

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 16

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE MONTANA AGRICULTURE DEVELOPMENT COUNCIL
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PROPOSED
amendment of ARM 4.16.303 and)	AMENDMENT AND ADOPTION
4.16.701 and adoption of)	
New Rule I relating to the)	NO PUBLIC HEARING
agricultural marketing)	CONTEMPLATED
development program)	

TO: All Concerned Persons

1. On September 24, 2005, the Montana Agriculture Development Council proposes to amend and adopt the above-stated rules relating to the agricultural marketing development program.

2. The Montana Agriculture Development Council 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 Agriculture no later than 5:00 p.m. on September 8, 2005, to advise us of the nature of the accommodation that you need. Please contact Joel A. Clairmont at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-2402; TTY: (406) 444-4687; Fax: (406) 444-5409; or E-mail: agr@mt.gov.

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

4.16.303 APPLICATION PROCEDURES FOR A SEED CAPITAL PROJECT LOAN - REVIEW PROCESS (1) through (1)(b) remain the same.

~~(c) The applicant shall make a formal presentation to the council at a regularly scheduled council meeting. The council staff will then conduct its own due diligence examination of the seed capital project proposal, which involves, at a minimum, a thorough assessment of the project's compliance with the applicable criteria and goals as set forth in the act and rules, the company's management team, the company's potential market, other investors, ownership, and management and financial references.~~

(d) The council staff will then conduct its own due diligence examination of the seed capital project proposal, which involves, at a minimum, a thorough assessment of the project's compliance with the applicable criteria and goals as set forth in the act and rules, the company's management team, the company's potential market, other investors, ownership, and management and financial references. Council staff will then develop a recommendation for the council for its review and consideration.

~~(e) Council staff will then develop a recommendation for the council for its review and consideration. The applicant shall make a formal presentation to the council at a regularly scheduled council meeting.~~

AUTH: 90-9-203, MCA

IMP: 90-9-203, 90-9-311, 90-9-312, and 90-9-313, MCA

REASON: As the council holds regularly scheduled meetings on a quarterly basis, current language within the rule defines a timeline of up to approximately six months (two quarters) between submission and approval of an applicant's executive summary for a seed capital loan and the council's final review and decision for a seed capital loan application. By revising the sequence of the application steps required of the applicant, council staff and the council, the application timeline is reduced to approximately three months (one quarter) making the program more user-friendly.

4.16.701 AGRICULTURAL MARKETING AND BUSINESS DEVELOPMENT PROGRAM; PURPOSE, GOALS, AND CRITERIA (1) In addition to the purposes of the "Montana Growth Through Agriculture Act" as set forth in 90-9-102, MCA, the purpose of the marketing and business development program is to find new or expanded markets for the products, processes, and technologies of Montana agricultural businesses.

(2) The agricultural marketing and business development program will coordinate with existing department marketing programs and the market development activities of the department of agriculture.

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

AUTH: 90-9-203, MCA

IMP: 90-9-102, 90-9-201, 90-9-202, and 90-9-401, MCA

REASON: To clarify the council's role in enhancing products, processes, business organizational improvements and markets for Montana's agricultural industry, language is proposed to include business development as an eligible area of investment participation for the council.

4. The new rule as proposed to be adopted provides as follows:

NEW RULE I APPLICATION PROCEDURES FOR AN AGRICULTURAL MARKETING AND BUSINESS DEVELOPMENT INVESTMENT - SUBMISSION AND USE OF INVESTMENT PROPOSAL (1) An applicant for an agricultural marketing or business development investment project shall submit an investment proposal to the council, not to exceed a maximum of eight typewritten pages in at least 12-point font.

(2) The investment proposal must include the following items:

- (a) applicant cover page which includes the investment proposal title, name and contact information of the applicant, applicant tax identification number, and project duration;
 - (b) executive summary of the investment proposal;
 - (c) identification of need or opportunity which contains a description of the agricultural product and/or process proposed to be developed or marketed with particular emphasis on any proprietary characteristics which would result in a competitive advantage for the applicant;
 - (d) investment proposal objectives which detail the intended accomplishments of the project;
 - (e) investment proposal deliverables which detail the tangible or intangible outcome(s) of the project;
 - (f) investment proposal plan of work which details the timeline, steps, and actions that will be taken to achieve the outcomes defined by the project's objectives and deliverables;
 - (g) investment proposal potential use which details the expected benefit or consequence to Montana's agricultural industry(s) should the project result in a favorable outcome and may include an estimate of projected sales revenue, jobs creation or preservation, or other positive economic impact;
 - (h) investment proposal key personnel which identifies the project team members and may include a description of the project team's experience and qualifications relevant to the particular focal area;
 - (i) investment proposal facilities and equipment which detail the project's facility or equipment needs, if relevant, for the investment project;
 - (j) investment proposal current and pending support which detail the nature and amount of both monetary and nonmonetary forms of support pledged toward the investment project and includes a listing of the potential investors; and
 - (k) investment proposal budget which:
 - (i) details the amount of funding needed for the current round of financing;
 - (ii) expenses associated with the investment project;
 - (iii) delineates how those expenses are proposed to be funded;
 - (iv) identifies the amount and nature of matching contributions; and
 - (v) the expenditure categories that state monies will be allocated toward.
- (3) The investment proposal is evaluated by the council for a determination of whether the project:
- (a) complies with ARM 4.16.701(2);
 - (b) should receive a financial investment assistance grant;
 - (c) should have any repayments provisions associated with an award of funding; and
 - (d) should be approved as the executive summary for a seed capital loan application and subject to the processes defined under ARM 4.16.301 through 4.16.305.

(4) The investment proposal should not contain any information that the applicant does not want subject to public inspection.

AUTH: 90-9-203, MCA
IMP: 90-9-202, 90-9-203, 90-9-303, 90-9-311, and
90-9-401, MCA

REASON: To clarify the process and procedure used by the council in making investments in agricultural marketing or business development projects, the council proposes to adopt a rule providing for a more standardized application format.

5. Concerned persons may submit their data, views or arguments concerning the proposed amendment and adoption in writing to Joel A. Clairmont at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or E-mail: agr@mt.gov. Any comments must be received no later than September 22, 2005.

6. If persons who are directly affected by the proposed amendment and adoption wish to express their data, views or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Joel A. Clairmont at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or E-mail: agr@mt.gov. A written request for hearing must be received no later than September 22, 2005.

7. If the agency receives requests for a public hearing on the proposed amendment and adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 2800 persons based on 28,000 farm or ranch operations in Montana.

8. The Department of Agriculture 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 noxious weed seed free forage, noxious weeds, alfalfa seed, agriculture in Montana schools program, agriculture development, pesticides, warehouseman, produce, mint, seed, alternative crops, wheat research and marketing, rural development and/or hail. Such written

request may be mailed or delivered to Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or E-mail: agr@mt.gov or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

9. An electronic copy of this Notice of Proposed Amendment and Adoption is available through the Department's website at www.agr.mt.gov, under the Administrative Rules section. The Department strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

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

DEPARTMENT OF AGRICULTURE

/s/ Ervin Schlemmer
Ervin Schlemmer, Vice Chair
Montana Agriculture
Development Council

/s/ Timothy J. Meloy
Timothy J. Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State, August 15, 2005.

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

In the matter of the proposed	)	AMENDED NOTICE OF PROPOSED
amendment of ARM 6.6.504,	)	AMENDMENT AND ADOPTION
6.6.505, 6.6.506, 6.6.507,)	
6.6.507A, 6.6.507B, 6.6.507C,)	
6.6.508, 6.6.508A, 6.6.509,)	
6.6.510, 6.6.511, 6.6.519,)	
6.6.520, 6.6.521, 6.6.608,)	
6.6.612, and 6.6.613, and the)	
adoption of new rules I)	
through III pertaining to)	
medicare supplements)	

TO: All Concerned Persons

1. On July 14, 2005, the department published MAR Notice No. 6-160 at page 1131 of the 2005 Montana Administrative Register, Issue Number 13 regarding the public hearing on the proposed amendment and adoption of the above-stated rules.

2. The notice of proposed agency action is amended as follows to expand upon the reasonable necessity statement included in the first notice. The primary reason for amending the rules was to adopt NAIC model regulation changes required by recent changes in federal law. However, in some places the amendments add to the content of the most recent version of the model regulation, and an expanded reasonable necessity statement is required to adequately explain the department's reasons for making those changes. The rules as proposed do not change from the original proposal.

3. The reasonable necessity statement is being amended as follows:

REASONABLE NECESSITY STATEMENT: It is necessary to amend and adopt the above-stated rules in order to be in compliance with changes to corresponding federal regulations pursuant to the medicare modernization act of 2003 (MMA) that are relevant to medicare supplement coverage.


In addition, it is necessary to amend the definition of sickness in ARM 6.6.505 in order to conform to insurance code statutes regarding preexisting conditions, in particular 33-22-904, 33-22-110, and 33-22-242, MCA.

It is necessary to amend ARM 6.6.508A in order to provide a fairer system of implementing rate increases for policies that are rated on the basis of attained age. Over the years the department has noted that age bands that span more than one year often result in very large rate increases that consumers find difficult to afford.

In order to protect the interests of consumers, it is necessary to expand the guarantee issue rights set forth in ARM 6.6.507C beyond what is required by the NAIC model

regulation. The commissioner has a specific duty to protect the interests of insurance consumers in the state of Montana [33-2-311, MCA]. Only limited classes of persons, who have lost their prior medicare supplement coverage through circumstances beyond their control, have guarantee issue rights under this rule. Those persons should not have their benefit choices restricted, and they should have some protection from unreasonable rate increases. The federal regulations allow the states to implement standards that are more stringent than the federal standards. [42 CFR 403.222].

JOHN MORRISON, State Auditor
and Commissioner of Insurance



By: _____
Alicia Pichette
Deputy Insurance Commissioner

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

Certified to the Secretary of State on August 15, 2005.

BEFORE THE COMMUNITY DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
adoption of a new rule for the) PROPOSED ADOPTION
submission and review of)
applications to the Treasure)
State Endowment Program (TSEP))

TO: All Concerned Persons

1. On September 15, 2005, at 1:30 p.m., a public hearing will be held in Room 202, at the Park Avenue Building, 301 South Park Avenue, Helena, Montana, to consider the adoption by reference of rules governing the submission and review of applications to the Treasure State Endowment Program (TSEP).

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 Community Development Division no later than 5:00 p.m., on September 8, 2005, to advise the Division of the nature of the accommodation that you need. Please contact Tami Sunford, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620; telephone (406) 841-2770; TDD (406) 841-2702; facsimile (406) 841-2771; e-mail to tsunford@mt.gov.

3. The proposed new rule provides as follows:

NEW RULE I INCORPORATION BY REFERENCE OF RULES GOVERNING THE SUBMISSION AND REVIEW OF APPLICATIONS FOR FUNDING UNDER THE TREASURE STATE ENDOWMENT PROGRAM (1) The department of commerce adopts and incorporates by reference the Montana Treasure State Endowment Program Application Guidelines, dated 2005, published by the department as rules governing the submission and review of applications under the TSEP program.

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

- (a) eligible applicants and projects;
- (b) types of grants available under TSEP;
- (c) general requirements for applying for TSEP grants;

and

- (d) application ranking criteria and review process.

(3) Copies of the application guidelines adopted by reference in (1) may be obtained from the Department of Commerce, Community Development Division, P.O. Box 200523, Helena, Montana 59620-0523.

AUTH: 90-6-710, MCA
IMP: 90-6-710, MCA

REASON: It is reasonably necessary to adopt this rule because local government entities must have these application guidelines before the eligible entities may apply to the Department for financial assistance. The guidelines describe the types of projects that are eligible for TSEP grants and the types of grants available. The guidelines also describe the review process by which the Department evaluates applications and makes funding recommendations to the Legislature.

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 Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana, 59620; by facsimile to (406) 841-2771; or by e-mail to jedgcomb@mt.gov to be received no later than 5:00 p.m., September 23, 2005.

5. Jim Edgcomb has been designated to preside over and conduct this hearing.

6. The Community Development Division maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Division. Persons who wish to have their name added to the list may 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 rules relating to the Treasure State Endowment Program. This request may be mailed or delivered to the Community Development Division, 301 South Park Avenue, Helena, Montana 59620, transmitted by facsimile to (406) 841-2771, or made by completing a request form at any rules hearing held by the Division.

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

COMMUNITY DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE

By: /s/ ANTHONY J. PREITE
ANTHONY J. PREITE, DIRECTOR
DEPARTMENT OF COMMERCE

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

Certified to the Secretary of State, August 15, 2005.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption)
of proposed New Rules I through VI)
pertaining to operation of the)
identity theft passport program)

NOTICE OF PUBLIC
HEARING ON
PROPOSED ADOPTION

TO: All Concerned Persons

1. On September 16, 2005, at 9:30 a.m., the Montana Department of Justice will hold a public hearing in the auditorium of the Scott Hart Building, 303 N. Roberts, Helena, Montana, to consider the adoption of proposed New Rules I through VI pertaining to operation of the identity theft passport program which was enacted by the 2005 Legislature.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on September 2, 2005, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Justice, 215 N. Sanders, P.O. Box 201401, Helena, MT 59620-1401; (406) 444-2026; Montana Relay Service 711; Fax (406) 444-3549; e-mail cjensen@mt.gov.

3. The proposed new rules provide as follows:

NEW RULE I PURPOSE (1) The attorney general administers the identity theft passport program (passport program). Passports are available for eligible victims of identity theft. The attorney general's office through the office of victim services will work in cooperation with local law enforcement agencies to substantiate claims of identity theft prior to issuance of a passport.

(2) As a criminal justice agency, the attorney general's office is authorized to receive and share confidential criminal justice information with other law enforcement agencies to implement the provisions of the passport program.

AUTH: 46-24-220, MCA
IMP: 46-24-220, MCA

NEW RULE II APPLICATION (1) To apply for an identity theft passport, a victim must:

- (a) be a victim of identity theft in Montana;
- (b) file a report with a Montana law enforcement agency alleging identity theft pursuant to 45-6-332, MCA; and
- (c) complete the department of justice's identity theft passport application. The application must, at a minimum, include:
 - (i) a description of the alleged identity theft;

- (ii) if known by the victim, the perpetrator of the identity theft;
- (iii) a detailed statement of the accounts involved;
- (iv) the signature of the victim;
- (v) a copy of the victim's driver's license or other official form of photo identification; and
- (vi) the signature of the law enforcement agent with whom the victim filed a report.

(2) The law enforcement report and the identify theft passport application must be sent to the office of victim services by the law enforcement agency where the victim filed a report. The application and report may be mailed or faxed to the Office of Victim Services P.O. Box 201410, 1712 9th Ave., Helena, MT 59620-1410, Fax (406) 444-4303.

(3) Incomplete or inaccurate applications will not be accepted by the passport program.

AUTH: 46-24-220, MCA
IMP: 46-24-220, MCA

NEW RULE III ISSUANCE OF AN IDENTITY THEFT PASSPORT

(1) The office of victim services will issue an identity theft passport if the provisions of this subchapter have been complied with and the office has a reasonable basis to conclude that the alleged identity theft occurred.

(2) Identity theft passports will not be issued if the application or report is submitted by anyone other than a Montana law enforcement agency.

(3) Upon receipt of the passport, the victim must call the office of victim services at (406)444-3653 to activate the card. At the time of activation, the victim will be given a unique passport number. Prior to activation, the passport will not be accepted by law enforcement agencies, creditors, or consumer reporting agencies.

