, MCA

3. The IV-E foster care program provides funding to subsidize the costs of caring for children in foster care. Federal financial participation is available to the IV-E program. The proposed amendment to ARM 37.49.413 allows an additional \$30.00 and 1/3 of the balance of earned income to be deducted from each wage earner's gross income when determining IV-E eligibility for foster care. The change is necessary to comply with recent federal interpretations governing the IV-E program.

Currently in determining IV-E eligibility, the family from whom the child is removed or the child, once they are in foster care, is allowed to have resources valued at \$1,000.00 and an automobile with equity value of \$1,500.00. Any equity value of the automobile in excess of \$1,500.00 is included in the \$1,000.00 resource limit.

Public Law 106-169 "Foster Care Independence Act of 1999" amended the portion of the Social Security Act which limited the amount of resources owned by a needy family from \$1000.00 to \$10,000.00. The amendment to ARM 37.49.501 is necessary to allow youth in foster care to own resources with an equity value of \$10,000.00 without losing IV-E eligibility in order to comply with P.L. 106-169. The equity value of an automobile would still be \$1,500.00 with any excess value included in the \$10,000.00 resource limit.

These changes in the resource limit and disregards allow more children entering foster care to be eligible for the IV-E program giving the state the opportunity to take advantage of federal financial participation in the foster care funding.

There are an average of 2200 kids in foster care in any given

month. The Department expects these amendments to increase IV-E eligibility from 50% to 55% or more. The amendments will not result in a change in benefits, fees, or costs to children in foster care, but should ultimately result in savings of an unknown amount to the state as federal financial participation is expected to increase. The proposed amendments are to be retroactively applied to July 1, 2000, in order to comply with federal law and to maximize federal financial participation.

4. Interested persons may submit their data, views or arguments concerning the proposed action in writing to Kathy Munson, 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 November 2, 2000. 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 Kathy Munson, 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 November 2, 2000.

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. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 220 based on the 2200 individuals potentially affected by rules covering foster care eligibility.

/s/ Dawn Sliva  
Rule Reviewer

/s/ Laurie Ekanger  
Director, Public Health and  
Human Services

Certified to the Secretary of State September 25, 2000.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the proposed )	NOTICE OF PUBLIC HEARING
adoption of new rules I, II )	ON THE PROPOSED ADOPTION,
and III, amendment of ARM )	AMENDMENT AND REPEAL
42.2.302, 42.2.303, 42.2.311, )	
42.2.312, 42.2.313, 42.2.321, )	
42.2.322, 42.2.323, 42.2.324, )	
42.2.325, 42.2.401, 42.2.501, )	
42.2.613 and repeal of ARM )	
42.2.701 relating to public )	
participation and general )	
application of tax payments )	

TO: All Concerned Persons

1. On October 25, 2000, at 8:30 a.m., a public hearing will be held in Fourth Floor Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption of new rules I, II and III; amendment of ARM 42.2.302, 42.2.303, 42.2.311, 42.2.312, 42.2.313, 42.2.321, 42.2.322, 42.2.323, 42.2.324, 42.2.325, 42.2.401, 42.2.501, 42.2.613; and repeal of ARM 42.2.701 relating to public participation and general application of tax payments.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, and proceed to Room 455, where they will sign in and receive a visitor's pass to attend the hearing.

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., October 16, 2000, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax (406) 444-3696; or e-mail canderson@state.mt.us.

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

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

(1) "Allocation" refers to the assignment of nonbusiness income in a particular state.

(2) "Apportionment" refers to the division of business income between states by the use of a formula containing apportionment factors.

(3) "Association" means an organization of people having a

common interest.

(4) "Business activity" refers to the transactions and activity occurring in the regular course of a particular trade or business of a taxpayer.

(5) "Business income" is income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations. In essence, all income which arises from the conduct of trade or business operations of a taxpayer is business income. For purposes of administration, the income of the taxpayer is business income unless clearly classifiable as non-business income.

(6) "Calendar year" means a 12-month period beginning January 1 and ending December 31.

(7) "CALP" means a computer assisted land pricing model system.

(8) "CAMAS" means a computer assisted mass appraisal system.

(9) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services; provided, that such amounts constitute income to the recipient under the federal IRC. In the case of employees not subject to the federal IRC, e.g., those employed in foreign countries, the determination of whether such benefits or services would constitute income to the employees shall be made as though such employees were subject to the federal IRC.

(10) "Contiguous parcels of land" means separate land acreage in the same ownership that are adjacent.

(11) "Department" means the department of revenue as defined in 2-15-1301, MCA.

(12) "Discretion" means the power to do or to refrain from doing a certain thing.

(13) "Domiciled" means a person who is a resident of the state of Montana as stated in 1-1-215, MCA.

(14) "Earned income" means:

(a) wages, salaries, or professional fees, and other amounts received as compensation for personal services actually rendered; and

(b) the amount of the taxpayer's net earnings from a trade or business which is wholly or partially subject to the federal self employment tax.

(15) "Economic hardship" means the financial inability of the taxpayer to pay a tax when the tax is due as determined by the department through a review of various financial documents and inquiries.

(16) "Eligible nonresident partner or shareholder" means an individual who does not reside in Montana and whose only Montana source income is derived from the business entity.

(17) "Employee" means:

(a) Any individual who performs services for another individual or organization having the right to control the employee as to the services to be performed and as to the manner of performance. The power to control, rather than the actual exercise of control, is the important factor. Designation of an individual as, or determination by an appropriate authority that an individual is an employee for purposes of industrial accident insurance (workers' compensation), unemployment compensation, federal social security, or federal withholding tax will establish that person as an employee.

(b) All classes or grades of employees are included within the relationship of employer and employee. Thus, superintendents, managers, other supervisory personnel, and corporate officers are employees.

(18) "Employer" means any person or organization for whom an individual performs any service as an employee. However, if the person or organization for whom an individual performs services does not have control of the compensation payments, the term employer means the person or organization having control of the payment of such compensation. State income tax withheld, or that should have been withheld, and will be collected from the person or organization having control of the payment of such compensation.

(a) An employer may be an individual, corporation, limited liability company, partnership, estate, trust, association, joint venture, or other unincorporated group or entity. The term employer also includes all religious, educational, charitable, and social organizations or societies and all governmental agencies at the federal, state, and local level, including school districts, towns, counties, and other political subdivisions.

(19) "Entity" shall mean any such business organization as defined in (27) below.

(20) "Final order" means an order entered by the department or a court of review which either has not been appealed on a timely basis or to which no appeal is available.

(21) "Fiscal year" means any 12-month period ending on the last day of any month other than December.

(22) "Household" means a family living together.

(23) "Incorporated city or town" means any municipality or county area in which the government body has complied with all incorporation provisions outlined in Title 7, MCA.

(24) "Internal revenue code" (IRC) is the federal code relating to the Internal revenue service regulations.

(25) "Internal revenue service" (IRS), means the federal bureau of the department of the treasury of the United States of America with the duties set forth in 26 USCA 8022.

(26) "Manufacturer" means any person who produces a product for the purpose of resale.

(27) "Multi-jurisdictional entity" means any business

organization that is classified as a partnership, S corporation, limited liability partnership or a limited liability company for tax purposes by Montana and has nonresident partners, members or shareholders.

(28) "Non-business income" means all income other than business income.

(29) "Noncontiguous parcels of land" means land acreage in the same ownership that meets one of the two following standards:

(a) Acreage that does not touch but that are each an integral part of the operation of a bona fide agricultural operation; or

(b) Acreage that would meet the definition of contiguous contained in (10) above were the acreage not separated by one or more of the following features only:

(i) roads and highways;

(ii) navigable rivers and streams;

(iii) local taxing authority boundaries;

(iv) railroad lines; or

(v) federal or state land that is leased from the federal or state government by a taxpayer whose land ownership is contiguous to the federal or state land.

(30) "Neglect" means the failure to exercise ordinary business care and prudence.

(31) "Nonresident" means any individual, estate, trust, partnership, or other organization, excluding corporations, not a resident of Montana.

(32) "Ownership interest" means the involvement in the business operated by someone who owns some or all of the assets of the business, shares in the financial risks, is entitled to any portion of the profits, or any portion of the liabilities and losses of the business. Ownership interest includes the right to control the location or ownership of a business. Examples of ownership interests include the authority to participate in such business decisions as sale of the business, relocation of the business, change or creation of any financial arrangements for loan repayment or funding sources, or any other responsibilities regarding the management of the business. This definition applies to an ownership interest for purposes of rules contained in the ARM Title 42, unless otherwise specified by law.

(33) "Paid" and "received" are construed in the context of an acceptable accounting method used to compute taxable income.

(34) "Payee" means a person to whom or to whose order a bill, note, check, or money order is made payable.

(35) "Person" means an individual, estate, trust, receiver, firm, partnership, corporation, cooperative association, limited liability company, joint venture, syndicate, or other business entity, however formed.

(a) A person may not include:

(i) federal government entities or their subdivisions; or

(ii) enrolled Native American entities, including tribal offices or businesses owned by the tribe and operating on the tribal reservation.

(36) "Quarter" means quarters that end:

- (a) March 31;
- (b) June 30;
- (c) September 30; and
- (d) December 31.

(37) "Reasonable cause" means the customer exercised ordinary business care and prudence and was nevertheless unable to file the return or pay the tax within the prescribed time.

(38) "Reasonable time" means within five years or the normal statute of limitations.

(39) "Residence" means the same as (13) above.

(40) "Resident" means natural persons and includes, for the purpose of determining liability to the tax imposed by the state, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and who has not established a residence elsewhere.

(41) "Retail business" means individuals, firms, fiduciaries, partnerships, corporations, trusts, organizations, or associations engaged in the business of selling products to the consumer.

(42) "Settlement" means a compromise, agreement, or arrangement between parties which, in consideration of mutual concessions, terminates a dispute.

(43) "Situs" means location.

(44) "Taxable year," as stated in section 441(b) of the IRC, means:

(a) the taxpayer's annual accounting period, if it is a calendar year or a fiscal year;

(b) the calendar year if the taxpayer does not keep books or does not have an annual accounting period that qualifies as a fiscal year; or

(c) the period for which the return is made, if a return is made for a period of less than 12 months, the so-called "short period" defined under section 443 of the IRC. Generally, a taxable year cannot cover more than 12 calendar months.

(45) "Taxpayer" means any person or fiduciary, resident or nonresident, subject to a tax imposed by the laws of Montana. Taxpayer includes any corporation, partnership, firm, association, or person acting as a business entity.

(46) "Write-off of collection" means removal of an assessment from active department enforcement and monitoring procedures, and does not mean a tax assessment is forgiven.

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

IMP: Sec. 15-1-102, 15-1-601, 15-30-101, 15-30-131, and Title 15, chapter 31, part 3, MCA

#### NEW RULE II AVAILABILITY AND RETENTION OF TAXPAYER RECORDS

(1) Unless otherwise provided by law, all taxpayers who are required to maintain records shall make such records available to the department during normal business hours. In this regard, the department, or its duly authorized agents, may enter any office or other area where the provider maintains business records to examine the records and other supporting data from

which the tax returns were prepared. These audits may be conducted at the same time as audits are conducted for other state taxes.

(2) Records and other supporting data used to prepare the tax returns must be maintained for a period of five years from the due date of the return or five years from the date of payment, whichever is later.

AUTH: Sec. 10-4-203, 10-4-212, 15-1-201, 15-53-155, 16-10-104, and 16-11-103, MCA

IMP: Sec. 10-4-203, 10-4-207, 10-4-212, 15-53-150, 16-11-118, 16-11-202, and 16-11-203, MCA

NEW RULE III PENALTY AND INTEREST (1) Unless otherwise provided by law, for all taxes, fees and other assessments imposed under Titles 15, 16, and 39, and administered by the department, penalty attaches if the tax that is deficient is not paid within ten days of notice of the final determination. Thereafter, interest is calculated on the amount of tax at the rate of 12% per year, accrued at 1% per month or fraction of a month, on the unpaid tax as stated in 15-1-216, MCA.

(2) In the instance of a deficiency, the penalty is calculated at the rate of 1.5% per month or fraction thereof on the unpaid tax. The penalty may not exceed 18% of the tax due.

(3) Additional penalties and interest may be assessed according to the provisions of 15-1-216 and 16-11-205, MCA.

(4) Exclusions to this rule are provided in 15-1-216, MCA.

AUTH: 15-1-201, 15-1-216, 16-10-104, 16-11-103 and 39-51-301, MCA

IMP: 15-1-206, 15-1-207, 15-1-216, 15-1-701, 15-1-708, 16-1-409, 16-1-411, 16-11-143, 16-11-203, and 39-51-301, MCA

4. The rules proposed to be amended provide as follows:

42.2.302 REQUESTS FOR INFORMATION (1) Citizens desiring information about anything mentioned in these rules or about anything concerning the department of revenue and public participation should contact the appropriate division administrator Department of Revenue, P.O. Box 5805, Helena, Montana 59604-5805 or visit the department's internet web site at www.state.mt.us/revenue.

AUTH: Sec. 15-1-201, 16-1-303, 16-10-104 and 16-11-103, MCA

IMP: Title 2, chapter 3, part 1 and 15-1-201, MCA

42.2.303 APPOINTMENTS WITH DIRECTOR OR DIVISION ADMINISTRATORS (1) Any individual or group of individuals may make appointments to meet with the director or division administrators regarding any matter of concern to those individuals and under the responsibility of the department ~~of revenue~~. Such appointments may be made by contacting the ~~director's office in Helena, 449-2460~~ Department of Revenue, P.O. Box 5805, Helena, Montana 59604-5805, telephone (406) 444-6900.

AUTH: Sec. 15-1-201, 16-1-303, 16-10-104 and 16-11-103, MCA

IMP: Title 2, chapter 3, part 1 and 15-1-201, MCA

42.2.311 OBJECTIVES FOR PROVIDING FOR PUBLIC PARTICIPATION

(1) ~~Participation of the public~~ Public participation is to be provided for, encouraged, and assisted to the fullest extent practicable. Participation must be consistent with other requirements of state law and the rights and requirements of personal privacy. The major objectives of such participation include:

(a) greater responsiveness of governmental actions to public concerns and priorities; and

(b) improved public understanding of official programs and actions.

(2) Prior to the adoption, amendment, or repeal of a rule or policy or the granting or denying of certain licenses, the department of revenue shall, where the decision is of significant public interest, give adequate notice and opportunity to participate ~~that the decision is to be made and provide a means for public participation in the decision-making of the decisions process.~~

AUTH: Sec. 15-1-201, 16-1-303, 16-10-104 and 16-11-103, MCA  
IMP: Title 2, chapter 3, part 1 and 15-1-201, MCA

42.2.312 ACTIONS CONSIDERED TO BE OF SIGNIFICANT PUBLIC INTEREST (1) The following will be ~~deemed of a~~ considered action of significant public interest to require notice and the ~~availability of a means~~ opportunity for public participation in the decision-making process:

(a) the adoption, amendment, or repeal of any regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy, ~~or describes the organization, procedures, or practice requirements of the department of revenue;~~ or

(b) the granting or denying of a license for which a hearing is required under provisions of Montana law.

(2) In all other cases, whether or not the decision is one of significant public interest will be determined by the person within the department who is proposing the decision according to the following considerations:

(a) whether the decision regards a matter which is controversial;

(b) the number of persons who will be affected by the decision;

(c) the fiscal impact the decision will have; or

(d) the department has witnessed a high level of citizen interest ~~has been witnessed to the department.~~

AUTH: Sec. 15-1-201, 16-1-303, 16-10-104 and 16-11-103, MCA  
IMP: Title 2, chapter 3, part 1 and 15-1-201, MCA

42.2.313 NOTICE AND MEANS FOR PUBLIC PARTICIPATION

(1) If it is determined that significant public interest is involved, one or more of the following steps, as applicable, shall be taken to assist public participation in the decision-making process:

(a) a proceeding or hearing is held in compliance with the provisions of Montana Administrative Procedure Act, Title 2, chapter 4, MCA;

(b) a public hearing, after appropriate notice is given, is held pursuant to any other provision of state law or a local ordinance or regulation;

(c) a news release, legal advertisement, or other method of publication will be given to news media within the area to be affected which shall include the name of a person within the department most familiar with the proposed action, ~~his~~ that person's address, and a ~~phone~~ telephone number where interested persons may submit their data, views, or arguments, orally or in written form, concerning the proposed action.

AUTH: Sec. 15-1-201, 16-1-303, 16-10-104 and 16-11-103, MCA  
IMP: Title 2, chapter 3, part 1 and 15-1-201, MCA

42.2.321 DEPARTMENT PROGRAMS RELATED TO PUBLIC PARTICIPATION

~~(1) A continuing departmental program for public participation shall contain mechanisms of activity for each of the elements listed in ARM 42.2.322 through 42.2.327. The department shall develop procedures that outline the elements stated in ARM 42.2.322 through 42.2.327. The exact mechanism and extent of activity may vary in relation to available resources available, public response, and the nature of issues involved.~~

AUTH: Sec. 15-1-201, 16-1-303, 16-10-104 and 16-11-103, MCA  
IMP: Title 2, chapter 3, part 1 and 15-1-201, MCA

42.2.322 INFORMATIONAL MATERIALS (1) ~~Each division of the To assist the public in participating in the department's decision-making process, the~~ department shall provide continuing policy, program, and technical information at the earliest practicable times and at places easily accessible to interested or affected persons and organizations, ~~so that they can make informed and constructive contributions to department decision making.~~ News releases and other publications may be used for this purpose as well as informational discussions and meetings with interested citizens' groups. Special effort shall be made to summarize complex technical materials for public and media use.

AUTH: Sec. 15-1-201, 16-1-303, 16-10-104 and 16-11-103, MCA  
IMP: Title 2, chapter 3, part 1 and 15-1-201, MCA

42.2.323 PUBLIC ASSISTANCE (1) ~~Each division The department shall have a~~ develop procedures for providing technical and informational assistance to concerned groups and individuals. ~~Requests for information shall be promptly handled.~~

AUTH: Sec. 15-1-201, 16-1-303, 16-10-104 and 16-11-103, MCA  
IMP: Title 2, chapter 3, part 1 and 15-1-201, MCA

42.2.324 NOTIFICATION OF INTERESTED PERSONS (1) ~~Each division for its appropriate area of responsibility The department shall maintain a~~ current lists of interested persons and organizations ~~including any who have requested inclusion on such list for the distribution of information such as that the information listed in ARM 42.2.322. This shall be in addition to the lists now maintained as required by the Montana Administrative Procedure Act.~~

(2) Additionally, The the department shall ~~in addition~~ notify

any interested persons of any public hearings or other decision-making proceedings prior to the decision-making and, wherever possible, shall supplement this notification with informal notice to all interested persons or groups having requested such advance notice in advance.

AUTH: Sec. 15-1-201, 16-1-303, 16-10-104 and 16-11-103, MCA

IMP: Title 2, chapter 3, part 1 and 15-1-201, MCA

42.2.325 ACCESS TO INFORMATION (1) The department files, other than ~~personnel files~~ and those files required by law to be closed, or ~~requirements of personal privacy to remain confidential~~, are open to public inspection in accordance with established department of revenue policy. These files are located at various the department offices in Helena Montana. Copies of specific documents are available either ~~free or for a reasonable copying charge plus employee time~~ in accordance with department policy entitled, "Agency Documents - Access and Photocopying", 2.1.4, dated January 15, 1999.

AUTH: Sec. 15-1-201, 16-1-303, 16-10-104 and 16-11-103, MCA

IMP: Title 2, chapter 3, part 1, 2-6-102, 2-6-110, 2-6-202, and 15-1-521, MCA

42.2.401 SMALL BUSINESS LIABILITY FUNDS (1) Tax deduct-ible administrative costs as provided by 15-30-127(2) and 15-31-117(2), MCA, are limited to those that are allowable under the ~~Internal Revenue Code~~ and are ordinary and necessary costs directly connected with or pertaining to the management or maintenance of the principal of the fund.

(2) through (4) remain the same.

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

IMP: Sec. 15-30-107, 15-30-127, 15-31-117, and 15-31-118, MCA

42.2.501 APPLICATION OF PARTIAL PAYMENTS (1) ~~All partial~~ Partial payments on accounts receivable balance that are received by the department for payment of an administrative fee, tax, penalty, and interest must first be ~~first~~ applied to the amount of administrative fee due, until it is satisfied. Any amounts remaining will then be applied to the amount of interest, then to the amount of penalty and then to the tax due.

(2) Payments will be applied prorata among the accounts being collected by the department. For example, if 30% of the total debt is unemployment insurance, 40% is withholding, and 30% is income tax, and a partial payment is received, application of the payment will be applied prorata according to the schedule shown in (1) above until all debt is satisfied.

AUTH: Sec. 2-4-201, 15-1-201, 15-30-305, 15-31-501, 15-35-122, ~~15-53-104~~, and 15-53-155 ~~15-70-104~~, MCA

IMP: Sec. 2-4-201, 15-1-206, 15-1-216, 15-30-304, 15-30-321, 15-30-323, 15-31-111, 15-31-502, 15-31-506, 15-31-510, 15-31-522, 15-31-543, 15-31-545, 15-35-105, 15-35-121, 15-36-107, 15-37-108, 15-38-107, 15-38-110, 15-53-111, 15-53-145, 15-54-111, 15-55-108, 15-56-111, 15-58-106, and 15-59-106, 15-59-205, 15-70-210, and 15-70-330, MCA

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

(1) and (2) remain the same.

~~(3) "Department" means the Montana department of revenue.~~

(4) through (10) remain the same but are renumbered (3) through (9).

~~(11) "Person" means natural persons as contemplated by law, or human beings.~~

~~(12) "Settlement" means a compromise, agreement, or arrangement between parties which, in consideration of mutual concessions, terminates a controversy.~~

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

IMP: Sec. 15-1-211, MCA

5. The department proposes to repeal the following rule:

42.2.701 PUBLIC ACCESS TO TAXPAYER INFORMATION which can be found on page 42-273 of the Administrative Rules of Montana.

AUTH: Sec. 15-1-201, MCA

IMP: Montana Constitution, Art. II, sec. 8, 9, & 10; Attorney General Opinions 38-59 and 39-17; Sec. 2-4-501, 2-4-623, 2-6-109, 15-7-308, 15-30-303, 15-31-507, 15-35-205, 15-38-109, 15-50-205, 15-50-206, 15-50-207, 16-3-211, 16-3-404, 16-11-120, and 16-11-122, MCA

6. The department is proposing new rule I as a general definition rule for terminology that is used throughout the department's rules. These terms will be deleted in other definition rules since they apply to all areas of the department.

The department is proposing new rules II and III as general rules with uniform applicability for all of ARM Title 42. For housekeeping purposes, if this language or similar language is contained elsewhere in ARM Title 42, it will be deleted.

The department is proposing the amendments to ARM 42.2.302, 42.2.303, 42.2.311, 42.2.312, 42.2.313, 42.2.321, 42.2.322, 42.2.323, 42.2.324, 42.2.325, 42.2.401, 42.2.501, 42.2.613 to comply with the biennial review requirements of 2-4-314, MCA. These amendments are all housekeeping changes.

The department is proposing to repeal ARM 42.2.701 on the basis of the recent decision of the Montana Supreme Court in Associated Press Inc. v. Montana Department of Revenue, 2000 MT 160, \_\_\_ Mont. \_\_\_.

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

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

and must be received no later than November 3, 2000.

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

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

9. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in paragraph 7 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Mary Bryson  
MARY BRYSON  
Director of Revenue

Certified to Secretary of State September 25, 2000

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
adoption of New Rules I, II and ) ON PROPOSED ADOPTION,  
III; amendment of ARM 42.11.201,) AMENDMENT AND REPEAL  
42.11.205, 42.11.211, 42.11.213,) )  
42.11.214, 42.11.215, 42.11.245,) )  
42.11.251, 42.12.103, 42.12.106,) )  
42.12.108, 42.12.111, 42.12.116,) )  
42.12.122, 42.12.124, 42.12.129,) )  
42.12.130, 42.12.131, 42.12.132,) )  
42.12.141, 42.12.204, 42.12.205,) )  
42.12.206, 42.12.207, 42.12.208,) )  
42.12.209, 42.12.222, 42.12.301,) )  
42.12.302, 42.12.312, 42.12.323,) )  
42.12.324, 42.12.401, 42.12.406,) )  
42.13.101, 42.13.102, 42.13.103,) )  
42.13.105, 42.13.108, 42.13.109,) )  
42.13.222, 42.13.301, 42.13.304,) )  
42.13.401, 42.13.402; and repeal) )  
of ARM 42.12.410 relating to ) )  
Liquor Licensing ) )

TO: All Concerned Persons

1. On October 26, 2000, at 9:00 a.m., a public hearing will be held in Fourth Floor Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption of New Rules I, II and III; amendment of ARM 42.11.201, 42.11.205, 42.11.211, 42.11.213, 42.11.214, 42.11.215, 42.11.245, 42.11.251, 42.12.103, 42.12.106, 42.12.108, 42.12.111, 42.12.116, 42.12.122, 42.12.124, 42.12.129, 42.12.130, 42.12.131, 42.12.132, 42.12.141, 42.12.204, 42.12.205, 42.12.206, 42.12.207, 42.12.208, 42.12.209, 42.12.222, 42.12.301, 42.12.302, 42.12.312, 42.12.323, 42.12.324, 42.12.401, 42.12.406, 42.13.101, 42.13.102, 42.13.103, 42.13.105, 42.13.108, 42.13.109, 42.13.222, 42.13.301, 42.13.304, 42.13.401, 42.13.402; and repeal of ARM 42.12.410 relating to Liquor Licensing.

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., October 16, 2000, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax (406) 444-3696; or e-mail canderson@state.mt.us.

3. The 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 DOMESTIC WINERY (1) A domestic winery as described in 16-3-411, MCA, located in Montana shall apply on forms provided by the department for a license to produce and sell wine at wholesale to wine distributors. The annual fee for a domestic winery shall be \$500.

AUTH: 16-1-303, MCA

IMP: 16-3-411 and 16-4-107, MCA

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

(1) "Building" means an enclosed structure with external walls and a roof. A series of structures linked together, such as a commercial mall, structures contained on a city block or structures connected by skyways, are not considered one building for licensing purposes.

(2) "Portable satellite vehicle" or "other movable satellite device" as used in 16-3-302, MCA, may include:

(a) self-propelled wheeled vehicles such as golf carts, concession vans or similar conveyances containing beverage dispensing and storage equipment; or

(b) wheeled devices such as concession wagons or vendors carts and other similar vehicles which may be towed, pushed or transported to a temporary site and which contains beverage dispensing and storage equipment; and

(c) fixed booths or stands in which portable beverage dispensing and storage equipment may be temporarily installed and removed after use.

(3) "Premises" means one building or a specific portion or portions of one building as described on the floor plan and approved by the department. The premises shall contain all service areas used by the licensee and the licensee's patrons and those service areas in which the licensee operates outside of and attached to the licensed building and to which patrons are permitted free access from the building.

(4) "Service area" means the area in which the preparation, sale, service or consumption of alcoholic beverages occurs, except as provided in 16-3-105, MCA.

AUTH: 16-1-303, MCA

IMP: 16-3-302, 16-3-311, 16-4-404, and 16-6-104, MCA

NEW RULE III SMALL BREWERY RESTRICTIONS (1) As provided in 16-3-213, MCA, a small brewery may provide samples of beer brewed on the premises in a sample room located on the premises, with or without charge, between the hours of 10 a.m. and 8 p.m. Outside of these hours, the only persons allowed on the premises shall be the licensee, licensee's employees and delivery personnel.

(2) A small brewery is not a retail licensee, and may not operate in conjunction with a hotel, restaurant, casino, or any on-premise licensed establishment.

AUTH: 16-1-303, MCA

IMP: 16-3-213 and 16-3-214, MCA

4. The rules proposed to be amended provide as follows:

42.11.201 DEFINITIONS ~~(1)~~ As used in this sub-chapter, the following definitions apply:

~~(a) (1) "Broker" means a person, partnership, association, or corporation under contract to a vendor to arrange for the employment and registration of the vendor's representatives as provided by these rules and/or to supervise those representatives.~~

~~(b) (2) "Employ" means to engage the services of a person either through direct supervision and control of the person or through a contract for services with the person.~~

~~(c) "Licensee" means a person, partnership, association, or corporation holding a Montana retail liquor license and retail liquor operations located on U. S. military installations within Montana.~~

~~(d) (3) "Promote" means to:~~

~~(a) solicit the listing and maintenance of products in accordance with liquor division department listing and delisting procedures;~~

~~(b) arrange for special orders of products not regularly listed by the liquor division department;~~

~~(c) advertise products regularly listed by the liquor division department in accordance with ARM 42.11.245 and ARM 42.13.212;~~

~~(d) call on licensees, state agency liquor store managers, state agency liquor store agents, and liquor division department personnel to develop product identification and to provide product information; and~~

~~(e) distribute product samples in accordance with ARM 42.11.243.~~

~~(f) (4) "Representative" means a person employed and registered, as provided by these rules, by a vendor to promote the sale of the vendor's product in Montana.~~

~~(g) "Resident" means a person who dwells within the state of Montana except for occasional trips out of state.~~

~~(h) (5) "Vendor" means a person, partnership, association, or corporation selling liquor to the department and to whom the department makes payment for liquor received.~~

~~(i) (6) "Vendor's permit" means a permit issued to a vendor entitling it to promote the sale of its products in Montana through representatives registered in accordance with these rules.~~

~~(2) Other words and phrases used in these rules shall have the meaning ascribed to them in the Montana Alcoholic Beverage Code, as amended, and if not defined therein have their usual and customary meaning.~~

AUTH: 16-1-303, MCA

IMP: 16-3-103, MCA

42.11.205 VENDORS EMPLOYMENT OF REPRESENTATIVES

(1) Vendors who desire to have their products promoted in Montana shall employ and register at least one person and may employ and register one additional person to promote the sale of the vendor's products in Montana. A broker may arrange for the employment and registration of a representative. A person who is a broker may be registered as a representative as provided in these rules.

(2) A vendor, a vendor's employee, or a vendor's broker may only promote the sale of its products in Montana when accompanied by the vendor's representative, except as provided in (3) below.

(3) A vendor shall have 60 days to register a replacement for a representative who has resigned and who is the vendor's only representative. The vendor may only continue to promote the sale of its products in Montana, without a registered representative during this period, if the vendor provides to the liquor division department advance written notice in advance, identifying the unregistered representative.

AUTH: 16-1-303, MCA

IMP: 16-3-103, MCA

42.11.211 REGISTRATION OF REPRESENTATIVES (1) ~~Any person acting as a representative of a~~ A vendor must be registered a representative with the department ~~by a vendor~~ in accordance with the provisions of ARM 42.11.212 through 42.11.215.

(2) No person may be registered as a representative ~~who is if they are:~~

(a) an alcoholic beverage retail licensee, licensed beer wholesaler, table wine distributor, or brewer, or licensed winery;

(b) an officer, director, agent, or employee of an alcoholic beverage retail licensee, licensed beer wholesaler, table wine distributor, or brewer, or licensed winery;

(c) not at least 18 years of age and of good repute; or under the age of 18 years;

(d) of bad repute; or

~~(d)~~ (e) not a non-resident of Montana.

(3) and (4) remain the same.

(5) Individuals seeking registration as a representative must submit a properly completed application to the department.

(6) Registration of a representative is not effective until 30 days after the liquor division receives a properly completed application and has approved the application upon approval by the department.

~~(6)~~ (7) In addition to the definition of "resident" found in chapter 2, Evidence evidence of residency includes:

(a) qualification to vote in a Montana election, or

(b) filing a Montana income tax return.

AUTH: 16-1-303, MCA

IMP: 16-3-103, MCA

42.11.213 APPLICATION FOR VENDOR PERMIT (1) A vendor who desires to promote the sale of ~~his~~ the vendor's brands of liquor through a representative ~~registered in accordance with these~~

rules must be the holder of a Montana vendor permit. Such To hold a permit, vendors must register at least one representative in accordance with ARM 42.11.211 through 42.11.215 ~~to hold a permit.~~ The vendor shall apply for the registration of a representative on forms provided by the ~~liquor division~~ department.

(2) In considering an application for a vendor permit, the department shall ~~consider~~ review all matters pertaining to the general reputation of the vendor.

AUTH: 16-1-303, MCA

IMP: 16-3-103, MCA

42.11.214 PERMIT AND REGISTRATION FEES (1) An applicant for a vendor permit must file a written application on the form provided by the ~~liquor division~~ department accompanied by an \$25 \$100 annual permit fee.

(2) A vendor seeking to register a representative must file a registration form provided by the ~~liquor division~~ department accompanied by a \$25 annual registration fee.

AUTH: 16-1-303, MCA

IMP: 16-3-103, MCA

42.11.215 EXPIRATION AND RENEWAL OF REGISTRATION (1) A vendor's permit shall be issued for the year beginning October 1 and ending September 30. All permits expire September 30. A vendor permit may be renewed annually by filing an application for renewal on a form provided by the ~~liquor division~~ department accompanied by the \$25 \$100 filing permit fee.

(2) A vendor may register a representative for the year beginning October 1 and ending September 30. A registration expires on September 30. Registration may be renewed by filing an application for renewal of registration on forms provided by the ~~liquor division~~ department and paying a \$25 filing registration fee for each representative.

AUTH: 16-1-303, MCA

IMP: 16-3-103, MCA

42.11.245 ADVERTISING SPECIALTIES (1) Regulations number ~~6.85 and 6.87~~ 6.84 of the bureau of alcohol, tobacco and firearms, United States department of the treasury as set forth in 27 CFR as revised on April 1, 2000, and subsequent amendments and supplements, are is hereby adopted incorporated by reference as though fully set forth herein as the regulations for consumer advertising specialties and retailer advertising specialties. Copies may be obtained by contacting the Department of Revenue, P.O. Box 5805, Helena, MT 59601-5805.

(2) Vendors and representatives may distribute such advertising specialties to the extent allowed by regulations ~~6.85 and 6.87~~ 6.84 of 27 CFR, as revised on April 1, 2000.

AUTH: 16-1-303, MCA

IMP: 2-4-307 and 16-3-103, MCA

42.11.251 UNLAWFUL ACTS (1) Sections 16-1-304, 16-2-105, 16-3-101, 16-3-103, 16-6-104~~(1)~~, and 16-6-301, MCA, of the

Montana Alcoholic Beverage Code provide that certain practices in connection with the sale of alcoholic beverages shall be unlawful. All vendors and their brokers and representatives shall be familiar with and abide by these statutes.

(2) Although not limiting the scope of the statutory provisions and with the exception of the advertising specialties ~~of stated in~~ ARM 42.11.245, the following practices are in violation of one or more of these sections:

(a) through (c) remain the same

(d) to induce ~~liquor division~~ department personnel to promote the sale of particular brands. This prohibition does not apply to discussions between vendors or representatives and ~~liquor division~~ department employees with regard to the department's purchase of liquor.

(e) through (g) remain the same

AUTH: 16-1-303, MCA

IMP: 16-3-103, MCA

42.12.103 SUPPORTING DOCUMENTATION -- CORPORATE APPLI-

CANTS (1) ~~A corporate applicant applying for a retail on-premises consumption alcoholic beverages license must provide with its application a sworn statement by an officer or director attesting that the corporation meets the licensing criteria in 16-4-401(2), MCA.~~

(2) ~~A corporate applicant applying for a retail off-premises consumption alcoholic beverages license must provide with its application a sworn statement by an officer or director attesting that the corporation meets the licensing criteria in 16-4-401(3), MCA.~~

(3) ~~A corporate applicant applying for a license that permits the manufacture, importing or wholesaling of an alcoholic beverage must provide with its application a sworn statement by an officer or director attesting that the corporation meets the licensing criteria in 16-4-401(4), MCA.~~

(4)(1) A corporate application applicant other than one whose stock is listed on a national exchange or a corporation with ~~more~~ fewer than ~~10~~ ten stockholders shall list:

(a) the names, dates of birth and social security numbers and resident addresses of all owners of the issued stock, directors and officers; and

(b) the number of shares of stock owned by each stockholder; ~~and~~

(c) ~~the residence addresses of all stockholders, directors and officers.~~

(5)(2) A corporate applicant whose stock is listed on a national exchange or a corporation with more than ~~10~~ ten stockholders shall list:

(a) and (b) remain the same.

AUTH: 16-1-303, MCA

IMP: 16-4-203, 16-4-205, and 16-4-401, MCA

42.12.106 DEFINITIONS The following ~~terms will be used in definitions apply to this sub-chapter-;~~

(1) "Associated business" means a business that is not

licensed by the state to keep or sell alcoholic beverages but has an alcoholic beverages licensed business located within or on the premises owned or controlled by the "associated business." Examples of associated businesses are:

(a) a hotel owner that is not licensed to keep or sell alcoholic beverages but leases space in the hotel to a licensee, ~~i~~ or

(b) a shopping mall that is not licensed to keep or sell alcoholic beverages but leases space in the mall to a licensee ~~for use as tavern~~ to sell alcoholic beverages.

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

~~(7)~~(10) "License fee" means a fee paid at the time a new license application is submitted, at the time an existing license transfers ownership, or upon renewal of an existing license.

~~(8)~~(7) "Cosmetic change" means, in addition to the examples given in 16-3-311, MCA, the correction of structural defects that do not entail reconfiguration of the premises.

(8) "Fraternal" means a group of people, society or fellowship of a recognized national organization if such organization has been in existence for a period of five years or more prior to January 1, 1949.

(9) "Licensee" means a person, partnership, association, or corporation holding a Montana retail liquor license and retail liquor operations located on U. S. military installations within Montana.

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

~~(12)~~(14) "Parties" means a:

(a) licensee;

(b) applicant;

(c) secured party;

(d) protestant; or

(e) attorney representing the licensee, applicant, secured party, protestor or other interested party.

(13) though (15) remain the same but are renumbered (15) through (17).

(18) "Sample room" means a defined area within the licensed premise where beer/wine samples may be consumed with or without charge. A sample room is not a deck, patio, or any structure adjacent to the brewery.

(16) through (19) remain the same but are renumbered (19) through (22).

AUTH: 16-1-303, MCA

IMP: 16-3-311, 16-4-105, 16-4-205, 16-4-207, 16-4-404, 16-4-420, and 16-4-423, MCA

42.12.108 HEARING PROCEDURE (1) When it is determined that a hearing is necessary, the matter will be forwarded to the ~~hearing examiner who will determine~~ department's office of dispute resolution where the time, date, and place for the hearing will be determined. The date and time of the hearing shall be during regular business hours. The place of the hearing shall be:

(a) through (c) remains the same.

(2) Prior to a hearing date, the ~~hearing examiner's~~ office of dispute resolution shall issue a written notice of the date, time, and place of the hearing. At that time, a copy of the notice shall be provided to all interested parties.

AUTH: 16-1-303, MCA

IMP: 16-4-105, 16-4-203, 16-4-207, and 16-4-404, MCA

42.12.111 APPLICATION PROCESSING FEES (1) The following are the fees to be charged for processing applications for new licenses:

- (a) All-beverages license (including veterans' or fraternal). . . . . ~~\$100~~ \$200
- (b) Catering endorsement (~~for use with existing all-beverages license~~) . . . . . \$50
- (c) All-beverages license with catering endorsement (when applied for concurrently). . . . . ~~\$100~~ \$200
- (d) Retail on-premises beer license (including veterans' or fraternal). . . . . ~~\$100~~ \$200
- (e) Wine amendment (for use with existing on-premises retail beer license). . . . . \$50
- (f) Retail on-premises beer license and wine amendment (when applied for concurrently). ~~\$100~~ \$200
- (g) Retail off-premises beer license . . . . . \$100
- (h) Retail off-premises table wine license . . . . . \$100
- (i) Retail off-premises beer and table wine license (when applied for concurrently). . . . . \$100
- (j) Wholesale beer license . . . . . \$100
- (k) Wholesale beer sub-warehouse license. . . . . \$50
- (l) Wholesale table wine license . . . . . \$100
- (m) Wholesale table wine sub-warehouse. . . . . \$50
- (n) Wholesale beer and table wine license . . . . . \$100
- (o) Brewer's license . . . . . \$100
- (p) Beer importer's license . . . . . \$100
- (q) Resort all-beverages license . . . . . ~~\$100~~ \$200
- (r) Winery/wine importer . . . . . \$100

(2) The processing fee for determination of resort area is ~~\$250~~ 500.

~~(3) The processing fee for the transfer of any license issued by the department is \$100.~~

~~(4)(3) The applicable license fee and processing fee must accompany all applications. Processing fees are not refundable.~~

~~(5) The processing fee for registration of a winery or table wine importer, as provided for in ARM 42.13.401, is \$25.~~

~~(6)(4) Fees for addition or deletion of a mortgage, security interest, or lien are set forth in ARM 42.12.205 and fees for the registration of liquor agents vendor representatives are set forth in ARM 42.11.214.~~

AUTH: 16-1-303, MCA

IMP: 16-1-302 and 16-1-303, MCA

42.12.116 CONCURRENT APPLICATIONS (1) and (2) remain the same.

(a) a default to a secured party and a subsequent transfer

to a purchaser, i or  
(b) remains the same.  
AUTH: 16-1-303, MCA  
IMP: 16-4-412, MCA

42.12.122 DETERMINATION OF SUITABILITY OF PREMISES

(1) through (2)(b)(i) remain the same.

(ii) A license issued for on-premises consumption operates at a premises recognizable as a restaurant, bar, tavern or other business directly related to the on-premises consumption of alcoholic beverages such as a bowling alley, hotel, or gambling casino. The licensed premises must have a bar preparation area and sufficient seating to encourage patrons to remain on the premises and consume the alcoholic beverages sold by the drink. Sufficient seating must consist of not less than 12 seats at either a bar, not including a service bar as defined in ARM ~~42.12.106~~ 42.12.401, or tables, booths, gaming areas or any combination of the above.

(iii) A restaurant beer and wine licensed premises must have a service bar as defined in ARM ~~42.12.106~~ 42.12.401 and sufficient seating as defined in 16-4-420, MCA.

(c) through (g) remain the same.

(h) The premises to be used for the on-premises consumption of alcoholic beverages is physically separated from any business not directly related to the on-premises consumption of alcoholic beverages by four permanent walls. The walls must be floor to ceiling ~~that cannot~~ and shall not be moved without department approval of alterations to premises pursuant to ARM 42.13.106. The premises can maintain inside access to each business conducted in the building through a doorway no larger than six-feet wide ~~whose~~ with a door(s) that can be closed and locked when not in use. Businesses directly related to the on-premises consumption of alcoholic beverages are a hotel, bowling alley, gambling casino, or restaurant.

(i) remains the same.

(j) The provisions of ~~subsection~~ (3) below are not violated.

(3) through (3)(c)(i) remain the same.

(ii) self-service beer tap.

(d) through (f) remain the same.

(4) Premises currently licensed that do not meet the suitability standards would be required to meet the above standards upon department approval of completed alterations of the existing licensed premises in accordance with 16-3-311, MCA, except for the requirement that premises not be within a fifty-foot radius of gasoline pumps. The restriction on premises being beyond a fifty-foot radius of gasoline pumps applies only to transfers of licenses to new locations or to new original licenses.

AUTH: 16-1-303, MCA  
IMP: 16-3-311, 16-4-402, 16-4-404, 16-4-405, and 16-4-420,  
MCA

42.12.124 REJECTION OF APPLICATION BECAUSE OF NUMBER OF

EXISTING LICENSES (1) ~~An application shall be returned to the applicants with an explanation shall be notified that the issuance of a new license or transfer applied for cannot legally will not be allowed by the department when an application is made for:~~

(a) the issuance of an on-premises consumption alcoholic beverages license for premises located within any incorporated city or town or within a distance of 5 five miles from the corporate limits or boundaries of an incorporated city or town and where the number of licenses of each class already issued for the area is equal to or exceeds the limitations specified in 16-4-105 and 16-4-201, MCA; or

(b) remains the same.

~~(2) In each case described in (1), no notice of application for the issuance or transfer of an on-premises consumption alcoholic beverages license shall be published under the provisions of 16-4-207, MCA.~~

AUTH: 16-1-303, MCA

IMP: 16-4-105, 16-4-201, 16-4-204, and 16-4-405, MCA

42.12.129 DETERMINATION OF PROXIMITY TO PLACE OF WORSHIP OR SCHOOL (1) through (3) remain the same.

(4)(a) In the event that a county or city government should enact an ordinance or resolution supplanting the provisions of 16-3-306(1), MCA, the restriction shall not apply.

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

AUTH: 16-1-303, MCA

IMP: 16-3-306, MCA

42.12.130 DETERMINATION OF LICENSE QUOTA AREAS (1) through (2)(a) remain the same.

(3) The sworn statement or affidavit must be substantially in the following form or on a form provided by the department entitled Certified Survey Affidavit:

~~CERTIFIED SURVEY AFFIDAVIT~~

(a) Legal Description description and/or Street street Address address of Proposed Premises proposed premises:

I (individual's name), (title) have the knowledge and the authority to attest to the location of the premises known as (trade or business name).

The location of this premises is (within the incorporated boundaries of (name of city) or is (less than) five miles from the (name of city) corporate boundary or is more than five miles from any incorporated city within (name) county.

(b) In the case of a location outside the corporate boundary include the following:

The distance was measured by radial survey method from the nearest corporate city boundary to the nearest entrance of the proposed premises. Plat(s)/map(s) verifying the location that indicate the points between which the measurement was made and the distance can be provided upon request.

(c) In the case of a location inside the corporate boundary include the following:

The location of the premises was determined by examination of corporate plats or other official records.

(d) A signature block, title of the parties, and the document must be dated and notarized.

AUTH: 16-1-303, MCA

IMP: 16-4-105, 16-4-201, 16-4-409, and 16-4-501, MCA

42.12.131 APPLICATIONS FOR LAST AVAILABLE LICENSE(S) IN QUOTA AREA (1) When the department receives applications for the last available license(s) in a quota area, the following procedures apply:

(a) When fewer applications than licenses available are filed received, the applications will be processed.

~~(b) When an application has been received after the filing deadline in the original publication announcing available licenses within a quota area for the last license available within that quota area, the applicant will be advised, in writing, that he has applied for the last available license and may choose to the department to If there are more applicants than licenses available in a quota area, then the license must be awarded by lottery in accordance with ARM 42.12.401 through 42.12.414.~~

~~(i) publish notice of the last available license and set a final date for receipt of all applications for that license; or~~

~~(ii) continue processing the application with the knowledge that if another application is received before his application is approved the department will publish notice of the last available license and set a deadline for receipt of all applications for that license.~~

(c) All applications received at by the department or postmarked on or before the final date for receipt of all applications will be considered; and .

~~(d) When more applications than licenses available are filed, a lottery shall be conducted in accordance with ARM 42.12.401 through 42.12.414.~~

AUTH: 16-1-303, MCA

IMP: 16-4-105 and 16-4-201, MCA

42.12.132 MANAGEMENT AGREEMENTS (1) remains the same.

(2) Within 30 days of employing the manager, an original signed copy of the written management agreement must be filed with the department ~~of revenue which~~ that clearly discloses the following information:

(a) through (3)(g) remain the same.

(h) the compensation of the manager must be commensurate with the duties performed, cannot consist of all net profits from the business and cannot be less than the federal wage and hour standards for an individual; and

~~(i) if the licensee's net profit, after payment of all sums due to the manager, whether for services as a manager or for other compensation due to the manager under a security agreement, lease, or other purposes, constitutes at least a~~

~~percentage of capital investment equal to the interest rate earned by the state board of investments for Montana commercial loans from the permanent coal tax fund as published in its most recent annual report, the financial arrangement between the manager and the licensee will not be considered to create an economic interest of the manager in the license; and~~

(j) remains the same but is re-earmarked (i).

(4) Management agreements failing to meet any of the standards set forth in (1), (2) and (3) above of this rule will be marked as rejected and returned to the licensee together with a written explanation of the reasons for the rejection. If the deficiencies are not corrected within a period of time set by the department, the tendered management agreement will be deemed to be void. Failure of the licensee to terminate operations under a void management agreement constitutes a violation of Montana law and the departmental rules.

AUTH: 16-1-303, MCA

IMP: 16-4-404, MCA

42.12.141 CORPORATE LICENSES (1) No alcoholic beverages license shall be issued to a Montana corporation unless the following requirements are met:

(a) The corporation was organized and has existed as a Montana corporation or has been authorized to do business in Montana prior to making application for an alcoholic beverages license; and

(b) The corporate application must be accompanied by a current copy of the corporation's certificate of incorporation or certificate of good standing issued within the last six months ~~if the corporation has been authorized to do business for more than one year~~ issued by the Montana secretary of state.

AUTH: 16-1-303, MCA

IMP: 16-4-401, MCA

42.12.204 TREATMENT OF LICENSE OF DECEASED LICENSEE

(1) Alcoholic beverages licenses may be transferred to the personal representative of the estate of any deceased licensee in accordance with appropriate probate proceedings. In all such cases a certified copy of letters testamentary ~~the death certificate~~ or of administration must be filed with the liquor division department. A certified copy of the decree of distribution or order of settlement affecting the license and confirming the transfer of the license must also be filed with the liquor division department in connection with the transfer of the license to the distributee or purchaser. The distributee or purchaser of an alcoholic beverages license must comply with all licensing criteria before the transfer of the license will be approved by the liquor division department.

(2) remains the same.

AUTH: 16-1-303, MCA

IMP: 16-4-204, MCA

42.12.205 REQUIREMENTS WHEN LICENSE SUBJECT TO LIEN

(1) through (3) remain the same.

(4) Alcoholic beverage licenses may be subject to security interests as defined in 30-9-102(2), MCA, and other valid liens. The perfection of a security interest or other lien in an alcoholic beverage license does not depend upon filing with the department but rather by the statutory requirements which apply to the particular security interest or lien. If a secured party or a lien creditor, as defined in 30-9-301(3), MCA, desires to give additional public notice he may do so by filing a claim of security interest or other lien with the department. The department acts only as an additional source of public notice for voluntarily filed claims of security interest and other liens.

(5) through (9) remain the same.

(10) ~~Subsections~~ (1) through (3) above will apply to all security interests and liens filed with the department prior to September 1, 1990. Beginning September 1, 1990, (4) through (9) above will apply to all new security interests and liens filed with the department.

AUTH: 16-1-303, MCA

IMP: 16-4-204, MCA

42.12.206 PROHIBITION AND EXCEPTION REGARDING ON LEASING OF LICENSE (1) A license issued under the provisions of Title 16, chapter 4, parts 1 through 5, MCA, is a privilege personal to the licensee, and in no case shall the licensee lease the license to any other person.

(2) Publicly owned golf course beer and wine licenses and airport all-beverages licenses are excepted from this rule.

AUTH: 16-1-303, MCA

IMP: 16-4-404, MCA

42.12.207 APPLICATION APPROVED SUBJECT TO FINAL INSPECTION OF PREMISES (1) The department will consider and process an application for a new license, transfer of location, or transfer of ownership and location whenever the location of the proposed premises is specified but the building to accommodate the proposed premises has not been constructed or requires substantial remodeling.

(2) If, upon investigation, the department determines the applicant is qualified to own a license and it appears that the proposed premises, based on sufficient evidence provided by the applicant, meets all criteria for suitability, the department shall issue a conditional approval letter. The conditional approval is subject to a final inspection of the completed premises conducted by department investigative personnel, state or local health officials, state or local building codes personnel and state or local fire code officials.

(3) Conditional approval does not constitute the issuance of a license. The department will not issue a license until such time as the conditions, upon which approval was granted, are satisfied. An applicant who has received conditional approval is not authorized to engage in the purchase or sale of alcoholic beverages.

(4) An applicant who receives approval conditioned on the

construction or remodeling of a premises is required to complete the premises and arrange for final inspection within a reasonable time. For purposes of this rule, "reasonable time" means 180 days in the case of an unconstructed building and 90 days in the case of a building, which requires substantial remodeling, unless otherwise provided in the final agency decision approving the application. In the case of a major construction project, the final agency decision may provide additional time for completion of construction or remodeling and final inspection.

(5) An applicant granted conditional approval who has applied for a last available license will not be subject to the provisions of ARM 42.12.131. A quota license will remain available for an applicant who has received conditional approval until a final determination either granting or denying the license is made by the department.

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

AUTH: 16-1-303, MCA

IMP: 16-4-104, 16-4-106, 16-4-201, 16-4-402, and 16-4-404, MCA

42.12.208 TEMPORARY AUTHORITY (1) Temporary authority as provided by 16-4-404(6), MCA, may be issued only to an applicant who requests a transfer of ownership. Temporary operating authority must not be granted on an application for an original license or when there is a proposed change of location for the existing licensed premises.

(2) remains the same.

(3) Temporary authority will be issued for 45-day periods. An applicant may request an extension for an additional 45-day period if the application has not been processed within that time.

(4) In the event liens, attachments, or judgments have attached to the license, prior to September 1, 1990, the department will not grant an extension beyond the initial 45 days. Beginning September 1, 1990, new liens, new attachments, or new judgments which ~~that~~ have attached to a license do not affect the issuance of temporary authority. The recorded owner of the license must resume operation of the business conducted under the license in cases where the temporary authority has expired and cannot be extended.

(5) and (6) remain the same.

AUTH: 16-1-303, MCA

IMP: 16-4-404, MCA

42.12.209 TRANSFER OF A LICENSE TO ANOTHER PERSON (1) A license may be transferred to another qualified person only pursuant to means legally authorized for the transfer of personal property in Montana, such as:

(a) the person is a purchaser upon a bona fide sale, *i*

(b) the person is the personal representative of the estate of a deceased licensee, *i*

(c) the person has a security interest in a license being

foreclosed pursuant to ARM 42.12.205~~7~~ ;

(d) the person is gifted the license and the donor completely transfers ownership interest, as provided in Title 70, chapter 3, part 1, MCA~~7~~ ; or

(e) the person is appointed receiver under the license receivership.

(2) and (3) remain the same.

(4) The department may revoke a license for a violation of the requirements in (2) above.

AUTH: 16-1-303, MCA

IMP: 16-4-401, 16-4-402, and 16-4-404, MCA

42.12.222 PROCEDURE UPON REVOCATION OR SUSPENSION OF LICENSE (1) When any alcoholic beverages license is suspended or revoked by the department, the ~~administrator of the liquor division~~ department shall cause a notice to be posted on the inside of the licensed premise so that the notice can be seen from the outside, stating that the license has been suspended or revoked. The notice must identify the number of the license, the name of the licensee, the reason for the suspension or revocation, and the period of suspension. The suspension or revocation notice issued by the department must be dated and signed by the ~~administrator of the liquor division, or designee~~.

The notice must be posted at all times during the period of suspension. In the case of a revocation, the notice must be posted on the premises for a period of ~~10~~ ten days. If the notice is removed or caused to be removed by the licensee or any employee of the licensee during a period of suspension, the license shall be permanently revoked and the licensee must be so notified in writing at the time the notice is posted. The license or licenses suspended will be held by the department during the period of suspension.

AUTH: 16-1-303, MCA

IMP: 16-1-303 and 16-4-406, MCA

42.12.301 RESORT LICENSES (1) The issuance of resort all-beverages licenses pursuant to ~~16-4-201~~ 16-4-202, MCA, is governed by all other applicable provisions of Title 16, MCA, and the rules of the department.

(2) and (3) remain the same.

AUTH: 16-1-303, MCA

IMP: 16-4-201 and 16-4-202, MCA

42.12.302 DEFINITIONS The following terms will be used in this sub-chapter:

(1) "Association" ~~means an organization of people having a common interest~~ is defined in [New Rule I proposed in MAR Notice No. 42-2-661 in this issue].

(2) through (4) remain the same.

(5) "Contiguous" ~~means touching along a boundary~~ is defined in [New Rule I proposed in MAR Notice No. 42-2-661 in this issue].

(6) remains the same.

(7) The term "manufacture" includes distillation,

rectification, bottling, and processing, as defined under the provisions of the laws of the United States.

(7) through (10) remain the same but are renumbered (8) through (11).

AUTH: 16-1-303, MCA

IMP: 16-4-201 and 16-4-202, MCA

42.12.312 LIQUOR MANUFACTURER'S LICENSE (1) Any person or corporation, licensed to operate under the provisions of the laws of the United States, may apply to the department for a license to engage in the manufacture of liquor in the state of Montana. The application must be accompanied by a \$600 license fee, to be paid annually upon renewal of the license. The applicant shall submit satisfactory evidence of good moral character and that he is qualified to operate under the laws of the United States.

(2) If the department is satisfied that the applicant is qualified, it may issue a license which ~~that~~ must, at all times, be prominently displayed in the applicant's place of business. If the department finds that the applicant is not qualified, no license will be issued and the license fee shall be returned.

~~(3) The term "manufacture" includes distillation, rectification, bottling, and processing, as defined under the provisions of the laws of the United States.~~

AUTH: 16-1-303, MCA

IMP: 16-1-201, MCA

42.12.323 PERMISSIBLE AND PROHIBITED SPECIAL PERMIT ACTIVITIES (1) A special permit issued pursuant to 16-4-301~~(1)~~, MCA, entitles the holder to sell and serve beer and/or table wine at retail only at a booth, stand, or other fixed place of business within the exhibition enclosure, confined to specified premises or designated areas, described in the application and approved by the ~~division~~ department. A holder of any such permit, or his agents or employees may also sell and serve beer in the grandstand or bleacher.

(2) Special permits issued under 16-4-301~~(2)~~, MCA, entitle the holder to sell and serve liquor, beer, and/or table wine at retail only within the hall or building described in the application. A holder of a special permit, ~~his~~ the holder's agents, or employees may not sell liquor, beer, and/or table wine to any persons other than the members of the permittee organization and their bona fide guests. Where posts of nationally chartered veterans organizations or lodges of a recognized national fraternal organization do not own or maintain a permanent post, lodge building, or hall, the department may issue a special permit to the organization for use at premises where the post or lodge regularly meets to conduct its meetings or community related events.

(3) remains the same.

(4) A special permittee or catering permittee may use portable equipment furnished by a wholesaler in accordance with 16-3-241~~(2)~~, MCA.

AUTH: 16-1-303, MCA

IMP: 16-3-103, 16-3-241, and 16-4-301, MCA

42.12.324 SPECIAL PERMITS (1) through (3) remain the same.

(4) Any on-premises consumption retail licensee entitled to a catering endorsement will not be issued a special permit.

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

AUTH: 16-1-303, MCA

IMP: 16-4-301, MCA

42.12.401 DEFINITIONS (1) through (1)(e) remain the same.

(2) The following terms specifically apply to restaurant beer/wine lottery process:

(a) "Existing beer/wine/all beverage license" means either an on-premises or off-premises retail license that is either currently being used at the location in question, or has been approved for nonuse status, or is a license for which a sale has occurred or is pending but not approved by the department of revenue.

(2)(a)(i) through (2)(e) remain the same.