AUTH: 46-24-220, MCA
IMP: 46-24-220, MCA

NEW RULE IV NAME OR ADDRESS CHANGES

(1) If a victim who has been issued an identity theft passport changes his or her name or address the victim shall:

(a) notify the Office of Victim Services, P.O. Box 201410, 1712 9th Ave., Helena, MT 59620-1410, within 30 days of the change; and

(b) return their passport to the office of victim services.

(2) The office of victim services will deactivate the original passport and issue the victim a new passport reflecting the victim's updated name or address.

AUTH: 46-24-220, MCA
IMP: 46-24-220, MCA

NEW RULE V LOST OR STOLEN PASSPORTS

(1) If a victim's identity theft passport is lost or stolen the victim must:

- (a) notify the office of victim services; and
 - (b) re-apply for a new passport following the procedures set forth in this subchapter.
- (2) The lost or stolen passport will be deactivated by the office of victim services.

AUTH: 46-24-220, MCA
IMP: 46-24-220, MCA

NEW RULE VI PENALTY FOR FRAUDULENT APPLICATION (1) If the office of victim services determines that a victim fraudulently applied for an identity theft passport, the victim's passport will be immediately deactivated.

(2) A victim who fraudulently applies for an identity theft passport may be subject to, in addition to other penalties available under Montana law, criminal prosecution for false swearing pursuant to 45-7-202, MCA.

AUTH: 46-24-220, MCA
IMP: 46-24-220, MCA

4. The new rules are necessary to implement the provisions of 46-24-220, MCA, enacted by the 2005 legislature. The new law creates an identity theft passport program. The program is available for victims of identity theft in Montana. The new rules are necessary to establish the administration of the program and to create a process by which the office of victim services, responsible for administering the program, can verify that applications for passports are supported by legitimate and adequately substantiated allegations of identity theft in accordance with 46-24-220, MCA. The new rules will help the office of victim services to protect citizens of Montana who have been victims of identity theft, a crime that is becoming an increasing problem across the country.

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 Cort Jensen, Department of Justice, 215 N. Sanders, P.O. Box 201401, Helena, MT 59620-1401; Fax (406) 444-3549; e-mail cjensen@mt.gov and must be received no later than September 22, 2005.

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

7. The Department of Justice maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to

receive notices of rules regarding the Crime Control Division, the Central Services Division, the Forensic Sciences Division, the Gambling Control Division, the Highway Patrol Division, the Law Enforcement Academy, the Division of Criminal Investigation, the Legal Services Division, the Consumer Protection Division, the Motor Vehicle Division, the Justice Information Systems Division, or any combination thereof. Such written request may be mailed or delivered to the Office of the Attorney General, Attn: Interested Party List, P.O. Box 201401, Helena, MT 59620-1401, faxed to the office at (406) 444-3549, emailed to abovingdon@mt.gov, or may be made by completing a request form at any rules hearing held by the Department.

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

By: /s/ Mike McGrath
MIKE MCGRATH
Attorney General

/s/ Ali Bovingdon
ALI BOVINGDON, Rule Reviewer

Certified to the Secretary of State August 15, 2005.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption)
of proposed New Rules I through VI)
pertaining to the administration)
of the forensic rape examination)
payment program)
NOTICE OF PUBLIC
HEARING ON
PROPOSED ADOPTION

TO: All Concerned Persons

1. On September 20, 2005, at 9:30 a.m., the Montana Department of Justice will hold a public hearing in the auditorium of the Scott Hart Building, 303 N. Roberts, Helena, Montana, to consider the adoption of proposed New Rules I through VI pertaining to the administration of the forensic rape examination payment program which was enacted by the 2005 Legislature.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on September 12, 2005, to advise us of the nature of the accommodation that you need. Please contact Ali Bovington, Department of Justice, 215 N. Sanders, P.O. Box 201401, Helena, MT 59620-1401; (406) 444-2026; Montana Relay Service 711; Fax (406) 444-3549; e-mail abovington@mt.gov.

3. The proposed new rules provide as follows:

NEW RULE I FORENSIC RAPE EXAMINATION PAYMENT PROGRAM-PURPOSE (1) The forensic rape examination payment program (FREPP) covers the costs of providing sexual assault forensic examinations for victims of an alleged incident of sexual intercourse without consent, sexual assault, or incest who choose not to report the alleged incident to law enforcement. FREPP supplies medical providers with forensic rape examination kits at no charge.

AUTH: 46-15-411, MCA
IMP: 2-15-2014, 46-15-411, MCA

NEW RULE II FORENSIC RAPE EXAMINATION PAYMENT PROGRAM COVERAGE GUIDELINES (1) To be eligible to receive FREPP coverage, a victim must have a forensic rape examination performed within 72 hours of the alleged sexual assault and must choose not to report the alleged incident to law enforcement.

(2) To be eligible for reimbursement by FREPP the forensic rape examination must be:

(a) performed by a physician or by other medical providers who have been trained to gather evidence of a sexual assault in a manner suitable for use in a court of law; and

(b) a forensic rape examination kit supplied by FREPP must be used.

(3) FREPP will pay a maximum of \$600 to medical providers who perform forensic rape examinations on victims who do not choose to report the alleged sexual assault to law enforcement.

(a) The forensic rape examination payment includes the following covered costs:

(i) a complete and customary forensic rape examination;

(ii) emergency room/facility charges;

(iii) medical provider charges;

(iv) sexually transmitted disease (STD) and pregnancy prophylaxis;

(v) blood and urine specimens for toxicology testing;

(vi) supplies;

(vii) laboratory testing;

(viii) pharmaceuticals; and

(ix) shipping costs.

(4) The FREPP payment constitutes payment in full for all services related to the forensic rape examination and the medical provider may not bill the victim for covered costs associated with the examination that exceed the allowable payment of \$600.

(5) The FREPP payment does not cover costs associated with the treatment of physical injuries due to the alleged sexual assault. The victim is responsible for payment of such costs.

AUTH: 46-15-411, MCA
IMP: 2-15-2014, 46-15-411, MCA

NEW RULE III PROCESSING AND RETURN OF FORENSIC RAPE EXAMINATION KITS

(1) Forensic rape examination kits, which include evidence obtained as a result of the examination, the medical record sexual assault form, and any other paperwork accompanying the examination, should be mailed to the Office of Victim Services, ATTN: FREPP, P.O. Box 201410, 1712 9th Ave., Helena, MT 59620-1410, as soon as reasonably possible and preferably within 24 hours of completion of the examination.

(2) FREPP recommends that forensic rape examination kits be sent via federal express or UPS, overnight delivery.

AUTH: 46-15-411, MCA
IMP: 46-15-411, MCA

NEW RULE IV PROVIDER BILLING AND REIMBURSEMENT (1) To be eligible for reimbursement for the covered costs of the forensic rape examination, the medical provider must, within 90 days of performing the examination:

(a) submit the FREPP claim form;

- (b) provide a copy of the patient information form;
 - (c) provide an itemized statement of charges listing current procedural terminology (CPT) codes on a standard health care financing administration (HCFA) form; and
 - (d) provide copies of all pertinent treatment records.
- (2) All billing paperwork should be mailed to the Office of Victim Services, ATTN: FREPP, P.O. Box 201410, 1712 9th Ave., Helena, MT 59620-1410.

AUTH: 46-15-411, MCA
IMP: 46-15-411, MCA

NEW RULE V ADMINISTRATION OF THE FORENSIC RAPE EXAMINATION PAYMENT PROGRAM

- (1) FREPP will maintain a database of all forensic rape examination kits received.
- (2) FREPP will store forensic rape examination kits for a minimum of 60 days.
- (3) FREPP will maintain the confidentiality of the victim's identity and the forensic rape examination.
- (4) In the event that a victim chooses to report the alleged sexual assault to law enforcement and the forensic rape examination kit has not been destroyed, FREPP will provide the kit, upon request, to law enforcement.

AUTH: 46-15-411, MCA
IMP: 46-15-411, MCA

NEW RULE VI LAW ENFORCEMENT'S RESPONSIBILITY TO PAY

- (1) If FREPP has provided coverage for a forensic rape examination and the victim later reports the offense to law enforcement, in accordance with 46-15-411, MCA, law enforcement must reimburse FREPP for the cost of the examination.
- (2) Section (1) does not apply if the forensic rape kit has been destroyed.

AUTH: 46-15-411, MCA
IMP: 46-15-411, MCA

4. The new rules are necessary to implement the amendments to 46-15-411, MCA, enacted by the 2005 Legislature. The amendments to the law provided for an appropriation to the office of victim services to pay for the costs of forensic rape examinations of victims of sexual assaults who choose not to report the assault to law enforcement. The rules outline the purpose of the program and provide coverage guidelines to assist the office of victim services in determining whether the costs of a forensic rape examination should be covered by FREPP. The rules also set forth administrative guidelines for implementation of FREPP and clarify law enforcement's responsibility to pay if a victim chooses to report the alleged assault and the forensic rape examination kit has not been destroyed.

5. Concerned persons may submit their data, views, or arguments concerning the proposed adoption either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Ali Bovington, Department of Justice, 215 N. Sanders, P.O. Box 201401, Helena, MT 59620-1401; Fax (406) 444-3549; e-mail abovington@mt.gov and must be received no later than September 27, 2005.

6. Ali Bovington, Department of Justice, has been designated to preside over and conduct the hearing.

7. The Department of Justice maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices of rules regarding the Crime Control Division, the Central Services Division, the Forensic Sciences Division, the Gambling Control Division, the Highway Patrol Division, the Law Enforcement Academy, the Division of Criminal Investigation, the Legal Services Division, the Consumer Protection Division, the Motor Vehicle Division, the Justice Information Systems Division, or any combination thereof. Such written request may be mailed or delivered to the Office of the Attorney General, Attn: Interested Party List, P.O. Box 201401, Helena, MT 59620-1401, faxed to the office at (406) 444-3549, emailed to abovington@mt.gov, or may be made by completing a request form at any rules hearing held by the Department.

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

By: /s/ Mike McGrath
MIKE MCGRATH
Attorney General

/s/ Ali Bovington
ALI BOVINGTON, Rule Reviewer

Certified to the Secretary of State August 15, 2005.

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

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

TO: All Concerned Persons

1. On September 20, 2005, at 9:00 a.m., a public hearing will be held in room 489 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and transfer, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or who need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Outfitters no later than 5:00 p.m., September 14, 2005, to advise us of the nature of the accommodation you need. Please contact Wayne Johnston, Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2370; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsout@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: As part of the periodic review of its rules, and in conjunction with and in response to the 2001 legislation transferring the Board of Outfitters (Board) from the Department of Commerce to the Department of Labor and Industry (Department), the Board is proposing a substantial number of revisions to its administrative rules. Some of the proposed amendments are technical in nature, such as the proposed renumbering of the rules to designate where in ARM Title 24 (rules of the Department of Labor and Industry) the rule is to be placed when it is transferred from ARM Title 8 (Commerce) to ARM Title 24. Similar technical changes substitute modern language for archaic phrasing, amend rule catchphrases for accuracy and update obsolete or inappropriate statutory references. Other rule changes reflect a decision by the Board to attempt to streamline its rules. Repeal of existing rules will also make the transfer of the remaining rules to ARM Title 24 simpler and more efficient. Accordingly, the Board believes that there is reasonable necessity to generally amend certain existing rules, repeal certain existing rules, and adopt new rules at this time. Where additional specific

bases for a proposed action exist, the Board will identify those reasons immediately following that rule.

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

~~8.39.518 24.171.401 LICENSURE FEES FOR OUTFITTER, OPERATIONS PLAN, NET CLIENT HUNTING USE (N.C.H.U.), AND GUIDE OR PROFESSIONAL GUIDE~~ (1) through (1)(e) remain the same.

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

(g) Amendments to operations plan proposing an increase in net client ~~hunting~~ hunter use (NCHU) 2,000

(h) Fee for each new client added to operations plan by ~~N.C.H.U.~~ NCHU expansion request 500

(i) through (j) remain the same.

(k) Fee for transfer of NCHU from each outfitter involved in the transfer 50

(l) Fee for replacement watercraft identification 5

(m) Fee for audit of river use days 50

AUTH: 37-1-131, 37-1-134, 37-47-201, ~~37-47-303, 37-47-304,~~ 37-47-306, MCA

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

REASON: The Board has determined that it is reasonable and necessary to amend subsection (1)(f) of this rule in order to further implement 37-47-318, MCA. Amendment of this subsection will clarify that the annual fee will be assessed whenever an outfitter establishes a new area where services are being offered rather than simply where an outfitter provides an individual camp. This subsection is also being amended to clarify that the administrative region referenced means a region of the Montana Department of Fish, Wildlife, and Parks, as provided in the statute.

The Board has determined that it is reasonable and necessary to add subsection (1)(k) of this rule to assess a fee for transfer of NCHU. This fee was determined based on an average of four hours of personal services per transfer, at a rate of \$23.84 per hour (\$23.84 x 4 hours = \$95.36/2 outfitters = \$47.68 rounded to \$50.00). The Board has a responsibility to set fees commensurate with associated costs, therefore it is within reason that only the outfitters that wish to transfer NCHU be responsible to pay the associated cost. This proposed

new fee will affect approximately 50 outfitters per year that wish to transfer NCHU, for an approximate annual revenue increase of \$2,500.00.

The Board has determined that it is reasonable and necessary to add subsection (1)(l) of this rule to implement a fee to cover the costs of issuing replacement or additional sets of watercraft identification. The cost of each watercraft identification is \$0.69. The cost of supplies to mark and mail each identification is \$0.72. The approximate personal services spent preparing and mailing each identification is \$1.98. The total cost of processing additional watercraft identification is \$3.39 apiece ($\$0.69 + 0.72 + 1.98 = \3.39 , rounded up to \$5.00). This fee will only affect those outfitters, guides, and professional guides that request additional sets of watercraft identification. Using figures from 2004, the Board estimates that approximately 400 additional sets of watercraft identification will be processed, for an estimated annual revenue increase of \$2,000.00.

The Board has determined that it is reasonable and necessary to add subsection (1)(m) of this rule to require a fee for transfer of river use days when an audit is requested. This fee was determined based on an average of two hours of personal services per audit, at a rate of \$23.84 per hour (2 hours x \$23.84 = \$47.68 rounded to \$50.00). The Board has a responsibility to set fees commensurate with costs, therefore it is within reason that the outfitters requesting an audit of their river use days be responsible to pay the associated costs. This fee will affect approximately five outfitters per year, with an approximate annual revenue increase of \$250.00.

Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule and to provide the complete sources of the Board's rulemaking authority.

~~8.39.501~~ 24.171.501 ~~LICENSURE~~ APPLICATION FOR OUTFITTER ~~LICENSES~~ LICENSE (1) remains the same but is renumbered (2).

(a) remains the same.

(b) successfully passed the required examination examinations pertaining to those functions; and, categories described in ARM 24.171.505;

(c) filed an operations plan that has been approved by the board;

(d) filed a completed outfitter license application with the board office;

(e) received an approved equipment inspection; and

(f) if applicable, filed a NCHU application that has been approved by the board.

(2) remains the same but is renumbered (1).

(a) remains the same.

(b) hunting services (upland game birds, waterfowl, and non-big game) ~~and turkey;~~

(c) fishing services; ~~or~~ and

(d) if applicable to the services provided in ~~(2)(1)(a)~~ through (c) ~~above~~, and qualified for, one or more of the following:

(i) saddle or pack animal; or

~~(ii) personal guiding services,~~

~~(iii) camping equipment,~~

~~(iv) transportation (vehicles or other conveyance),~~

~~(v)~~ (ii) boat or other floating craft, or motorized watercraft.

~~(vi) lodging.~~

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

IMP: 37-47-101, 37-47-201, 37-47-301, 37-47-302, 37-47-305, 37-47-307, 37-47-308, MCA

REASON: The Board has determined that it is reasonable and necessary to amend this rule to clarify the necessary application steps for outfitter licensure in response to questions from applicants. An applicant must file a completed license application, have a complete operations plan on file with the Board office, pass the required examinations, receive an approved equipment inspection and file a NCHU application, previously approved by the Board. Applicants had expressed confusion regarding submission of the operations plan and whether the NCHU application is required prior to licensure.

The Board has determined that because personal guiding services, camping equipment, and transportation are general areas of practice for all outfitters and because an individual examination is not administered for provision of these services, these functions do not need to be printed on the outfitter's license. The Board is amending the rule accordingly. It is reasonable to amend the rule to clarify to the reader that the term "turkey" is considered an upland game bird as defined by the Montana Department of Fish, Wildlife and Parks at 87-2-101(15), MCA. Additionally, the Board is amending the rule to account for outfitter businesses using both drift and motorized boats. The implementation cites are being amended to accurately reflect all statutes implemented through the rule.

~~8.39.502~~ 24.171.502 ~~LICENSURE—OUTFITTER QUALIFICATIONS~~

~~(1) In addition to meeting all of the qualifications contained in 37-47-302, MCA, outfitter qualifications, each An applicant for an outfitter license shall have:~~

~~(a) have 100 days of verified experience as a licensed outfitter in another state or a licensed guide or professional guide working for a licensed outfitter in this state, guiding clients in pursuing the types of game and using methods for which licensure is sought by the applicant~~ (hunting or fishing); and, or

~~(b) be qualified to provide all services and use all equipment necessary to provide the functions of an outfitter that his or her license will authorize him or her to conduct. 100 days of verified experience as a licensed outfitter in another state guiding clients in pursuing the types of game and using the methods for which licensure is sought by the applicant (hunting or fishing), subject to approval by the board; and~~

~~(c) the qualifications to provide all services and use all equipment necessary to provide the functions of an outfitter that the license will authorize the outfitter to provide.~~

(2) For purposes of this rule, verified experience includes:

(a) ~~an affidavit by the outfitter verifying attesting to the guiding experience claimed by the applicant and subject to confirmation by the outfitter client logs;~~

(b) and (c) remain the same.

(d) sources of information with board acceptable guarantees of reliability which may include, but are not limited to, ~~park service records~~ federal land agency records, client affidavits or letters.

~~(3) The experience required in this part shall be in the field pertaining to the license function applied for.~~

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

~~(4) The board may waive up to 50 days of experience for an applicant purchasing an existing outfitter operation provided that:~~

~~(a) the applicant receives pre-approval from the board for a training and instruction plan documenting how and in what capacity the applicant will work with the licensed outfitter from whom the business is obtained;~~

~~(b) the applicant has entered into a sales agreement with the selling outfitter for the purchase of the operation and the sales agreement provides supervision of the applicant by the selling outfitter during the 12-month period following board approval of the application;~~

~~(c) the selling outfitter has a current, approved operations plan on file with the board; and~~

~~(d) the applicant files an operations plan that is approved by the board.~~

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

IMP: 37-47-201, 37-47-302, 37-47-304, 37-47-307, 37-47-308, MCA

REASON: The threshold qualifications for licensure as an outfitter are set forth at 37-47-302, MCA. In reviewing the administrative rules, the Board determined it is reasonably necessary to amend this rule to strike redundant and unnecessary introductory language.

The Board has determined that it is reasonable and necessary to amend and reorganize this rule to provide a clearer

explanation that the required prior guiding or outfitting experience must be in the general fields of hunting or fishing. The amendment further clarifies and informs applicants that the Board may confirm applicants' experience by reviewing outfitter client logs.

It is reasonable and necessary to replace "park service records" with "federal land agency records", as there are several federal agencies that require reporting of client use. The Board is amending the rule to use a broader term so as not to limit the types of federal agency records that may be submitted to verify experience.

It is reasonably necessary to amend this rule to incorporate the requirements for requesting waiver of up to 50 days of experience as previously included in ARM 8.39.513 which is proposed to be repealed. The Board has amended the requirements to clarify that an applicant for a waiver must file and receive board approval of an operations plan. The operations plan is currently and has been previously required as part of the waiver application process, but the requirement was never before delineated in rule.

8.39.503 24.171.505 LICENSURE—OUTFITTER EXAMINATION

(1) and (2) remain the same.

(3) The following list is not intended to be exhaustive in detail. A wide range of issues and subtopics exist within each broad topic. The general examination categories will be are:

(a) hunting; general knowledge of outfitting and guiding;

(b) bird hunting; hunting;

(c) fishing; and

(d) watercraft used for fishing or hunting; packing.

(e) packing; and

(f) ~~waterfowl. This list is not intended to be exhaustive in detail. A wide range of issues and sub topics exist within each broad topic.~~

(4) remains the same but is renumbered (6).

(4) All applicants must obtain a passing score of 75% or more on each examination category taken.

(5) remains the same.

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-47-201, 37-47-305, MCA

REASON: As part of the periodic review of its administrative rules, the Board determined that it is reasonable and necessary to amend the rule regarding outfitter licensure examination. The Board determined that some of the current test categories are broad and general enough to be required of all outfitter licensure applicants. The Board is broadening the description of the general test categories to encompass all the areas tested. It is reasonably necessary to set forth

the minimum passing score to provide notice to and lessen confusion among license applicants. The 75% minimum passing score is currently and has been previously in effect as a Board policy, but the requirement was never before specifically delineated in rule.

~~8.39.505~~ 24.171.506 ~~LICENSURE~~—OUTFITTER APPLICATION

(1) remains the same.

(2) Application shall ~~be in two~~ consist of three parts:

(a) a license application form which shall require information the board needs in order to determine the basic abilities and qualifications of the applicant and to verify those functions of an outfitter the applicant is applying for; ~~and~~

(b) an operations plan application form which shall be considered under the guidelines of 37-47-304(~~2~~), MCA, and ARM ~~8.39.804. 24.171.701~~; and

(c) a NCHU application which shall be considered under the guidelines of 37-47-316, 37-47-317 and 37-47-318, MCA, if operating on land or property other than federal land that regulates hunter use.

(3) An applicant who receives approval of ~~his or her~~ a proposed operations plan and license application ~~may then~~ must take, and ~~must~~ pass, the licensing examination prior to licensure.

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

IMP: 37-47-201, 37-47-304, 37-47-307, MCA

REASON: In reviewing the administrative rules, the Board determined it is reasonably necessary to amend this rule to clarify the full application requirements for outfitter licensure. The amendment specifies that a NCHU application must accompany an application for a hunting outfitter license. The requirement of submission of a NCHU application is currently and has been required as part of the outfitter application, but the requirement was never before delineated in rule.

~~8.39.506~~ 24.171.507 INSURANCE FOR OUTFITTERS (1) An outfitter, other than an outfitter licensed on inactive status, shall have liability insurance, as a named insured, in effect at all times during the license year, and shall submit proof of such insurance with ~~his or her~~ an application for renewal. Minimum amounts of liability insurance shall be \$10,000 for property damage, \$100,000 for personal injury to one person and a total of \$300,000 for personal injury to more than one person.

AUTH: 37-47-201, MCA

IMP: 37-47-201, 37-47-304, MCA

REASON: It is reasonable and necessary to address confusion and inquiries among licensees by amending this rule to clarify

what is intended by the Board as satisfaction of the liability insurance requirement for outfitters. The amendment specifies that the liability insurance policy must show the licensed outfitter as a named insured since outfitter licenses are issued only to individual outfitters and not to businesses. The implementation cites are being amended to accurately reflect all statutes implemented through the rule.

8.39.507 24.171.510 OUTFITTER ACTING AS GUIDE

(1) ~~Any person~~ A licensee holding a current and valid outfitter's license may act as a guide without a guide's license if such licensee:

(a) ~~he or she~~ possesses the qualifications of a guide under these rules;

(b) ~~they work~~ works for only one outfitter at any given time; ~~and~~

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

(d) is reported as a guide in that employer outfitter's client logs; and

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

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

IMP: 37-47-301, 37-47-302, 37-47-303, MCA

REASON: The Board has determined it is reasonably necessary to amend this rule to add the requirement that a licensed outfitter who is working for another licensed outfitter as a guide is reported as such in the employer outfitter's client logs. This reporting requirement is currently and has been required by the Board when an outfitter is acting as a guide, but was never before specifically delineated in rule. The Board is also adding the requirement that the guiding outfitter provide written notice to the Board of the guide work. Board enforcement staff will benefit greatly by having this additional information when encountering an outfitter having clients outside of the outfitter's area of operations and claiming to be working as a guide for another employer outfitter. Authority cites are being amended to provide the complete sources of the Board's rulemaking authority.

8.39.510 24.171.511 LICENSURE—AMENDMENT TO OPERATIONS PLAN

(1) An outfitter may apply for an amendment to ~~his or her~~ the outfitter's operations plan by stating in writing ~~his or her~~ the proposed changes and submitting it to the board.

(2) All amendments will be considered by the board using the same criteria as new applicants, including being required to take those parts of the outfitter examination that apply to the proposed amendment, if an outfitter is applying to add ~~hunting, fishing, watercraft used for fishing or hunting, upland game bird, waterfowl, turkey or horse use~~ the following to ~~his or her~~ the operations plan, ~~being required to take~~

~~those parts of the outfitter examination that apply to the proposed amendment. :~~

- ~~(a) hunting;~~
- ~~(b) fishing;~~
- ~~(c) watercraft used for fishing or hunting;~~
- ~~(d) upland game bird;~~
- ~~(e) waterfowl; or~~
- ~~(f) saddle or pack animal use.~~

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

REASON: It is reasonable to amend the rule to delete the duplicate reference to "turkey," as the turkey is already considered an upland game bird as defined by the Montana Department of Fish, Wildlife and Parks at 87-2-101(15), MCA. The rule is being amended to further earmark for clarity and better organization. The Board is deleting the term "horse" and substituting "saddle or pack animal" to address the fact that licensees are using different pack animals than just horses as part of their operations plans.

~~8.39.515 24.171.603 LICENSURE—GUIDE OR PROFESSIONAL GUIDE QUALIFICATIONS (1) In addition to the requirements contained in 37-47-303, MCA, for guide or professional guide's qualifications, an An applicant for a guide or professional guide license shall have:~~

~~(a) through (2)(e) remain the same.~~

~~(3) An outfitter whose license is currently suspended or revoked shall is not be qualified for a guide or professional guide license.~~

AUTH: 37-1-131, ~~37-47-101~~, 37-47-201, MCA
IMP: 37-47-101, 37-47-201, 37-47-303, 37-47-307, MCA

REASON: The threshold qualifications for licensure as a guide or professional guide are set forth at 37-47-303, MCA, and the statute already provides for additional requirements to be set by Board rule. In reviewing the administrative rules, the Board determined it is reasonably necessary to amend this rule to strike redundant and unnecessary introductory language.

The Board is amending language in section (3) to more clearly convey the Board's intent in addressing the situation where an outfitter not in good licensure standing applies for guide licensure. The Board has concluded that an outfitter with a license suspended or revoked for disciplinary reasons should not be able to qualify for a guide license as a way of circumventing the suspension or revocation. The authority cites are being amended to delete an erroneous cite and provide the complete and accurate sources of the Board's rulemaking authority.

~~8.39.703~~ 24.171.801 OUTFITTER RECORDS (1) through (2)(c) remain the same.

(d) clients' hunting ~~and~~ or fishing license numbers;

(e) and (f) remain the same.

(g) the actual leased acreage unused by clients during that year; ~~and~~

(h) tally sheets reflecting the number of clients served per ~~N.C.H.U.~~ NCHU category as defined in ARM ~~8.39.804(2)(a), (b), and (c),~~ 24.171.701 each year shall be maintained and submitted to the board during the renewal of the license or when the outfitter's license is lapsed; ~~and~~

(i) the name and license number of the guide who accompanied the client.

(3) remains the same.

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

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

IMP: 37-47-301, MCA

REASON: The Board has determined there is reasonable necessity to amend this rule to clarify that outfitter records must contain the names and license numbers of the guides working with an outfitter to enable the Board to better track who is providing services to clients and to verify experience for guides. This is not a new requirement for inclusion in the client logs, but has not been delineated before in rule. It is also necessary to amend this rule to add the requirement for the outfitter to list booking agents that are providing a service to the outfitter. Requiring documentation of booking agents will provide a method of cross-referencing booking agents with outfitters and will enable the Board staff to track guides legitimately working as booking agents for outfitters as opposed to guides who are actually working for themselves. Since the Montana Department of Fish, Wildlife, and Parks switched to an automated licensing system, hunting and fishing license numbers are the same for each individual, and the Board is amending this rule accordingly.

~~8.39.704~~ 24.171.802 SAFETY PROVISIONS (1) remains the same.

(2) Except for the one-time, ~~90~~ 30-day exemption provided for ~~new, first time applicants and temporary emergency~~ guide licenses in ARM ~~8.39.514(2)~~ [NEW RULE II], guides and professional guides are required to hold a current basic first aid card ~~at all times~~ while licensed.

(3) remains the same.

(4) Each watercraft or vessel shall contain a serviceable U.S. coast guard approved personal floatation device for each person on board. Children under 12 are required to wear a personal floatation device. Watercraft 16 feet and longer are required to be equipped with a throwable type IV floatation device.

(5) remains the same.

AUTH: 37-47-201, MCA
IMP: 37-47-201, MCA

REASON: Through the periodic review of its administrative rules, the Board determined that the current 90-day exemption potentially allows an emergency guide to operate for an entire fishing and hunting season without being qualified to administer first aid. The amendment to a 30-day exemption would address this concern and serve to better protect the health and safety of the clients. The Board determined that it is reasonable and necessary to amend this rule to correspond and comply with the throwable flotation device requirement of the Montana Department of Fish, Wildlife, and Parks for watercraft over 16 feet in length.

~~8.39.419~~ 24.171.806 WATERCRAFT IDENTIFICATION (1) A person holding a valid outfitter, professional guide, or guide license who utilizes any type of watercraft while providing services shall prove evidence of licensure by displaying a Montana board of outfitters issued license watercraft identification tag on each watercraft to be occupied by the licensee.

(2) through (5) remain the same.

~~(6) This rule shall be effective commencing with the 1998 licensing year. Licensees, depending on watercraft ownership, shall apply for sufficient tags to identify all watercraft they may utilize to provide services. Tag requests~~ Requests for watercraft identification shall be made as part of the annual license and renewal applications starting with ~~1998 applications~~ application.

~~(7) The following uses of this license~~ Improper use of watercraft identification tag shall be considered misconduct under ARM ~~8.39.709~~ 24.171.2301.

~~(a) failure to display license tags by any licensee while providing services;~~

~~(b) display of counterfeit license tags or license numbers;~~

~~(c) offering for use by an unlicensed individual any license tag identifying another licensee as the occupant of the watercraft.~~

(8) Licensees shall be provided with one set of watercraft identification at the time of application for licensure or renewal. A fee will be assessed for any replacement or additional sets of identification needed, in accordance with ARM 24.171.401.