AUTH: 16-1-303, MCA

IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-420, and 16-4-502, MCA

42.12.406 LOTTERY APPLICATION PROCESS (1) and (2) remain the same.

(3) Lottery applications to be included in the available license lotteries can be acquired through the department of revenue.

(4) through (7) remain the same.

(8) Lottery applications to be included in the license lotteries can be acquired through the department of revenue.

(9) and (10) remain the same.

AUTH: 16-1-303, MCA

IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-420, and 16-4-502, MCA

42.13.101 COMPLIANCE WITH LAWS AND RULES (1) and (2) remain the same.

(3) The department will impose progressive penalties for multiple violations of any laws, ordinances and rules within any three-year period unless mitigating circumstances indicate the penalty should be reduced or aggravating circumstances indicate the penalty should be increased. Violations and progressive penalties include, but are not limited to, those listed on the following chart. Any combination of 4 four of the below violations occurring within a three-year period could result in license revocation action.

	1st	2nd	3rd	4th
<u>Violation</u>	<u>Offense</u>	<u>Offense</u>	<u>Offense</u>	<u>Offense</u>

Sale to a Minor	\$250	<u>500</u>	\$500	<u>1000</u>	\$1500/20-day Suspension	Revocation
Sale to Intoxicated Persons	<del>\$250</del>	<u>500</u>	\$500	<u>1000</u>	\$1500/20-day Suspension	Revocation
Open after Hours	\$150	<u>300</u>	\$300	<u>600</u>	\$1000/12-day Suspension	Revocation
Sale after Hours	\$150	<u>300</u>	\$300	<u>600</u>	\$1000/12-day Suspension	Revocation
Repouring	\$250	<u>500</u>	\$500	<u>1000</u>	\$1500/20-day Suspension	Revocation
Denial of Right to Inspect	\$150	<u>300</u>	\$300	<u>600</u>	\$1000/12-day Suspension	Revocation
No approval to Alter	\$150	<u>300</u>	\$300	<u>600</u>	\$1000/12-day Suspension	Revocation
No management Agreement	\$150	<u>300</u>	\$300	<u>600</u>	\$1000/12-day Suspension	Revocation
Improper use of Catering Endorsement	\$150	<u>300</u>	\$300	<u>600</u>	\$1000/12-day Suspension	Revocation
Accept more than 7 Days Credit	\$250	<u>500</u>	\$500	<u>1000</u>	\$1500/20-day Suspension	Revocation
Extend more than 7 Days Credit	\$250	<u>500</u>	\$500	<u>1000</u>	\$1500/20-day Suspension	Revocation
Undisclosed Ownership Interest	Fine, Suspension or Revocation					
90-Day Nonuse Without Approval	lapse					

(4) Reinstatement of a revoked license pursuant to this rule will not be considered until the number of violations in a three-year period from the date that revocation was effective totals to three or less but in no event less than ± one year. In every case, reinstatement will only be allowed if:

(a) the licensee demonstrates to the department that the licensee has taken steps to insure the causes of the license revocation will be prevented from occurring; and

(b) a license is available under the quota.

(5) A revoked license will affect a license quota area and

the following may result:

(a) if it causes the area to be under quota, a notice of availability of a license will be published in the newspaper of general circulation in the quota area and invite applications for the available license, ~~i~~ or

(b) if the area is over quota the revoked license will cease to be available for issuance.

(6) and (7) remain the same.

(8) Aggravating circumstances may result in the imposition of maximum monetary penalties, maximum suspension time or revocation and will not bind the department to the progressive penalty framework indicated in (3) ~~of this rule above~~.

(9) Aggravating circumstances include, but are not limited to:

(a) no effort on the part of a licensee to prevent a violation from occurring, ~~i~~

(b) a licensee's failure to report a violation at time of renewal, ~~i~~

(c) a licensee's ignoring warnings issued by a regulating authority about compliance problems, ~~i~~

(d) a licensee's failure to timely respond to requests during the investigation of a violation, ~~i~~ or

(e) a violation's significant negative effect on the health and welfare of the community in which the licensee operates.

(10) and (11) remain the same.

AUTH: 16-1-303, MCA

IMP: 16-3-301, 16-4-406, 16-6-305, and 16-6-314, MCA

42.13.102 RETENTION OF RECORDS (1) ~~Each licensee shall retain all purchase slips, checks, books, and records for a period of 3 years. All records may be inspected by the department in accordance with the provisions of [New Rule II proposed in MAR Notice No. 42-2-661 in this issue].~~

AUTH: 16-1-303, MCA

IMP: 16-1-303, MCA

42.13.103 DEPARTMENT EXAMINATIONS (1) remains the same.

(2) Any authorized representative as designated in (3) ~~below~~ shall have immediate access to all parts of the licensed premises. Doors of licensed premises shall not be locked while persons other than the licensee or his employees are within or upon the licensed premises.

(3) The department ~~of revenue~~ designates as its authorized representative, for the purpose of carrying out 16-6-103, MCA, any member of a county sheriff's department or the police force of a city or town, provided the police force is organized pursuant to Title 7, chapter 32, part 41, MCA, ~~(metropolitan police law)~~.

AUTH: 16-1-303, MCA

IMP: 16-6-103, MCA

42.13.105 APPLICABILITY OF LICENSES; PREMISES DEFINED; GOLF COURSE EXCEPTION; PORTABLE SATELLITE VEHICLE, MOVABLE

DEVICES (1) All licenses shall be applicable only to the premises in respect to which they were issued. The premises is are described by a floor plan on file with the department which accompanied the application and was approved by the department. The licensee must have possessory interest in the entire premises. No more than one license can be issued for the area described in the floor plan unless the first license has been granted nonuse status. The floor plan may be amended by a licensee submitting an application to alter the licensed premises and gaining department approval pursuant to ARM 42.13.106. Where a licensee conducts as a single business enterprise two or more service areas located on the same premises and which have such inter-communication as will enable patrons to move freely from one service area to another without leaving the premises, the various service areas shall be regarded as but one premises for which but one license is required. In all other cases licenses must be obtained for each service area even though operated in the same building with another service area.

~~(2) The term "premises" means one building or a specific portion or portions of one building which contain all service areas used by the licensee and the licensee's patrons and those service areas in which the licensee operates outside of and attached to the licensed building and to which patrons are permitted free access from the building.~~

~~(3) The term "service area" means the area in which the preparation, sale, service or consumption of alcoholic beverages occurs, except as provided in 16-3-105, MCA.~~

~~(4) The term "building" means an enclosed structure with external walls and a roof. A series of structures linked together, such as a commercial mall, structures contained on a city block or structures connected by skyways, are not considered one building for licensing purposes.~~

(5)(2) Retail all-beverages licensees operating at a golf course may sell alcoholic beverages and publicly owned golf courses holding a retail beer and table wine license may sell beer and table wine, under the provisions of 16-3-302, MCA, anywhere within the golf course boundaries from portable satellite devices and other moveable satellite devices.

(6)(3) Non-publicly owned golf courses holding retail beer or table wine licenses are restricted to sales of beer and table wines on their premises as defined in (2) above.

~~(7) "Portable satellite vehicle" or "other movable satellite device" as used in 16-3-302, MCA, may include:~~

~~(a) self-propelled wheeled vehicles such as golf carts, concession vans or similar conveyances containing beverage dispensing and storage equipment; or~~

~~(b) wheeled devices such as concession wagons or vendors carts and other similar vehicles which may be towed, pushed or transported to a temporary site and which contains beverage dispensing and storage equipment; and~~

~~(c) fixed booths or stands in which portable beverage dispensing and storage equipment may be temporarily installed and removed after use.~~

~~(d) Other devices not described within these categories may be submitted to the liquor division for approval of use.~~

~~(8)(4)~~ Premises licensed prior to the effective date of this rule that do not meet these standards would be required to meet the above standards described in (1) above when requesting the department to approve an application for transfer of ownership, and/or location or a request to alter the existing licensed premises.

AUTH: 16-1-303, MCA

IMP: 16-3-302, 16-3-311, 16-4-404, and 16-6-104, MCA

42.13.108 LAPSE OF LICENSE FOR NONUSE (1) remains the same.

(2) For the purpose of this rule "week" refers to any consecutive 7 seven-day period.

(3) An establishment is a going establishment if it meets the following criteria:

(a) It is open at least 20 hours a week for any 4 four weeks in a 90-day period, ~~and ;~~

(b) Inventory of at least ~~10~~ ten cases of alcoholic beverage is maintained on the premises each day that the establishment is open, ~~and ;~~

(c) Alcoholic beverages are displayed for sale in the purchase or consumption area of the establishment each day that the establishment is open, ~~which display must show at least 5 linear feet of product facings, ;~~ and

(d) The sale of alcoholic beverages is at least \$50 each week that the establishment is open.

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

AUTH: 16-1-303, MCA

IMP: 16-3-310, MCA

42.13.109 SEVEN-DAY CREDIT LIMITATION (1) and (2) remain the same.

(3) The first day of the seven-day credit period begins at 8:00 a.m. on the day after the delivery.

(4) through (4)(e) remain the same.

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

(c) wholesaler has been without payment for more than seven days; and

(d) remains the same.

(6) When a license is sold and a debt to a beer and wine wholesaler remains unpaid, the debt becomes the obligation of the new owner of the license. Based on the seven-day credit limitations, the wholesaler may not sell to the new licensee until the previous debt is paid in full.

AUTH: 16-1-303, MCA

IMP: 16-3-243, 16-3-406 and 16-4-404, MCA

42.13.222 BEER WHOLESALER AND TABLE WINE DISTRIBUTOR RECORDKEEPING REQUIREMENTS (1) through (1)(f) remain the same.

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

(3) Beer wholesalers shall keep and maintain records at

their place of business of visits to retailers within their assigned territory, as specified under Title 16, MCA, for department inspection.

AUTH: 16-1-303, MCA

IMP: 16-3-220, 16-3-243, 16-3-404, and 16-3-406, MCA

42.13.301 STORAGE OF ALCOHOLIC BEVERAGES (1) A licensee may store alcoholic beverages only on ~~his~~ the licensee's licensed premise.

(2) remains the same.

AUTH: 16-1-303, MCA

IMP: 16-3-201 and 16-6-301, MCA

42.13.304 STORAGE RESULTING IN TREATMENT AS BEER WHOLE-SALER OR TABLE WINE DISTRIBUTOR (1) Whenever beer or table wine is held in storage in wholesaling or jobbing quantities at a fixed place of business and deliveries are made or orders filled by the person in charge or ~~his~~ the employee, the department will treat these persons as carrying on the business of a wholesaler or distributor, requiring such person to have a license for such place of business, except in the case of a brewer's storage depot as provided in 16-3-230, MCA.

AUTH: 16-1-303, MCA

IMP: 16-3-230, 16-4-103, and 16-6-104, MCA

42.13.401 IMPORTATION OF WINE (1) Each winery or importer desiring to ship table wines to licensed distributors within the state must submit an application for registration to the department ~~of revenue~~ as specified under 16-4-107, MCA. Each application must be accompanied by a \$25 ~~\$400~~ registration fee and a copy of each product label the winery or importer intends to ship into the state. Approval will be granted by the department annually on or before October 1. The department must be notified in writing of any changes, additions, or deletions in product line prior to distribution in Montana.

(2) remains the same.

~~(3) Each winery or importer registration must be:~~

~~(a) submitted on forms supplied by the liquor division department;~~

~~(b) accompanied by a \$25 \$400 fee; and~~

~~(c) renewed annually on or before October 1.~~

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

AUTH: 16-1-303, MCA

IMP: 16-4-107, MCA

42.13.402 WINE DISTRIBUTOR'S MONTHLY REPORTS (1) Each table wine distributor shall file with the ~~liquor division department~~ a table wine distributor's monthly tax report (Form AA-50), as required by 16-3-404, MCA, showing the number of liters sold during the previous month. The form must be filed whether or not the distributor has sold any wine during a month. The form may be obtained from the ~~Centralized Services Division, Department of Revenue, Mitchell Building, P.O. Box 5805, Helena, Montana 59620~~ 59604-5805.

(2) remains the same.

(3) Failure to file the form or pay the table wine tax is sufficient cause for the assessment of penalties and interest in accordance with 15-1-216 and 16-1-411, MCA, and other penalties provided in 16-4-406, MCA.

AUTH: 16-1-303, MCA

IMP: 15-1-216, 16-1-411, 16-3-404, and 16-4-406, MCA

5. The department proposes to repeal the following rule:

42.12.410 WHEN LOTTERY WILL NOT BE HELD which can be found on page 42-1291 of the Administrative Rules of Montana.

AUTH: 16-1-303, MCA

IMP: 16-4-420, MCA

6. New Rule I is necessary to establish the licensing criteria and fees for a domestic winery. Domestic wineries shall be regulated in the same manner as breweries.

New Rule II is necessary to define terms used in this chapter.

New Rule III is necessary to clarify the hours that a small brewery may offer samples on its premises. The rule further establishes who may be present on the premises after these hours and that a brewery is not a licensee and may not operate in conjunction with another licensed premise.

The department is proposing the amendments to ARM 42.11.201, 42.11.205, 42.11.211, 42.11.213, 42.11.245, 42.11.251, 42.12.108, 42.12.116, 42.12.124, 42.12.129, 42.12.130, 42.12.204, 42.12.205, 42.12.206, 42.12.208, 42.12.209, 42.12.222, 42.12.312, 42.12.323, 42.13.103, 42.13.201, 42.13.222, 42.13.301, 42.13.304, to comply with the requirements of 2-4-314, MCA. These amendments are all housekeeping changes.

The department is proposing to amend ARM 42.11.214 to increase the fees. There were seven new vendor registrations in 2000. The increase is \$75 per year, which will realize an additional revenue of \$525 annually.

The amendment to ARM 42.11.215 is a fee adjustment that will impact 69 vendors. The increase is \$75 per year, which will result in an increased revenue of \$5,175 annually.

The department is proposing the amendment to ARM 42.12.103 as paragraphs (1), (2), & (3) are not currently required by the department in processing a corporate application. Further, 16-4-401, MCA, specifically sets out the requirements for licensing for a corporate applicant. A corporation with fewer than ten stockholders shall list all shareholders, directors, and officers.

The department is proposing the amendments to ARM 42.12.106 to clarify the certain terms used in the chapter. Associated business is more clearly defined with the examples indicating the sale of alcoholic beverages in a shopping mall rather than a tavern. Further amendments include definitions for "fraternal", "licensee" and "sample room".

Amendments to ARM 42.12.111 are proposed to recover the costs of processing for on-premise license applications. Winery/Wine importer processing fees are being amended to bring them in line brewery/beer importer processing fees. The increases only apply when there is a new application or a transfer application. During 2000 the department processed 494 on-premise applications. The amendments to the rules would result in a \$100 increase for each, for a total revenue increase of \$49,400. There were five resort all-beverage applications in 2000. The increase of \$100 for each would result in a total revenue increase of \$500. There were 20 winery applications in 2000. The increase of \$100 for each would result in an additional \$2,000 in revenue.

Amendments to ARM 42.12.122 are housekeeping measures listing the correct cite for a service bar.

The department is proposing the amendments to ARM 42.12.131 to clear up confusion over when the lottery process will apply to the number of applications received and the approval process.

ARM 42.12.132 is being amended because an ownership interest is defined in ARM 42.12.106. Further, the formula in this rule is too burdensome to apply.

The amendments to ARM 42.12.141 are necessary because the requirement for a certificate of good standing issued by the Secretary of State's Office within the last 6 months is listed as a required document to be submitted with the application on the department forms. The department needs to know that the corporation is active for the current renewal year with the Secretary of State's Office.

Amendment to ARM 42.12.207 is being made to ensure that an applicant that has received conditional approval will receive a license upon satisfactory completion of the premise.

The department is proposing to amend ARM 42.12.301 to correct the statutory citation to refer to the resort area statute.

The amendments to ARM 42.12.302 are necessary because the department is proposing a new definition rule in Chapter 2 of ARM Title 42 which covers general terms used throughout the department's rules. Some of the definitions in ARM 42.12.302 are more appropriate in this new rule.

Amendment to ARM 42.12.324 limits the issuance of special permits to those associations/corporations that do not have a retail on-premises consumption license who qualify for a catering endorsement.

Amendments to ARM 42.12.401 and 42.12.406 are proposed for housekeeping purposes to make the language in the rules comply with the 1999 legislative changes to 16-4-420, MCA.

Amendments to ARM 42.13.101 are proposed to bring the penalties in line with those charged by other control states and to encourage compliance by licensees.

The department is proposing to amend ARM 42.13.102 because it is adopting a new rule in Chapter 2 of ARM Title 42 pertaining to the retention of records for all areas administered by the department.

The amendments to ARM 42.13.105 are necessary for housekeeping reasons because these requirements no longer apply.

The department is amending ARM 42.13.108(3)(c) because requiring a restricted amount of product display to a limited linear feet designation is not practical.

The department is amending ARM 42.13.109 to clarify 16-4-404(7), MCA, which provides that beer or wine sold to a licensee on credit does not create a lien upon a license. However, a subsequent licensee has the obligation to pay for the beer and wine.

The amendment to ARM 42.13.401 regarding the registration fee for wineries or wine importers is increased to be commensurate with the registration fee charged to brewers and beer importers and the annual renewal fee charged. There are 282 wineries and wine importers registered with the department causing an impact of \$105,750 additional annual revenue. An additional 20 wineries applied for NEW registration with the department in 2000 which adds another \$7,500 revenue collected for registration fees.

Amendment to ARM 42.13.402 is proposed to correct the address information for obtaining forms from the department and add the reference to 15-1-216, MCA, which is the uniform penalty statute.

The department is proposing to repeal ARM 42.12.410 because it is no longer applicable and the same information is covered in ARM 42.12.412, which indicates when the department will hold a lottery.

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

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

and must be received no later than November 3, 2000.

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

9. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in paragraph 7 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Mary Bryson  
MARY BRYSON  
Director of Revenue

Certified to Secretary of State September 25, 2000

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment of ARM 42.14.101 ) ON PROPOSED AMENDMENT  
and 42.14.103 relating to )  
lodging facility use taxes )

TO: All Concerned Persons

1. On October 25, 2000, at 10:30 a.m., a public hearing will be held in Fourth Floor Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of ARM 42.14.101 and 42.14.103, relating to lodging facility use 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., October 16, 2000, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax (406) 444-3696; or e-mail canderson@state.mt.us.

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

42.14.101 DEFINITIONS ~~For purposes of this sub-chapter~~  
†The following definitions apply to this sub-chapter:

(1) through (11) remain the same.

AUTH: 15-65-102, MCA

IMP: 15-65-101, MCA

42.14.103 EXEMPT FACILITIES/ACCOMMODATION CHARGES (1)  
through (6) remain the same.

(7) ~~An accommodation charge for lodging for an enrolled member of a federally recognized Indian tribe in a facility located within the exterior boundaries of an Indian reservation is exempt from the tax. Enrolled members of a federally recognized Indian tribe, who stay in a facility located within the exterior boundaries of the enrolled member's Indian reservation, are exempt from the tax.~~ The owner or operator must record the individual's enrollment number on the record of the accommodation charge.

(8) and (9) remain the same.

AUTH: 15-65-102, MCA

IMP: 2-18-501, 15-65-101, and 15-65-111, MCA

4. The amendments to ARM 42.14.101 are general housekeeping. The department is proposing to amend ARM 42.14.103 to clarify that the exemption for enrolled members of

an Indian tribe only applies when they stay in a facility on their reservation. This amendment makes the rule consistent with the income and withholding tax exemptions for Native Americans.

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

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

and must be received no later than November 3, 2000.

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

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in paragraph 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.

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

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Mary Bryson  
MARY BRYSON  
Director of Revenue

Certified to Secretary of State September 25, 2000

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment to ARM 42.18.106, ) ON THE PROPOSED AMENDMENT  
42.18.107, 42.18.109, 42.18.110,) AND REPEAL  
42.18.112, 42.18.113, 42.18.115,) )  
42.18.116, 42.18.118, 42.18.119,) )  
42.18.120, 42.18.121, 42.18.122,) )  
42.18.124, and repeal of ) )  
42.18.126, 42.18.201, 42.18.202,) )  
42.18.203, 42.18.204, and ) )  
42.18.211 relating to the ) )  
Appraisal of Agricultural and ) )  
Forest Land, Commercial, ) )  
Industrial and Residential ) )  
Property ) )

TO: All Concerned Persons

1. On October 27, 2000, at 9:00 a.m., a public hearing will be held in Fourth Floor Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendments to ARM 42.18.106, 42.18.107, 42.18.109, 42.18.110, 42.18.112, 42.18.113, 42.18.115, 42.18.116, 42.18.118, 42.18.119, 42.18.120, 42.18.121, 42.18.122, 42.18.124, and repeal of 42.18.126, 42.18.201, 42.18.202, 42.18.203, 42.18.204, and 42.18.211 relating to the appraisal of agricultural and forest land, commercial, industrial and residential property in Montana.

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., October 16, 2000, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax (406) 444-3696; or e-mail canderson@state.mt.us.

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

42.18.106 1997 MONTANA REAPPRAISAL PLAN (1) remains the same.

(2) The Montana reappraisal plan provides for the valuation of residential property, commercial property, agricultural and timberland property, and industrial property. A ~~computer-assisted mass appraisal system~~ (CAMAS) is used to assist in the valuation process. The department's plan is to determine a new appraised value for each parcel of land, each

residential improvement, each commercial improvement, each agricultural improvement, and each industrial improvement. The department will enter the new appraised values on the tax rolls for tax year 1997.

(3) remains the same.

AUTH: 15-1-201, MCA

IMP: 15-7-111 and 15-7-133, MCA

42.18.107 2010 2003 MONTANA REAPPRAISAL PLAN (1) The Montana reappraisal plan implements the legislature's cyclical reappraisal program set forth in 15-7-111, MCA. The ~~2010-2003~~ Montana reappraisal plan consists of seven parts:

(a) residential appraisal~~7i~~

(b) commercial appraisal~~7i~~

(c) agricultural and forest land appraisal~~7i~~

(d) industrial appraisal~~7i~~

(e) certification and training requirements~~7i~~

(f) manuals~~7i~~ and

(g) progress reporting. ~~The Montana reappraisal plan implements the legislature's cyclical reappraisal program set forth in 15-7-111, MCA.~~

(2) The Montana reappraisal plan provides for the valuation of residential property, commercial property, agricultural and forest land property, and industrial property. ~~A computer-assisted mass appraisal system (CAMAS) is used to assist in the valuation process.~~ The department's plan is to determine a new appraised value for each parcel of land, each residential improvement, each commercial improvement, each agricultural improvement, and each industrial improvement. The department will enter the new appraised values on the tax rolls for tax year ~~2010~~ 2003.

(3) The results of this plan apply to tax years beginning January 1, ~~2010~~ 2003, and thereafter.

AUTH: 15-1-201, MCA

IMP: 15-7-111 and 15-7-133, MCA

42.18.109 1997 RESIDENTIAL REAPPRAISAL PLAN (1) Multiple field reviews of each property will be kept to an absolute minimum. The reappraisal of residential property consists of the:

(a) limited field reviews;

(b) comprehensive field reviews;

(c) ~~the~~ collection, verification and analysis of sales information;

(d) ~~the~~ data entry of missing or updated information, new improvements, and sales information;

(e) ~~the~~ development and review of ~~computer-assisted land pricing (CALP) models;~~

(f) ~~the~~ development of market models/benchmarking;

(g) ~~the~~ generation and review of inventory contents sheet; and

(h) final determinations of value. ~~Multiple field reviews of each property will be kept to an absolute minimum. Workplans must reflect that position.~~

(2) The reappraisal plan provides for limited field reviews to be conducted from January 1, 1993, through December 31, 1994. Limited field review of residential property consists of an external observation to determine accuracy of existing information on the inventory content sheet and property record card; to observe condition; to review grade and depreciation assignment; and collect additional data.

(3) The reappraisal plan provides for comprehensive field reviews to be conducted from January 1, 1993, through June 30, 1995. Appraisal staff will identify specific areas of the county where property data needs a complete review. The comprehensive field review consists of an internal inspection, and/or external inspection of the residential property. No call-backs will be made to the property unless specifically requested by the taxpayer, the appraisal supervisor, or area manager.

(4) Residential property data entry consists of correcting, updating, and adding residential property data on ~~the department of revenue's computer-assisted mass appraisal system (CAMAS)~~. The process will also include the review of edit reports; the addition of supplementary data to CAMAS; and sketch vectoring.

(5) The collection, verification, analysis and data entry of sales information is an important component of CAMAS. Procedures for collection, verification, and validation of sales information shall be formulated by the department of revenue. Accuracy of sales information is critical to the development of:

- (a) accurate, land valuation;
- (b) benchmarking;
- (c) the development of accurate market models;
- (d) individual property final value determinations; and
- (e) the defense of final value estimates.

(6) Residential lots and tracts are valued through the use of ~~computer-assisted land pricing (CALP)~~ models. Homogeneous areas within each county are geographically defined as neighborhoods. The CALP models will reflect January 1, 1996, land market values.

(7) through (9) remain the same.

(10) This rule applies to tax years from January 1, 1997, through December 31, ~~2009~~ 2002.

AUTH: 15-1-201 and 15-7-111, MCA

IMP: 15-7-111, MCA

42.18.110 2010 2003 RESIDENTIAL REAPPRAISAL PLAN (1) The reappraisal of residential property consists of:

- (a) field reviews;
- (b) the collection, verification and analysis of sales information;
- (c) the data entry of missing or updated information, new improvements, and sales information;
- (d) the development and review of ~~computer-assisted land pricing (CALP)~~ models;
- (e) the development of market sales comparison models/benchmarking;

(f) the use of door hangers where appropriate;  
(g) the use of self-reporting forms, where appropriate;  
(h) the generation and review of inventory contents sheet;  
and

(i) final determinations of value.

(2) Multiple field reviews of each property will be kept to an absolute minimum. ~~Work plans must reflect that position.~~

~~(2)(3)~~ The reappraisal plan provides for field reviews to be conducted. Field reviews of residential property consist of an internal or external observation to:

(a) determine accuracy of existing information on the ~~inventory content sheet~~ and property record card;

(b) ~~to~~ observe condition;

(c) ~~to~~ review grade and depreciation assignment; and

(d) collect additional data.

(4) No call-backs will be made to the property unless specifically requested by the taxpayer, ~~the field supervisor,~~ or regional manager department.

~~(3)(5)~~ Residential property data entry consists of correcting, updating, and adding residential property data on the ~~department of revenue's computer-assisted mass appraisal system (CAMAS)~~. The process will also include the review of edit reports; the addition of supplementary data to CAMAS; and sketch vectoring.

~~(4)(6)~~ The collection, verification, analysis and data entry of sales information is an important component of CAMAS. Accuracy of sales information is critical to the development of:

(a) accurate, land valuation;

(b) benchmarking;

(c) the development of accurate market sales comparison models;

(d) individual property final value determinations; and

(e) the defense of final value estimates.

~~(5)(7)~~ Residential lots and tracts are valued through the use of ~~computer-assisted land pricing (CALP)~~ models. Homogeneous areas within each county are geographically defined as neighborhoods. The CALP models will reflect January 1, ~~2009~~ 2002, land market values.

~~(6)(8)~~ The development of market models using CAMAS is a requirement for property valuation during the reappraisal cycle. The key components that influence value and the appropriate level of influence are determined through use of multiple regression analysis. Staff may develop separate market sales comparison models for each neighborhood.

~~(7)(9)~~ ~~Inventory contents sheets~~ Property record cards are generated and reviewed by appraisal staff. These sheets include physical characteristics and component information, sales, basic ownership, and valuation information. The review will consist of analyzing and collecting component information such as condition, ~~desirability and utility (CDU) factors~~ and style of improvements. This review will allow the appraiser to compare property information to an estimate of value. Discrepancies in data or the collection of additional information required by the review will result in the update of

CAMAS data.

~~(8)~~(10) Final determinations of value are conducted once all required field and program needs of CAMAS are met. ~~The appraised value for residential property may include indicators of value using: the cost approach and the sales comparison approach. The appraised value supported by defensible market data, when available, serves as the value for ad valorem tax purposes. The appraised value for residential property may include indicators of value using:~~

- ~~(a) the cost approach;~~
- ~~(b) the sales comparison approach; and~~
- ~~(c) when possible, the income approach.~~

~~(11) The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes.~~

~~(9)~~ (12) The results of this rule apply to tax years beginning January 1, 2010 2003, and thereafter.

AUTH: 15-1-201 and 15-7-111, MCA

IMP: 15-7-111, MCA

42.18.112 1997 COMMERCIAL REAPPRAISAL PLAN (1) The reappraisal of commercial property consists of:

- (a) limited field reviews;
  - (b) comprehensive field reviews;
  - (c) collection, verification and analysis of sales and income information;
  - (d) data entry of sales and income information;
  - (e) development and review of ~~computer-assisted land pricing (CALP)~~ models;
  - (f) development of income models/benchmarking;
  - (g) generation and review of inventory contents sheets;
- and

(h) final determinations of market value.

(2) Multiple field reviews will be kept to an absolute minimum. ~~Workplans must reflect that position.~~

~~(2)~~(3) The reappraisal plan provides for limited field reviews to be conducted from January 1, 1993, through December 31, 1994. A limited field review of commercial property consists of an external observation to:

- (a) determine accuracy of existing information on the ~~inventory content sheet and property record card;~~
- (b) ~~to~~ observe condition;
- (c) ~~to~~ review depreciation assignment; and
- (d) ~~to~~ collect additional data.