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-1-134, 37-47-201, 37-47-301, 37-47-302, 37-47-303, 37-47-304, MCA

REASON: The Board has determined there is a reasonable necessity to clarify throughout the rule that the tag

referenced is a means to identify watercraft and is not a license. The effective date for the rule is not needed as the rule specifies that watercraft identifications are required at all times while providing services. It is reasonably necessary to assess a fee for replacement sets of identification to cover the additional costs associated with Board's production, printing, processing, and mailing of the additional sets. Additionally, the Board is proposing to move the specific examples of improper watercraft identification use to ARM 24.171.2301 where it properly belongs. This amendment will make it easier for readers to locate and identify what the Board considers to be licensee unprofessional conduct or misconduct. The Board has determined it is reasonably necessary to amend the authority and implementation cites to accurately reflect all statutes implemented through the rule and to provide the complete sources of the Board's rulemaking authority.

~~8.39.508~~ 24.171.2101 ~~LICENSURE—~~OUTFITTER RENEWAL

(1) License renewal applications for outfitters, ~~guides and professional guides~~ shall be made on forms provided by the board and shall be accompanied by:

(a) the required fee (~~outfitters, guides and professional guides~~);

(b) ~~a signed statement verifying that the licensee has current first aid training and is able to produce a current first aid card upon request~~ a copy of the licensee's valid and current first aid certification;

(c) a copy of the licensee's current insurance certificate (~~outfitters only~~) with the licensee as the named insured;

(d) complete client report logs (~~outfitters only~~); and

(e) fishing and/or hunting statistical outfitter use level sheets, depending on the services provided by the outfitter in the preceding license year (~~outfitter only~~).

(2) If an outfitter, ~~guide or professional guide~~ does not submit a completed renewal application with the required fee in accordance with (1) on or before December 31 of each license year, ~~he or she~~ the outfitter shall immediately cease practice until a renewal application is submitted and approved by the board.

(3) remains the same.

(4) Outfitters who provide services during the late hunt seasons may submit amended client logs and statistical use level sheets reflecting services from December 1st through December 31st separately as long as they are received by the board no later than January 31st of the following year.

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

IMP: 37-47-201, 37-47-302, ~~37-47-303,~~ 37-47-304, 37-47-306, 37-47-307, ~~37-47-312,~~ MCA

REASON: The Board has determined there is reasonable necessity to amend this rule to clarify that only outfitters

have an annually renewable license. Guides and professional guides do not obtain renewable licensure and must apply new each year. This annual application requirement is not a change in the licensure process for guides and professional guides, but was never before specifically delineated in Board rule.

The Board is amending this rule to clarify that the licensee's current insurance certificate, when submitted to the Board at renewal, must show the licensee as a named insured, to coincide with the proposed amendments to ARM 24.171.507.

The Board has determined it is reasonable and necessary to address licensee confusion and amend this rule to clarify that the Board will accept as timely client logs and statistical level sheets reflecting late hunt services and submitted after the renewal date. The amended rule also provides a deadline for submission of the late hunt documents. Further, the Board is amending the rule to require submission of a current and valid first aid certification at licensure renewal. Currently, the renewal applicant must only submit a signed statement that the applicant's training is current and that the applicant is able to produce a current first aid card at the Board's request. The amendment will streamline the process by requiring the card up front at renewal and will serve to better protect the health and safety of the clients and the public in general. The implementation cites are being amended to accurately reflect all statutes implemented through the rule and to delete a reference to a repealed statute.

~~8.39.709 24.171.2301 STANDARDS FOR OUTFITTERS, GUIDES AND PROFESSIONAL GUIDES — UNPROFESSIONAL CONDUCT AND MISCONDUCT~~ (1) through (1)(f) remain the same.

(g) specify in writing, when offering services to a nonresident hunting client, ~~shall specify, in writing, the monetary consequences with respect to the prospective client's deposit, of the refund policy for failure by the prospective client to draw a license required to participate in the service offered;~~

(h) remains the same.

(i) ~~be responsible for making all agreements with clients concerning monetary consideration or services offered~~ set all terms and conditions with clients;

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

(k) through (m) remain the same.

(n) not employ or retain a ~~new, first-time licensed guide or professional~~ an emergency guide after the ~~90th~~ 30th day following the date of the emergency guide's ~~or professional guide's~~ application for licensure without first

confirming that the emergency guide ~~or professional~~ guide has current basic first aid certification;

(o) not employ or retain a ~~previously licensed~~ guide or professional guide without first confirming that the guide or professional guide has current basic first aid certification;
or

(p) ~~properly endorse an application for a guide or professional guide license in accordance with the laws and rules of the board not exceed the licensee's NCHU.~~

(2) A guide and professional guide shall:

(a) not advertise outfitting services, ~~unless the guide or professional guide owns an outfitting business. In cases where the guide or professional guide owns the outfitting business, he or she must identify the endorsing and supervising outfitter in any advertisement for the business;~~

(b) through (d) remain the same.

(3) All licensees shall:

(a) ~~make every effort to operate~~ provide services with respect for the rights of others, private and public property, and provide for the health, safety and well-being of their clients, employees and the general public;

(b) through (l) remain the same.

(m) not have hunting or fishing privileges suspended, revoked, placed on probation or voluntarily surrendered in the state of Montana or any other jurisdiction; ~~or~~

(n) not act beyond the scope of activities for which the individual is licensed-;

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

(p) not offer for use by an unlicensed individual any watercraft identification identifying another licensee as the occupant of the watercraft;

(q) not intentionally misrepresent board laws or rules;

(r) not fail to respond to board inquiries and requests;

or

(s) not remit a "non-sufficient fund check" or a check on a closed account for board fees or fines.

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

IMP: 37-1-312, 37-47-341, MCA

REASON: As part of the Board's ongoing rule review, the Board determined it is reasonable and necessary to make several language and organizational amendments to this rule for ease of the reader's use and to more clearly identify the actions considered by the Board as unprofessional conduct and misconduct. In response to licensee inquiries, the Board is amending the rule to clarify that all terms and conditions of client services must be set by the licensed outfitter and not by a guide, and that the licensed outfitter is responsible for adhering to their deposit and refund policies.

The Board is amending subsection (1)(n) of the rule to coincide with requirements in New Rule II and ARM 24.171.802 regarding emergency guide licensure.

If an application for guide licensure is not properly endorsed by an outfitter, the guide will not receive a license. The Board determined it is reasonably necessary to remove the potential for disciplinary action against an outfitter for not properly endorsing a guide application, as the true penalty in such a case is that the guide will not obtain licensure and the outfitter cannot provide the guide's service to clients.

A licensed outfitter may not by law exceed their NCHU other than within the exception provided for at 37-47-316, MCA. This amendment incorporates the violation of the NCHU into Board rule as unprofessional conduct or misconduct and enables the Board to take disciplinary action against licensed outfitters who exceed their NCHU. The Board is amending the rule to make it very clear that a guide cannot advertise for outfitting services, except as allowed in subsection (3)(o) of this rule. Improper use of watercraft identification is being moved from ARM 24.171.806 to this rule to maintain all unprofessional conduct or misconduct rules in one location within the Board rules. Misrepresentation of Board laws and rules was not previously identified as unprofessional conduct or misconduct, however the Board determined that a licensee that intentionally provides false information should be subject to disciplinary action by the Board. Licensee failure to respond to Board inquiries and requests creates an additional workload for Board staff, and creates a hardship for the Board when additional information is needed in order to make informed decisions. It is reasonable to amend the rule to add as unprofessional conduct or misconduct a licensee's issuance of a bad check to the Board for fees or fines to authorize the Board to impose disciplinary action in such a case.

5. The proposed new rules provide as follows:

NEW RULE I GUIDE OR PROFESSIONAL GUIDE LICENSE (1) An applicant may apply for a guide or professional guide license on forms provided by the board, and accompanied by the required fee. The application must include a signature of the endorsing outfitter confirming that, to the knowledge of the outfitter, the guide or professional guide meets all the qualifications of a guide or professional guide.

(2) An applicant must submit proof of current basic first aid certification with the application.

(3) Except as provided below, when issued, the license shall be mailed to the endorsing outfitter retaining or employing the guide or professional guide. Thereafter, each additional outfitter who uses the services of the guide during the license year shall sign the guide's license, and,

following completion of the guide's service on behalf of the outfitter, shall specify dates on which the guide or professional guide provided service for the outfitter.

(4) An applicant for a guide or professional guide license who delivers a completed application and application fee to the board office will receive the license at that time, providing the endorsing outfitter has furnished the board office with written notice authorizing release of that guide's license to the guide.

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

IMP: 37-47-101, 37-47-201, 37-47-301, 37-47-303, 37-47-307, 37-47-308, MCA

REASON: The Board has determined it is reasonably necessary to separate New Rules I and II from existing rule ARM 8.39.514 to make a clear and understandable distinction between the requirements for emergency guide license and the regular guide license. ARM 8.39.514 is proposed to be repealed. The separation of the regular and emergency guide license rules will create a more user-friendly rule format and will allow for improved customer service. In addition, the Board is putting the procedure for the immediate release of a guide's license in New Rule I. The procedure is currently and has been in place as the Board's procedure, but had not been specifically delineated before in rule.

NEW RULE II EMERGENCY GUIDE LICENSE (1) An outfitter may employ a guide for 10 days by using an emergency guide license on an application form provided by the board. The completed application form must be submitted to the board within that 10-day period.

(a) The outfitter must certify on the form that the guide is competent to provide guiding services in the physical location in which the guide will operate and for the specific activities in which the guide will engage.

(b) One emergency guide form will be provided to each outfitter annually at the time of renewal. When an outfitter submits an emergency guide license application in accordance with this rule, a blank form will be sent to the outfitter for use during the remainder of the license year. An outfitter may not submit for approval more than five emergency guide license application forms in any one license year, unless under state or federal emergency the board increases the allowable number of emergency guide licenses. An outfitter is prohibited from sharing emergency guide license applications with another outfitter.

(c) If an emergency guide wishes to have a regular guide license, a complete application must be received in the board office within 10 days from the first day the emergency guide was used. In this instance, the emergency guide license will remain in effect until the guide receives a regular guide license and allows the guide to perform services during the interim period.

(d) The endorsing outfitter shall designate the name of the emergency guide on the outfitter's log along with the clients guided and the dates during which the emergency guide was employed.

(2) An emergency guide license applicant wishing to obtain a regular license must submit proof of current basic first aid certification no later than 30 days from the date of application.

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

IMP: 37-47-201, 37-47-301, 37-47-303, 37-47-307, MCA

REASON: The Board has determined that there is a reasonable necessity to separate New Rules I and II from existing rule ARM 8.39.514 to make a clear and understandable distinction between the requirements for emergency guide license and the regular guide license. ARM 8.39.514 is proposed to be repealed. The term "temporary" is being amended to "emergency" guide license to better reflect the situations and circumstances under which outfitters use emergency guides. The Board is amending the rule to provide outfitters the option of using up to five emergency guides during a license year. In reviewing the Board rules, the Board determined that the current 90-day exemption potentially allows an emergency guide to operate for an entire fishing and hunting season without being qualified to administer first aid. The amendment to a 30-day exemption would address this concern and serve to better protect the health and safety of the clients.

NEW RULE III TRANSFER OF RIVER-USE DAYS (1) When a fishing outfitter transfers all river-use days that have been allocated to that fishing outfitter as part of the complete sale or transfer of a business, and if requested by either the outfitter-owner transferring the river-use days or the prospective new owner receiving them, board staff shall determine the outfitter-owner's record of river-use days to ensure accuracy of the allocation of river-use days to be transferred.

(2) When board staff conducts such an audit, all expenses for the audit shall be billed to the outfitter who is transferring the river-use days. The fee for the audit has been established by the board and set forth in ARM 24.171.401.

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

IMP: 37-47-201, 37-47-310, MCA

REASON: The 2003 Montana Legislature enacted Section 1, Chapter 91, Laws of 2003 (House Bill 411), an act providing for the transfer of river-use days to the new owner of a fishing outfitter business. The bill was signed by the Governor and became effective on March 24, 2003, and is codified at 37-47-310, MCA.

The Board determined it is reasonable and necessary to adopt New Rule III to clarify the audit procedure the Board will use in determining the transferable river-use days as specified in the 2003 legislation. The New Rule further implements the legislation by clarifying that when an audit is requested, a fee will be billed to the transferring outfitter.

NEW RULE IV ACTIVE DUTY STATUS FOR LICENSEES IN THE MILITARY

(1) The board recognizes that the nation relies on members of the national guard and the reserve branches of the armed forces for the nation's security, and that the members of the national guard and reserve forces are subject to call to active duty on short notice. In consideration of that service to the nation, the board finds that it is appropriate to defer the licensing renewal obligations of such individuals called to active duty status, provided that the individual is not required by the armed forces to maintain current professional or occupational licensing as a condition of serving in the armed forces.

(2) An activated reservist, as defined in 37-1-138, MCA, upon submission of appropriate evidence, is entitled to the following privileges:

(a) The activated reservist is not required to timely pay a renewal fee for license renewal that comes due while the person is in active duty status. The renewal fee is payable within six months following the activated reservist's discharge from active duty status. Unless otherwise relieved from the renewal application requirements, the activated reservist must timely apply for license renewal.

(b) If the activated reservist provides proof to the board of the reservist's active duty status before the reservist's license expires, the reservist is relieved from having to timely submit a renewal application and any related documents or information during the period while the reservist is on active duty status. The reservist has six months following discharge from active duty status to submit to the board such renewal applications and any related documents or information that came due during the period of the reservist's active duty status.

(3) In order to gain the benefits of this rule, the activated reservist must provide the board with proof of active duty status, including the date upon which the reservist was called to active duty status. The board may require the activated reservist to periodically provide information to the board regarding the reservist's active duty status or the date of the reservist's discharge from active duty status.

(4) A license that has not lapsed continues in the same status as existed the day before the reservist was called to active duty status, and remains in that status until the reservist renews the license or six months have elapsed from the reservist's discharge from active duty status, whichever comes first.

AUTH: 37-1-131, 37-1-138, 37-47-201, MCA
IMP: 37-1-138, 37-47-307, MCA

REASON: The 2003 Montana Legislature enacted Section 62, Chapter 271, Laws of 2003 (House Bill 285), an act revising laws related to military status and prohibiting certain adverse actions related to the professional licensure of a reserve member of the United States armed forces who is activated to federal military duty for an extended length of time. The bill was signed by the Governor and became effective April 9, 2003, applying retroactively to occurrences after December 31, 2002, and is codified at 37-1-138, MCA.

There is reasonable necessity to adopt New Rule IV in order to further implement the 2003 legislation and to address concerns of those licensees who are members of the National Guard or reserve forces of the U.S. armed services and have been called to active duty status. The New Rule is proposed to minimize licensure renewal concerns that might occur when a licensee is suddenly called to active duty. The proposed language treats renewal obligations in a manner consistent with the Soldiers' and Sailors' Civil Relief Act of 1940, as amended.

6. The Board of Outfitters proposes to repeal the following rules:

8.39.513 SALE AND PURCHASE OF AN OUTFITTING OPERATION
found at ARM page 8-1118.5.

AUTH: 37-47-201, MCA
IMP: 37-47-201, MCA

REASON: It is reasonable and necessary to repeal this rule as the Board has determined that the Board lacks jurisdiction to review, approve or deny the sale of outfitting businesses. The portion of the rule addressing waiver of up to 50 days of experience for applicants buying an existing outfitter operation have been retained and incorporated into ARM 24.171.502.