~~(3)~~(4) The reappraisal plan provides for comprehensive field reviews to be conducted from January 1, 1993, through June 30, 1995. Appraisal staff will identify specific areas of the county where property data needs a complete review. The comprehensive field review consists of an internal inspection and/or external inspection of the commercial property. No call-backs will be made to the property unless specifically requested by the taxpayer, ~~the appraisal supervisor, or area manager department.~~

~~(4)~~(5) Commercial property data consists of correcting,

updating and adding commercial property data on the ~~department of revenue computer assisted mass appraisal system (CAMAS).~~

~~(5)~~(6) The collection, verification, analysis and data entry of sales and income information is an important component of CAMAS. Procedures for collection, verification, and validation of sales and income information shall be formulated by the department ~~of revenue~~. Accuracy of sales information and income information is critical to:

- (a) accurate land valuation;
- (b) ~~to~~ benchmarking;
- (c) ~~to~~ the development of accurate income models;
- (d) ~~to~~ individual property final value determinations; and
- (e) ~~to~~ the defense of final value estimates.

~~(6)~~(7) Commercial lots and tracts are valued through the use of ~~computer assisted land pricing (CALP) models~~. Homogeneous areas within each county are geographically defined as neighborhoods. The CALP models will reflect January 1, 1996, land market values.

(7) and (8) remain the same, but are renumbered (8) and (9).

~~(9)~~(10) Final determinations of value are conducted once all required field and program needs of CAMAS are met. The appraisal value for commercial property may include indicators of value using:

- (a) the cost approach~~;~~
- (b) the income approach; and~~;~~
- (c) when possible, the sales comparison approach.

(11) The appraisal value supported by the most defensible valuation information serves as the value for ad valorem tax purposes.

~~(10)~~(12) This rule applies to tax years from January 1, 1997, through December 31, ~~2009~~ 2002.

AUTH: 15-1-201 and 15-7-111, MCA

IMP: 15-7-111, MCA

42.18.113 2010 2003 COMMERCIAL REAPPRAISAL PLAN (1) The reappraisal of commercial property consists of:

- (a) field reviews;
- (b) collection, verification and analysis of sales and income information;
- (c) data entry of sales and income information;
- (d) development and review of ~~computer assisted land pricing (CALP) models;~~
- (e) development of income models/benchmarking;
- (f) generation and review of inventory contents sheets; and
- (g) final determinations of market value.

(2) Multiple field reviews will be kept to an absolute minimum. ~~Work plans must reflect that position.~~

~~(2)~~(3) The reappraisal plan provides for field reviews. A field review of commercial property consists of an internal or external observation to:

- (a) determine accuracy of existing information on the inventory content sheet and property record card;

- (b) to observe condition;
- (c) to review depreciation assignment; and
- (d) to collect additional data.

(4) No call-backs will be made to the property unless specifically requested by the taxpayer, ~~the field supervisor,~~ or regional department manager.

~~(3)~~(5) Commercial property data consists of correcting, updating and adding commercial property data on ~~the department of revenue computer assisted mass appraisal system (CAMAS).~~

~~(4)~~(6) The collection, verification, analysis and data entry of sales and income information is an important component of CAMAS. Accuracy of sales information and income information is critical to:

- (a) accurate land valuation;
- (b) ~~to~~ benchmarking;
- (c) ~~to the~~ development of accurate income models and sales comparison models;

- (d) ~~to~~ individual property final value determinations; and
- (e) ~~to the~~ defense of final value estimates.

~~(5)~~(7) Commercial lots and tracts are valued through the use of ~~computer assisted land pricing (CALP) models~~. Homogeneous areas within each county are geographically defined as neighborhoods. The CALP models will reflect January 1, ~~2009~~ 2002, land market values.

(6) and (7) remain the same but are renumbered (8) and (9).

~~(8)~~(10) Final determinations of value are conducted once all required field and program needs of CAMAS are met. The appraisal value for commercial property may include indicators of value using:

- (a) the cost approach~~;~~
- (b) the income approach; and~~;~~
- (c) when possible, the sales comparison approach.

(11) The appraisal value supported by the most defensible valuation information serves as the value for ad valorem tax purposes.

~~(9)~~(12) The results of this rule apply to tax years beginning January 1, ~~2010~~ 2003, and thereafter.

AUTH: 15-1-201 and 15-7-111, MCA  
IMP: 15-7-111, MCA

42.18.115 1997 AGRICULTURAL/FOREST LAND AND IMPROVEMENTS REAPPRAISAL PLAN

(1) Agricultural and forest lands are valued in accordance with administrative rules adopted by the department ~~of revenue~~ in chapter 20. Use changes are updated annually on both agricultural and forest lands. For agricultural land the valuation methodology and agricultural land valuation schedules are developed in accordance with 15-7-201, MCA. For forest lands the valuation methodology and forest lands valuation schedules are developed in accordance with 15-44-103, MCA. The agricultural and forest lands values will reflect productivity values in accordance with 15-7-201 and 15-44-103, MCA. Agricultural and forest land values will be placed on the tax rolls for tax year 1997.

(2) The reappraisal of agricultural/forest lands consists of:

- (a) limited field reviews;
- (b) comprehensive field reviews of agricultural/forest lands improvements;
- (c) agricultural/forest lands property data collection and analysis;
- (d) the data entry of agricultural/forest lands information;
- (e) the generation and review of inventory contents sheets; and
- (f) final determinations of value.

(3) The plan provides for multiple field reviews of each property to be kept to an absolute minimum. ~~Workplans must reflect that position.~~

~~(3)~~(4) The reappraisal plan provides for limited field reviews to be conducted from January 1, 1993, through December 31, 1994. A limited field review consists of an external observation to:

- (a) determine accuracy of existing information on the ~~inventory content sheet~~ and property record card;
  - (b) ~~to~~ observe condition;
  - (c) ~~to~~ review grade and depreciation assignment;
  - (d) ~~to~~ review agricultural and forest lands classification;
- and

(e) ~~to~~ collect additional data required to implement CAMAS.

~~(4)~~(5) The reappraisal plan provides for comprehensive field reviews to be conducted from January 1, 1993, through June 30, 1995. Appraisal staff will identify specific areas of the county where property data needs a complete review. The comprehensive field review consists of an internal inspection and/or external inspection of the agricultural/forest lands improvements. No call-backs will be made to the property unless specifically requested by the taxpayer, ~~the appraisal supervisor or the area manager department.~~

~~(5)~~(6) Agricultural/forest lands property data entry consists of correcting, updating, and adding agricultural/forest lands property data to ~~the department of revenue's computer assisted mass appraisal system (CAMAS).~~ The correction, updating and addition process also consists of reviewing edit reports which result from that process, the manual entry of agricultural/forest lands information to CAMAS, the addition of improvement data (outbuildings and residences) to CAMAS, and sketch vectoring.

~~(6)~~(7) Inventory contents sheets are generated and reviewed by appraisal staff. The inventory contents sheets include:

- (a) physical characteristic and component information for agricultural/forest lands improvements;
- (b) productivity information for agricultural/forest lands;
- (c) basic ownership information; and
- (d) valuation information.

(8) The review consists of analyzing; collecting component

information on improvements; and reviewing productivity information on agricultural/forest lands. This review allows the appraiser to compare property information to an estimate of value. Discrepancies in data or the collection of additional information required by the review will result in the update of data on CAMAS. The addition or refinement of existing data results in a more accurate valuation estimate.

(7) remains the same, but is renumbered (9).

~~(8)~~(10) This rule applies to tax years from January 1, 1997, through December 31, ~~2009~~ 2002.

AUTH: 15-1-201 and 15-7-111, MCA

IMP: 15-7-111, MCA

42.18.116 2010 2003 AGRICULTURAL/FOREST LAND AND IMPROVEMENTS REAPPRAISAL PLAN (1) Agricultural and forest lands are valued in accordance with ~~administrative rules adopted by the department of revenue in ARM Title 42, chapter 20.~~ Use changes are updated annually on both agricultural and forest lands. For agricultural land the valuation methodology and agricultural land valuation schedules are developed in accordance with 15-7-201, MCA. For forest lands the valuation methodology and forest lands valuation schedules are developed in accordance with 15-44-103, MCA. The agricultural and forest lands values will reflect productivity values in accordance with 15-7-201 and 15-44-103, MCA.

(2) The reappraisal of agricultural/forest lands consists of:

(a) ~~comprehensive~~ field reviews of agricultural/forest lands improvements as appropriate;

(b) agricultural/forest lands property data collection and analysis;

(c) the data entry of agricultural/forest lands information;

(d) the generation and review of ~~inventory contents sheets~~ property record cards; and

(e) final determinations of value.

(3) The plan provides for multiple field reviews of each property to be kept to an absolute minimum. ~~Work plans must reflect that position.~~

~~(3)~~(4) The reappraisal plan provides for field reviews. A field review consists of an internal or external observation to:

(a) determine accuracy of existing information on the ~~inventory content sheet~~ and property record card;

(b) ~~to~~ observe condition;

(c) ~~to~~ review grade and depreciation assignment;

(d) ~~to~~ review agricultural and forest lands classification;

and

(e) ~~to~~ collect additional data required to implement CAMAS.

(5) No call-backs will be made to the property unless specifically requested by the taxpayer, ~~the field supervisor~~ or the ~~regional manager~~ department.

~~(4)~~(6) Agricultural/forest lands property data entry consists of correcting, updating, and adding agricultural/forest lands property data to ~~the department of revenue's computer~~

~~assisted mass appraisal system (CAMAS).~~ The correction, updating and addition process also consists of reviewing edit reports which result from that process, the ~~manual~~ entry of agricultural/forest lands information to CAMAS, the addition of improvement data (outbuildings and residences) to CAMAS, and sketch vectoring.

~~(5)(7) Inventory contents sheets~~ Property record cards are generated and reviewed by appraisal staff. The ~~inventory contents sheets~~ property record cards include:

(a) physical characteristic and component information for agricultural/forest lands improvements;

(b) productivity information for agricultural/forest lands;

(c) basic ownership information; and

(d) valuation information.

(8) The review consists of:

(a) analyzing;

(b) collecting component information on improvements; and

(c) reviewing productivity information on agricultural/forest lands.

(9) This review allows the appraiser to compare property information to an estimate of value. Discrepancies in data or the collection of additional information required by the review will result in the update of data on CAMAS. The addition or refinement of existing data results in a more accurate valuation estimate.

~~(6)(10)~~ Final determinations of value are conducted once all required field and program needs of CAMAS are met. The appraised value for agricultural/forest lands property improvements includes an estimate of market value using the cost approach and, when possible, the ~~market data~~ sales comparison approach.

~~(7)(11)~~ The results of this rule apply to tax years beginning January 1, ~~2010~~ 2003, and thereafter.

AUTH: 15-1-201 and 15-7-111, MCA

IMP: 15-7-111, MCA

#### 42.18.118 1997 INDUSTRIAL PROPERTY REAPPRAISAL

(1) Approximately 1,500 industrial properties are appraised by industrial appraisers and the resulting appraised values are distributed to the appropriate ~~county appraisal/assessment~~ local department field offices. Each industrial property will be reappraised annually.

(2) The reappraisal plan provides for industrial property to be valued as an entity. For valuation methodology, the department will rely upon ARM 42.22.1304 through 42.22.1310. The ~~centralized assessment bureau~~ department will be responsible for valuing industrial property as that concept is defined in ARM 42.22.1301, 42.22.1302, and 42.22.1303.

(3) This rule applies to tax years from January 1, 1997, through December 31, ~~2009~~ 2002.

AUTH: 15-1-201 and 15-7-111, MCA

IMP: 15-7-111, MCA

42.18.119 2000 2003 INDUSTRIAL PROPERTY REAPPRAISAL

(1) ~~Approximately 1,000 industrial~~ Industrial properties are appraised by industrial appraisers and the resulting appraised values are distributed to the appropriate county appraisal/assessment local department field offices. Each industrial property will be reappraised annually.

(2) The reappraisal plan provides for industrial property to be valued as an entity; that is to say, the valuation includes both real and personal property valuation components. For valuation methodology, the department will rely upon ARM 42.22.1304 through 42.22.1310. ~~The centralized assessment bureau~~ department will be responsible for valuing industrial property as that concept is defined in ARM 42.22.1301, 42.22.1302, and 42.22.1303.

(3) The results of this rule apply to tax years beginning January 1, ~~2010~~ 2003, and thereafter.

AUTH: 15-1-201 and 15-7-111, MCA

IMP: 15-7-111, MCA

42.18.120 CERTIFICATION AND TRAINING REQUIREMENTS

(1) ~~Residential and commercial appraisers~~ Appraisers are required to be certified in accordance with ~~ARM 42.18.201 and 42.18.202.~~ Agricultural and timber appraisers/classifiers are required to be certified in accordance with ARM 42.18.203. Industrial appraisers are required to be certified in accordance with ARM 42.18.204. The department will develop policies and procedures outlining certification requirements that meet the IAAO standards.

(2) ~~Initial training for new appraisers and property tax clerks for CAMAS is on residential valuation and system administration. That training prepares staff to use the computer terminals and computerized files. It will teach staff to create individual property files, update component listings, review values, update and delete records, and backup, store and process data on the computer file.~~

(3) ~~Designated appraisal staff will attend a training session on residential valuation for reappraisal, use of the cost approach, system reporting features, development of market models and computer-assisted land pricing (CALP) models. This will prepare the appraisal staff to use CAMAS for accomplishing reappraisal. The appraiser will learn how to develop both the cost approach and the market data approach for each property.~~

(4) ~~Staff who work on commercial appraisal work will receive training that includes commercial/industrial data entry and data management, use of the commercial cost approach, review of CALP modeling and residential market valuation.~~

(5) ~~Certain staff will also receive advanced training on commercial valuation for reappraisal and the collection, analysis and input of commercial property income/expense information. The instruction will also include an overview of prior training sessions.~~

AUTH: 15-1-201, MCA

IMP: 15-7-107 and 15-7-111, MCA

42.18.121 VALUATION MANUALS (1) ~~For residential and agricultural/forest lands new construction, the January 1, 1992 Montana Appraisal Manual will be used through tax year 1996.~~

(2) For the reappraisal cycle ending December 31, 1996, the 1996 Montana Appraisal Manual will be used for valuing residential and agricultural/forest lands real property. The cost base schedules will reflect January 1, 1996 cost information.

(3) ~~For commercial and industrial new construction the January 1, 1992, Montana Appraisal Manual will be used through tax year 1996. If the property is not listed, other construction cost manuals such as Marshall Valuation Service, Boeckh or Means will be used with a publication date as close to the Montana Appraisal Manual as possible.~~

(4) (2) For the reappraisal cycle ending December 31, 1996, the 1996 Montana Appraisal Manual will be used for valuing commercial and industrial real property if the property is listed. If not, other construction cost manuals such as Boeckh; Marshall Valuation Service Manual; Richardson Engineering Services, Inc., entitled "Process Plant Construction Estimating Standards"; or R.S. Means Company, Inc., entitled "Building Construction Cost Data" will be used with a publication date as close as possible to the Montana Appraisal Manual. The cost base schedules will reflect January 1, 1996, cost information.

(5) (3) Copies of the valuation manuals used by the department of revenue may be reviewed in the county appraisal/assessment local department field offices or purchased from the department at the Property Assessment Division by writing to Department of Revenue, P.O. Box 5805, Helena, Montana 59620 59604-5805.

(6) (4) The results of this rule apply to tax years beginning January 1, 1997, and thereafter through December 31, 2002.

AUTH: 15-1-201, MCA

IMP: 15-7-111, MCA

42.18.122 REVALUATION MANUALS (1) For residential, and agricultural/forest lands new construction, the January 1, 1996, Montana Appraisal Manual will be used through tax year 2009 2002.

(2) For the reappraisal cycle ending December 31, 2009 2002, the 2009 2002 Montana Appraisal Manual Marshall Valuation Service, adjusted for local conditions, will be used for valuing residential and agricultural/forest lands real property. The cost base schedules will reflect January 1, 2009 2002, cost information.

(3) For commercial and industrial new construction, the January 1, 1996, Montana Appraisal Manual will be used through tax year 2009 2002. If the property is not listed, other construction cost manuals such as Marshall Valuation Service, Boeckh or Means, will be used with a publication date as close to the Montana Appraisal Manual as possible.

(4) For the reappraisal cycle ending December 31, 2009 2002, the 2009 2002 Montana Appraisal Manual Marshall Valuation

Service, adjusted for local conditions, will be used for valuing commercial and industrial real property if the property is listed. If not, other construction cost manuals such as Boeckh; ~~Marshall Valuation Service Manual~~; Richardson Engineering Services, Inc., entitled "Process Plant Construction Estimating Standards"; or R.S. Means Company, Inc., entitled "Building Construction Cost Data" will be used with a publication date as close as possible to the ~~Montana Appraisal Manual~~ Marshall Valuation Service. The cost base schedules will reflect January 1, ~~2009~~ 2002, cost information.

(5) Copies of the valuation manuals used by the department ~~of revenue~~ may be reviewed in the ~~county appraisal/assessment~~ local department field offices or purchased from the department ~~at the Property Assessment Division by writing to Department of Revenue, P.O. Box 5805, Helena, Montana 59620~~ 59604-5805.

(6) The results of this rule apply to tax years beginning January 1, ~~1997~~ 2003, and thereafter.

AUTH: 15-1-201 and 15-7-111, MCA

IMP: 15-7-111, MCA

42.18.124 CLARIFICATION OF VALUATION PERIODS (1) In compliance with 15-7-103, MCA:

(a) ~~For the taxable years from January 1, 1986, through December 31, 1992, all property classified in 15-6-134, MCA, (class 4) must be appraised at its market value as of January 1, 1982.~~

(b) ~~For the taxable years from January 1, 1993, through December 31, 1996, all property classified in 15-6-134, MCA, (class 4) must be appraised at its market value as of January 1, 1992.~~

(c) For the taxable years from January 1, 1997, through December 31, ~~2009~~ 2002, all property classified in 15-6-134, MCA, (class 4) must be appraised at its market value as of January 1, 1996.

(d) (b) For the taxable years from January 1, ~~2010~~ 2003, through December 31, ~~2012~~ 2009, all property classified in 15-6-134, MCA, (class 4) must be appraised at its market value as of January 1, ~~2009~~ 2002.

AUTH: 15-1-201 and 15-7-111, MCA

IMP: 15-6-134, 15-7-103, and 15-7-111, MCA

4. The department proposes to repeal the following rules:

42.18.126 PROGRESS REPORTING which can be found on page 42-1818 of the Administrative Rules of Montana.

AUTH: 15-1-201 and 15-7-111, MCA

IMP: 15-7-111, MCA

42.18.201 RESIDENTIAL PROPERTY CERTIFICATION REQUIREMENTS which can be found on page 42-1823 of the Administrative Rules of Montana.

AUTH: 15-1-201, MCA

IMP: 15-7-107 and 15-7-111, MCA

42.18.202 COMMERCIAL PROPERTY CERTIFICATION REQUIREMENTS which can be found on page 42-1824 of the Administrative Rules of Montana.

AUTH: 15-1-201, MCA

IMP: 15-7-107 and 15-7-111, MCA

42.18.203 AGRICULTURAL PROPERTY CERTIFICATION REQUIREMENTS which can be found on page 42-1826 of the Administrative Rules of Montana.

AUTH: 15-1-201, MCA

IMP: 15-7-107 and 15-7-111, MCA

42.18.204 INDUSTRIAL PROPERTY CERTIFICATION REQUIREMENTS which can be found on page 42-1828 of the Administrative Rules of Montana.

AUTH: 15-1-201, MCA

IMP: 15-7-107 and 15-7-111, MCA

42.18.211 CERTIFICATION SEQUENCE which can be found on page 42-1837 of the Administrative Rules of Montana.

AUTH: 15-1-201, MCA

IMP: 15-7-107 and 15-7-111, MCA

5. The department is proposing the amendments to the rules to comply with statutory changes resulting from the provisions of Senate Bill 184, enacted by the 1999 Legislature. This bill changed the dates of the current reappraisal cycle, which previously was to be completed in tax year 2010. The cycle will now be completed in tax year 2003. Other amendments include housekeeping changes to create uniformity in all Department rules. Any reference to a particular division has been changed to the generic term "department" and terms such as, "customer assistance staff" is used instead of "centralized assessment clerks". Some of the amendments include terminology changes which are necessary for compliance with International Association of Assessing Officers (IAAO) standards, e.g., the term "sales comparison" is used in place of "market".

ARM 42.18.110(7) is amended to reflect the provisions of Senate Bill 441, enacted by the 1999 Legislature (15-8-111, MCA). This legislation requires the department to consider the income approach in the valuation of residential properties, along with the cost and sales comparison approach.

The amendments to ARM 42.18.120 reflect the department's intent to establish policies and procedures to cover specific requirements for certification and training of department appraisers and other staff.

The department is proposing to repeal ARM 42.18.126, 42.18.201, 42.18.202, 42.18.203, 42.18.204 and 42.18.211 because they would be more appropriate as internal policies rather than administrative rules. The department recognizes the need for the various certifications and will develop policies and procedures to address the various requirements for each of these areas.

6. Concerned persons may submit their data, views, or

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

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

and must be received no later than November 3, 2000.

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

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 paragraph 6 above or faxed to the office at 406-444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Mary Bryson  
MARY BRYSON  
Director of Revenue

Certified to Secretary of State September 25, 2000

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 amendment) ON THE PROPOSED ADOPTION,  
 of ARM 42.31.102, 42.31.103, ) AMENDMENT AND REPEAL  
 42.31.105, 42.31.107, 42.31.109, )  
 42.31.111, 42.31.131, 42.31.201, )  
 42.31.202, 42.31.203, 42.31.204, )  
 42.31.205, 42.31.213, 42.31.221, )  
 42.31.302, 42.31.303, 42.31.304, )  
 42.31.305, 42.31.306, 42.31.308, )  
 42.31.309, 42.31.310, 42.31.311, )  
 42.31.312, 42.31.313, 42.31.315, )  
 42.31.316, 42.31.317, 42.31.325, )  
 42.31.340, 42.31.345, 42.31.350, )  
 42.31.401, 42.31.405, 42.31.501, )  
 42.31.502, 42.31.504, 42.31.510, )  
 42.31.601, 42.31.603, 42.31.2101, )  
 42.31.2121, 42.31.2122, 42.31.2131, )  
 42.31.2132, 42.31.2133, 42.31.2134, )  
 42.31.2141, 42.31.2142, 42.31.2143; )  
 and repeal of ARM 42.31.211, )  
 42.31.214, 42.31.320, 42.31.403, )  
 42.31.404, 42.31.502, 42.31.515, )  
 and 42.31.603; related to Tobacco )  
 and Contractor's License Taxes )  
 )

TO: All Concerned Persons

1. On October 27, 2000, at 1:00 p.m., a public hearing will be held in Fourth Floor Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption of New Rule I; amendment of 42.31.102, 42.31.103, 42.31.105, 42.31.107, 42.31.109, 42.31.111, 42.31.131, 42.31.201, 42.31.202, 42.31.203, 42.31.204, 42.31.205, 42.31.213, 42.31.221, 42.31.302, 42.31.303, 42.31.304, 42.31.305, 42.31.306, 42.31.308, 42.31.309, 42.31.310, 42.31.311, 42.31.312, 42.31.313, 42.31.315, 42.31.316, 42.31.317, 42.31.325, 42.31.340, 42.31.345, 42.31.350, 42.31.401, 42.31.405, 42.31.501, 42.31.502, 42.31.504, 42.31.510, 42.31.601, 42.31.603, 42.31.2101, 42.31.2121, 42.31.2122, 42.31.2131, 42.31.2132, 42.31.2133, 42.31.2134, 42.31.2141, 42.31.2142, 42.31.2143; and repeal of ARM 42.31.211, 42.31.214, 42.31.320, 42.31.403, 42.31.404, 42.31.502, 42.31.515 and 42.31.603 related to tobacco and contractor's license tax rules.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue not later than

5:00 p.m., October 16, 2000, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax (406) 444-3696; or e-mail canderson@state.mt.us.

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

NEW RULE I CONTRACTOR'S RETURN REQUIRED FOR PUBLIC WORKS PROJECTS

(1) Public works contracts performed during the calendar year showing the 1% tax credit withheld during the current tax year must be filed with the department as required by 15-50-301, MCA. For purposes of this filing, the department will accept the following:

(a) Schedule C, attached to the individual income tax return, as required by 15-30-142, MCA;

(b) Schedule C attached to the corporation license tax return, as required by 15-31-111, MCA; and

(c) personal property refund request form PC-4 and, if necessary, an additional schedule form PC-3, as required by 15-50-207, MCA.

(2) Failure to provide these schedules will result in a fine as stated in 15-50-301, MCA.

AUTH: 15-50-301, MCA

IMP: 15-50-301, MCA

4. The rules proposed to be amended provide as follows:

42.31.102 MARKING UNSTAMPED CIGARETTES (1) All cigarettes sold in Montana must have a tax insignia except sales made to:

(a) military reservations;

(b) Indian reservations that have entered into a cooperative agreement and require their own stamp; and or

(c) licensed wholesalers ~~which~~ whose sales are subject to the provisions of ARM 42.31.108.

(2) The method of marking may either be by ~~metered stamp~~, 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 that cigarettes are stamped as required by 16-11-111, MCA.

AUTH: 16-11-103, MCA

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

42.31.103 SECURITY OF UNSTAMPED CIGARETTES (1) Persons authorized by the department to affix cigarette tax insignia must maintain external and internal security for unstamped cigarettes.

(2) External security must be provided in the form of a sound and properly maintained building to warehouse the cigarettes.

(3) The internal organization of warehouses operated by persons authorized to affix cigarette tax insignia shall provide

for the separation of unstamped cigarettes from stamped cigarettes. The warehouses' procedures shall further provide that unstamped cigarettes may not be removed from the warehouse as stamped cigarettes. Examples of internal security may include, but are not limited to, the use of a separately controlled area, or a distinct separate location within the warehouse.

(4) In no case may unstamped cigarettes be easily accessible by unauthorized individuals.

AUTH: 16-11-103, MCA

IMP: 16-11-113 and 16-11-133, MCA

42.31.105 STORAGE OF STAMPS AND TAX METERS (1) During periods of non-use, cigarette stamps and tax meters must be stored in a secure area. ~~Meters may be left on stamping equipment which is located in a secure area.~~

AUTH: 16-11-103, MCA

IMP: 16-11-115, MCA

42.31.107 ACCOUNTING CONTROL OF CIGARETTE DISTRIBUTION

(1) Each in-state 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 of revenue by a wholesaler on or before the 15th day of the each month following for the preceding month's activities. 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. When appropriate, form CT-206 and Schedule C are to be filed with form CT-205. These forms are to be filed with the department by a wholesaler on or before the 15th day of each month for the preceding month's activities. Form CT-205 is a reconciliation of the purchase and distribution of cigarettes and the consumption of cigarette tax indicia. The back of the form CT-205 reflects exempt military reservation, and wholesaler-to-wholesaler purchases for the month.

~~(2)~~(3) Sales of unstamped cigarettes must be itemized on form CT-206 which is then used as a supporting document for form CT-205.

~~(3)~~(4) Sales of untaxed cigarettes made to cigarette retailer(s) on an Indian reservation shall be reported on form 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) and (b) remain the same.

~~(4)~~(5) Wholesaler(s) must contact the department prior to all non-taxed 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: 16-11-103, MCA

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

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 Montana department of revenue 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 form must be submitted along with Form form CT-205 by the 15th day of the month following the sale.

AUTH: 16-11-103, MCA

IMP: 16-11-132, MCA

42.31.111 PURCHASING ROLL, ~~METERED OR HAND-APPLIED CIGARETTE TAX INSIGNIA~~ ~~(1) Metered cigarette tax units shall be purchased at designated county treasurer offices on either a cash or credit basis.~~

~~(a) Cash remittances shall be made payable to the Montana department of revenue or the state treasurer and shall be collected by county treasurers before setting meters.~~

~~(b) A cigarette tax surety bond, as referenced in 16-11-117, MCA, must be on file with the Montana department of revenue and written authorization given to county treasurer by the department before credit purchases are allowed.~~

~~(c) The original copy of form CT-201, order for Montana metered cigarette tax, shall be submitted to the department by county treasurers to report each cash or credit purchase.~~

~~(d) County treasurers shall keep ledgers verifying ascending and descending settings on cigarette tax meters.~~

~~(2)~~(1) Roll or hand-applied stamp orders shall be submitted on form CT-201, directly to the department on a cash or credit basis.

(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: 16-11-103, MCA

IMP: 16-11-115 and 16-11-117, MCA

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

(2) remains the same.

(3) Cigarette tax distributions are made to an Indian

tribe pursuant to an agreement between the Indian tribe and the department of revenue. The agreement provides for the collection of a tribal cigarette tax on the Indian reservation and a distribution, less the administrative expense, if applicable, to the Indian tribe based on the negotiated quota agreement.

(4) 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 form CT-207. Upon receipt of form CT-207 the department will approve the credit or mail the refund within ten (10) working days.

(5) No credit or refund for non-taxed (quota) sales on an Indian reservation will be allowed to a wholesaler once the retailer/reservation has depleted the quota amount. (See ARM 42.31.107 for qualifying sales.) Amounts on form CT-207 received during the month will be reconciled with amounts on form CT-206 filed at the appropriate time. Any discrepancies found will be added to or subtracted from the amount requested for credit/refunds of the current month. Added/subtracted amounts will be applied to the request of the wholesaler that causes the discrepancy to develop.