8.39.514 LICENSURE - GUIDE OR PROFESSIONAL GUIDE LICENSE
found at ARM page 8-1118.6.

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-47-201, 37-47-301, 37-47-307, MCA

REASON: It is reasonable and necessary to repeal this rule as the Board has separated the provisions on emergency guide licenses and regular guide licenses and set them forth in New Rules I and II. The Board is repealing this rule as redundant and unnecessary.

8.39.801 PURPOSE found at ARM page 8-1123.

AUTH: 37-47-201, MCA
IMP: 37-47-201, 37-47-315, MCA

8.39.802 MORATORIUM found at ARM page 8-1123.

AUTH: 37-47-201, MCA
IMP: 37-47-201, 37-47-315, MCA

8.39.803 APPLICANT CATEGORIES - CONDITIONS AND PRIORITIES found at ARM page 8-1124.

AUTH: 37-47-201, MCA
IMP: 37-47-201, 37-47-315, MCA

REASON: The Board has determined that there is reasonable necessity to repeal these rules in order to eliminate redundancy, combine similar rules and remove rules that no longer apply or have become outdated.

7. The remainder of the rules not proposed to be amended and transferred, or repealed at this time, will be renumbered and transferred when final action is taken on the proposed rule amendments, adoptions, and repeals.

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 by mail to: Wayne Johnston, Board of Outfitters, Department of Labor and Industry, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsout@mt.gov and must be received no later than 5:00 p.m., September 28, 2005.

9. An electronic copy of this Notice of Public Hearing is available through the Department and Board's site on the World Wide Web at <http://www.outfitter.mt.gov>, in the Rules Notices section. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

10. The Board of Outfitters maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request that

includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Outfitters administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2309, e-mailed to dlibsout@mt.gov or may be made by completing a request form at any rules hearing held by the agency.

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

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

BOARD OF OUTFITTERS
MEL MONTGOMERY, CHAIRPERSON

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

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

Certified to the Secretary of State August 15, 2005.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 24.29.4301,) ON PROPOSED AMENDMENT
24.29.4303, 24.29.4314,)
24.29.4321, 24.29.4332, and)
24.29.4335, all related to)
the workers' compensation)
reporting database)

TO: All Concerned Persons

1. On September 14, 2005, at 1:00 p.m., the Department of Labor and Industry will hold a public hearing in the first floor conference room (room 104) of the Walt Sullivan Building, 1327 Lockey Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., September 12, 2005, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Workers' Compensation Claims Assistance Bureau, Attn: Diana Ferriter, P.O. Box 8011, Helena, Montana 59624-8011; telephone (406) 444-1574; fax (406) 444-4140; TDD (406) 444-5549; or email diferriter@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: Section 39-71-225, MCA, requires the Department to develop and maintain a workers' compensation database system to generate management information for the legislative and executive branches. To that end, the Department participates in the International Association of Industrial Accident Boards and Commissions' (IAIABC) efforts to nationally standardize electronic reporting of workers' compensation data, known as electronic data interchange (EDI).

In order to better participate with IAIABC, the Department is proposing to change its business processes and corresponding rules to reflect changes in the software it uses to accept reports of claim data. The specific changes are discussed where applicable below.

When the Department reviewed the rules governing the workers' compensation database to make the IAIABC changes, the Department determined that other rules changes should be made in order to make corrections, delete obsolete language, and update language to be consistent with 2005 legislation. Further, the Department determined its business processes and rule related to attorney reporting of fees and costs should be consistent with insurer

reporting in order to get more meaningful results from the data reported. These changes are also discussed where applicable below.

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

24.29.4301 PURPOSE (1) remains the same.

(2) The department is participating in the international association of industrial accident boards and commissions' (IAIABC) efforts to nationally standardize electronic reporting of workers' compensation data, known as electronic data interchange (EDI). The department uses or may eventually use IAIABC standards for reporting claim data, insurance coverage, medical, adjudication, and rehabilitation information.

AUTH: 39-71-203, MCA
IMP: 39-71-225, MCA

REASON: There is reasonable necessity to fix a typographical error by adding a comma between "claim data" and "insurance coverage" while related rules are being amended.

24.29.4303 DEFINITIONS For the purpose of this subchapter, the following definitions apply, unless the context of the rule clearly indicates otherwise:

~~(1) "ANSI" means the American national standards institute, which serves as administrator and coordinator of the United States private sector voluntary standardization system.~~

(2) through (10) remain the same, but are renumbered (1) through (9).

~~(11)~~(10) "Reporting parties" means any person, firm, corporation, or any other type of entity, including an insurer, that is required by Title 39, chapter 71, part 2, MCA, rule to report information to the department.

(12) through (15) remain the same, but are renumbered (11) through (14).

AUTH: 39-71-203, MCA
IMP: 39-71-225, MCA

REASON: Regarding section (1), it is reasonably necessary to delete the definition of ANSI because the Department will no longer use ANSI formatting to receive and transfer data. The current ANSI translator within the State Connect software developed by Bridium is obsolete and will no longer be supported after December 31, 2005. A replacement product is available from Bridium, but it is prohibitively expensive with an initial purchase cost of \$15,000 and an annual maintenance cost of \$10,000. Further, the Department's information technology staff has developed programming to replace the function of State Connect and has not included an ANSI translator in the programming. Finally, the IAIABC no longer includes ANSI as a transmission option for new product development, so it is

reasonably necessary to delete the references to ANSI in the above rule.

Regarding section (12), it is reasonably necessary to delete an "insurer" from the definition of reporting party because 39-71-225, MCA, already lists insurers among the required reporting parties. It is unnecessary to single out insurers when the other entities included in the statute, including employers, medical providers, claimants, adjusters, rehabilitation providers, and attorneys, are not listed in the rule. Further, it is reasonably necessary to make the rule clearer for the reader by specifying the statutory title, chapter, and part that requires reporting.

24.29.4314 ELECTRONIC REPORTING (1) ~~Insurers or third-party administrators~~ Reporting parties who report electronically, whether voluntarily or when required by 39-71-225, MCA, shall sign a written ~~trading partner~~ agreement with the department. The reporting parties may designate another entity, approved by the department, to serve as their reporting agent. The ~~trading partner~~ written agreement will provide the effective date to send and receive the electronic reports, the acceptable data to be sent and received, the method of transmission to be used, and other pertinent agreements between the parties.

(2) Electronic reporting for workers' compensation claims and insurance coverage information ~~the first report of injury and occupational disease and the workers' compensation subsequent report~~ must be ~~done~~ reported using a department supported IAIABC product, using pursuant to either the IAIABC flat file format or the American national standards institute (ANSI) electronic reporting standards X.12 format. The department will not accept electronic reports submitted in any other formats after the transition to the IAIABC product is complete.

~~(3) The department has not yet established a format for electronic reporting of information other than the first report of injury and the workers' compensation subsequent report. Until such time as an appropriate format is established by the department for other information, the department will not accept electronic reporting.~~

AUTH: 39-71-203, MCA
IMP: 39-71-225, MCA

REASON: It is reasonably necessary to change the rule to properly reflect the Department's current practice. Specifically, it is reasonably necessary to indicate that the Department requires written agreements for all reporting parties who report electronically, not just insurers or third party administrators. Written agreements are required to establish the technical details used to accomplish the transfer of data to and from the Department. Further, the Department applies the

rule to all reporting parties so the references to trading partners in (1) must be deleted as well.

Regarding section (2), it is reasonably necessary to replace the specific language of first report of injury and occupational disease and subsequent reports with the more general language of workers' compensation claims and insurance coverage information because the Department can support a much wider array of data collection than when this rule was first adopted. It is also reasonably necessary to delete the references to ANSI standards as discussed above. It is also reasonably necessary to indicate the Department will not accept any other formats after the transition to the IAIABC products is complete. The workers' compensation claims IAIABC product is complete. The proof of coverage IAIABC product is scheduled for completion in 2006. Until that transition is complete, the Department will accept only formats compatible with its transition program.

It is reasonably necessary to delete section (3) because it is obsolete.

24.29.4321 INSURER REPORTING REQUIREMENTS--INJURIES AND OCCUPATIONAL DISEASES (1) All insurers and the UEF are required to submit a first report of injury and occupational disease to the department within 30 days of the report to the insurer of the ~~accident~~ injury or of an occupational disease.

(2) through (6) remain the same.

AUTH: 39-71-203, MCA
IMP: 39-71-225, 39-71-307, MCA

REASON: Chapter 103, L. of 2005 (Senate Bill 8), became effective July 1, 2005. This legislation changes "accident" to "injury" in 39-71-307(2), MCA. The change in this rule is reasonably necessary to make the language of the rule consistent with the statute.

24.29.4332 CLAIMANT CONSULTANT AND LEGAL FEES AND COSTS REPORTING REQUIREMENTS (1) All attorneys that represent claimants shall report, on a per-claim basis, the amount of ~~consultant and legal fees and costs received that are paid by the claimant,~~ for each claim where:

(a) the attorney has an approved fee agreement; ~~or~~ and

(b) the attorney actually receives a fee from the claimant or on behalf of a claimant. For purposes of this rule, a fee received on behalf of a claimant as a result of a Lockhart lien is a fee withheld by the insurer from a payment to the medical provider and issued to the attorney pursuant to Lockhart v. New Hampshire Ins. Co., 1999 MT 205, 295 Mont. 465, 984 P.2d 744.

(2) An initial legal fee report ~~The information~~ must be reported to the department, ~~on or in the form prescribed by the department, each time there is a triggering event:~~ within 14 days of the date the attorney actually receives the first fee or cost payment for each claim.

- ~~(a) the settlement of the claim;~~
- ~~(b) the closure of the claim by the insurer;~~
- ~~(c) if there is payment of attorney fees by the claimant, when the case is not closed or settled, annually upon request by the department; or~~
- ~~(d) the termination of the attorney's representation of the client.~~

(3) Subsequent legal fee reports must be reported within 14 days of each six-month anniversary of the injury or occupational disease for as long as there exists the potential for fee payments.

(4) Once the potential for fee payments no longer exists, a final legal fee report must be filed at any time prior to or within 14 days of the next six-month anniversary of the injury or occupational disease.

(5) The claimant attorney must also submit a legal fee report upon:

(a) notification by the department that a previously submitted report contains an error; or

(b) a request by the department for a report.

(3) (6) A claimant attorney must report to the department, in the form prescribed by the department, the following information:

(a) the total amount of attorney fees paid to date by the claimant; and

(b) the total amount of attorney costs paid or reimbursed to date by the claimant. For purposes of this rule, attorney costs include but are not limited to:

(i) deposition costs;

(ii) witness fees and mileage;

(iii) expert witness fees;

(iv) documented photocopy expenses;

(v) documented long-distance telephone expenses; and

(vi) documented postage expenses.

~~consultant fees paid by the claimant. For the purpose of this rule and ARM 24.29.4335, a consultant is a person or firm hired to evaluate the claimant's condition or abilities. A fee charged for providing treatment or restorative services to or for the claimant is not a consultant fee.~~

~~(4) Reporting is not required until July 1, 1995. Reports must be submitted to the department within 10 days of the triggering event, unless the department specifies that a longer period in which to report is acceptable.~~

~~(5) Reports must be filed for all claims where there is an attorney fee agreement in effect on July 1, 1995, regardless of date of injury, if a triggering event occurs on or after July 1, 1995. Reports which would have been due prior to July 1, 1995, do not have to be submitted.~~

AUTH: 39-71-203, MCA

IMP: 39-71-225, MCA

REASON: It is reasonably necessary to make the reporting requirements for claimant attorneys more uniform with the

reporting requirements for insurers as specified in ARM 24.29.4321. Specifically, after the initial reports from either insurers or attorneys, both entities' subsequent reports will now be required in six-month intervals scheduled to coincide with the anniversary of the claimant's date of injury. The proposed changes to the reporting requirements for claimants' attorneys will reduce the number of reports required and will provide more useful data for the annual report.

In addition, it is reasonably necessary to delete the reporting requirements for consultant fees, because the change will make the rule consistent with IAIABC reporting standards. Instead of consultant fees, the proposed rule requires the reporting of expert witness fees under costs. Finally, it is reasonably necessary to delete the obsolete portions of the rule.

24.29.4335 INSURER CONSULTANT AND LEGAL FEES REPORTING REQUIREMENTS (1) All insurers shall report, on a per-claim basis, the amount of the ~~consultant fees~~, insurer's legal fees, ~~and~~ claimant's legal fees, and fees paid to expert witnesses that have been paid to date by the insurer, associated with each indemnity claim. That information must be reported on the subsequent report required by ARM 24.29.4321.

(2) remains the same.

AUTH: 39-71-203, MCA

IMP: 39-71-225, MCA

REASON: It is reasonably necessary to change this rule in order to reflect IAIABC reporting standards on insurer's legal fees and costs as reported on a subsequent report of injury. Specifically, the IAIABC standards now track expert witness fees rather than consultant fees.

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

Diana Ferriter, Bureau Chief
Workers' Compensation Claims Assistance Bureau
Employment Relations Division
Department of Labor and Industry
PO Box 8011
Helena, Montana 59624-8011

and must be received by no later than 5:00 p.m., September 23, 2005. Comments may also be submitted electronically as noted in the following paragraph.

6. An electronic copy of this Notice of Public Hearing is available through the Department's website at <http://dli.state.mt.us/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings section. Interested persons may make comments on the proposed rules via the comment

forum, <http://dli.state.mt.us/forum.asp>, linked to the Notice of Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m., September 23, 2005. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in accessing or posting to the comment forum do not excuse late submission of comments.

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

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

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

/s/ MARK CADWALLADER
Mark Cadwallader,
Rule Reviewer

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

Certified to the Secretary of State August 15, 2005

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

In the matter of the	)	NOTICE OF PUBLIC HEARING
amendment of ARM 37.30.102,	)	ON PROPOSED AMENDMENT
37.30.405, 37.30.706,)	
37.30.730, 37.30.1030, and)	
37.30.1401 pertaining to the)	
vocational rehabilitation)	
program)	

TO: All Interested Persons

1. On September 23, 2005, at 11:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on September 12, 2005, 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@mt.gov.

2. The rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.30.102 VOCATIONAL REHABILITATION POLICY: INCORPORATION BY REFERENCE OF FEDERAL AND STATE AUTHORITY (1) The department, except as otherwise provided in this chapter, ~~hereby~~ adopts and incorporates by reference, for purposes of administering the program of vocational rehabilitation services, the federal regulations specified in (2) as presented in the July 1, ~~2001~~ 2004 edition of the Code of Federal Regulations (CFR). These federal regulations, adopted by the United States department of education, govern the administration and delivery by the states of various aspects of vocational rehabilitation services.

(2) through (2)(k)(i) remain the same.

(3) The department, except as otherwise provided in this chapter, ~~hereby~~ adopts and incorporates by reference, for purposes of administering the program of vocational rehabilitation services, the policies specified in (4), as presented in ~~the September 1, 2002 edition of~~ the Montana Vocational Rehabilitation Policy Manual. Copies of the policies may be obtained through the Department of Public Health and

Human Services, Disability Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

(4) The following Montana vocational rehabilitation policies govern the administration and delivery of vocational rehabilitation services as specified:

(a) For purposes of selecting appropriate goods: Montana Vocational Rehabilitation Policy B - "Rates of Payment" dated December 27, 2002.

(b) For purposes of staff and consumer safety: Montana Vocational Rehabilitation Policy C1 - "Personal Safety" dated December 27, 2002.

(c) For purposes of conciliation in consumer due process: Montana Vocational Rehabilitation Policy E - "Counselor Determinations" dated December 27, 2002.

(d) For purposes of self-employment service provision: Montana Vocational Rehabilitation Policy M1 - "Self-employment" dated December 27, 2002.

(e) For purposes of defining "emancipated adult" for financial eligibility determinations: Montana Vocational Rehabilitation Policy ZGD08 - "Definitions" dated December 27, 2002.

(f) For purposes of defining "individual with a most significant disability" for federal reporting and order of selection: Montana Vocational Rehabilitation Policy ZGD16 - "Definitions" dated December 27, 2002.

(g) For purposes of developing the IPE: Montana Vocational Rehabilitation Policy W - "Core Requirements of IPE" dated December 27, 2002.

(h) For purposes of emergency response to IPE change requests: Montana Vocational Rehabilitation Policy X - "On-going IPE Services" dated December 27, 2002.

AUTH: Sec. 53-7-102, 53-7-206, 53-7-302 and 53-7-315, MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-105, 53-7-106, 53-7-108, 53-7-203, 53-7-205, 53-7-302, 53-7-303, 53-7-306, 53-7-310 and 53-7-314, MCA

37.30.405 VOCATIONAL REHABILITATION PROGRAM: PAYMENT FOR SERVICES (1) through (3) remain the same.

(4) The department may pay for the costs for the provision of any services that are authorized to be provided to the consumer through the consumer's IPE to the extent that the consumer's income and financial resources, determined as provided in this rule and ARM 37.30.407, do not exceed the maximum amounts allowable for income and for financial resources calculated by the department as provided for in (4)(a) and (b).

(a) The maximum allowable level for income is a prospective 12 month annual income calculated at 250% of the ~~2003~~ 2005 U.S. department of health and human services poverty guidelines for households of different sizes.

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

AUTH: Sec. 53-7-102, 53-7-206 and 53-7-315, MCA
IMP: Sec. 53-7-102, 53-7-105, 53-7-108 and 53-7-310, MCA

37.30.706 VOCATIONAL REHABILITATION PROGRAM: PHYSICAL AND MENTAL RESTORATION SERVICES (1) through (3) remain the same.

(4) The department hereby adopts and incorporates by this reference the vocational rehabilitation list of covered services dated ~~September 1~~ December 27, 2002, and published by the department as Montana Vocational Rehabilitation Policy M, "Scope of Montana Vocational Rehabilitation Services", of the Montana Vocational Rehabilitation Policy Manual. A copy of the policy may be obtained through the Department of Public Health and Human Services, Disability Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

AUTH: Sec. 53-7-102, 53-7-206, 53-7-302 and 53-7-315, MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310, MCA

37.30.730 VOCATIONAL REHABILITATION PROGRAM: PROVIDER FEES (1) through (1)(a)(iii) remain the same.

(2) The department hereby adopts and incorporates by this reference the vocational rehabilitation fee schedule, dated ~~September 1~~ July 1, 2002, and published by the department as Montana Vocational Rehabilitation Policy R, "Fee Schedule", of the Montana Vocational Rehabilitation Policy Manual. A copy of the policy may be obtained through the Department of Public Health and Human Services, Disability Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-302 and 53-7-315, MCA
IMP: Sec. 53-7-102, 53-7-105, 53-7-108, 53-7-203, 53-7-302, 53-7-303, 53-7-306, 53-7-307 and 53-7-310, MCA

37.30.1030 REHABILITATION FACILITIES: POLICIES ON ESTABLISHMENT (1) through (3) remain the same.

(4) Prior to the establishment of a rehabilitation facility, the department will certify that there is a need for the rehabilitation facility, that the establishment of the facility is consistent with the state rehabilitation facilities plan, and that the facility will be in compliance with all federal and state laws and statutes governing civil rights.

(a) remains the same.

(b) The certification by the state under this ~~section~~ rule and ARM 37.30.1002 are not a guarantee of grants nor of purchases of services by the department.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-302 and 53-7-315, MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-302 and 53-7-303, MCA

37.30.1401 FAIR HEARINGS (1) through (8) remain the same.

(9) The department hereby adopts and incorporates by this reference the conciliation procedures, dated ~~September 1~~ December 27, 2002, and published by the department as Policy E, "Counselor Determinations", of the Montana Vocational Rehabilitation Manual. A copy of the policy may be obtained through the Department of Public Health and Human Services,

Disability Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-206, 53-7-302, 53-7-315 and 53-19-112, MCA

IMP: Sec. 53-7-102, 53-7-103, 53-7-105, 53-7-106, 53-7-203, 53-7-205, 53-7-206, 53-7-302, 53-7-303, 53-7-310, 53-7-314, 53-19-103, 53-19-106 and 53-19-112, MCA

3. The proposed amendments to ARM 37.30.102 and 37.30.405 are for the purpose updating the published dates for other materials that are incorporated by reference into those rules. These rules are part of a set of rules that govern the provision of vocational rehabilitation services to eligible persons by the Department. Vocational rehabilitation services, a federally mandated program administrated by the various states, are for the purpose of physically and economically rehabilitating persons who due to injury or disability do not have access to productive economic activity.

ARM 37.30.102 serves as the principal vehicle for incorporation of other authorities into the rule set. The rule incorporates by reference relevant federal regulations that govern implementation of vocational rehabilitation services by the states and various policies of the Montana vocational rehabilitation program that apply the requirements and limitations of the federal and state authorities.

The Department has chosen as a best practice to utilize the more current editions of the relevant CFR regulations and the departmental policies when incorporating those authorities into the rule set. Leaving an outdated cross reference to a governing authority in place can undermine the legitimacy of the rule set for the program.

The proposed amendment to ARM 37.30.102(1), concerning the incorporation of pertinent federal regulations, would delete the existing cross reference to the publishing date of the 2001 Code of Federal Regulations (CFR) and provide instead for the cross reference to be to the most recent publishing date, 2004, for the governing CFR regulations. Even though there is a new publishing date for the governing CFR regulations, those regulations have not been amended since the 2001 edition and therefore remain unchanged. Consequently, this proposed amendment does not involve any changes to the administration of the program, the eligibility of persons for services, or the provision of services.

The proposed amendments to ARM 37.30.102(3), concerning the incorporation of the various policies of the Montana vocational rehabilitation program that apply the requirements and limitations of the federal and state authorities, would delete the existing cross reference to the publishing date of the September, 1, 2001 for the Montana Vocational Rehabilitation

Manual as a whole and provide instead for cross references to the most recent publishing dates for each of the specific sections of that manual that serve as authority for the administration of the program. These changes are necessary to bring the incorporations of the rule into conformance with the current practice of the program providing separate publishing dates for the specific sections of the manual. The program expects that over time the manual sections will be separately updated on varying intermittent schedules. The existing rule text is incorrect in referencing a single publishing date for the manual as a whole. Failure to make this correction concerning incorporation would result in confusion and undermine the integrity of the rule as a governing authority.

ARM 37.30.405 provides criteria for the purpose of determining the extent to which a consumer is obligated to contribute to the payment for the vocational rehabilitation services that the vocational rehabilitation program plans and arranges for delivery to the consumer. The proposed amendment to this rule concerns the calculation of the maximum allowable level for income used in the calculation to determine whether the vocational rehabilitation program will assume financial responsibility for the purchase of the services to be delivered to the consumer. The calculation has been predicated upon the 2003 U.S. department of health and human services poverty guidelines. The proposed rule change would delete the cross reference to the 2003 guidelines and insert instead a cross reference to the 2005 guidelines. This change may benefit some consumers who otherwise, based upon the prior poverty guidelines which were lesser than the more recent, would bear financial responsibility for their services. The Department, however, does not believe that the adoption of the current guidelines for this purpose will have a substantive impact upon the expenditures of the program.

The Department has chosen to pursue adoption of the current standard in lieu of retention of the older standard because failure to maintain over time more current economic indices of financial status for the program could undermine the legitimacy of those factors for purposes of the calculation and of overall predicates for eligibility. The Department at this time has not identified any more appropriate criteria to be applied to the calculation.

The proposed amendment for the change in date of publication for Policy M, pertaining to the scope of Montana vocational rehabilitation services, stated for purposes of incorporation by reference in ARM 37.30.706, is necessary to state the correct date of publication. The proposed change of date does not represent any change in the text of the policy.

The proposed amendment for the change in date of publication for Policy R, pertaining to the fee schedule, stated for purposes of incorporation by reference in ARM 37.30.730, is necessary to

state the correct date of publication. The proposed change of date does not represent any change in the text of the policy.

The proposed amendment for the change in date of publication for Policy E, pertaining to counselor determinations, stated for purposes of incorporation by reference in ARM 37.30.1401, is necessary to state the correct date of publication. The proposed change of date does not represent any change in the text of the policy.

The proposed amendments to ARM 37.30.706, 37.30.730, 37.30.1030 and 37.30.1401 are for the purpose of removing, in conformance with the Secretary of State's guidelines, inappropriate nomenclature. Inappropriate nomenclature is also proposed to be removed from ARM 37.30.102. The proposed changes to the text of these rules are not substantive and do not affect their application.

4. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on September 29, 2005. Data, views or arguments may also be submitted by facsimile to (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

Dawn Sliva
Rule Reviewer

Russ Cater for
Acting Director, Public
Health and Human Services

Certified to the Secretary of State August 15, 2005.

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED
amendment of ARM 44.10.331	)	AMENDMENT
relating to limitations on)	
receipts from political	)	NO PUBLIC HEARING
committees to legislative	)	CONTEMPLATED
candidates)	

TO: All Concerned Persons

1. On September 24, 2005, the Commissioner of Political Practices proposes to amend the above-stated rule relating to limitations on receipts from political committees to legislative candidates.

2. The Commissioner of Political Practices 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 Commissioner of Political Practices no later than 5:00 p.m. on September 22, 2005, to advise us of the nature of the accommodation that you need. Please contact Gordon Higgins, Commissioner of Political Practices, P.O. Box 202401, 1205 Eighth Avenue, Helena, Montana 59620-2401; telephone (406)444-2942; Fax (406)444-1643; e-mail ghiggins@mt.gov.

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

44.10.331 LIMITATIONS ON RECEIPTS FROM POLITICAL COMMITTEES (1) Pursuant to the operation specified in 13-37-218 ~~and 15-30-101(8)~~, MCA, limits on total combined contributions from political committees other than political party committees to legislative candidates are as follows:

(a) a candidate for the state house of representatives may receive no more than ~~\$1300~~ 1400;

(b) a candidate for the state senate may receive no more than ~~\$2150~~ 2300.

(2) These limits apply to total combined receipts for the entire election cycle of ~~2002~~ 2006.

(3) Pursuant to 13-37-218, MCA, in-kind contributions must be included in computing these limitation totals.

AUTH: 13-37-114, MCA

IMP: 13-37-218, MCA

Reasonable Necessity: Section 13-37-218, MCA, requires the Commissioner of Political Practices to periodically adjust the limitations established in that statute, and to publish the revised limitations as a rule.

4. Concerned persons may submit their data, views, or arguments concerning the proposed amendment in writing to Gordon Higgins, Commissioner of Political Practices, P.O. Box 202401, 1205 Eighth Avenue, Helena, Montana 59620-2401, or by email to ghiggins@mt.gov to be received no later than September 22, 2005.

5. If persons who are directly affected by this proposed amendment wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a public hearing and submit this request, along with any written comments, to the Commissioner of Political Practices, P.O. Box 202401, 1205 Eighth Avenue, Helena, 59620-2401, or by email to ghiggins@mt.gov. Written requests for hearing must be received no later than September 22, 2005.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, from the appropriate administrative rule review committee of the legislature, from a governmental subdivision or agency, or from an association having no less than 25 members who will be directly affected, a hearing will be scheduled 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 132 based on the number of registered candidates and political committees in the 2004 election cycle.

7. An electronic copy of this Notice of Proposed Amendment is available through the agency's site on the World Wide Web at <http://www.state.mt.us/cpp>, under "public meetings/notices" and "administrative rule notices." The agency strives to make the electronic copy of this Notice of Proposed Amendment conform to the official version of the Notice as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the agency strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission or comments.

8. The Commissioner of Political Practices maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their names added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes

to receive notices concerning campaign finance, ethics, or lobbying. Such written request may be mailed or delivered to the Commissioner of Political Practices at P.O. Box 202401, 1205 Eighth Avenue, Helena, MT 59620-2401, or faxed to (406) 444-1643, or may be made by completing a request form at any rules hearing held by the Commissioner of Political Practices.

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

By: /s/ GORDON HIGGINS
Gordon Higgins
Commissioner

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

Certified to the Secretary of State on August 15, 2005.

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

In the matter of the)	
adoption of a temporary)	
emergency rule closing)	
the Clark Fork River	)	NOTICE OF ADOPTION OF A
from the Petty Creek	)	TEMPORARY EMERGENCY RULE
Fishing Access Site to)	
the Tarkio Fishing)	
Access Site)	

TO: All Concerned Persons

1. The Fish, Wildlife and Parks Commission (commission) believes the following reasons justify the adoption of a temporary emergency rule:

(a) There is an immediate need for a source of water for aircraft dropping water on numerous fires along and adjacent to I-90 west of Missoula and perhaps other fires. The use of the aircraft is part of Northern Rockies interagency fire management.

(b) The aircraft scoop water with a large bucket while hovering over the surface of the Clark Fork River.

(c) If anyone is on the Clark Fork River while one of the aircraft is loading water, there would be an immediate and extreme danger both to anyone on the river, and to the crew of the aircraft.

(d) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied any other way, the commission intends to adopt the following temporary emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as a temporary emergency rule in Issue No. 16 of the 2005 Montana Administrative Register.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on August 25, 2005, to advise us of the nature of the accommodation that you need. Please contact Brandi Fisher, Fish, Wildlife and Parks, 1420 East Sixth Ave., P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; or email brfisher@mt.gov.

3. The temporary emergency rule is effective August 5, 2005.

4. The text of the temporary emergency rule provides as follows:

RULE I CLARK FORK RIVER TEMPORARY EMERGENCY CLOSURE

(1) The Clark Fork River west of Missoula is located in Missoula and Mineral counties.

(2) The Clark Fork River from the Petty Creek Fishing Access Site (FAS) to the Tarkio FAS is closed to all boating, floating, and swimming and any other public occupation of the river.

(3) This rule is effective as long as Clark Fork River is needed as a source of water for fighting wildfires. The commission delegates its authority to the department, in consultation with the commissioner in the region, to determine when the Clark Fork River is again safe for boating, floating, and swimming and any other occupation of the river.

AUTH: 87-1-303, MCA

IMP: 87-1-303, MCA

5. The rationale for the temporary emergency rule is as set forth in paragraph 1.

6. This rule will expire as soon as the department determines the river is again safe for boating, floating and swimming and any other occupation of the river. This will depend on the extent and duration of wildfires in the area. Signs restricting use of the river will be removed when the rule is no longer effective. Notice of repeal of this emergency rule will be published in the Montana Administrative Register.

7. Concerned persons are encouraged to submit their comments to the department. They should submit their comments along with their names and addresses to Brandi Fisher, Fish, Wildlife and Parks, 1420 East Sixth Ave., P.O. Box 200701, Helena, MT 59620-0701, or email to brfisher@mt.gov.

8. 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 Sixth Ave., 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.