AUTH: 16-11-103, MCA

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

42.31.201 TOBACCO PRODUCTS DEFINED FOR TAX PURPOSES  
DEFINITIONS The following definitions apply to this subchapter:

(1) ~~For the purposes of this tax, products~~ "Tobacco products" are defined by the following list, but are not ~~inclusive limited~~ limited to this list:

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

(b) smoking, chewing, and snuff tobaccos.

(2) "Wholesale price" means the comparable arm's length price for which a manufacturer sells a tobacco product to a wholesaler or any other person before any discount or other reduction.

AUTH: 16-11-103, MCA

IMP: 16-11-102, 16-11-202, MCA

42.31.202 PAYMENT OF TAX -- BOND (1) The wholesaler shall remit the appropriate tax calculated at the statutory rate on the wholesale price paid for tobacco products purchased and delivered from manufacturers, less 5% of the computed tax for collection, ~~together with copies of the itemized invoices and Form No. TP-101, Tobacco Products Tax Reporting Form.~~ Such remittance shall be made to the department of revenue by the 10th of each month covering purchases of tobacco products made during the previous month. ~~Forms will be supplied by the department of revenue upon request.~~

(2) All in-state wholesalers shall remit the tax on form TP-101, tobacco products tax reporting form, together with copies of the itemized invoices procured from the manufacturer

of all tobacco products or a computerized print-out approved by the department.

(3) All out-of-state wholesalers shall remit the tax on form TP-101A together with form TP-101B or a computerized print-out approved by the department.

(4) All such remittance shall be made to the department by the 10th of each month covering purchases of tobacco products made during the previous month. Forms will be supplied by the department upon request.

(2)(5) The department may in its discretion require that wholesalers be bonded under the provisions of these rules.

AUTH: 16-11-103, MCA

IMP: 16-11-203, MCA

42.31.203 OUT-OF-STATE WHOLESALERS (1) All out-of-state wholesalers meeting the conditions of "transacting business in this state" as provided in 35-1-1026, MCA, and all out-of-state wholesalers doing intrastate business within Montana, are subject to all of the provisions of Title 16, chapter 11, part 2, MCA, and these regulations as Montana wholesalers.

AUTH: 16-11-103, MCA

IMP: 16-11-201 and 16-11-203, MCA

42.31.204 PAYMENT OF TAX BY RETAILER (1) ~~Any individual, firm, fiduciary, partnership, corporation, trust, organization, or association, however formed, who is engaged in the business of selling tobacco products to the ultimate consumer and Before offering to sell tobacco products, as defined in ARM 42.31.201, a retailer who purchases tobacco products on for which the statutory tobacco products tax has not been pre-collected and paid to the department of revenue, must comply with all the provisions of Title 16, chapter 11, part 2, MCA, and these rules to by prepaying the tax before offering to sell such tobacco products.~~

(2) remains the same.

AUTH: 16-11-103, MCA

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

42.31.205 DISPLAY OF NOTICE OF TAX (1) Any person selling tobacco products at retail shall display, in the premises where such products are sold, a notice of the tax included in the selling price.

(2) remains the same.

AUTH: 16-11-103, MCA

IMP: 16-11-202, MCA

42.31.213 WHOLESALER AND RETAILER RECORDS (1) Every wholesaler shall keep at its place of business complete and accurate records for that place of business, including legible copies of all invoices for tobacco products held, purchased and delivered, or sold in this state by the wholesaler. All records must be preserved for a period of 5 five years from the date of purchase or from the date of last entry in the records.

(2) Every retailer shall keep at its place of business

complete and accurate records for that place of business, including legible copies of all itemized invoices of purchases of tobacco products purchased and delivered from all wholesalers. The invoices shall show the name and address of the wholesaler and the date of purchase. All records must be preserved for a period of 5 five years from the date of purchase or from the date of last entry in the records.

(3) All records may be inspected by the department in accordance with the provisions of [New Rule II proposed in MAR Notice No. 42-2-661 in this issue].

AUTH: 16-11-103, MCA

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

42.31.221 CREDITS FOR UNSALABLE TOBACCO PRODUCTS OTHER THAN CIGARETTES (1) remains the same.

(2) Credits must be claimed by filing ~~Form No.~~ form TP-102, Claim for Credit on Tobacco Products Tax. Forms will be supplied by the department of revenue upon request.

(3) remains the same.

AUTH: 16-11-103, MCA

IMP: 16-11-206, MCA

42.31.302 COMPLAINTS, INVESTIGATIONS, AND PENALTIES

(1) remains the same.

~~(2) The department will not consider small or trifling complaints or complaints where the cost of the investigation will exceed the amount of the extended credit.~~

~~(3) Upon receipt of a complaint, 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, the department will proceed pursuant to 16-10-403, MCA, and ARM 42.2.613 through 42.2.621.~~

~~(4) Violations of Title 16, chapters 10 and 11, MCA, shall be punished by applying penalties using a progressive procedure. The first violation in any three year period will result in a written warning. A second violation in the same three year period may result in a fine of \$500 and/or suspension of the violator's license for a period of time not less than 5 nor more than 20 consecutive business days. The third and any other subsequent violation may result in a fine of \$500 and/or suspension of license for a period of not less than 20 consecutive business days nor more than one year. No person who has their license suspended for one year may reapply for a license until one year after the year for which the license was suspended.~~

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

IMP: ~~16-10-305~~ 16-10-403 and 16-11-118, MCA

42.31.303 RECORDS (1) remains the same.

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

(3) The records or invoices shall be maintained for 5 five years.

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

IMP: ~~16-10-305~~ and 16-11-118, MCA

42.31.304 DATE OF MAILING AS DATE OF PAYMENT (1) The date of payment shall be considered to be the date of mailing the payment. The date of mailing shall be determined by ~~reference to as described in~~ ARM 42.3.111.

AUTH: 16-10-104, MCA

IMP: ~~16-10-305~~ 2-4-201 and 16-10-104, MCA

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 minimum price set by the department ~~of revenue~~ as required by statute.

(2) and (3) remain the same.

AUTH: 16-10-104, MCA

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

42.31.306 SALES/PURCHASES BELOW COST - REBATES (1) It shall be a violation of Title 16, ~~Montana Code Annotated MCA,~~ for any retailer or wholesaler to advertise or sell cigarettes at less than minimum price set by the department ~~of revenue~~ using methods known as rebates, gifts, or concessions.

(2) It shall also be a violation of Title 16, ~~Montana Code Annotated MCA,~~ for a retailer to attempt to obtain any rebate, gift, or concession in conjunction with cigarette purchases that will lower the cost.

AUTH: 16-10-104, MCA

IMP: 16-10-301, MCA

42.31.308 WHOLESALE/RETAIL PRICES (1) remains the same.

(2) When tax increases occur, 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 ~~Montana~~ department ~~of revenue~~ or on a voluntary system basis by the wholesaler.

(3) and (4) remain the same.

AUTH: 16-11-103, MCA

IMP: 16-11-111, MCA

42.31.309 DEFINITIONS ~~(1) As used in~~ In addition to the definitions found in 16-10-103, MCA, the following definitions apply to this sub-chapter the following definitions apply in addition to those found in 16-10-103, MCA:

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

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

~~(c) "Department" means the Montana state department of revenue provided for in 2-15-1301, MCA.~~

~~(d) "Final order" means an order entered by the department or a court of review which either has not been appealed on a timely basis or to which no appeal is available.~~

~~(h)(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.~~

~~(g)(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.~~

~~(e)(5) "Montana Cigarette Sales Act" means the laws codified in Title 16, chapter 10, MCA.~~

(6) For the purposes of enforcing tobacco products sales and use by minors, "tobacco" means a substance intended for human consumption that contains tobacco. The term includes, but is not limited to, cigarettes, cigars, snuff, smoking tobacco, and smokeless tobacco.

~~(f)(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: 16-10-104, MCA

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

42.31.310 PETITION REQUIREMENTS (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 ~~of revenue, Form form~~ CT-210 and all supporting documentation 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.

(2) remains the same.

AUTH: 16-10-104, MCA

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

~~42.31.311 APPEALS AND HEARINGS (1) Within 30 days of receipt of the petition and supporting information for approval of a lower cost, the department shall notify affected persons of the filing of the proposed lower cost petition by publication in the Montana Administrative Register and direct mailing to those who have indicated to the department a desire to receive such information. Unless determined to be confidential pursuant to ARM 42.31.317, the petition will be available for review in income and miscellaneous tax division of the department which is located in the Sam W. Mitchell building, Helena, Montana or a complete copy may be obtained by contacting petitioner.~~

~~(2) To request a hearing on the petition, affected persons will have 30 days from either the date of publication or the date of mailing of the notice, whichever is the later.~~

~~(a) Upon receipt of a timely request for hearing, the~~

~~matter shall be referred to the department's hearing examiner who shall within 30 days schedule a hearing.~~

~~(b) The hearing shall be conducted as a contested case pursuant to the provisions of Title 2, chapter 4, part 6, MCA.~~

~~(c) Upon completion of the hearing, the hearing examiner shall within 30 days issue a proposed order either modifying the relief requested in the petition or granting or denying the petition based upon the substantial credible evidence presented at the hearing.~~

~~(d) Any party adversely affected by the hearing examiner's proposed decision may file written objections and request oral argument before the director of revenue. The time for filing objections and requests for oral argument shall be provided in the notice of the hearing examiner's proposed decision.~~

~~(e) If oral argument is requested a time convenient to the director's schedule shall be set. No party shall be permitted to introduce new evidence or new material of any kind at the time for oral argument before the director. Upon completion of oral argument the director shall have 60 days to issue the department's final decision.~~

~~(3) If a hearing request is not received within the 30-day period, the department will issue an order of approval of lower cost and notify all affected persons. The order will become effective 30 days from the date of issuance.~~

~~(4) The time limits set forth herein may be extended by the department or upon the request of petitioner and/or other affected persons and shall be extended for a reasonable time upon a showing of good cause by the parties.~~

~~(5) The petition filed pursuant to this regulation shall be considered public information. ARM 42.2.613 through 42.2.621, effective December 17, 1999, are incorporated by reference. Copies may be obtained by contacting the Department of Revenue, P.O. Box 5805, Helena, Montana 59604-5805.~~

AUTH: 16-10-104, MCA

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

42.31.312 ORDER OF APPROVAL OF A LOWER COST (1) and (2) remain the same.

~~(3) Appeal rights are contained in Title 2, chapter 4 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: 16-10-104, MCA

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

42.31.313 COST DATA AND ANALYSIS (1) In establishing the actual cost of doing business, cost data analysis shall contain sufficient information to show ~~one hundred percent (100%)~~ allocation of all costs of the company's total operations. Indirect costs must be allocated to all products based on a method consistent with those required for income tax reporting.

The wholesaler or retailer shall annotate the actual cost data shown on the latest filed federal income tax return (including

federal schedules) submitted to the department to demonstrate how such costs have been allocated in calculating the petitioner's cost of doing business.

(2) The cost data to be submitted shall contain the petitioner's basic 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) ~~If~~ petitioner's cigarette cost of doing business is ~~not~~ 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 a representative sample of invoices issued for cigarettes purchased from each cigarette manufacturer or wholesaler for the period as provided in ~~ARM 42.31.311~~ 16-10-103, MCA;

(c) ~~Proof~~ proof of total state cigarette tax stamp indicia purchased by petitioner during the period ~~applicable under ARM 42.31.311~~ covered in the petition;

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

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

(f) Form 4562;

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

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

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

AUTH: 16-10-104, MCA

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

42.31.315 GUIDELINES FOR WHOLESALERS (1) remains the same.

(2) Costs of doing business by the wholesaler shall include:

(a) all direct costs, including, but not limited to:

(i) inbound freight charges;

(ii) labor costs to affix tax indicia;

(iii) cost of equipment to affix hand stamps;

(iv) ink;

(v) glue;

(vi) rental and maintenance expenses for the cigarette tax indicia;

(vii) state and local cigarette licenses; and

(b) indirect overhead costs and expenses paid or incurred,

including, but not limited to:

- (i) pre-opening expenses;
- (ii) management fees;
- (iii) labor costs (including salaries of executives and officers);
- (iv) rents;
- (v) depreciation;
- (vi) selling costs;
- (vii) maintenance expenses;
- (viii) interest expenses;
- (ix) delivery costs;
- (x) all types of licenses;
- (xi) all types of taxes;
- (xii) all types of insurance;
- (xiii) advertising; and
- (xiv) any and all district, central, regional and national administrative and operational costs and expenses.

(3) remains the same.

AUTH: 16-10-104, MCA

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

42.31.316 GUIDELINES FOR RETAILERS (1) remains the same.

(2) Costs of doing business by the retailer shall include:

- (a) all direct costs, including, but not limited to:
  - (i) inbound freight charges; and
  - (ii) state and local cigarette licenses; and
- (b) indirect overhead costs and expenses paid or incurred, including, but not limited to:

- (i) pre-opening expenses;
- (ii) management fees;
- (iii) labor costs (including salaries of executives and officers);
- (iv) rents;
- (v) depreciation;
- (vi) selling costs;
- (vii) maintenance expenses;
- (viii) interest expenses;
- (ix) delivery costs;
- (x) all types of licenses;
- (xi) all types of taxes;
- (xii) all types of insurance;
- (xiii) advertising; and
- (xiv) any and all district, central, regional and national administrative and operational costs and expenses.

(3) All indirect overhead costs, including any pre-opening and central and regional administrative expenses, shall be allocated to the Montana location based on a method consistent with those used for income tax reporting. All revenues and expenses paid or incurred shall be properly matched for the analysis period.

AUTH: 16-10-104, MCA

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

42.31.317 PROTECTIVE ORDER FOR CONFIDENTIAL INFORMATION

(1) remains the same.

(2) If the department determines that the specified information is confidential, it shall protect the information through a protective order issued by the hearings examiner, the director, or ~~his~~ the director's designee. The department shall use the protective order sanctioned by the Montana supreme court in Mountain States Telephone and Telegraph Company v. Department of Public Service Regulation, 194 Mont. 277, 634 P.2d 181 (1981), as a guide in fashioning a protective order. The order is an appendix to the Montana supreme court opinion in this case. In particular, if the department determines that the specified information is confidential trade secret information, the department will use the protective order to ensure that competitors are not allowed access to the information. Access to the information will be restricted to attorneys and if appropriate, experts who are not employees, officers, or directors of the competitors or an association of competitors.

AUTH: 16-10-104, MCA

IMP: Article II, sections 9 and 10, Montana Constitution; 16-10-103 and 16-10-301, MCA

42.31.325 LICENSE (1) All persons that sell tobacco products at retail must obtain a license from the department of revenue. This includes sales over the counter, by vending machine or any other means of selling the tobacco products.

(2) through (4) remain the same.

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

AUTH: 16-11-312, MCA

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

42.31.340 PACKAGING OF TOBACCO PRODUCTS (1) remains the same.

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

AUTH: 16-11-312, MCA

IMP: 16-11-307, MCA

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: 16-11-312, MCA

IMP: 16-11-308, MCA

42.31.350 USE OF TOBACCO PRODUCTS IN PUBLIC SCHOOL BUILDINGS (1) The use of tobacco products in public school buildings referred to in ~~20-5-411~~ 20-1-220, MCA, applies only to elementary and secondary schools.

AUTH: 16-11-312, MCA

IMP: ~~20-5-411~~ 20-1-220, MCA

42.31.501 DEFINITIONS The following definitions will

apply to terms used in this sub-chapter:

(1) ~~"Carrier access service" for telephone license tax purposes, means the service a local exchange company provides to an interexchange carrier for the origination or termination of telecommunications. The local exchange company and the local exchange carrier are telecommunications companies that provide telephone access lines to members of the general public who are its customers.~~

(2) ~~"Equipment" for telephone license tax purposes, means all items generally classified as customer premise equipment such as telephone and terminal equipment. This includes, but is not limited to, telephone instruments, station sets, dialers, modems, private branch exchanges (PBX), switches, computers, wire, cable, facsimile machines, pagers and non-electronic associated items such as documentation, manuals, and furniture.~~

(3) ~~"Gross income" for telephone license tax purposes, means all the gross operating income derived from intrastate telephone business without allowance for expenses and deductions. Gross operating income includes, but is not limited to, local revenues, private line revenues, and long distance service revenues. Gross income does not include carrier access revenues or revenue from the sale of wholesale services as described in 15-53-101, MCA, or non-operating income or uncollectable accounts actually written off during the year provided recoveries of uncollectable accounts are included in gross income in the year of recovery.~~

(4) ~~"Interexchange carrier" for telephone license tax purposes, means a telecommunications company that provides customers voice or data transmission service beyond the toll-free calling area of a local exchange company by means of owned or leased facilities, or any combination thereof. The term may include a local exchange company, which in addition to providing telephone access lines to the general public and carrier access service, also provides long distance or message toll services.~~

(5) ~~"Non-operating income" for telephone license tax purposes, means income derived from non-transmission related services or activities. This would include income from activities that are not necessary for or directly related to the transmission of messages. Non-operating revenues must be segregated and separately identified from other charges. Examples of non-operating income are interest income, dividends, and rents.~~

(6) ~~"Non-transmission related services or activities" for telephone license tax purposes includes, but is not limited to, installation, repair, maintenance, construction, termination, engineering handling, financing, interest, billings and collection, automated data storage, data retrieval and processing services, and the use of computer time or equipment if the sales or rentals of that equipment are not includable as gross income. For example, a company that provides access to an on-line computer data base would not be subject to the tax on the receipts from the data processing or inquiry, but would be subject to tax on the receipts from the separately stated transmission of the data.~~

~~(7) "Person" for telecommunications excise tax purposes, means an individual, estate, trust, receiver, cooperative association, corporation, limited liability company, firm, partnership, joint venture, syndicate or other entity.~~

~~(a) A person may not include federal government entities or their subdivisions.~~

~~(b) A person may not include enrolled Native American entities, including tribal offices, businesses owned by the tribe and operating on the tribal reservation, and enrolled tribal members residing on their reservation, are exempt from the tax.~~

~~(8)(1) "Related services" for telecommunications excise tax purposes, means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information via telecommunications through, but not limited to, operator and information services, directory assistance, call waiting, call forwarding, caller ID, call rejection, last call return, priority call, speed calling, three-way calling, voice messaging, continuous redial and line blocking.~~

~~(9)(2) "Telecommunications" for telecommunications excise tax purposes, means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.~~

~~(10) "Telephone business" for telephone license tax purposes, means the access and transport, for hire, of two-way communications originating from a point of access to a point of termination within the state of Montana. This includes, but is not limited to, the transmission of messages or information through use of local, toll and wide area telephone service, private line service, channel service, teletype-writer, computer exchange service, cellular mobile telecommunications service, specialized mobile radio, stationary two-way radio, enhanced paging service, or any other form of mobile and portable communications. Telephone business does not include the sale, lease, repair, installation, or maintenance of equipment or the provision of non-transmission related services.~~

~~(11)(3) "Two-way transmission" for telecommunications excise tax purposes, means all forms of telecommunications except those forms of telecommunications that are only capable of one-way transmission and are not related services as defined in (8)(1) above.~~

~~(12)(4) "Internet revenue" is revenue generated from the activity of providing internet access by an internet service provider.~~

~~AUTH: 15-53-104 and 15-53-155, MCA~~

~~IMP: 15-53-101, 15-53-104, 15-53-111, 15-53-145, and 15-53-147, MCA~~

42.31.502 TAXPAYER RECORDS (1) For the telecommunications excise tax, each telecommunications service provider who is responsible and liable for the collection of the tax under this sub-chapter will keep records showing the total retail revenue

to support the tax liability as required in these rules.

~~(2) Anytime during usual business hours, the department, or its duly authorized agents, may enter any office or other area where the provider maintains business records to examine the records and other supporting data from which the reports were prepared. These audits may be conducted at the same time as audits are conducted for other state taxes.~~

~~(3) Records and other supporting data used to prepare the quarterly returns must be maintained for a period of five years from the due date of the return or five years from the date of payment, whichever is later. All records may be inspected by the department in accordance with the provisions of [New Rule II proposed in MAR Notice No. 42-2-661 in this issue].~~

~~AUTH: 15-53-155, MCA~~

~~IMP: 15-53-150, MCA~~

42.31.504 WHO MUST COLLECT THE TAX (1) remains the same.

(2) A telecommunications service provider has the right to request a hearing on a tax liability as provided 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.

(3) through (5) remain the same.

(6) Enrolled tribal members residing on their reservations are exempt from the tax.

AUTH: 15-53-155, MCA

IMP: 15-1-211, 15-1-701, 15-53-130, 15-53-137, 15-53-138, and 15-53-139, MCA

42.31.510 PENALTY AND INTEREST (1) ~~For the telephone license tax, penalty attaches if the tax that is deficient is not paid within ten days of notice of final determination. Thereafter, interest is calculated on the amount of tax.~~

~~(2) In the instance of a delinquent telephone license tax liability, interest is calculated at the rate of 1% per month or fraction thereof on the unpaid balance of the tax.~~

~~(3) In the instance of a deficiency, the interest is calculated at the rate of 1% per month or fraction thereof on the unpaid tax. For the taxes administered by the department, refer to [New Rule III proposed in MAR Notice No. 42-2-661 in this issue].~~

~~AUTH: 15-53-104 and 15-53-155, MCA~~

~~IMP: 15-1-216, 15-53-101, 15-53-104, and 15-53-111, MCA~~

42.31.601 DEFINITIONS The following definitions apply to terms used in this sub-chapter:

(1) "Customer premise equipment" means all items generally classified as customer premise equipment such as telephone and terminal equipment. This includes, but is not limited to:

- (a) telephone instruments;
- (b) station sets;
- (c) dialers;
- (d) modems;
- (e) private branch exchanges (PBX);

(f) switches;  
(g) computers;  
(h) wire;  
(i) cable;  
(j) facsimile machines; and  
(k) pagers and non-electronic associated items such as manuals, and furniture.

(2) The term "quarters" means ~~quarters which end: September 30, December 31, March 31, and June 30~~ is defined in [New Rule II proposed in MAR Notice No. 42-2-661 in this issue].

(3) The term "retail revenue" applies to both intrastate and interstate telecommunications. To be considered retail revenue the communications need to:

- (a) originate in Montana; or
- (b) terminate in Montana; and
- (c) be billed for a service address in Montana.

(4) The term "telecommunications service" means the offering of telecommunications for a fee directly to the public or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

AUTH: 69-3-860, MCA

IMP: 69-3-860, MCA

42.31.603 TAXPAYER RECORDS (1) ~~Each telecommunication provider who is liable for the tax under this sub-chapter will keep records showing the total retail revenue to support the tax liability as required in these rules.~~

~~(2) Anytime during usual business hours, the department, or its duly authorized agents, may enter any office or other area where the provider maintains business records to examine the records and other supporting data from which the reports were prepared. These audits may be conducted at the same time as audits are conducted for other state taxes.~~

~~(3) Records and other supporting data used to prepare the quarterly returns must be maintained for a period of five years from the due date of the return or five years from the date of payment, whichever is later. All records may be inspected by the department in accordance with the provisions of [New Rule II proposed in MAR Notice No. 42-2-661 in this issue].~~

AUTH: 69-3-860, MCA

IMP: 69-3-860, MCA

42.31.2101 DEFINITIONS The following definitions apply to terms used in this sub-chapter:

(1) A "public contractor" is anyone who submits a proposal to or enters into a contract with a governmental agency or department for the construction or reconstruction of any public work, the cost of such construction or reconstruction being greater than \$5,000. The term "public contractor" includes sub-contractors.

(2) "Public construction work," ~~15-50-101, MCA, is broadly construed to include~~ any work requiring the installation, addition, placement, replacement, or removal of any equipment, parts, structures, or materials of any kind whatsoever. This

rule applies to all contracts exceeding \$5,000 whether or not such contracts require performance of service, maintenance, repair, or any other type of work in addition to, or as part of, the work as stated above construed.

AUTH: ~~15-1-201~~ 15-50-301, MCA

IMP: 15-50-101, MCA

42.31.2121 CONTRACT AWARD REPORT BY AGENCY (1) Whenever a contract for the performance of public construction or reconstruction is awarded by any governmental agency, or departments thereof or any contractor sub-letting a contract, the awarding agencies, departments or contractors must complete and file with the department of ~~revenue~~ a contract award report (form PC-1) which must contain the following information:

(a) ~~the~~ name of the governmental agency, department thereof within that agency, or awarding contractor awarding the contract;

(b) ~~the~~ contract number, location and general description of construction to be performed, and the date the contract or subcontract, whichever the case may be, was awarded;

(c) ~~the~~ name and address of the contractor or subcontractor awarded the contract;

(d) ~~the~~ total value in money, credits, or other valuable consideration specified in the contract, that is to be paid for the completion of the contract;

(e) ~~the~~ date when the construction is to be completed; and

(f) ~~the~~ date when the increments of the contract costs are to be paid the contractor or subcontractor, the amounts of such payments, and the percentage of the increment withheld from each payment to insure satisfactory completion of the job.

(2) The above information must be transmitted to the department of ~~revenue~~ within ~~10~~ ten days from the date that the contract is awarded.

AUTH: ~~15-1-201~~ 15-50-301, MCA

IMP: ~~15-50-301~~ 15-50-101, 15-50-205, and 15-50-206, MCA

42.31.2122 GROSS RECEIPTS WITHHOLDING BY AGENCY (1) The governmental agencies that have awarded a contract for the performance of public construction or reconstruction works and are making payment for the satisfactory performance of said contract, or any increment thereof, must withhold 1% of the amount due and transmit such amount withheld to the department of ~~revenue~~ along with a gross receipts withholding report (form PC-2) which must contain the following:

(a) ~~the~~ governmental agency that awarded the contract and is making payment;

(b) ~~the~~ contract number, location and general description of construction to be performed, and the date contract was awarded;

(c) ~~the~~ name and address of the contractor to whose account the 1% payment is to be credited;

(d) ~~the~~ total sum due the contractor, including amounts to be withheld until completion of the contract;

(e) the total sum due the contractor less any amount to be withheld until completion of the contract by including the 1% withholding;

(f) the net amount paid the contractor at time of reporting; and

(g) the amount transmitted to the department of revenue at time of reporting.

(2) The withholding agent or agency must in all cases issue a receipt to the contractor for all monies withheld under Title 15, chapter 50, MCA.

AUTH: ~~15-1-201~~ 15-50-301, MCA

IMP: 15-50-101, 15-50-205, and 15-50-206, MCA

42.31.2131 CONTRACT AWARD REPORT BY CONTRACTOR AWARDED

CONTRACT (1) Whenever a contract for the performance of public construction or reconstruction works is awarded by the federal government or by any agencies or when a contractor sublets a contract, the contractor awarded the contract must complete and file with the department of revenue a contract award report (form PC-1) which must contain the following information:

(a) the name of the governmental agency or prime contractor awarding the contract;

(b) the contract number, location and general description of construction to be performed;

(c) the name and address of the contractor or subcontractor awarded the contract;

(d) the total value in money, credits, or other valuable consideration specified in the contract, that is to be paid for the completion of the contract;

(e) the date when the construction is to be completed; and

(f) the date when the increments of the contract costs are to be paid the contractor or subcontractor, the amount of such payments, and the percentage of the increment withheld from each payment to insure satisfactory completion of the job.

(2) The above information must be transmitted to the department of revenue within ~~10~~ ten days from the date that the contract is awarded.

AUTH: ~~15-1-201~~ 15-50-301, MCA

IMP: ~~15-50-301~~ 15-50-101, 15-50-205, and 15-50-206, MCA

42.31.2132 GROSS RECEIPTS PAYMENT BY CONTRACTOR (1) If

the 1% of the gross receipts is not withheld by the contracting governmental agency or awarding contractor, the contractor must make payment of such amounts to the department of revenue within 30 days after the date on which the contractor receives each increment of payment for work performed by the contractor. Payment by the contractor must be accompanied by a completed gross receipts withholding report (form PC-2).

(2) remains the same.

(3) In all cases where the federal government or any agency is the sole governmental agency awarding the contract, payment must be made by the contractor to the department of revenue in an amount equal to 1% of the gross receipts received by the contractor as payment for work performed by the

contractor. The payment of such amount to the department of revenue is the duty of the contractor without any specific request or notice, relative to a particular payment, that such payment must be made to the department of revenue.

AUTH: ~~15-1-201~~ 15-50-301, MCA

IMP: 15-50-101, 15-50-205, and 15-50-206, MCA

42.31.2133 ADDITIONAL REPORT AND WITHHOLDING REQUIREMENTS IN CASE OF SUB-LET CONTRACT (1) remains the same.

(2) Any contractor sub-letting a contract is also required to withhold 1% of the amount due his sub-contractor but will not transmit such amount to the department of revenue. He will complete the gross receipts withholding report (form PC-2) checking the box marked "Sub-contractor Allocation." The amount withheld (amount shown on line 8 on form PC-2) will then be credited to the sub-contractor and deducted from the original 1% which was withheld from the prime contractor. For failure to file the allocation report within the required 30-day period, provided for in ARM 42.31.2132, a penalty of 10% of the tax withheld from the subcontractor shall be due from the prime contractor.

AUTH: ~~15-1-201~~ 15-50-301, MCA

IMP: 15-50-101, 15-50-205, and 15-50-206 and ~~15-50-301~~, MCA

42.31.2141 PERSONAL PROPERTY TAX REFUND (1) remains the same.

(2) These refunds will only be allowed, after all necessary reports are filed and copies of paid personal property tax and motor vehicle fee receipts are submitted to the department of revenue. ~~Contractors claiming this credit must provide the current contractor's certificate of registration number as required by 39-9-204, MCA, on their refund request. Failure to provide this registration number will result in denial of the credit.~~

(3) remains the same.

AUTH: ~~15-1-201~~ and 15-50-301, MCA

IMP: 15-50-207, 15-50-304, and 39-9-204, MCA

42.31.2142 CORPORATION LICENSE TAX CREDIT (1) and (2) remain the same.

~~(3) Contractors claiming this credit must have a current contractor's certificate of registration number as required by 39-9-204, MCA.~~

AUTH: ~~15-1-201~~ 15-50-301, MCA

IMP: 15-50-205, 15-50-206, 15-50-207, and 39-9-204, MCA

42.31.2143 STATE INCOME TAX CREDIT (1) and (2) remain the same.

~~(3) Contractors claiming this credit must have a current contractor's certificate of registration number as required by 39-9-204, MCA.~~

AUTH: 15-1-201, MCA

IMP: 15-50-205, 15-50-206, 15-50-207, and 39-9-204, MCA

5. The following rules remain the same but the citations within the histories are corrected.

42.31.401 REPORTING REQUIREMENTS (1) and (2) remain the same.

AUTH: 10-4-203, 10-4-212, and 15-1-201(~~1~~), MCA

IMP: 10-4-201 through 10-4-211, MCA

42.31.405 EXEMPTIONS (1) through (3) remain the same.

AUTH: 10-4-203, 10-4-212, and 15-1-201(~~1~~), MCA

IMP: 10-4-202 and 10-4-203, MCA

42.31.2134 ESTIMATION OF TAX UPON FAILURE TO FILE AND PAY TAX (1) remains the same.

AUTH: ~~15-1-201~~ 15-50-301, MCA

IMP: 15-50-206, ~~15-50-301~~, 15-50-308, 15-50-309, and 15-50-310, MCA

6. The department proposes to repeal the following rules:

42.31.211 WHOLESALER INVOICES which can be found on page 42-3125 of the Administrative Rules of Montana.

AUTH: 16-11-103, MCA

IMP: 16-11-202 and 16-11-203, MCA

42.31.214 DEPARTMENT EXAMINATIONS AND PRESERVATION OF RECORDS which can be found on page 42-3126 of the Administrative Rules of Montana.

AUTH: 16-11-103, MCA

IMP: 16-11-202 and 16-11-203, MCA

42.31.320 TOBACCO PRODUCTS DEFINED REGARDING SALES TO MINORS which can be found at page 42-3177.1 of the Administrative Rules of Montana.

AUTH: 16-11-312, MCA

IMP: 16-11-302, MCA

42.31.403 EXAMINATION OF RECORDS which can be found on page 42-3148 of the Administrative Rules of Montana.

AUTH: 10-4-203, 10-4-212, and 15-1-201(~~1~~), MCA

IMP: 10-4-212, MCA

42.31.404 RETENTION OF RECORDS which can be found on page 42-3148 of the Administrative Rules of Montana.

AUTH: 10-4-203, 10-4-212, and 15-1-201(~~1~~), MCA

IMP: 10-4-203, 10-4-207, and 10-4-212, MCA

42.31.502 TAXPAYER RECORDS which can be found on page 42-3151 of the Administrative Rules of Montana.

AUTH: 15-53-155, MCA

IMP: 15-53-150, MCA

42.31.515 EFFECTIVE DATES which can be found on page 42-3153 of the Administrative Rules of Montana.

AUTH: 15-53-104 and 15-53-155, MCA

IMP: 15-53-101, 15-53-104, 15-53-111, 15-53-145, and 15-53-147, MCA

42.31.603 TAXPAYER RECORDS which can be found on page 42-3162 of the Administrative Rules of Montana.

AUTH: 69-3-860, MCA

IMP: 69-3-860, MCA

7. The department proposes New Rule I because 15-50-301, MCA, requires the contractors who perform public works to file a report with the Department identifying those projects. The rule outlines what will be acceptable reporting documents in this regard.

The department is proposing the amendments to ARM 42.31.102, 42.31.103, 42.31.105, 42.31.109, 42.31.131, 42.31.201, 42.31.203, 42.31.204, 42.31.205, 42.31.221, 42.31.303, 42.31.305, 42.31.306, 42.31.308, 42.31.309, 42.31.310, 42.31.313, 42.31.315, 42.31.316, 42.31.317, 42.31.325, 42.31.340, 42.31.345, 42.31.350, 42.31.502, 42.31.601, 42.31.603, 42.31.2101, 42.31.2121, 42.31.2122, 42.31.2131, 42.31.2132, and 42.31.2133 as housekeeping changes resulting from the department's biennial review of chapter 31.

The language in ARM 42.31.401, 42.31.405 and 42.31.2134 remains the same but the cites found in the authorities to each of these rules are corrected.

The department proposes to amend ARM 42.31.107 to allow for computerized filing of Schedule A and to clarify the documents that the out-of-state wholesalers are required to file with the Department, as well as where to file these documents.

The department proposes to amend ARM 42.31.111 because metered cigarette tax units are no longer used in the state of Montana. Therefore, the rule is being amended to bring it into conformance with the current practice of the agency and industry.

The department proposes to amend ARM 42.31.202 because there are different forms for reporting for in-state and out-of-state wholesalers. The language as originally written did not identify the form number for reporting by out-of-state wholesalers.

The department proposes to amend ARM 42.31.213 because the department is creating a new rule in the general rules, ARM Title 42, chapter 2, regarding records retention and inspection in order to reduce the redundant language throughout the rules. The amendment to this rule reflects adopting that rule by reference.

The department proposes to amend ARM 42.31.302 because of general housekeeping and also because there is a need for consistency within the department concerning the appeal process available to the customers. This rule will reference the newly adopted rules pertaining to the office of dispute resolution in ARM Title 42, chapter 2, sub-chapter 6.

The department proposes to amend ARM 42.31.304 because the statute cited in this rule was repealed several years ago and it

is clearer to reference the general statutory authority regarding what constitutes the date of mailing and receipt of a tax payment.

The department proposes to amend ARM 42.31.311 and 42.31.312 to reference the newly adopted rules pertaining to the office of dispute resolution in ARM Title 42, chapter 2, subchapter 6.

The department proposes to amend ARM 42.31.501, 42.31.504, and 42.31.510 because the law was repealed January 1, 2000. The department is further amending ARM 42.31.504 to reflect the new office of dispute resolutions rules and advise the public where copies of those rules may be obtained.

The department proposes to amend ARM 42.31.2141, 42.31.2142, and 42.31.2143 because the contractor registration unit of the department of labor and industry does not have a complete list of public works contractors. Therefore, this portion of these rules is unenforceable.

The department proposes to repeal ARM 42.31.211 and 42.31.214 because this language is redundant to the new rule created in ARM Title 42, chapter 2, for the entire department concerning taxpayer records.

The department proposes to repeal ARM 42.31.320 because the definition in this rule was moved to ARM 42.31.309.

The department proposes to repeal ARM 42.31.403, 42.31.404, 42.31.502, and 42.31.603 because a new rule was adopted in ARM Title 42, chapter 2, regarding the inspection of records and retention of records for all tax types handled by the department. Unless a specific statute or rule indicate record retention and inspection shall be handled differently, the uniform rule will apply.

The department proposes to repeal ARM 42.31.515 because the law was repealed.

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

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

and must be received no later than November 3, 2000.

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

10. 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 paragraph 8

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.

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

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Mary Bryson  
MARY BRYSON  
Director of Revenue

Certified to Secretary of State September 25, 2000

BEFORE THE BOARD OF NURSING  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT  
of rules pertaining to )  
temporary practice permits, )  
general requirements for )  
licensure, re-examination, )  
licensure for foreign nurses, )  
temporary practice permits, )  
renewals and conduct of nurses )

TO: All Concerned Persons

1. On April 27, 2000, the Board of Nursing published a notice of the proposed amendment of the above-stated rules at page 988, 2000 Montana Administrative Register, issue number 8. The hearing was held May 17, 2000.

2. The Board has amended ARM 8.32.308, 8.32.401, 8.32.403, 8.32.404, 8.32.406, 8.32.408, 8.32.411 and 8.32.413 exactly as proposed.

3. The Board received two oral and six written comments. The comments received and the Board's response are as follows:

COMMENT NO. 1: The Board received an oral and written comment from Sami Butler, RN, Executive Director of the Montana Nurses Association supporting the amendments to the proposed rule amendments except 8.32.413. The Montana Nurses Association opposes requiring nurses to have their last name on identification badges for safety reasons.

COMMENT NOS. 2 - 8: The Board received oral and written comments from five nurses, Medallion Medical Care, Home Health, and WestMont opposing the amendment to 8.32.413(1)(a) requiring that nurses have their last names on identification badges. All commentators felt that having the nurses' last names on the identification badges would result in safety and security problems for the nurses.

RESPONSE: The Board discussed the concerns raised by the commentators and determined that the public's right to know outweighs the nurses' right of privacy in connection with having their last names on their identification badges. In support of this amendment the Board cited the fact that police officers are required to have last names on their identification badges.

BOARD OF NURSING  
RITA HARDING, RN, MN, PRESIDENT

By: /s/ Annie M. Bartos  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, September 25, 2000.

BEFORE THE BOARD OF NURSING  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT  
of rules pertaining to )  
licensure by endorsement, )  
temporary practice permits, )  
renewals, standards related to )  
registered nurse's responsi- )  
bilities, prescriptive authority )  
committee, initial application )  
requirements for prescriptive )  
authority, limitations on )  
prescribing controlled substan- )  
ces, quality assurance of )  
advanced practice nursing, and )  
renewal of prescriptive authority)

TO: All Concerned Persons

1. On June 29, 2000, the Board of Nursing published a notice of the proposed amendment of the above-stated rules at page 1539, 2000 Montana Administrative Register, issue number 12. The hearing was held July 20, 2000.

2. The Board has amended ARM 8.32.405, 8.32.408, 8.32.411, 8.32.1404, 8.32.1503, 8.32.1504, 8.32.1506, and 8.32.1510 exactly as proposed.

3. The Board has voted to not adopt the amendments to ARM 8.32.1508.

4. The Board received five comments. The comments received and the Board's response are as follows:

8.32.1508

COMMENT NO. 1: Steve Brown from the Montana Health Care Association raised a concern as to what constitutes unsafe nursing practice and what constitutes unsafe practice conditions. Neither term is defined.

COMMENT NO. 2: Sami Butler, R.N., on behalf of the Montana Nurses' Association opposes the amendment to 8.32.1508 that says, "reviewers must avoid any conflict of interest with the licensee." She feels the language is unclear and will be open to interpretation.

COMMENT NO. 3: One commentor stated that the peer review logistics in implementing the requirement leave a great deal to be desired. There needs to be a panel of nurse practitioners developed that would be appropriate for review.

COMMENT NO. 4: One commentor stated that the term "conflict of interest" in 8.32.1508 is not clear in its intent and was

concerned with how this would be interpreted. The commentor supported the rest of the amendments.

RESPONSE: The Board felt that the proposed amendment to 8.32.1508 needed further consideration and therefore voted to not adopt the amendment to that rule.

8.32.1504

COMMENT NO. 5: Chuck Brown, CEO of Dahl Memorial Healthcare stated that in connection with the proposed amendments to 8.32.1404(1), he was concerned that the cost of the results may exceed the benefits.

RESPONSE: The Board acknowledges the comment, but voted to adopt the amendment as proposed.

BOARD OF NURSING  
RITA HARDING, RN, MN, PRESIDENT

By: /s/ Annie M. Bartos  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, September 25, 2000.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF ADOPTION OF
adoption of rules relating	)	RULES RELATING TO CONTENT
to content and performance	)	AND PERFORMANCE STANDARDS
standards for social	)	FOR SOCIAL STUDIES, ARTS,
studies, arts, library	)	LIBRARY MEDIA, AND
media, and workplace	)	WORKPLACE COMPETENCIES
competencies	)	

TO: All Concerned Persons

1. On May 11, 2000, the Board of Public Education (Board) published notice of the proposed adoption of rules concerning content and performance standards for social studies, arts, library media, and workplace competencies, at page 1148 of the 2000 Montana Administrative Register, Issue Number 9.

2. After consideration of the comments received, the following rules are being adopted as proposed and codified as follows:

RULE I	(10.54.6010),	RULE XXX	(10.54.6092),
RULE II	(10.54.6011),	RULE XXXI	(10.54.6093),
RULE III	(10.54.6012),	RULE XXXII	(10.54.6094),
RULE IV	(10.54.6013),	RULE XXXIII	(10.54.6095),
RULE V	(10.54.6020),	RULE XXXIV	(10.54.6096),
RULE VI	(10.54.6021),	RULE XXXV	(10.54.6097),
RULE VII	(10.54.6022),	RULE XXXVI	(10.54.6098),
RULE VIII	(10.54.6023),	RULE XXXVII	(10.54.2510),
RULE IX	(10.54.6030),	RULE XXXVIII	(10.54.2511),
RULE X	(10.54.6031),	RULE XXXIX	(10.54.2512),
RULE XI	(10.54.6032),	RULE XL	(10.54.2513),
RULE XII	(10.54.6033),	RULE XLI	(10.54.2520),
RULE XIII	(10.54.6040),	RULE XLV	(10.54.2530),
RULE XIV	(10.54.6041),	RULE XLVI	(10.54.2531),
RULE XV	(10.54.6042),	RULE XLVII	(10.54.2532),
RULE XVI	(10.54.6043),	RULE XLVIII	(10.54.2533),
RULE XVII	(10.54.6050),	RULE XLIX	(10.54.2540),
RULE XVIII	(10.54.6051),	RULE L	(10.54.2541),
RULE XIX	(10.54.6052),	RULE LI	(10.54.2542),
RULE XX	(10.54.6053),	RULE LII	(10.54.2543),
RULE XXI	(10.54.6060),	RULE LIII	(10.54.2550),
RULE XXII	(10.54.6061),	RULE LIV	(10.54.2551),
RULE XXIII	(10.54.6062),	RULE LV	(10.54.2552),
RULE XXIV	(10.54.6063),	RULE LVI	(10.54.2553),
RULE XXV	(10.54.6087),	RULE LVII	(10.54.2560),
RULE XXVI	(10.54.6088),	RULE LVIII	(10.54.2561),
RULE XXVII	(10.54.6089),	RULE LIX	(10.54.2562),
RULE XXVIII	(10.54.6090),	RULE LX	(10.54.2563),
RULE XXIX	(10.54.6091),	RULE LXI	(10.54.2587),

RULE LXII	(10.54.2588),	RULE XCIV	(10.54.6592),
RULE LXIII	(10.54.2589),	RULE XCV	(10.54.6593),
RULE LXIV	(10.54.2590),	RULE XCVI	(10.54.6594),
RULE LXV	(10.54.2591),	RULE XCVII	(10.54.6595),
RULE LXVI	(10.54.2592),	RULE XCVIII	(10.54.6596),
RULE LXVII	(10.54.2593),	RULE XCIX	(10.54.6597),
RULE LXVIII	(10.54.2594),	RULE C	(10.54.6598),
RULE LXIX	(10.54.2595),	RULE CI	(10.54.9510),
RULE LXX	(10.54.2596),	RULE CII	(10.54.9511),
RULE LXXI	(10.54.2597),	RULE CIII	(10.54.9512),
RULE LXXII	(10.54.2598),	RULE CIV	(10.54.9513),
RULE LXXIII	(10.54.6510),	RULE CV	(10.54.9520),
RULE LXXIV	(10.54.6511),	RULE CVI	(10.54.9521),
RULE LXXV	(10.54.6512),	RULE CVII	(10.54.9522),
RULE LXXVI	(10.54.6513),	RULE CVIII	(10.54.9523),
RULE LXXVII	(10.54.6520),	RULE CIX	(10.54.9530),
RULE LXXVIII	(10.54.6521),	RULE CX	(10.54.9531),
RULE LXXIX	(10.54.6522),	RULE CXI	(10.54.9532),
RULE LXXX	(10.54.6523),	RULE CXII	(10.54.9533),
RULE LXXXI	(10.54.6530),	RULE CXIII	(10.54.9540),
RULE LXXXII	(10.54.6531),	RULE CXIV	(10.54.9541),
RULE LXXXIII	(10.54.6532),	RULE CXV	(10.54.9542),
RULE LXXXIV	(10.54.6533),	RULE CXVI	(10.54.9543),
RULE LXXXV	(10.54.6540),	RULE CXVII	(10.54.9550),
RULE LXXXVI	(10.54.6541),	RULE CXVIII	(10.54.9551),
RULE LXXXVII	(10.54.6542),	RULE CXIX	(10.54.9552),
RULE LXXXVIII	(10.54.6543),	RULE CXX	(10.54.9553),
RULE LXXXIX	(10.54.6587),	RULE CXXV	(10.54.9587),
RULE XC	(10.54.6588),	RULE CXXVI	(10.54.9588),
RULE XCI	(10.54.6589),	RULE CXXVII	(10.54.9589),
RULE XCII	(10.54.6590),	RULE CXXVIII	(10.54.9590),
RULE XCIII	(10.54.6591),		

3. After consideration of the comments received, the Board has adopted the following rules as proposed with those changes given below, stricken matter interlined, new matter underlined:

RULE XLII (10.54.2521) BENCHMARK FOR ARTS CONTENT STANDARD 2 FOR END OF GRADE 4 (1) through (1)(a)(iii) remain the same as proposed.

(iv) visual arts by applying the elements of line, shape, form, color, space, value, and texture to compose works of art and the principles of design-pattern, balance, contrast, rhythm, proportion, economy, movement, and dominance;

(b) through (e)(iii) remain the same as proposed.

(iv) visual arts by identifying examples of historical, contemporary, and traditional visual arts, including American Indian art; and

(f) remains the same as proposed.

COMMENT 1: Connie Landis, Professor, Montana State University - Billings, representing herself, commented that the arts content standard two should address the principles of

art as well as the elements.

RESPONSE 1: The Board and the Office of Public Instruction (OPI) agree that principles of art should be included and have made the changes to the proposed rules.

COMMENT 2: Carol Juneau, Chairperson, Montana-Wyoming Indian Education Association, commented in support of specific guidance on curriculum and instruction about American Indian and Montana Indian tribes in the proposed social studies standards. The study of American Indian and Montana Indian tribes should be included in all subject areas. The assessment strategies for curriculum related to American Indian and Montana Indian tribes should be strengthened.

COMMENT 3: Norma Bixby, Chairperson, Montana Advisory Council for Indian Education (MACIE), expressed concern about the words "traditional," "ceremonial," and "diverse cultures" in the arts standards. She stated that American Indians and Montana Indians have a rich history in art and music and should be included in art and music as part of the standards.

RESPONSE 2 and 3: The Board and the OPI agree and have made changes to the arts standards. As a component of Montana school improvement, the Board and the OPI will facilitate the periodic review of all content and performance standards. This ongoing review process will revise the standards to ensure that the standards comply with Montana constitutional language in Article X and HB 528.

RULE XLIII (10.54.2522) BENCHMARK FOR ARTS CONTENT STANDARD 2 FOR END OF GRADE 8 (1) through (1)(a)(iii) remain the same as proposed.

(iv) visual arts by applying the elements of line, shape, form, color, space, value, and texture to compose works of art and the principles of design-pattern, balance, contrast, rhythm, proportion, economy, movement, and dominance;

(b) through (e)(iii) remain the same as proposed.

(iv) visual arts by demonstrating examples of historical, contemporary, and traditional visual arts, including American Indian art; and

(f) remains the same as proposed.

COMMENT: See Comment and Response Nos. 1 through 3.

RULE XLIV (10.54.2523) BENCHMARK FOR ARTS CONTENT STANDARD 2 UPON GRADUATION (1) through (1)(a)(iii) remain the same as proposed.

(iv) visual arts by applying the elements of line, shape, form, color, space, value, and texture to compose works of art and the principles of design-pattern, balance, contrast, rhythm, proportion, economy, movement, and dominance;

(b) through (e)(iii) remain the same as proposed.

(iv) visual arts by demonstrating examples of historical, contemporary, and traditional visual arts, including American Indian art; and

(f) remains the same as proposed.

COMMENT: See Comment and Response Nos. 1 through 3.

RULE CXXI (10.54.9560) WORKPLACE COMPETENCIES CONTENT STANDARD 6 (1) To satisfy the requirements of workplace competencies content standard 6, a student must ~~develop~~ acquire and demonstrate skills in life and career planning and workplace readiness.

COMMENT 4: Sherry Jones, School Counselor, Polson Public Schools, representing herself, commented that the workplace competencies content and performance standards are too focused on the workplace and the standards need to address life and career development as well.

RESPONSE 4: The Board and the OPI agree and have made changes to the standards.

RULE CXXII (10.54.9561) BENCHMARK FOR WORKPLACE COMPETENCIES CONTENT STANDARD 6 FOR END OF GRADE 4

(1) remains the same as proposed.

(a) describe how current learning relates to ~~work~~ life and career development;

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

(e) explore and discuss a variety of occupational clusters (e.g., health, science) and their contribution to society; and

(f) describe and demonstrate the importance of personal goal setting and planning.

COMMENT: See Comment and Response No. 4.

RULE CXXIII (10.54.9562) BENCHMARK FOR WORKPLACE COMPETENCIES CONTENT STANDARD 6 FOR END OF GRADE 8

(1) remains the same as proposed.

(a) identify how the skills taught in school subjects are used in various life roles and occupations;

(b) and (c) remain the same as proposed.

(d) recognize and describe the interrelationships of lifetime roles of family, community, work, and leisure roles;

(e) identify locate, explore, and evaluate a variety of occupations not limited by stereotypes, bias or traditional roles; and

(f) explore and identify personal interests, aptitudes, and abilities and develop strategies to achieve tentative life and career goals.

COMMENT: See Comment and Response No. 4.

RULE CXXIV (10.54.9563) BENCHMARK FOR WORKPLACE COMPETENCIES CONTENT STANDARD 6 UPON GRADUATION (1) remains the same as proposed.

(a) describe how skills developed in academic and occupational programs relate to life and career goals planning;

(b) and (c) remain the same as proposed.

(d) describe and evaluate life and career choices and the effect on family and lifestyle;

(e) remains the same as proposed.

(f) develop, evaluate, and adjust ~~personal~~ life and career plans.

COMMENT: See Comment and Response No. 4.

RULE CXXIX (10.54.9591) ADVANCED WORKPLACE COMPETENCIES PERFORMANCE STANDARDS FOR END OF GRADE 8 (1) through (1)(e) remain the same as proposed.

(f) consistently applies personal interests, aptitudes, abilities, and work ethics to daily life and develops strategies to plan future life and career goals.

COMMENT: See Comment and Response No. 4.

RULE CXXX (10.54.9592) PROFICIENT WORKPLACE COMPETENCIES PERFORMANCE STANDARDS FOR END OF GRADE 8

(1) through (1)(e) remain the same as proposed.

(f) applies personal interests, aptitudes, abilities, and work ethics to daily life and develops strategies to plan future life and career goals.

COMMENT: See Comment and Response No. 4.

RULE CXXXI (10.54.9593) NEARING PROFICIENCY WORKPLACE COMPETENCIES PERFORMANCE STANDARDS FOR END OF GRADE 8

(1) through (1)(e) remain the same as proposed.

(f) sometimes recognizes how the connections among personal interests, aptitudes, abilities, and work ethics help to plan future life and career goals.

COMMENT: See Comment and Response No. 4.

RULE CXXXII (10.54.9594) NOVICE WORKPLACE COMPETENCIES PERFORMANCE STANDARDS FOR END OF GRADE 8 (1) through (1)(e) remain the same as proposed.

(f) recognizes, but has a limited understanding of how personal interests, aptitudes, abilities, and work ethics help to plan future life and career goals.

COMMENT: See Comment and Response No. 4.

RULE CXXXIII (10.54.9595) ADVANCED WORKPLACE COMPETENCIES PERFORMANCE STANDARDS UPON GRADUATION

(1) through (1)(e) remain the same as proposed.

(f) purposefully develops, evaluates, and adjusts personal life and career plans and effectively demonstrates workplace readiness skills.

COMMENT: See Comment and Response No. 4.

RULE CXXXIV (10.54.9596) PROFICIENT WORKPLACE COMPETENCIES PERFORMANCE STANDARDS UPON GRADUATION

(1) through (1)(e) remain the same as proposed.

(f) develops, evaluates, and adjusts personal life and career plans and demonstrates workplace readiness skills.

COMMENT: See Comment and Response No. 4.

RULE CXXXV (10.54.9597) NEARING PROFICIENCY WORKPLACE COMPETENCIES PERFORMANCE STANDARDS UPON GRADUATION

(1) through (1)(e) remain the same as proposed.

(f) develops personal life and career plans and, with assistance, evaluates and makes adjustments and demonstrates workplace readiness skills.

COMMENT: See Comment and Response No. 4.

RULE CXXXVI (10.54.9598) NOVICE WORKPLACE COMPETENCIES PERFORMANCE STANDARDS UPON GRADUATION (1) through (1)(e) remain the same as proposed.

(f) rarely develops, evaluates, or adjusts personal life and career plans but, with assistance, demonstrates workplace readiness skills.

COMMENT: See Comment and Response No. 4.

4. The Board and the OPI have thoroughly considered the comments and testimony received on the proposed rules. The following is a summary of the comments received and responses that do not result in a change in wording of the proposed rules.

COMMENT 5: Judy Jonart, Curriculum Director, Butte Public Schools, commented that the Butte School District generally supports the proposed standards but has two concerns. One, districts need to expand integrated curricula to implement the new state standards. The State should begin to provide financial support to districts for this effort and opportunities for professional development in cross curriculum instruction. Two, there should be alignment between the state standards and statewide assessment.

COMMENT 6: Sally Newhall, representing herself, commented that she supports stating workplace competency standards separate from career/technical standards. She is also concerned that school district accountability for the workplace competency standards will be difficult to develop.

RESPONSE 5 and 6: The Board and the OPI agree that the integration of a school's education programs enhances student learning and helps to ensure meaningful implementation of the standards. All students are expected to meet all standards by the time they leave the K-12 education system, and teachers and administrators may use innovative schedules, interdisciplinary approaches, and/or traditional practices to accomplish that task. Local districts will determine how best to deliver the learning programs to ensure that all students meet all academic standards, first by ensuring that the local curricula, instruction, and assessment are aligned to the state standards.

A major portion of the OPI legislative request for the 2003 biennium is for funding to support statewide professional development to assist districts, teachers, and administrators to implement the standards ensuring improved learning for all students. Through such a professional development system, the OPI will provide assistance to school district personnel that addresses alignment and accountability.

COMMENT 7: Connie Landis, Professor, Montana State University - Billings, representing herself, commented that the arts standards are not challenging enough for art in the novice and nearing proficiency levels for the 8th and 12th grades.

RESPONSE 7: The Board and the OPI do not agree that the standards are not challenging enough. The standards provide guidance for the art education provided to all students. Local districts have discretion to provide more expansive programs.

COMMENT 8: Ellen Hilde, Billings, representing herself, commented that the standards should help students improve government and develop civic responsibility. The standards address the issues of Native American students and all students. She applauds the work of the committee, but feels that there has been very little change over the past three decades. The standards do not reflect the most current research. The broad concepts of patterns and problems of civilizations are not clear. Standard 3 in geography is not current.

RESPONSE 8: The Board and the OPI agree that the standards should help improve students' civic responsibilities and understanding of geography and government. Current research was used to develop all the standards. Foundational research and local and national documents were used to update the social studies standards. These standards are broadly written not to preclude the study of new research findings and theoretical thought in history, geography, government, economics, sociology, etc.

COMMENT 9: Randy Parker, Billings, representing the  
Montana Administrative Register

19-10/5/00

Yellowstone Historical Society and Eastern Montana Historical Society, commented that the standards are vague, repetitious and unenforceable. Students do not need to have the same textbook or methods but the standards should be more specific. The history standards are dull, unenforceable and vague.

COMMENT 10: Gay Ann Masolo, Teacher and Legislator, commented that some individuals have expressed concern that the standards include general statements without measurable details. She has also heard concern expressed about who was given an opportunity to participate in the development of the standards.

RESPONSE 9 and 10: The Board and the OPI considered several approaches to revising academic standards. Standards documents and processes from other states, national standards projects, reports and criteria from professional organizations, and best practices of Montana teachers were studied. Based upon this research, the Board made a reasoned decision to develop a standards framework that would assure Montana citizens that its public schools provide all children with challenging academic expectations.

The standards are intended to provide guidance to school districts, but the districts remain responsible for developing curriculum and instructional programs that are locally meaningful. Written without excessive detail, the standards allow teachers and administrators flexibility to meet the needs of their students and to continue Montana's tradition of local control of school districts by local communities. The standards are intended to give citizens living anywhere in Montana assurance that a district following the standards is providing a quality education program consistent with other districts.

The work of developing Montana's standards has been collaborative. A comprehensive and inclusive process was created to engage professional education associations and organizations, the Montana University System, the Montana Board of Public Education, tribal colleges, tribal education departments and agencies, local PTAs, and other interested parties in the revision of content and performance standards. The collaborative effort developed the standards and sought comments from the public through broad dissemination of the draft documents using public hearings, the U.S. mail service, and the OPI website.

COMMENT 11: Fred Anderson, Principal, Custer County District High School, commented that the public needs to have a general understanding of what Montana's education standards mean and how school districts are supposed to apply them. Some terms used in the standards will be confusing to an individual unfamiliar with curriculum development. For example, there may be confusion between the concepts of proficiency levels for students (novice, nearing proficiency, etc.), student grade levels (4th grade, 8th grade, etc.), and

student grades (A, B, C, etc.). The Board and the OPI should work at public awareness and understanding of the standards.