9. The Environmental Quality Council has been notified of the adoption of this temporary emergency rule.

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

BY: /s/ Larry G. Peterman
Larry G. Peterman, Chief
of Field Operations for
the Department of Fish,
Wildlife and Parks and Acting
Secretary of the Fish,
Wildlife and Parks Commission

BY: /s/ Robert N. Lane
Robert N. Lane
Rule Reviewer

Certified to the Secretary of State August 5, 2005

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 18.8.1101 pertaining to)
the movement of houses,)
buildings, extremely heavy)
machinery, and other large and)
unusual objects)

TO: All Concerned Persons

1. On June 30, 2005, the Department of Transportation published MAR Notice No. 18-108 pertaining to the proposed amendment of the above-stated rule relating to the Motor Carrier Services' regulations for overdimensional vehicles and loads, at page 1002 of the 2005 Montana Administrative Register, issue number 12.

2. The Department of Transportation has amended ARM 18.8.1101 as proposed.

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

COMMENT 1: The first commenter expressed support for the proposed amendment.

RESPONSE: No response is necessary.

COMMENT 2: The second commenter raised an issue pertaining to flag vehicles and pilot cars. More specifically, this commenter suggested that the rules require that the flag vehicles and pilot cars be required to be a minimum distance in front of, or behind, the oversized load so that the drivers of the oversized load would have sufficient advanced notice of another approaching oversized load to allow time to pull over on narrow roads.

RESPONSE: The second comment was not received within the time specified within the notice of proposed amendment. More importantly, the suggested amendment expands the scope of the original proposed amendment. In order to adopt such a rule regarding flag vehicle requirements would have required publishing a new proposal with further public notice and comment. Please note that this agency is in the process of developing a more comprehensive revision of the motor carrier service rules and will consider these comments in that larger context. As part of those revisions, the agency will review rules 18.8.510A and 18.8.511A to determine if changes should be made to flag vehicle or pilot car requirements. Those rules would be a more appropriate location within which to

make amendments for flag cars, such as suggested by this commenter.

4. The Department acknowledges and thanks the proponents for their comments.

DEPARTMENT OF TRANSPORTATION

/s/ James Currie
James Currie
Deputy Director

/s/ Lyle Manley
Lyle Manley, Attorney
Rule Reviewer

Certified to the Secretary of State, August 15, 2005.

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

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 37.78.102 and 37.82.101)
pertaining to temporary)
assistance for needy families)
(TANF), medical assistance,)
purpose and incorporation of)
policy manuals)

TO: All Interested Persons

1. On June 16, 2005, the Department of Public Health and Human Services published MAR Notice No. 37-350 pertaining to the public hearing on the proposed amendment of the above-stated rules relating to temporary assistance for needy families (TANF), medical assistance, purpose and incorporation of policy manuals at page 898 of the 2005 Montana Administrative Register, issue number 11.

2. The Department has amended ARM 37.78.102 and 37.82.101 as proposed.

3. No comments or testimony were received.

Dawn Sliva
Rule Reviewer

John Chappuis, Acting
Director, Public Health and
Human Services

Certified to the Secretary of State August 15, 2005.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the)
amendment of ARM 42.15.315) CORRECTED NOTICE OF
relating to personal income) AMENDMENT
taxes)

TO: All Concerned Persons

1. On September 23, 2004, the Department published MAR Notice No. 42-2-741 regarding a public hearing on the proposed amendment of the above-stated rule relating to personal income taxes at page 2221 of the 2004 Montana Administrative Register, Issue No. 18. On December 16, 2004, the Department published notice of amendment ARM 42.15.315 at page 3147 of the 2004 Montana Administrative Register, Issue No. 24.

2. This correction notice is necessary because when the proposal notice was filed it incorrectly listed the sections that would remain the same. Section (13) was not listed as remaining the same even though it was the intent of the department that that section would remain the same. The corrected rule amendment reads as follows:

- 42.15.315 ORIGINAL AND AMENDED RETURNS (1) remains the same.
- (2) and (3) remain as amended.
- (4) through (13) remain the same.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-1-216, 15-30-142, 15-30-149, 15-30-241, and 15-30-321, MCA.

3. Replacement pages for the corrected notice of amendment will be filed with the Secretary of State on September 30, 2005.

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

Cleo Anderson
CLEO ANDERSON
Rule Reviewer

Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State August 15, 2005

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 42.20.106; 42.20.108;)
42.20.110; and 42.20.203)
relating to property taxes)

TO: All Concerned Persons

1. On June 30, 2005, the department published MAR Notice No. 42-2-748 regarding the proposed amendment of the above-stated rules relating to property taxes at page 1016 of the 2005 Montana Administrative Register, issue no. 12.

2. A public hearing was held on July 21, 2005, to consider the proposed amendments. No one appeared at the hearing to testify and no written comments were received.

3. The department amends ARM 42.20.106, 42.20.108, 42.20.110, and 42.20.203 as proposed.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State August 15, 2005

VOLUME NO. 51

OPINION NO. 7

SCHOOL DISTRICTS - Refund of taxes paid by contractors on special fuels;
TAXATION AND REVENUE - Ownership of special fuel determined by who purchases the fuel outright, not through inclusion in a contract or bid price;
TAXATION AND REVENUE - Refund of taxes paid on special fuels;
TAXATION AND REVENUE - Public entity not entitled to refund of taxes paid on special fuels by services contractor;
MONTANA CODE ANNOTATED - Sections 15-6-201(1)(e), (2)(a), 15-70-301(16), -321, -356(2)(a).

HELD: A school district may not claim a refund pursuant to Mont. Code Ann. § 15-70-356(2)(a) of taxes paid on special fuels by a company which contracts with the district to provide bus service for the district's students.

August 4, 2005

Mr. Robert Zimmerman
Sanders County Attorney
P.O. Box 519
Thompson Falls, MT 59873-0519

Dear Mr. Zimmerman:

You have requested an opinion on the following question:

May a school district claim a refund of taxes paid on special fuels, pursuant to Mont. Code Ann. § 15-70-356(2)(a), even if the school district contracts with a bus company to transport its students?

The Legislature has empowered the Department of Transportation to collect taxes on "special fuels," defined in Mont. Code Ann. § 15-70-301(16) to include what is commonly known as diesel fuel. The legal incidence of the tax falls on the owner or operator of the motor vehicle using the special fuels. Mont. Code Ann. § 15-70-321. Mont. Code Ann. § 15-70-356(2)(a) provides:

The United States government, the state of Montana, any other state, or any county, incorporated city, town, or school district of this state is entitled to a refund of the taxes paid on special fuel regardless of the use of the special fuel.

Your letter informs me that the district contracts with independent contractors to provide transportation for students to and from school. The contractors own and operate the busses

and also pay for the fuel used to operate those busses for transporting students.

By the terms of the statutes, the exemption is not available to the district on these facts. The tax is paid by the owner or operator pursuant to Mont. Code Ann. § 15-70-321. The refund is available to the district only for "taxes paid." The district pays no tax under the scenario you outline, and the refund procedure therefore does not apply.

Your letter argues that the use of the property, not its ownership, is determinative, citing Steer, Inc. v. Department of Revenue, 245 Mont. 470, 803 P.2d 601 (1990). The case does not support the application of the refund statute to the district or its contractor here. Steer involved a claim that cattle were exempt from taxation as personal property because the income derived from them was used for charitable purposes. The Montana Supreme Court rejected the claimed exemption, relying principally on the rule that tax exemption statutes are to be construed strictly against the taxpayer. 245 Mont. at 477. The exemption statute at issue, Mont. Code Ann. § 15-6-201(1)(e) and (2)(a), exempted from tax "institutions of public charity," and cattle are animals, not institutions. Accordingly, the Court, strictly construing the exemption, held that the cattle were subject to tax.

In your case, strict construction of the refund statute can lead to only one conclusion. The refund is available only if the district paid the tax. That is unquestionably not the case here.

Northwestern Improvement Co. v. Rosebud County, 129 Mont. 412, 288 P.2d 657 (1955), is likewise unhelpful. In that case, the Court considered the tax status of a building owned by a private company and leased to a school district for use as a public school. The applicable statute and constitutional provision provided an exemption from property tax for the property of a school district as well as any property "used exclusively for educational purposes." Under that statute, the Court held that the exemption applied regardless of ownership. Here, the special fuel tax refund statute has no similar language.

Montana Code Annotated § 15-70-356(2)(a) states that a school district is entitled to a refund of special fuels taxes paid "regardless of the use of the special fuel." This provision does not alter the conclusion expressed above. Nothing in the language of this clause contradicts the clear operation of the statutory language placing the legal incidence of the tax on the owner or operator and limiting the refund to taxes paid. Applying the rule of strict construction, in my opinion the clause simply clarifies that when the district has paid a tax on special fuel, it may seek the refund regardless of the district activity for which the fuel was used.

The general argument that the district "pays" the tax by virtue of the fact that the contractor builds the cost of the fuel into the contract price charged the district is not persuasive. Courts have long been critical of the view that a governmental tax exemption may be passed through to the government's contractor because the economic burden of the tax falls ultimately on the government. See, e.g., Alabama v. King & Boozer, 314 U.S. 1, 8-9 (1941) ("The Government, rightly we think, disclaims any contention that the Constitution, unaided by Congressional legislation, prohibits a tax exacted from the contractors merely because it is passed on economically, by the terms of the contract or otherwise, as a part of the construction cost to the Government. So far as such a non-discriminatory state tax upon the contractor enters into the cost of the materials to the Government, that is but a normal incident of the organization within the same territory of two independent taxing sovereignties. The asserted right of the one to be free of taxation by the other does not spell immunity from paying the added costs, attributable to the taxation of those who furnish supplies to the Government and who have been granted no tax immunity.")

Recognition of such a tax immunity for special fuel taxes paid by those who contract with a school district would create a huge unintended loophole in the special fuels tax statute. Districts contract with all manner of entities for functions that require the use of special fuel. There is no evidence in the language of the statute to suggest, for example, that when the district enters into a contract for the construction of a school, the construction contractor or the district can receive a refund of the special fuels tax for the fuels used in the contractor's trucks, backhoes, and road graders simply because the bid price included such overhead costs. If the legislature intended such a result, the rule of strict construction would require much clearer evidence than that which is available under these statutes.

THEREFORE, IT IS MY OPINION:

A school district may not claim a refund pursuant to Mont. Code Ann. § 15-70-356(2)(a) of taxes paid on special fuels by a company which contracts with the district to provide bus service for the district's students.

Very truly yours,


/s/ Mike McGrath

MIKE McGRATH
Attorney General

mm/cdt/jym

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- ▶ Department of Agriculture;
- ▶ Department of Commerce;
- ▶ Department of Labor and Industry;
- ▶ Department of Livestock;
- ▶ Office of the State Auditor and Insurance Commissioner;

and

- ▶ Office of Economic Development.

Education and Local Government Interim Committee:

- ▶ State Board of Education;
- ▶ Board of Public Education;
- ▶ Board of Regents of Higher Education; and
- ▶ Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- ▶ Department of Public Health and Human Services.

Law and Justice Interim Committee:

- ▶ Department of Corrections; and
- ▶ Department of Justice.

Energy and Telecommunications Interim Committee:

- ▶ Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- ▶ Department of Revenue; and
- ▶ Department of Transportation.

State Administration, and Veterans' Affairs Interim Committee:

- ▶ Department of Administration;
- ▶ Department of Military Affairs; and
- ▶ Office of the Secretary of State.

Environmental Quality Council:

- ▶ Department of Environmental Quality;
- ▶ Department of Fish, Wildlife, and Parks; and
- ▶ Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA
AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|-------------------------------------|---|
| Known
Subject | 1. Consult ARM topical index.
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute
Number and
Department | 2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2005. This table includes those rules adopted during the period July 1, 2005 through September 30, 2005 and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 2005, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2004 and 2005 Montana Administrative Registers.

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

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BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the *Montana Administrative Register* a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in July 2005 appear. Vacancies scheduled to appear from September 1, 2005, through November 30, 2005, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of August 11, 2005.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM JULY 2005

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Chief Water Judge (not listed)			
Mr. C. Bruce Loble Bozeman	Chief Justice	reappointed	7/1/2005 6/30/2009
Qualifications (if required):	none specified		
Community Service Commission (Labor and Industry)			
Mr. John Allen Helena	Governor	reappointed	7/12/2005 7/1/2008
Qualifications (if required):	representative of the National Service Corporation		
Dr. Johnel Barcus Browning	Governor	Galvin	7/12/2005 7/1/2007
Qualifications (if required):	representative of the private sector		
Ms. Amy Busch Broadview	Governor	Melichar	7/12/2005 7/1/2008
Qualifications (if required):	representative of senior services		
Mr. Robert Harris Great Falls	Governor	not listed	7/12/2005 7/1/2008
Qualifications (if required):	public member		
Mr. John Ilgenfritz Helena	Governor	Walsh	7/12/2005 7/1/2006
Qualifications (if required):	representative of disaster and emergency services		
Director Keith Kelly Helena	Governor	Keating	7/12/2005 7/1/2007
Qualifications (if required):	representative of the Department of Labor & Industry		
Mr. Tracy King Harlem	Governor	Campbell	7/12/2005 7/1/2007
Qualifications (if required):	tribal government member		

BOARD AND COUNCIL APPOINTEES FROM JULY 2005

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Community Service Commission (Labor and Industry) cont.			
Mr. Bob Maffit Helena	Governor	reappointed	7/12/2005 7/1/2008
Qualifications (if required): representative of the disabilities community			
Mr. Michael J McGinley Dillon	Governor	reappointed	7/12/2005 7/1/2008
Qualifications (if required): representative of local government			
Ms. Pat Murphy Hamilton	Governor	LeFebvre	7/12/2005 7/1/2008
Qualifications (if required): representative of youth services			
Ms. Lindsay Rehder Missoula	Governor	Butts	7/12/2005 7/1/2007
Qualifications (if required): youth representative			
Rep. Sheila Rice Great Falls	Governor	Stevens-Wulf	7/12/2005 7/1/2008
Qualifications (if required): representative of volunteer agencies			
District Court Council (Justice)			
Judge Katherine "Kitty" Curtis Columbia Falls	District Court Council	re-elected	7/1/2005 6/30/2008
Qualifications (if required): none specified			
Judge John C. McKeon Malta	District Court Council	re-elected	7/1/2005 6/30/2008
Qualifications (if required): none specified			

BOARD AND COUNCIL APPOINTEES FROM JULY 2005

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Judicial Standards Commission (Justice)			
Judge Gary L. Day Miles City	District Court Judges	not listed	7/1/2005 6/30/2009
Qualifications (if required): none specified			
Mint Committee (Agriculture)			
Mr. Clyde Fisher Columbia Falls	Governor	reappointed	7/1/2005 7/1/2008
Qualifications (if required): mint industry research council			
Mr. Kirk Passmore Kalispell	Governor	reappointed	7/1/2005 7/1/2008
Qualifications (if required): mint grower			
Montana Historical Society Board of Trustees (Historical Society)			
Ms. Shirley Groff Butte	Governor	not listed	7/12/2005 7/1/2010
Qualifications (if required): public member			
Mr. John G. Lepley Fort Benton	Governor	Brenden	7/12/2005 7/1/2010
Qualifications (if required): public member			
Mr. Steve Lozar Polson	Governor	Wetzel	7/12/2005 7/1/2007
Qualifications (if required): public member			
Mr. James W. Murry Clancy	Governor	Bosch	7/12/2005 7/1/2010
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM JULY 2005