RESPONSE 11: The Board and the OPI agree. There will be ongoing efforts at the state level to provide information to the general public regarding state standards and the local district implementation.

COMMENT 12: Fred Anderson, Principal, Custer County District High School, commented that the statewide assessment must be aligned to the standards in all subject areas, but this is going to be a difficult goal to achieve. Based on his experience, it is difficult to devise tests that accurately measure student performance. For example, he is concerned about using the Iowa Test of Basic Skills (ITBS) as the assessment tool because, in his opinion, the ITBS is not aligned to the math standards. Everyone wants high test scores but the optimism must be tempered by reality. There are problems such as class size and individual student academic needs that must be addressed. Whatever wording for the standards is adopted, the Board and the OPI have to recognize that issues such as funding and remediation need to be addressed.

COMMENT 13: Jack Regan, Superintendent, Miles City Public Schools, commented that the English K-12 outcome and assessment would be difficult to measure, especially in literature. Full assessment may be difficult. It would be difficult to measure a student's appreciation for literature, for example. Multiple measurement assessments will be necessary to provide the full picture of the services provided by a school or school district.

COMMENT 14: Norma Bixby, Chairperson, MACIE, commented that there are problems across the State related to the alignment of assessments to the standards. The proposed rules are an improvement, but the State and the districts need to look at students individually and consider the impact of culture on testing.

RESPONSE 12 through 14: The Board and the OPI agree that comprehensive and meaningful assessment is more than the results of a large-scale state assessment. A comprehensive assessment system includes multiple measures, multiple methods, and multiple levels providing information on student learning and education quality. Assessment is a shared responsibility of the education community at the State, district, school, and classroom levels.

Ongoing efforts will be coordinated throughout the State to provide information to the general public regarding standards and assessment, and to provide professional development to assist district personnel to implement standards and assessment.

5. The following general comments do not result in a change in the wording of the proposed rules and do not require a response.

COMMENT 15: Sue McCormick, Director of Curriculum and Technology Integration, Polson Public Schools, commented in support of the social study standards. The language addressing the history, culture, and governance of Montana and American Indian tribes is consistent with the Polson School District's effort to develop a culturally congruent curriculum.

COMMENT 16: Niki Whearty, Montana Library Association, commented in support of the library media standards, which focus on the skills and knowledge that Montana's students need.

COMMENT 17: Marlene La Counte, Professor, Montana State University - Billings, commented as a proponent of the standards and praised the committee that developed the standards. She stated that the standards represent the current thinking of historians, geographers, and political scientists. The ideas, processes, and content reflected in the standards are the most significant concepts and processes in those areas. She believes in local control because students in one school district may be very different from students in another school district. School districts should have the power to develop curriculum with broad standards to meet the needs of learners. Business communities need problem solvers, people, and team workers who understand many concepts.

COMMENT 18: Joette Speake, Curriculum Director, Colstrip Public Schools, commented that she is a proponent of the standards and she has been to every public hearing. She looks at these as a framework for districts to follow. She does not expect the State to come in and tell teachers how to teach but to give schools across the State a framework to start with. While her district exceeds the standards in many areas, they were able to identify gaps. She believes that any bugs in the standards will be addressed in the five-year process.

COMMENT 19: Norma Bixby, Chairperson, MACIE, commented as a proponent of the rules. The standards are a good starting point to meet the Constitutional mandate of Article X, section 2. The social studies standards reflect Montana and the unique relationship of the American Indians to the State and nation.

COMMENT 20: Dennis Parman, Curriculum Director, Havre Public Schools, commented that the Havre School District considers the statewide standards a good foundation. The Havre District's standards are higher so alignment to the state standards will not be difficult.

COMMENT 21: Cheryl Schlepp, representing the Workplace Competency Committee, commented that the Committee supports the workplace competency standards although the standards may reinforce curriculum isolation for vocational training.

COMMENT 22: Bonnie Williamson, Havre Public Library, commented that the process for developing the standards was fair and included input from public librarians as well as school librarians. Montana students will benefit from learning how to use library systems rather than learning how to use their school's library.

By: /s/ Kirk Miller  
Kirk Miller, Chairperson  
Board of Public Education

/s/ Geralyn Driscoll  
Geralyn Driscoll, Staff Attorney  
Office of Public Instruction

Certified to the Secretary of State September 25, 2000.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT  
of ARM 17.8.102 and 17.8.103 )  
pertaining to air quality )  
incorporation by reference )  
) (AIR QUALITY)

TO: All Concerned Persons

1. On May 25, 2000, the Board of Environmental Review published notice of the proposed amendment to ARM 17.8.102 and 17.8.103 pertaining to air quality incorporation by reference at page 1298 of the 2000 Montana Administrative Register, Issue No. 10.

2. The board has amended ARM 17.8.102 and 17.8.103 as proposed.

3. No comments or testimony were received.

BOARD OF ENVIRONMENTAL REVIEW

by: Joe Gerbase  
JOE GERBASE, Chairperson

Reviewed by:

David Rusoff  
David Rusoff, Rule Reviewer

Certified to the Secretary of State September 25, 2000.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment )                    NOTICE OF AMENDMENT  
of ARM 17.8.504, 17.8.505 and )  
17.8.514 pertaining to air        )  
quality fees                                )                    (AIR QUALITY)

TO: All Concerned Persons

1. On July 27, 2000, the Board of Environmental Review published notice of the proposed amendment to ARM 17.8.504, 17.8.505 and 17.8.514 pertaining to air quality fees at page 1927 of the 2000 Montana Administrative Register, Issue No. 14.
2. The board has amended ARM 17.8.504, 17.8.505 and 17.8.514 as proposed.
3. No comments or testimony were received.

BOARD OF ENVIRONMENTAL REVIEW

by: Joe Gerbase  
JOE GERBASE, Chairperson

Reviewed by:

David Rusoff  
David Rusoff, Rule Reviewer

Certified to the Secretary of State September 25, 2000.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT  
of ARM 17.38.606 pertaining to )  
administrative penalties ) (PUBLIC WATER SUPPLY)

TO: All Concerned Persons

1. On May 25, 2000, the Board of Environmental Review published notice of the proposed amendment of ARM 17.38.606 pertaining to public water supply administrative penalties, at page 1281 of the 2000 Montana Administrative Register, Issue No. 10.

2. The Board has amended ARM 17.38.606 as proposed.

3. The Board received the following comments; Board responses follow:

COMMENT #1: A representative of a water district stated that the proposed penalty for "Failure to Pay Annual Service Connection Fee" is \$4 per day. The fee itself is only \$2 per year. Therefore, the proposed penalty is totally unreasonable.

RESPONSE: The annual service connection fee is \$2 per connection. The total annual fee for a system with 50 connections would be \$100. The existing penalty for failure to pay a service connection fee is \$5/day for a system with 1-100 connections, \$20/day for a system with 101-1,000 connections and \$40/day for a system with more than 1,000 connections. Failure to pay an annual service connection fee is a significant violation and penalties higher than the fees are necessary to deter potential violators. However, the current penalties for failure to pay fees are too high when compared to the amount of the fees. Therefore, the amendments lower the penalty from \$5/day to \$2/day for systems serving 250 or fewer persons, from \$20/day to \$4/day for systems serving 251-2,500 persons, and from \$40/day to \$8/day for systems serving 2,501-10,000 persons. The amendments add a new penalty of \$25/day for systems serving more than 10,000 persons. One connection serves an average of 2.5 persons.

COMMENT #2: A representative of a water district stated that the proposed penalty for "Failure to Use a Certified Operator" is not reasonable because a small water system cannot expect a certified operator to serve 365 days a year.

RESPONSE: The Board recognizes that it is difficult for small water systems to retain certified operators. ARM 17.40.208 requires that the certified operator be "in responsible charge" of the public water supply system. This rule does not require that the operator be on-site 24 hours a day, 365 days a year, only that the operator be available in the event the water

system needs attention. The Board also believes that the existing penalty for failure to use a certified operator is too high when compared to the severity of the violation. The amendments lower the penalties as follows: for systems serving 250 persons or fewer, the penalty is lowered from \$60/violation plus \$20/day to \$5/day; for systems serving 251-2,500 persons, the penalty of \$240/violation plus \$80/day is lowered to \$10/day and for systems serving 2,501-10,000 persons, the existing penalty of \$480/violation plus \$160/day is lowered to \$8/day. The amendments create a new penalty of \$25/day for systems serving more than 10,000 persons.

COMMENT #3: The residents served by a small community water supply commented that they oppose the regulations because they are a heavy burden on all taxpayers and the residents do not need a "gestapo."

RESPONSE: Under Section 75-6-109, MCA, the Legislature authorized the Department of Environmental Quality to assess administrative penalties for violations of the public water supply laws. The existing and proposed administrative penalty rules are promulgated by the Board of Environmental Review, members of which are appointed by the Governor and confirmed by the Senate. Penalties are necessary to deter violations and eliminate the economic benefit of noncompliance. Penalties are assessed only against significant violators and therefore do not place a heavy burden on all water systems, only on the violators. The Department exercises its administrative authority subject to the review of the Board, in accordance with the Montana Administrative Procedure Act to ensure alleged violators are afforded due process.

COMMENT #4: The operator of a ski area's water supply was concerned that if the system had several bad bacteria analyses, the Department would assess a penalty.

RESPONSE: The Department usually does not assess an administrative penalty just for several bad bacteria tests, provided the system cooperates with the Department, conducts the required follow-up sampling and issues the required notices. The Department has adopted criteria to determine which violations are considered significant. For bacteria analysis, a violation is not considered significant unless the water system has had four contaminated monthly samples in a 12-month period. Generally, if a system has a significant violation but works with the Department to investigate and correct the problem, the Department exercises enforcement discretion and does not assess an administrative penalty. The Department focuses its limited enforcement resources on the systems that fail to cooperate with the Department and repeatedly have significant violations.

BOARD OF ENVIRONMENTAL REVIEW

by: Joe Gerbase  
Joe Gerbase, Chairman

Reviewed by:

David Rusoff  
David Rusoff, Rule Reviewer

Certified to the Secretary of State September 25, 2000.

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

In the matter of the	)	NOTICE OF AMENDMENT OF TEN
amendment of ARM 24.29.205,	)	RULES AND REPEAL OF TWO RULES
24.29.206, 24.29.207,	)	
24.29.601, 24.29.627,	)	
24.29.804, 24.29.1733,	)	
24.29.4301, 24.29.4303	)	
and 24.29.4321, and the	)	
repeal of ARM 24.29.705	)	
and 24.29.4001,	)	
all relating to workers'	)	
compensation matters	)	

TO: All Concerned Persons

1. On July 13, 2000, the Department published notice at page 1733 of the Montana Administrative Register, Issue No. 13, to consider the amendment and repeal of the above-captioned rules.

2. On August 4, 2000, at 10:00 a.m. a public hearing was held in the Walt Sullivan Building (Department of Labor and Industry Building), 1327 Lockey, Helena, Montana, to consider the proposed amendment of 12 existing rules and the repeal of two rules, all related to workers' compensation matters. Members of the public appeared and provided comment and testimony. In addition, written comments were submitted prior to the close of the comment period.

3. After consideration of the comments received on the proposed amendments to the rules, the Department has amended 9 of the 12 rules exactly as proposed:

24.29.205 ISSUING ORDERS

24.29.206 ADMINISTRATIVE REVIEW

24.29.207 CONTESTED CASES

24.29.601 DEFINITIONS

24.29.627 RIGHT TO REVIEW

24.29.1733 DISALLOWED REHABILITATION EXPENSES

24.29.4301 PURPOSE

24.29.4303 DEFINITIONS

24.29.4321 INSURER REPORTING REQUIREMENTS--INJURIES AND OCCUPATIONAL DISEASES

4. After consideration of the comments received on the proposed amendments to the rules, the Department has amended 1 of the 12 rules as proposed, but with the following changes: (new matter underlined, deleted matter stricken, added matter in ALL CAPS)

24.29.804 ADJUSTERS IN MONTANA (1) Same as proposed.

(2) An insurer must maintain the documents related to each claim filed with the insurer under the Montana Workers' Compensation or Occupational Disease Acts at the office of the person adjusting the claim in Montana UNTIL THE CLAIM IS SETTLED. The documents may either be original documents, or duplicates of the original documents, and must be maintained in a manner which allows the documents to be retrieved from that office and copied at the request of the claimant or the department. SETTLED CLAIM FILES STORED OUTSIDE OF THE ADJUSTER'S OFFICE MUST BE MADE AVAILABLE BY THE INSURER WITHIN 48 HOURS OF A REQUEST FOR A FILE. Electronic or optically imaged documents are permitted by this rule.

(3) FOR PURPOSES OF (2), A "SETTLED CLAIM" MEANS A DEPARTMENT-APPROVED COMPROMISE OF BENEFITS BETWEEN A CLAIMANT AND AN INSURER. THE TERM "SETTLED CLAIM" DOES NOT INCLUDE A CLAIM WHERE THERE HAS ONLY BEEN A LUMP SUM ADVANCE OF BENEFITS.

AUTH: 39-71-203, MCA

IMP: 39-71-105, 39-71-107 and 39-71-203, MCA [same as proposed]

5. After consideration of the comments received, the Department will not adopt the proposed amendments to ARM 24.29.610 or 24.29.4314 as part of this rule-making project.

6. After consideration of the comments received, the Department has repealed two rules, ARM 24.29.705 and 24.29.4001, exactly as proposed.

7. The Department has thoroughly considered the comments and testimony received on the proposed rules. The following is a summary of the comments received, along with the Department's response to those comments:

Comment 1: An insurer objected to the proposed amendment to ARM 24.29.804 that requires claims documents to be kept "at the office of the person adjusting the claim in Montana", noting that office space is more costly than storage space. The insurer suggested that as an alternative, an insurer must be allowed to retrieve and produce the records within a specified time, such as 48 hours from the request of the records.

Response 1: The Department agrees that the purpose of the rule is to make sure that records are available for prompt inspection in Montana. The Department notes that the rule does allow the option to store the files in an electronic or optically imaged format. The Department has amended the rule to permit off-site storage of settled claims, provided the insurer make the records available within 48 hours of the request.

Comment 2: An insurer suggested that the Department allow exceptions to the "in-state adjuster" rule on a case-by-case basis, where the insurer can demonstrate that the adjuster is licensed in Montana as a claims adjuster and has a minimum of three years of experience adjusting Montana claims. The insurer proposed specific language for such an amendment. The insurer also submitted comments from a number of Montana employers insured by the insurer expressing their satisfaction with the claims service provided by the insurer from the insurer's out-of-state office. The National Association of Independent Insurers also suggested an exception to the in-state adjuster rule allowing an adjuster who can demonstrate knowledge of Montana law be allowed to adjust outside of Montana.

Response 2: The suggested changes to the rule, while potentially assuring an adjuster is knowledgeable regarding Montana workers' compensation law, does not address an injured worker's ability to access the adjuster and/or his/her claim file. Further allowing exceptions is administratively difficult because of the frequency with which claims are transferred among adjusters. Because the scope of the proposed exception is very broad, and has the potential to render meaningless the in-state adjuster requirement, the Department declines to adopt the suggested amendment. In addition, to the extent that insurers are proposing a knowledge-based standard to certify individual out-of-state adjusters as being authorized to adjust Montana workers' compensation claims, such certification potentially runs afoul of the authority of the Montana Commissioner of Insurance to generally regulate the licensing or certification of insurance adjusters in Montana. Such a proposal also has the possibility of running afoul of the authority of the insurance regulators in other states to regulate the conduct of insurance claim adjusting within the borders of those states.

Comment 3: A third party administrator suggested an amendment to allow routine "medical-only" claims to be adjusted out of state.

Response 3: The Department believes the rule, both in existing form and as amended, allows someone other than the in-state adjuster to make the payments on medical bills associated with a claim. However, the Department believes that reviewing bills and medical notes to determine that treatment is related to the injury and is appropriate, requires knowledge of Montana law. This is an important part of adjusting a claim and should be handled by the adjuster handling other aspects of the claim. The Department declines to make the suggested change.

Comment 4: The Alliance of American Insurers, the National Association of Independent Insurers and the American Insurance Association also objected to the "in-state" adjuster rule and recommended the deletion of the requirement. The commenters asserted there is no evidence to support that location of the adjuster in Montana improves the timeliness or quality of claims

adjusting services. In addition, it appears that the commenters may have suggested that the rule itself is constitutionally suspect.

Response 4: The Department agrees that the physical location of an adjuster does not guarantee quality customer service. However, physical location does provide the injured worker and the Department with accessibility to the adjuster and to the documents related to the claim, which is a primary goal of the amendment. In addition, the value of an in-state adjuster with authority to settle claims was recognized in *Thompson v. CIGNA*, 1999 MTWCC 51, and is reasonably related to the purpose of ensuring that claims are appropriately handled in a prompt manner by the insurer. The Department notes for the record that an "in-state adjuster" rule for workers' compensation has been in place in Montana since at least 1972.

As to whether the rule is "unconstitutional", the Department notes that no grounds for unconstitutionality were cited or explained. The Department believes that it is clear that the legislature is within its authority to require that claims in a comprehensive system such as workers' compensation be handled in an expedient manner, and that the Department's requirements for having an in-state adjuster is rationally related to that requirement.

Comment 5: The Montana Self-Insurers Association suggested two amendments to ARM 24.29.804, which would strengthen the enforcement of the in-state adjusters rule in cases of non-compliance.

Response 5: The Department agrees the amendments suggested by the Self-Insurers Association would strengthen the in-state adjuster rule. However, before such amendments could be proposed or adopted, appropriate procedures to implement the suggestions would need to be worked out with the Insurance Commissioner's office. The Department will consider exploring whether such procedures would be amenable to the Commissioner of Insurance.

Comment 6: The Montana Self-Insurers Association suggested the Department amend or rewrite the suggested amendments to clarify the appeal processes for specific statutes in rules 24.29.205 through 24.29.207. The Association also appeared to suggest that the proposed amendments will deprive parties of due process.

Response 6: The Department first notes that the proposed amendments do not deprive any party due process of law. The Department notes that the amendments help make it clear that parties are entitled to due process of law; that in the event a Department order is issued without giving the parties an opportunity to request a hearing, the parties have a right to such a hearing. However, once the parties have been given the

opportunity for a hearing, they do not have a right to ask for a new, de novo hearing after an order has been issued, unless that right is granted by statute.

As to the request that the Department's rules specify the particular appeal processes for various statutes, the Department notes that a party's appeal rights vary from statute to statute, and from version to version of a given statute, depending on how the statute was amended. The Department notes that the Workers' Compensation and Occupational Disease Acts have been frequently amended during the last 10 to 15 years, and a significant number of statutes have been amended repeatedly. As such, the Department does not believe it is feasible to try to compile a comprehensive listing of the various appeal procedures that apply (or might apply) to the various versions of each of the statutes that provide or provided for an administrative hearing by the Department. The Department also notes that § 2-4-305(2), MCA, prohibits an agency from unnecessarily repeating statutory language in rule. Given the complexity of the interaction of procedural and substantive changes, as well as retroactive procedural changes in the law over the years, the Department believes that the best way for a party to determine appeal rights is to look to the applicable statutory wording.

Comment 7: The Montana Self-Insurers Association requested that the Department provide data to support disallowing the payment of rehabilitation trust funds for travel or living expenses and the cost of the amendments.

Response 7: The proposed amendment allowing such payments to be made is in response to requests from insurers to allow such expenses be paid with such funds when agreed to by the insurer. Travel and relocation expenses are covered under auxiliary rehabilitation benefits so the deletion of travel expenses will not affect the trust funds. The Department believes that the deletion of living expenses will have only a very minor impact on the trust funds as this amendment only applies to claims which occurred prior to July 1, 1997.

Comment 8: The Montana Self-Insurers Association requested the Department amend 24.29.4321(2) and (4) by extending the time for insurers to correct errors in an electronic report transmission from 14 days to 28 days.

Response 8: The Department believes that 14 days should provide adequate time for the trading partners to correct any identified errors and electronically re-submit the data. Typographical errors should be easy to spot and correct; content errors need to be promptly examined and rectified to ensure that the claim is being handled appropriately. The Department declines to amend the time frame for compliance at this time.

Comment 9: The Montana Self-Insurers Guaranty Fund and the Montana Self-Insurers Association objected to the proposed

amendment to ARM 24.29.610 and supported the Department's announcement at the public hearing that the Department was withdrawing the proposed amendments at that time.

Response 9: The Department has withdrawn the proposed amendment to ARM 24.29.610.

Comment 10: The Montana Self-Insurers Association objected to the adoption of standards by reference as this does not allow input by concerned parties to any amendment to the standards.

Response 10: The Department agrees that adoption of standards by reference does make providing local input more difficult. However, the Department first notes that no new standards are being proposed; the standards cited in the data base system rules have been there since the rules were adopted by the Department in 1994. The Department also notes that national standards adopted by ANSI and by IAIABC are developed with a great deal of industry input, and typically are adopted only after significant comment periods. Both of the standards referred to in the database rules are standards that the insurance industry (including self-insurer associations) helped develop and support at a national level.

The Department also believes that it is required to use data formats that are compatible with those used in other jurisdictions. One of the statutory requirements of the data base system is that it provide for "uniformity to permit efficiency of collection and to allow interstate comparisons" of data. Section 39-71-225(4)(d), MCA. In addition, § 39-71-225(7), MCA, requires that certain insurers electronically submit reports "in a nationally recognized format". However, in response to the comment, the Department has decided not to amend ARM 24.29.4314 at the present time.

8. The amendments and repeals are effective October 6, 2000.

/s/ KEVIN BRAUN

Kevin Braun  
Rule Reviewer

/s/ PATRICIA HAFHEY

Patricia Haffey, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: September 25, 2000.

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

In the matter of the	)	NOTICE OF AMENDMENT
amendment of ARM 37.70.401,	)	
37.70.402, 37.70.406,	)	
37.70.407, 37.70.408,	)	
37.70.601, 37.70.607,	)	
37.70.901, 37.70.902,	)	
37.71.401 and 37.71.404	)	
pertaining to the low income	)	
energy assistance program	)	
(LIEAP) and the low income	)	
weatherization assistance	)	
program (LIWAP)	)	

TO: All Interested Persons

1. On August 24, 2000, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rules at page 2188 of the 2000 Montana Administrative Register, issue number 16.

2. The Department has amended rules 37.70.401, 37.70.402, 37.70.406, 37.70.407, 37.70.408, 37.70.601, 37.70.607, 37.70.901, 37.70.902, 37.71.401 and 37.71.404 as proposed.

3. No comments or testimony were received.

/s/ Dawn Sliva  
Rule Reviewer

/s/ Laurie Ekanger  
Director, Public Health and  
Human Services

Certified to the Secretary of State September 25, 2000.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the ) CORRECTED NOTICE OF  
amendment of ARM 42.12.401 ) AMENDMENT  
relating to Liquor Licenses )

TO: All Concerned Persons:

1. On July 13, 2000, the Department published a notice at page 1762 of the 2000 Montana Administrative Register, Issue No. 13, of the amendment of ARM 42.12.401 relating to liquor licenses.

2. The reason for the correction is that 42.12.401(2)(e) and (f) were inadvertently omitted from the notice. The corrected rule amendment reads as follows:

42.12.401 DEFINITIONS (1) through (2)(c) remain as amended.

(e) and (f) remain the same but are renumbered (d) and (e).

AUTH: 16-1-303, MCA

IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-420, and 16-4-502, MCA

3. Replacement pages for the corrected notice of amendment were submitted to the Secretary of State on September 30, 2000.

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Mary Bryson  
MARY BRYSON  
Director of Revenue

Certified to Secretary of State September 26, 2000.

BEFORE THE BOARD OF NURSING  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the petition )  
for declaratory ruling on the )  
use of vaginal speculums by )                   DECLARATORY RULING  
RN(s) for specimen collection )

TO: All Concerned Persons

1. On February 10, 2000, the Board of Nursing published a Petition for Declaratory Ruling in the above entitled matter at page 493, 2000 Montana Administrative Register, issue number 3.

2. Hearing on the matter was held February 24, 2000 before the full Board with Lon Mitchell, Hearing Examiner, presiding.

3. At the hearing the Board considered all submitted and written comments as well as formal testimony, then issued its Declaratory Ruling.

ISSUE

4. Is it within the scope of practice for a registered nurse to use vaginal speculums for specimen collection?

SUMMARY OF COMMENTS

5. Three written comments were submitted and two witnesses testified at the hearing.

COMMENT NO. 1: Sami Butler, RN, Executive Director testified on behalf of the Montana Nurses' Association (MNA) and stated that the MNA supports the use of vaginal speculums by RNs for specimen collection based upon the assumption that a physician or APRN prescribes the specimen collection and the RN only collects the specimen.

COMMENT NO. 2: One commentor, a certified nurse and midwife testified that she is in favor of using speculums as far as forensic collection but against it for taking PAP smears. PAP smears require specific training that is under the scope of practice of an advanced practice registered nurse.

COMMENT NO. 3: One commentor, a medical doctor, supports the petition if adequate training has been obtained by the responsible supervising clinician.

COMMENT NO. 4: Attorney General Joe Mazurek stated his support of the petition.

COMMENT NO. 5: One commentor, an advanced practice registered nurse stated that she supported the petition, but felt that

training and supervision were essential and felt that the board should specify training and supervision requirements.

ANALYSIS

6. Pursuant to Section 2-4-501, MCA, the Board is authorized to issue Declaratory Rulings "as to the applicability of any statutory provision."

7. The Petition for Declaratory Ruling was filed in accordance with Section 2-4-501, MCA, and appeared at page, 493, 2000 Montana Administrative Register, Issue No. 3.

8. After consideration of the comments in support of the Petition, and upon review of the applicable statutes and rules, the Board of Nursing makes the following declaratory ruling.

DECLARATORY RULING

9. The use of vaginal speculums for non-diagnostic purposes is within the scope of practice of the registered nurse.

BOARD OF NURSING  
RITA HARDING, RN, MN, PRESIDENT

By: /s/ Annie M. Bartos  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, September 25, 2000.

BEFORE THE BOARD OF NURSING  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the petition )  
for declaratory ruling on the )  
use of vaginal speculums by )                   DECLARATORY RULING  
RN(s) to obtain forensic )  
evidence from sexual assault )  
victims )

TO: All Concerned Persons

1. On February 10, 2000, the Board of Nursing published a Petition for Declaratory Ruling in the above entitled matter at page 495, 2000 Montana Administrative Register, issue number 3.

2. Hearing on the matter was held February 24, 2000 before the full Board with Lon Mitchell, Hearing Examiner, presiding.

3. At the hearing the Board considered all submitted and written comments as well as formal testimony, then issued its Declaratory Ruling.

ISSUE

4. Is it within the scope of practice for a registered nurse to use vaginal speculums for collection of forensic evidence from sexual assault victims?

SUMMARY OF COMMENTS

5. Twenty-five written comments were submitted and six witnesses testified at the hearing.

COMMENT NO. 1: One commentor, who is a RN-C, WHNP, stated that she supported the idea of providing the most appropriate care to all victims of assault/rape.

COMMENT NO. 2: Attorney General Joe Mazurek filed a written comment and testified in support of properly trained Sexual Assault Nurse Examiners (SANE) being allowed to use vaginal speculums for collection of forensic evidence from sexual assault victims.

COMMENT NO. 3: James A. Gilson, Deputy Attorney General for the State of New Jersey, submitted a written comment stating his support of the proposal based on his experience with a similar program in the state of New Jersey.

COMMENT NO. 4: Julie Long, Serology/DNA Supervisor for the Montana State Crime lab submitted a written comment stating her support for the petition.

COMMENT NO. 5: Sami Butler, RN, Executive Director on behalf of the Montana Nurses' Association submitted a written comment and testified in support of the petition in the interest of "furthering the potential for justice and for easing the emotional trauma of victims."

COMMENTS NO. 6 & 7: Two commentors testified in support of the petition.

COMMENT NO. 8: Melodee Hanes, Deputy Yellowstone County Attorney testified in support of the petition.

COMMENT NO. 9: Judy Peterson, RN, Director of Extended Care Service, an Association of Montana Health Care Providers (MHA) submitted a written comment stating that the MHA approves the use of vaginal speculums by properly trained and competency evaluated RNs.

COMMENT NO. 10: The Helena OB/GYN Associates submitted a written comment expressing their concerns based upon the possible assumption by "many women" that if they have a pap smear done, they need no further evaluation. They feel that only advanced practice registered nurses should be allowed to use vaginal speculums.

COMMENT NO. 11: One commentor, a CNM, MS submitted a written comment stating her opposition to allowing registered nurses to use vaginal speculums unless they are advanced practice registered nurses.

COMMENT NO. 12: One commentor, an APRN, MSN submitted a written comment stating her opposition to the petition and does not feel that RNs should be used for specimen collection in all instances, in particular not for pap smears.

COMMENT NO. 13: One commentor, an APRN, submitted a written comment stating that she opposes the petition because using vaginal speculums is too complex for the training given RNs in school.

COMMENT NOS. 14 - 29: Fifteen commentors submitted written statements expressing their support of the petition.

#### ANALYSIS

6. Pursuant to Section 2-4-501, MCA, the Board is authorized to issue Declaratory Rulings "as to the applicability of any statutory provision."

7. The Petition for Declaratory Ruling was filed in accordance with Section 2-4-501, MCA, and appeared at page, 495, 2000 Montana Administrative Register, Issue No. 3.

8. After consideration of the comments in support of the

Petition, and upon review of the applicable statutes and rules, the Board of Nursing makes the following declaratory ruling.

DECLARATORY RULING

9. The use of vaginal speculums for non-diagnostic purposes is within the scope of practice of the registered nurse.

BOARD OF NURSING  
RITA HARDING, RN, MN, PRESIDENT

By: /s/ Annie M. Bartos  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, September 25, 2000.

BEFORE THE BOARD OF NURSING  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the petition )  
for declaratory ruling on the )  
management of continuous )                   DECLARATORY RULING  
infusion of epidural catheter )  
for analgesia in the obstetric )  
setting )

TO: All Concerned Persons

1. On April 27, 2000, the Board of Nursing published a Petition for Declaratory Ruling in the above entitled matter at page 1090, 2000 Montana Administrative Register, issue number 8.

2. Hearing on the matter was held July 20, 2000 before the full Board with Lon Mitchell, Hearing Examiner, presiding.

3. At the hearing the Board considered all submitted and written comments as well as formal testimony, then issued its Declaratory Ruling.

ISSUE

4. Is it within the scope of practice of a registered nurse to monitor a continuous infusion of an epidural analgesia in a pregnant patient?

SUMMARY OF COMMENTS

5. Eight written comments were submitted and six witnesses testified at the hearing.

COMMENT NO. 1: Brian Zins and Mike P. Schweitzer, M.D. on behalf of the Montana Medical Association submitted a letter requesting the reversal of the declaratory ruling, stating that they believe it to be unnecessary because it "limits the health care team".

COMMENT NO. 2: John Honsky, BSN, RNC, MA, President of the Montana Nurses' Association testified and submitted a written statement in support of allowing a registered nurse to monitor a continuous infusion of an epidural analgesia in a pregnant patient provided the RN meets educational criteria for monitoring, that the RN practices under specific institutional policies and that protocols are in place in the institution. Education criteria means "in accordance with Association of Women's Health, Obstetrics and Neonatal Nurses' Standards for Education for RNs."

COMMENT NO. 3: Sami Butler, RN, representing the Montana Nurses' Association as executive director, testified in support of the Petition.

COMMENT NO. 4: One commentor testified asking the Board to adopt the Association of Women's Health, Obstetric, and Neonatal Nurses (AWHONN) position.

COMMENT NO. 5: One commentor testified in support of following the AWHONN guidelines because they say who does what and who doesn't do what.

COMMENT NO. 6: One commentor, an OB/GYN, testified in support of the petition, but believes AWHONN guidelines are very good.

COMMENT NO. 7: Michael Barts, CRNA on behalf of the Montana Association of Nurse Anesthetists testified and submitted a written comment stating that the MANA organization is in agreement with the AWHONN position statement and that RNs should not have anything to do with the actual administration of labor epidural analgesia medication.

COMMENT NO. 8: One commentor submitted a written comment in support of the AWHONN guidelines.

COMMENT NO. 9: One commentor submitted a written comment proposing the following: Management of analgesia in the laboring patient with viable fetus via epidural catheter is in the scope of practice of the RN provided that qualified anesthesia personnel are readily available to the unit. Management in this context shall include monitoring of a continuous infusion or a patient controlled infusion but shall not include administration of bolus doses or increasing a continuous infusion.

COMMENT NO. 10: One commentor submitted a letter asking a number of questions regarding meanings of certain terms and safety for the mother and her baby.

COMMENTS NO. 11 & 12: Two commentors submitted letters in support of the petition.

#### ANALYSIS

6. Pursuant to Section 2-4-501, MCA, the Board is authorized to issue Declaratory Rulings "as to the applicability of any statutory provision."

7. The Petition for Declaratory Ruling was filed in accordance with Section 2-4-501, MCA, and appeared at page, 1090, 2000 Montana Administrative Register, Issue No. 8.

8. After consideration of the comments and upon review of the applicable statutes and rules, the Board of Nursing makes the following declaratory ruling.

DECLARATORY RULING

9. It is within the scope of practice of the registered nurse to monitor the mother and fetus, replace empty infusion syringes or infusion bags with new pre-prepared solutions, stop the infusion, initiate emergency therapeutic measures under protocol if complications arise, and remove the catheter. The nurse may not rebolus an epidural catheter or increase the rate of continuous infusion.

BOARD OF NURSING  
RITA HARDING, RN, MN, PRESIDENT

By: /s/ Annie M. Bartos  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, September 25, 2000.

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.

Business and Labor Interim Committee:

- ▶ Department of Agriculture;
- ▶ Department of Commerce;
- ▶ Department of Labor and Industry;
- ▶ Department of Livestock;
- ▶ Department of Public Service Regulation; and
- ▶ Office of the State Auditor and Insurance Commissioner.

Education 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, Justice, and Indian Affairs Interim Committee:

- ▶ Department of Corrections; and
- ▶ Department of Justice.

Revenue and Taxation Interim Committee:

- ▶ Department of Revenue; and
- ▶ Department of Transportation.

State Administration, Public Retirement Systems, 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<br>Subject<br>Matter          | 1. Consult ARM topical index.<br>Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute<br>Number and<br>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 which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2000. This table includes those rules adopted during the period July 1, 2000 through September 30, 2000 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 2000, 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 1999 and 2000 Montana Administrative Registers.

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

ADMINISTRATION, Department of, Title 2

- 2.5.502 State Procurement, p. 2092
- 2.21.227 Annual Vacation Leave Policy, p. 903, 1628
- 2.21.306 and other rule - Disaster Leave for Trained American Red Cross Volunteers, p. 2315, 446
- 2.21.1423 and other rules - Persons with Disabilities Preference Policy, p. 2312, 448
- 2.21.3602 and other rules - Veterans' Employment Preference Policy, p. 2304, 450

(Teachers' Retirement Board)

- I and other rules - Teachers' Retirement System - Extra Duty Compensation - Membership of Teacher's Aides and Part-time Employees - Correction of Errors on Contributions and Overpayment, p. 2792, 822

(State Compensation Insurance Fund)

- I and other rules - Construction Credit Program - Premium Rates - Premium Modifiers and Dividends, p. 1, 1033

AGRICULTURE, Department of, Title 4

- I & II Japanese Beetle (Popillia japonica) Quarantine, p. 905, 1306

- I & II Commodity Research and Market Development Program,  
p. 113, 726  
4.5.202 and other rule - Category 1 and Category 2 Noxious  
Weeds, p. 2796, 451  
4.10.1808 Termination of the Pesticide Disposal Program,  
p. 986, 1498

(Alfalfa Seed Committee)

- 4.8.203 Grant Funding, p. 1129, 1629

STATE AUDITOR, Title 6

- I-IX Viatical Settlement Agreements, p. 2095  
6.6.1110 Determination of Reasonableness of Benefits in  
Relation to Premium Charged in Credit Disability and  
Credit Life Insurance, p. 1717, 453  
6.10.131 Foreign Security Exemption, p. 117, 824

(Classification Review Committee)

- 6.6.8301 Updating References to the NCCI Basic Manual for  
Workers Compensation and Employers Liability  
Insurance 1996 ed., p. 1381

COMMERCE, Department of, Title 8

(Board of Alternative Health Care)

- 8.4.503 Direct-Entry Midwife Apprenticeship Requirements,  
p. 1933, 456

(Board of Architects)

- 8.6.405 and other rules - Applicants Registered in Another  
State - Qualifications for Montana Branch Office -  
Examinations - Individual Seals - Unprofessional  
Conduct - Fees - Business Entity Definitions -  
Emergency Use of Practice - Application for  
Architects - Licensure by Examination, p. 1268, 2298

(Chemical Dependency Counselors Certification Program)

- 8.11.106 and other rules - Education - Verification of  
Supervised Counseling Experience - Application  
Procedures - Written Examinations - Counselors  
Certified in Other States - Renewals - Continuing  
Education, p. 2344

(Board of Chiropractors)

- 8.12.603 and other rules - Examinations - Temporary Permits -  
Continuing Education Requirements - Unprofessional  
Conduct - Fees - Interns and Preceptors -  
Recertification - Denial - Revocation - Patient  
Records, p. 663, 1307, 1499

(Board of Clinical Laboratory Science Practitioners)

- I Temporary Practice Permits, p. 2130  
8.13.301 and other rules - Applications for License - Fees -  
Minimum Standards for Licensure - Continuing  
Education Requirements, p. 2675, 727, 1034

(Board of Dentistry)

8.16.402A and other rules - Dentist Applications - Fees - Conversion of Inactive Status Licenses - Complaint Procedures - Dental Hygienist Licensure by Credentials - Denturist Examinations - Interns - Renewal - License Reinstatement - Dental Hygienist Local Anesthetic Agent Licensure, p. 518, 1312

(Board of Hearing Aid Dispensers)

8.20.407 and other rules - Records - Unprofessional Conduct - Minimum Testing and Recording Procedures - Definitions - Transactional Documents, p. 777, 2514

(Board of Horse Racing)

8.22.503 and other rules - Horse Racing, p. 529, 953

(Board of Landscape Architects)

8.24.409 Fee Schedule, p. 1132, 2004

(Board of Medical Examiners)

I-XI Purpose and Authority - Definitions - License Requirement - Application for a Telemedicine Certificate - Fees - Failure to Submit Fees - Issuance of Telemedicine Certificate - Certificate Renewal Application - Effect of Denial of Application for Telemedicine Certificate - Effect of Telemedicine Certificate - Sanctions, p. 1826

8.28.1501 and other rules - Definitions - Post-Graduate Training Program, p. 2143, 627, 729

8.28.1508 Temporary Approval, p. 1385

(Board of Funeral Service)

8.30.402 and other rules - Applications - Fees - Inactive Status and Reactivation - Contracts - Federal Trade Commission Regulations - Continuing Education - Disclosure Statements on Embalming - Unprofessional Conduct - Crematory Facility Regulation - Processing of Cremated Remains - Perpetual Care and Maintenance Fund Reports - Restrictions on Officers - Transfer of Cemetery Ownership - Perpetual Care and Maintenance Funds - Prepaid Funeral Arrangements - Branch Establishment Facilities - Definitions - Prearranged, Prefinanced or Prepaid Funerals - Requirements for Sale of At-need, Pre-need and Prepaid Funeral Arrangements - Pre-need Funeral Agreements - Trust Funds, p. 668, 1630

(Board of Nursing)

8.32.301 and other rules - Nurse Practitioner Practice - Standards Relating to the Licensed Practical Nurse's Role in Intravenous (IV) Therapies, p. 537, 954

8.32.304 and other rules - Advanced Practice Nursing - Program Director - Nurses' Assistance Program, p. 2132

8.32.308 and other rules - Temporary Permits - General Requirements for Licensure - Re-examination -

- 8.32.405 Licensure for Foreign Nurses - Temporary Practice Permits - Renewals - Conduct of Nurses, p. 988 and other rules - Licensure by Endorsement - Temporary Practice Permits - Renewals - Standards Related to Registered Nurse's Responsibilities - Prescriptive Authority Committee - Initial Application Requirements for Prescriptive Authority - Limitations on Prescribing Controlled Substances - Quality Assurance of Advanced Practice Nursing - Renewal of Prescriptive Authority, p. 1539
- 8.32.1702 and other rules - Nursing Tasks that may be Delegated - General Nursing Tasks that may not be Delegated - Nursing Tasks Related to Gastrostomy Feeding that may be Delegated, p. 2150, 458

(Board of Nursing Home Administrators)

- 8.34.414 and other rules - Examinations - Continuing Education - Fee Schedule, p. 227, 1035

(Board of Occupational Therapists)

- 8.35.407 Fees, p. 685, 1036

(Board of Outfitters)

- 8.39.501 and other rules - Outfitter Licenses - Qualifications - Examinations - Outfitter Acting as Guide - Renewal - Amendment to Operations Plan - Inactive - Guide or Professional Guide License - Fees for Outfitter Operations Plan - N.C.H.U. - Guide or Professional Guide - Outfitter Records - Safety Provisions - Standards for Outfitters - Guides and Professional Guides - Unprofessional Conduct and Misconduct - Moratorium - Review of New Operations Plan - Proposed Expansion of Net Client Hunting Use Under Existing and New Operations Plans - Sale and Purchase of an Outfitting Operation, p. 2318, 730
- 8.39.514 Emergency Amendment - Licensure - Guide or Professional Guide License, p. 2516

(Board of Pharmacy)

- 8.40.702 Definitions, p. 2330, 460
- 8.40.906 and other rules - Forms and Reports - Pharmacy Technicians - Patient Counseling, p. 540, 909, 2005

(Board of Physical Therapy Examiners)

- 8.42.403 Fees, p. 543, 1038

(Board of Plumbers)

- 8.44.402 and other rules - Plumbing Definitions - Applications - Examinations - Master Plumbers - Registration of Business Names - Renewals - Fee Schedule - Qualifications - Journeyman - Temporary Practice Permits - Out-of-State Applicants - Complaint Procedure - Medical Gas Endorsement Required - Application for Endorsement - Annual

Renewal of Endorsement - Endorsement Verification,  
p. 230, 825

(Board of Professional Engineers and Land Surveyors)  
8.48.1105 Fee Schedule, p. 1936, 743

(Board of Private Security Patrol Officers and Investigators)  
8.50.437 Fee Schedule, p. 2351

(Board of Public Accountants)  
8.54.415 and other rules - Licensure of Out-of-State Applicants - Reactivation of Inactive and Revoked Status - Commissions and Contingent Fees - Definitions, p. 1718

8.54.416 and other rules - Licensure of Foreign-Trained Applicants - Credit for Formal Individual Study Programs - Basic Requirement, p. 2332, 461

(Board of Radiologic Technologists)  
8.56.409 and other rule - Fees, p. 239, 783, 2008

(Board of Real Estate Appraisers)  
I Appraisal Reviews, p. 785, 2301  
8.57.406 and other rules - Qualifying Education Requirements - Adoption of USPAP by Reference - Regulatory Reviews, p. 2679, 956

(Board of Realty Regulation)  
8.58.406A Applications for Licensure by Salespersons and Brokers, p. 546  
8.58.411 Fee Schedule - Renewal - Property Management Fees, p. 2354  
8.58.415A and other rules - Continuing Education - Renewal - Mandatory Continuing Education for New Salespersons, p. 1134, 2013

(Board of Respiratory Care Practitioners)  
8.59.402 and other rules - Definitions - Procedures for Renewal - Inactive Status Licenses - Continuing Education Requirements, p. 548, 1039

(Board of Speech-Language Pathologists and Audiologists)  
8.62.413 Fees, p. 687, 1314

(Board of Veterinary Medicine)  
8.64.501 and other rules - Applications - Temporary Permits - Examinations - Licensure of Out-of-State Applicants, p. 1544, 2303

(Building Codes Division)  
8.70.101 and other rules - Incorporation by Reference of Uniform Building Code - Funding of Code Enforcement Program - Certification of Code Enforcement Programs - Incorporation by Reference of Uniform Plumbing Code, p. 2358

(Weights and Measures Bureau)

8.77.105 and other rule - Weighing Device License Transfer - License Fee Schedule, p. 1275, 2015

(Consumer Affairs Division)

I-V Telemarketing Registration and Fraud Prevention Act, p. 120, 1501

(Division of Banking and Financial Institutions)

I Investments by Banks to Promote the Public Welfare, p. 1549, 2306

(Board of County Printing)

8.91.301 and other rules - County Printing, p. 2339, 630

(Local Government Assistance Division)

I Administration of the 2000 Federal Community Development Block Grant Program, p. 126, 1746

8.94.3001 and other rules - Monumentation of Surveys - Form, Accuracy, and Descriptive Content of Records Survey, p. 2156, 462, 1041

8.94.3806 Submission and Review of Applications under the 2000/2001 Treasure State Endowment Program (TSEP), p. 552, 1042

(Board of Investments)

8.97.910 INTERCAP Program, p. 2142

8.97.1101 and other rules - Board of Investments, p. 2682, 470, 1043

(Economic Development Division)

I-V Advanced Telecommunications Infrastructure Tax Credit, p. 1723, 2403

I-XIII Montana Board of Research and Commercialization Technology, p. 1138

8.99.401 and other rules - Microbusiness Finance Program, p. 555, 1045

(Travel Promotion and Development Division)

8.119.101 Tourism Advisory Council, p. 993, 2307

(Health Facility Authority)

8.120.101 and other rules - Health Facility Authority, p. 995, 1509

(Montana Lottery)

8.127.407 and other rule - Retailer Commission - Sales Staff Incentive Plan, p. 2363

EDUCATION, Title 10

(Office of Public Instruction)

I-XI and other rules - Special Education, p. 129, 1048

(Board of Public Education)

- I and other rules - Teacher Certification - Reporting of Negative Certification Actions, p. 569, 1510
- I-X and other rules - Teacher Certification, p. 1388, 2406
- I-CXXXVI Content and Performance Standards for Social Studies, Arts, Library Media, and Workplace Competencies, p. 1148
- 10.55.2001 and other rules - Standards of School Accreditation, p. 2145
- 10.56.101 Student Assessment, p. 242, 957
- 10.57.220 and other rule - Teacher Certification - Recency of Credit - Endorsement Information, p. 911, 1511

(State Library Commission)

- I & II Federation Advisory Boards and Base Grants, p. 247, 1471, 2016

(Montana Heritage Preservation and Development Commission)

- I-VII Acquisition of Real and Personal Property, p. 13, 966

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

- 12.9.602 and other rule - Emergency Amendment - Pheasant Enhancement Program, p. 1071
- 12.9.602 and other rule - Pheasant Enhancement Program, p. 1000, 1512
- 12.9.602 and other rule - Pheasant Enhancement Program, p. 2719, 831

(Fish, Wildlife, and Parks Commission)

- I-III Importation of Bait Leeches, p. 18, 827
- I-V Western Fishing District - Limiting Watercraft to No Wake Speed for Lakes 35 Acres or Less - Instituting a No Wake Zone Contiguous to the Shoreline on Lakes Greater than 35 Acres, p. 1728
- 12.3.117 and other rules - Special Permits - Special License Drawings - Establishing a License Preference System, p. 1552, 2519
- 12.6.901 Regulating Personal Watercraft on the Tongue River Reservoir, p. 175, 1216, 1315
- 12.6.901 Limiting the Motor-Propelled Water Craft to No-Wake Speed on the Fort Peck Dredge Cut Trout Pond, p. 2722, 744

ENVIRONMENTAL QUALITY, Department of, Title 17

- I & II and other rules - Underground Storage Tanks - Underground Storage Tank Licensing, p. 572, 969, 2018
- 17.36.101 and other rules - Subdivisions - Standards for On-site Subsurface Sewage Systems in New Subdivisions, p. 1832

17.36.101 and other rules - Subdivisions - Procedures for Local Health Officer Review of Subdivision Applications, p. 610, 967

(Board of Environmental Review)

I and other rules - Air Quality - Use of Credible Evidence in Assessing Air Quality Compliance, p. 250, 1289

I-XIV and other rules - Air Quality - Air Quality Compliance Assurance Monitoring - Requirements for Air Quality Operating Permit Content, p. 2725, 839

17.8.101 Air Quality - Exclusions from the Definition of Volatile Organic Compounds, p. 257

17.8.101 and other rule - Air Quality - Implementation of Revised Federal Air Quality Standards for Particulate Matter, p. 2750, 836

17.8.102 and other rule - Air Quality - Air Quality Incorporation by Reference, p. 1298

17.8.302 Air Quality - Cement Manufacturing Industry and Primary Lead Smelting Maximum Achievable Control Technology, p. 261, 1316

17.8.504 Air Quality - Air Quality Fees, p. 1927

17.8.1201 and other rule - Air Quality - Title V Air Quality Operating Permits, p. 2747, 838

17.20.804 and other rules - Major Facility Siting - Major Facility Siting Act, p. 2367

17.24.101 and other rules - Metal Mines - Metal Mines Reclamation Act, p. 2178, 473

17.30.630 Water Quality - Temporary Water Quality Standards for Portions of Mike Horse Creek, Beartrap Creek, and the Upper Blackfoot River, p. 263, 1317

17.30.705 Water Quality - Nondegradation Requirements for Outstanding Resource Waters, p. 2753, 843

17.38.101 and other rules - Public Water Supply - Water Quality - Siting Criteria for Public Sewage Systems, p. 1859

17.38.202 and other rules - Public Water and Sewage System Requirements - Public Water Supplies, p. 1879

17.38.606 Public Water Supply - Administrative Penalties, p. 1281

(Department of Environmental Quality and Board of Environmental Review)

17.4.101 Incorporation by Reference of the Attorney General's Model Rules, p. 2173, 472

(Petroleum Tank Release Compensation Board)

17.58.311 Definitions, p. 1278, 1752

TRANSPORTATION, Department of, Title 18

18.2.101 Model Procedural Rules, p. 787, 1335

18.8.101 and other rules - Motor Carrier Services Regulations for Overdimensional Vehicles and Loads, p. 269, 1075

CORRECTIONS, Department of, Title 20

20.9.101 and other rules - Youth Placement Committees,  
p. 617, 1078

JUSTICE, Department of, Title 23

I-V and other rules - Use of a Full Legal Name on a  
Driver's License - Change of Name on a Driver Record  
- Collection of an Applicant's Social Security  
Number - Proof of Residence, p. 1559, 2524  
23.16.101 and other rules - Video Gambling Machines, p. 1203,  
1638

LABOR AND INDUSTRY, Department of, Title 24

I Payment of Silicosis Benefits, p. 179, 862  
I-IX Workers' Compensation Administrative Assessment,  
p. 22, 844  
24.11.101 and other rules - Unemployment Insurance Matters,  
p. 1934, 2454  
24.11.441 and other rules - Unemployment Insurance Matters,  
p. 2456  
24.16.9007 Montana's Prevailing Wage Rates - Building  
Construction Services - Heavy and Highway  
Construction Services, p. 922, 1639  
24.21.414 Wage Rates for Certain Apprenticeship Programs -  
Building Construction Occupations, p. 925, 1647  
24.29.205 and other rules - Workers' Compensation Matters,  
p. 1733

(Workers' Compensation Judge)

24.5.301 and other rules - Procedural Rules, p. 914, 1513

(Board of Personnel Appeals)

24.26.215 and other rule - Remands from the Board - Merger of  
Labor Organizations, p. 1473, 2308

LIVESTOCK, Department of, Title 32

32.8.101 and other rules - Fluid Milk - Grade A Milk Products  
- Milk Freshness Dating, p. 2372  
32.8.102 Fluid Milk and Grade A Milk Products - Milk  
Freshness Dating, p. 1477

(Board of Milk Control)

32.24.301 Emergency Amendment - Producer Floor Pricing of  
Class I Milk, p. 2310  
32.24.301 and other rules - Pricing of Producer Milk -  
Utilization - Procedures to Purchase - Marketing of  
Surplus Milk, p. 282, 1336, 1652, 1753

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

Establishing a Negotiated Rulemaking Committee to  
Negotiate and Develop Proposed Rules Relating to

Cabin and Homesite Lease Rates, p. 292  
I-XII Control of Timber Slash and Debris, p. 928, 2526  
36.12.102 and other rules - Water Rights Bureau, p. 33, 636

(Board of Oil and Gas Conservation)

36.22.302 and other rules - Definitions - Adoption of Forms -  
Drilling Permits Pending Special Field Rules -  
Reports from Transporters, Refiners and Gasoline or  
Extraction Plants - Approval for Pulling Casing and  
Re-entering Wells - Restoration of Surface -  
Plugging and Restoration Bond - Application Contents  
and Requirements - Financial Responsibility - Notice  
of Application - Exempt Aquifers - Injection Fee -  
Well Classification - Area of Review - Certification  
of Enhanced Recovery Projects - Application -  
Contents and Requirements - p. 2379

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

I and other rules - Communicable Disease Control,  
p. 1972, 2528  
I and other rules - Inpatient Hospital Services  
Reimbursement Rates, p. 1301, 2034  
I and other rules - Nursing Facility Reimbursement,  
p. 1208, 1754  
I-III Guardianship Services, p. 410, 864  
I-XI and other rules - Transfer from Department of Social  
and Rehabilitation Services - Home and Community-  
Based Services Program, p. 296, 2023  
I-XV and other rules - Day Care, p. 1573, 2415  
I-XVIII and other rules - Transfer from Department of Social  
and Rehabilitation Services and Department of  
Family Services - Repeal of Rules from the  
Department of Family Services - Amendment of Rules  
of the Department of Health and Environmental  
Sciences and Public Health and Human Services - Fair  
Hearings and Contested Case Proceedings, p. 356,  
1653  
I-XXX The Children's Health Insurance Program (CHIP),  
p. 416, 1221  
11.5.201 and other rules - Protective Services for the  
Developmentally Disabled, p. 2834, 475  
16.10.201 and other rules - Food Regulations, p. 2206  
16.10.1301 and other rules - Swimming Pools, Spas and Swimming  
Areas, p. 2178  
16.35.101 and other rules - End Stage Renal Disease (ESRD)  
Recipients, p. 1023, 1660  
16.38.307 Laboratory Testing Fees, p. 1003, 1663  
17.70.101 and other rules - Transfer from the Department of  
Environmental Quality - Radiation Control, p. 189  
37.34.1801 and other rule - Accreditation Standards for  
Provider Programs of Community-based Developmental  
Disabilities Services, p. 1483  
37.70.401 and other rules - Low Income Energy Assistance  
Program (LIEAP) - Low Income Weatherization  
Assistance Program (LIWAP), p. 2188

- 37.80.201 and other rules - Child Care Subsidy Programs, p. 1798, 2454
- 37.85.212 and other rules - Resource Based Relative Value Scale (RBRVS) - Early and Periodic Screening, Diagnostic and Treatment Services (EPSDT) - Eyeglasses Services - Clinic Services - Dental and Denturist Services - Durable Medical Equipment, Orthotics, Prosthetics and Supplies (DMEOPS) - Hearing Aid Services - Transportation Services - Non-Hospital Laboratory and Radiology Services, p. 1008, 1664
- 37.86.1101 Outpatient Drugs Definition, p. 1624, 2313
- 37.86.1105 Reimbursement to State Institutions for Outpatient Drugs, p. 2388
- 37.86.2901 and other rule - Inpatient Hospital Services, p. 1017, 1666
- 37.88.1401 and other rules - Reimbursement for Institutions for Mental Diseases, p. 1491, 2036
- 37.108.229 Continuity of Care and Transitional Care Provided by Managed Care Plans, p. 1742, 2432
- 46.9.301 and other rules - Grants-in-Aid to Counties - Community Services Block Grants, p. 39, 745
- 46.12.101 and other rules - Transfer from the Department of Social and Rehabilitation Services - Medicaid Eligibility, p. 476
- 46.12.202 and other rules - Transfer from the Department of Social and Rehabilitation Services - General Medicaid Services, p. 479
- 46.12.502B and other rules - Transfer from the Department of Social and Rehabilitation Services - Medicaid Mental Health Services, p. 195, 865
- 46.12.503 and other rules - Transfer from the Department of Social and Rehabilitation Services - Medicaid Services - Primary Care, p. 482
- 46.12.510 and other rules - Transfer from the Department of Social and Rehabilitation Services - Senior and Long Term Care Services, p. 489
- 46.12.521 and other rules - Montana Medicaid Passport to Health Program, p. 42, 866, 1338
- 46.12.1222 and other rules - Nursing Facilities, p. 2827, 492
- 46.12.3804 and other rules - Families Achieving Independence in Montana (FAIM), p. 2799, 746
- 46.20.106 Emergency Amendment - Mental Health Services Plan Eligibility, p. 2529
- 46.20.106 Mental Health Services Plan Eligibility, p. 2510
- 46.20.106 Mental Health Services Plan Eligibility, p. 2202
- 46.20.106 Emergency Amendment - Mental Health Services Plan Eligibility, p. 2105
- 46.30.501 and other rules - Conduct of Contested Hearings in Child Support Establishment and Enforcement Cases, p. 2471

PUBLIC SERVICE REGULATION, Department of, Title 38

- I-III Flexible Pricing for Regulated Telecommunications Service, p. 2000

- I-XX Protective Orders - Protection of Confidential Information, p. 939, 2037
- 38.2.314 Practice Before the Public Service Commission, p. 2559, 749
- 38.3.130 Meaning and Effect of the Landfill Closure Provision in Class D Motor Carrier Authorities, p. 690, 2047
- 38.3.402 and other rules - Application and Reporting Fees, p. 934, 1668
- 38.5.1107 Accrual of Interest on Utility Customer Deposits, p. 1998
- 38.5.1401 Definition of Customer under Termination of Gas and Electric Service, p. 625, 1080
- 38.5.2202 and other rule - Pipeline Safety, p. 2608, 752

REVENUE, Department of, Title 42

- I and other rules - Endowment Tax Credit, p. 806, 2109
- I and other rules - Oil and Gas Taxes, p. 706, 1347
- I and other rules - Tax Benefits, p. 702, 1343
- I and other rules - Family Education Savings Program Account Rules, p. 693, 1344
- I and other rule - Intangible Personal Property, p. 2620, 872
- I-V Declaratory Rulings, p. 697, 1340
- I-VI Tobacco Rules, p. 1495, 2113
- 42.11.309 Commission Rate Applicability Date, p. 704, 1341
- 42.12.101 and other rules - Liquor Licenses, p. 789, 1762
- 42.23.501 and other rules - New and Expanded Industry Credit, p. 810, 1346
- 42.25.1101 and other rules - Natural Resource Taxes, p. 2390

SECRETARY OF STATE, Title 44

- I Defining Search Criteria for Uniform Commercial Code Certified Searches, p. 818, 2051
- 44.14.101 and other rule - Allow Records to be Retained on Digital Media - Records with a Retention of 10 Years or Longer, p. 815, 1518