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Petroleum Tank Release Compensation Board (Environmental Quality)			
Ms. Theresa Balazicevich Stevensville	Governor	Manson	7/27/2005 6/30/2008
Qualifications (if required): member with environmental regulatory experience			
Mr. Frank Boucher, Jr. Helena	Governor	Johnston	7/27/2005 6/30/2008
Qualifications (if required): banker			
Professional Engineers and Land Surveyors (Labor and Industry)			
Mr. Tom Heinecke Kalispell	Governor	McCauley	7/27/2005 7/1/2009
Qualifications (if required): licensed mechanical engineer			
Mr. John Neil Great Falls	Governor	not listed	7/27/2005 7/1/2009
Qualifications (if required): licensed civil engineer			
Public Defender Commission (Administration)			
Ms. Betty Bishsel Edgar	Governor	not listed	7/1/2005 7/1/2007
Qualifications (if required): employee of an organization providing addictive behavior counseling			
Mr. Daniel Donovan Great Falls	Governor	not listed	7/1/2005 7/1/2008
Qualifications (if required): attorney nominated by the Montana Supreme Court			
Ms. Caroline Fleming Miles City	Governor	not listed	7/1/2005 7/1/2008
Qualifications (if required): public representative nominated by the House Speaker			

BOARD AND COUNCIL APPOINTEES FROM JULY 2005

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Public Defender Commission (Administration) cont.			
Ms. Jennifer Hensley Butte	Governor	not listed	7/1/2005 7/1/2008
Qualifications (if required): member of an organization advocating on behalf of people with mental illness			
Ms. Wendy Holton Helena	Governor	not listed	7/1/2005 7/1/2007
Qualifications (if required): attorney nominated by the Montana State Bar			
Mr. Doug Kaercher Havre	Governor	not listed	7/1/2005 7/1/2006
Qualifications (if required): public representative nominated by the Senate President			
Mr. Stephen Nardi Kalispell	Governor	not listed	7/1/2005 7/1/2006
Qualifications (if required): attorney nominated by the Montana State Bar			
Ms. Theda Newbreast Babb	Governor	not listed	7/1/2005 7/1/2006
Qualifications (if required): member of an organization advocating on behalf of racial minorities			
Mr. Mike Sherwood Missoula	Governor	not listed	7/1/2005 7/1/2007
Qualifications (if required): attorney nominated by the Montana Supreme Court			
Mr. James Park Taylor Pablo	Governor	not listed	7/1/2005 7/1/2008
Qualifications (if required): attorney nominated by the Montana State Bar			

BOARD AND COUNCIL APPOINTEES FROM JULY 2005

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Public Defender Commission (Administration) cont.			
Ms. Tara Veazey Helena	Governor	not listed	7/1/2005 7/1/2007
Qualifications (if required): member of an organization advocating on behalf of indigent persons			
Small Business Health Insurance Pool Board (Auditor)			
Ms. Gail Briese-Zimmer Helena	Governor	not listed	7/1/2005 1/1/2007
Qualifications (if required): management-level individual with knowledge of medicaid services			
Ms. Emily Lipp Helena	Governor	not listed	7/1/2005 0/0/0
Qualifications (if required): Governor's representative			
Mr. Christian Mackay Billings	Governor	not listed	7/1/2005 1/1/2007
Qualifications (if required): consumer representing the public interest			
Mr. Bob Marsenich Polson	Governor	not listed	7/1/2005 1/1/2008
Qualifications (if required): consumer representing small business			
Ms. Connie Welsh Helena	Governor	not listed	7/1/2005 1/1/2006
Qualifications (if required): management-level individual with knowledge of state employee health benefit plans			
State Poet Laureate (Montana Arts Council)			
Ms. Sandra Alcosser Florence	Governor	not listed	7/13/2005 7/13/2007
Qualifications (if required): Montana poet			

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2005 through NOVEMBER 30, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Barbers and Cosmetologists (Labor and Industry) Ms. Delores Lund, Plentywood Qualifications (if required): public member	Governor	10/1/2005
Board of Medical Examiners (Labor and Industry) Dr. Kay E. Dorr, Nashua Qualifications (if required): public member	Governor	9/1/2005
Dr. Van Kirke Nelson, Kalispell Qualifications (if required): doctor of medicine	Governor	9/1/2005
Ms. Linda Melick, Lewistown Qualifications (if required): nutritionist	Governor	9/1/2005
Ms. Susan McRae, Dillon Qualifications (if required): public member	Governor	9/1/2005
Ms. Jennifer Krueger, Missoula Qualifications (if required): certified physician assistant	Governor	9/1/2005
Mr. Dwight E. Thompson, Harlowton Qualifications (if required): physician assistant-certified	Governor	9/1/2005
Dr. James D. Upchurch, Crow Agency Qualifications (if required): doctor of medicine	Governor	9/1/2005
Board of Outfitters (Labor and Industry) Ms. Jennifer J. Cote, Missoula Qualifications (if required): sportsperson	Governor	10/1/2005
Mr. Wayne L. Underwood, Billings Qualifications (if required): sportsperson	Governor	10/1/2005

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2005 through NOVEMBER 30, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Outfitters (Labor and Industry) cont. Mr. Mel Montgomery, Lima Qualifications (if required): big game outfitter	Governor	10/1/2005
Mr. Leslie K. Dolezal, Billings Qualifications (if required): public member	Governor	10/1/2005
Board of Psychologists (Commerce) Ms. Nancy McLees, Bozeman Qualifications (if required): public member	Governor	9/1/2005
Building Codes Council (Labor and Industry) Mr. Robert J. Karhu, Helena Qualifications (if required): architect	Governor	10/1/2005
Mr. Mike Skinner, Helena Qualifications (if required): representative of the manufactured housing industry	Governor	10/1/2005
Mr. Joe Wolfe, Helena Qualifications (if required): member of the State Electrical Board	Governor	10/1/2005
Mr. Terry Phillips, Helena Qualifications (if required): state fire marshal	Governor	10/1/2005
Mr. Jeffrey Jenkins, Great Falls Qualifications (if required): municipal building inspector	Governor	10/1/2005
Mr. Joe Hansen, Bozeman Qualifications (if required): representative of the building contractor industry	Governor	10/1/2005
Mr. Howard Reid, Helena Qualifications (if required): representative of the Department of Public Health and Human Services	Governor	10/1/2005

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2005 through NOVEMBER 30, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Building Codes Council (Labor and Industry) cont.		
Mr. Stephen Tartaglino, Kalispell Qualifications (if required): representative of the home building industry	Governor	10/1/2005
Mr. Mike McCourt, Missoula Qualifications (if required): representative of the public	Governor	10/1/2005
Mr. Dave Broquist, Great Falls Qualifications (if required): professional engineer	Governor	10/1/2005
Mr. Scott Lemert, Livingston Qualifications (if required): Board of Plumbers representative	Governor	10/1/2005
Enterprise Solutions Advisory Council (Administration)		
Mr. Tony Herbert, Helena Qualifications (if required): Tier 1/Administration	Director	9/30/2005
Mr. Rod Sundsted, Helena Qualifications (if required): Tier 2/Montana University System	Director	9/30/2005
Mr. Terry Johnson, Helena Qualifications (if required): Tier 1/Legislative Branch	Director	9/30/2005
Ms. Barb Charlton, Helena Qualifications (if required): Tier 4/Department of Commerce	Director	9/30/2005
Ms. Cathy Muri, Helena Qualifications (if required): Tier 1/Administration	Director	9/30/2005
Ms. Jane Hamman, Helena Qualifications (if required): Tier 1/Governor's Office	Director	9/30/2005

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2005 through NOVEMBER 30, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Enterprise Solutions Advisory Council (Administration) cont.		
Ms. Carleen Layne, Helena Qualifications (if required): Tier 5/Montana Arts Council	Director	9/30/2005
Ms. Frieda Houser, Helena Qualifications (if required): Tier 5/Department of Agriculture	Director	9/30/2005
Mr. Mick Robinson, Helena Qualifications (if required): Tier 2/Department of Public Health and Human Services	Director	9/30/2005
Mr. John McEwen, Helena Qualifications (if required): Tier 1/Administration	Director	9/30/2005
Mr. John Huth, Helena Qualifications (if required): Tier 4/State Auditor	Director	9/30/2005
Ms. Lisa Smith, Helena Qualifications (if required): Tier 2/Judiciary	Director	9/30/2005
Mr. Darrell Zook, Helena Qualifications (if required): Tier 2/Department of Transportation	Director	9/30/2005
Ms. Gail Kramlick, Helena Qualifications (if required): Tier 2/Office of Public Instruction	Director	9/30/2005
Ms. Rhonda Schaffer, Helena Qualifications (if required): Tier 3/Department of Corrections	Director	9/30/2005
Mr. Steve Austin, Helena Qualifications (if required): Tier 3/Department of Revenue	Director	9/30/2005
Mr. Darrel Beaton, Helena Qualifications (if required): Tier 3/State Fund	Director	9/30/2005

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2005 through NOVEMBER 30, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Enterprise Solutions Advisory Council (Administration) cont. Mr. Tom Livers, Helena Qualifications (if required): Tier 4/Department of Environmental Quality	Director	9/30/2005
Flathead Basin Commission (Governor) Mr. Everit A. Sliter, Kalispell Qualifications (if required): public member	Governor	10/1/2005
Mr. Remington Kohrt, Darby Qualifications (if required): public member	Governor	10/1/2005
Mr. Bruce Tutvedt, Kalispell Qualifications (if required): public member	Governor	10/1/2005
Mr. Arthur Vail, Marion Qualifications (if required): public member	Governor	10/1/2005
Information Technology Board (Administration) Ms. Sheila Stearns, Helena Qualifications (if required): none specified	Board of Regents	9/1/2005
Lewis and Clark Bicentennial Commission (Historical Society) Mr. Darrell Kipp, Browning Qualifications (if required): representative of Indian Tribes	Governor	10/1/2005
Ms. Betty Stone, Glasgow Qualifications (if required): public member	Governor	10/1/2005
Mr. Homer Staves, Billings Qualifications (if required): public member	Governor	10/1/2005

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2005 through NOVEMBER 30, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Fetal Alcohol Syndrome Advisory Council (Public Health and Human Services)		
Mr. Richard Chiotti, Helena Qualifications (if required): public member	Governor	10/1/2005
Mr. Thomas Price, Eureka Qualifications (if required): public member	Governor	10/1/2005
Ms. Patti Jacques, Helena Qualifications (if required): public member	Governor	10/1/2005
Ms. Carole Lankford, Pablo Qualifications (if required): public member	Governor	10/1/2005
Ms. Crystal LaPlant, Browning Qualifications (if required): public member	Governor	10/1/2005
Ms. Mary Behrendt, Columbia Falls Qualifications (if required): public member	Governor	10/1/2005
Ms. Leita Cook, Helena Qualifications (if required): public member	Governor	10/1/2005
Mr. Billford Curley, Sr., Lame Deer Qualifications (if required): public member	Governor	10/1/2005
Dr. Suzanne Dixon, Great Falls Qualifications (if required): public member	Governor	10/1/2005
Ms. Allison Failing, Poplar Qualifications (if required): public member	Governor	10/1/2005
Ms. Diane Jeanotte, Billings Qualifications (if required): public member	Governor	10/1/2005

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2005 through NOVEMBER 30, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Fetal Alcohol Syndrome Advisory Council (Public Health and Human Services) cont. Dr. John Johnson, Helena Qualifications (if required): public member	Governor	10/1/2005
Dr. Ted Laine, Missoula Qualifications (if required): public member	Governor	10/1/2005
Ms. Irene Lake, St. Ignatius Qualifications (if required): public member	Governor	10/1/2005
Mr. Mike Lande, Billings Qualifications (if required): public member	Governor	10/1/2005
Ms. Terry McAnally, Poplar Qualifications (if required): public member	Governor	10/1/2005
Ms. Myrna Medicine Horse, Crow Agency Qualifications (if required): public member	Governor	10/1/2005
Ms. Linda Tarinelli, Bozeman Qualifications (if required): public member	Governor	10/1/2005
Mr. Richard Williams, Bozeman Qualifications (if required): public member	Governor	10/1/2005
Ms. Margaret Ann Yellow Kidney, Browning Qualifications (if required): public member	Governor	10/1/2005
Mr. Mike Hermanson, Billings Qualifications (if required): public member	Governor	10/1/2005

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2005 through NOVEMBER 30, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Fetal Alcohol Syndrome Advisory Council (Public Health and Human Services) cont.		
Mr. Roland Mena, Helena Qualifications (if required): public member	Governor	10/1/2005
Dr. Michael Spence, Helena Qualifications (if required): public member	Governor	10/1/2005
Ms. Mary Chaboya, Libby Qualifications (if required): public member	Governor	10/1/2005
Ms. Vickie Leigland, Great Falls Qualifications (if required): public member	Governor	10/1/2005
Ms. Cheryl Jill Plumage, Harlem Qualifications (if required): public member	Governor	10/1/2005
Montana Geographic Information Council (Administration)		
Mr. Don Wetzel, Bozeman Qualifications (if required): representative of Native American tribes of Montana	Governor	11/19/2005
Mr. Steve Shannon, Butte Qualifications (if required): representative of public utilities	Governor	11/19/2005
Mr. Ken Jenkins, Missoula Qualifications (if required): representing MARLS	Governor	11/19/2005
Mr. Martin Prather, Missoula Qualifications (if required): federal USDA representative	Governor	11/19/2005
Dr. Katherine Maynard, Bozeman Qualifications (if required): federal USDA representative	Governor	11/19/2005

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2005 through NOVEMBER 30, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Geographic Information Council (Administration) cont.		
Mr. Alex Philip, Missoula Qualifications (if required): representative of a private business active in land information systems	Governor	11/19/2005
Mr. Hans Zuuring, Missoula Qualifications (if required): representative of the university system	Governor	11/19/2005
Mr. Jeff Hutten, Kalispell Qualifications (if required): representing the Interagency GIS Technical Working Group	Governor	11/19/2005
Mr. Tom Reynolds, Kalispell Qualifications (if required): representing the Montana Local Government GIS Coalition	Governor	11/19/2005
Montana Organic Commodity Advisory Council (Agriculture)		
Mr. David Oien, Conrad Qualifications (if required): handler	Director	9/4/2005
Ms. Judy Owsowitz, Whitefish Qualifications (if required): producer	Director	9/4/2005
Mr. Robert Boettcher, Big Sandy Qualifications (if required): producer	Director	9/4/2005
Mr. Randy Hinebauch, Conrad Qualifications (if required): at-large representative	Director	9/4/2005
Montana Statewide Independent Living Council (Public Health and Human Services)		
Rep. Carol Lambert, Broadus Qualifications (if required): none specified	Director	10/27/2005
Sen. Gerald Pease, Lodge Grass Qualifications (if required): State Senator	Director	10/27/2005

VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2005 through NOVEMBER 30, 2005

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Vocational Rehabilitation Council (Public Health and Human Services) Ms. Denise Corrao, Miles City Qualifications (if required): vocational rehabilitation advocate position	Director	10/1/2005
Ms. Barbara Varnum, Kalispell Qualifications (if required): vocational rehabilitation counselor	Director	10/1/2005
Small Business Compliance Assistance Advisory Council (Environmental Quality) Ms. Lora Schultz, Billings Qualifications (if required): public member	Governor	10/1/2005
Mr. Ralph Hamler, Virginia City Qualifications (if required): public member	Governor	10/1/2005
State Historic Preservation Review Board (Historical Society) Ms. Marcella Knedler, Geraldine Qualifications (if required): public member	Governor	10/1/2005
Water and Waste Water Operators' Advisory Council (Environmental Quality) Dr. Carol Reifschneider, Havre Qualifications (if required): member of university faculty	Governor	10/16/2005
Workers' Compensation Judge (Governor) Mr. Michael McCarter, Helena Qualifications (if required): none specified	Governor	9/6/2005