

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 18

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF PUBLIC HEARING ON
adoption of New Rules I and) PROPOSED ADOPTION
II pertaining to the do-not-)
call list)

TO: All Concerned Persons

1. On October 17, 2003, at 1:00 p.m., a public hearing will be held in room 160 of the Mitchell Building, 125 Roberts Street, Helena, Montana, to consider the adoption of new Rules I and II.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on October 10, 2003, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Consumer Protection Counsel, Department of Administration, 1219 Eighth Avenue, Helena, MT 59620, telephone (406) 444-5439, fax (406) 444-9680, e-mail cojensen@state.mt.us.

3. The proposed new rules provide as follows:

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

(1) "National do-not-call list" means the database of residential phone numbers designated not to be called by telemarketers as established by the federal trade commission (FTC) in 16 CFR Part 310.

AUTH: 30-14-1603, MCA
IMP: 30-14-1603, MCA

REASON: This definition is necessary to make the rules read clearly and eliminate any vagueness over which national list is being used.

RULE II STATE DO-NOT-CALL DATABASE (1) The department shall use the national do-not-call list as the state do-not-call database.

(2) Citizens may give notice of their objection to receiving telephone solicitations by signing up to the national do-not-call list. A citizen's notice of objection shall last five years or until their phone number is disconnected.

(3) Only the information needed by the FTC to maintain the national do-not-call list must be collected. The FTC shall specify this information.

(4) A person or entity wishing to or required to gain access to the national do-not-call list shall pay the FTC its fee for access to that part or portion of the national do-not-call list containing the numbers in the 406 area code. The department may not charge a fee.

(5) A telemarketer operating in or into Montana shall provide proof of legal access to the national do-not-call list within 10 days of the department requesting it. Failure to provide proof is a violation of 30-14-103, MCA.

AUTH: 30-14-1603, MCA
IMP: 30-14-1603, MCA

REASON: The 2003 Legislature passed HB 424 requiring the Department of Administration to adopt rules to create a state do-not-call database, a listing of phone numbers of persons who do not wish to receive telemarketing. The state do-not-call list is necessary to preserve the privacy of Montana's citizens and to protect tranquility in their homes. The state list is required to comply with both FTC and Federal Communications Commission (FCC) rules on telemarketing. Both federal lists require any state with a do-not-call list to integrate with the national do-not-call list. Any state list must also comply with state law mandating coordination with any federal list on telemarketing.

The FTC has agreed to let any state use the national do-not-call list without charge as a state do-not-call list. The national do-not-call list is the least expensive option available to the Department and it complies fully with state and federally mandated integration. It also provides more options for sign up than the department could provide with any other option. Citizens will only need to sign up for one list instead of two and businesses will only have to acquire and implement one list. The combined list also allows for easy cooperation between state and federal law enforcement.

Montana law requires the Department of Administration to adopt a rule designating how a person will "notice their objection" to receiving telemarketing calls. In order to use the national do-not-call list, the length of the objection must match the federal rule. Section (2) matches the state length of notice of objection to the federal length notice of objection.

Montana law requires the Department of Administration to adopt a rule designating what information will be collected to enroll in the list. This information is contained in section (3) of the proposed rule. In order to use the national do-not-call list, the information collected must match the federal rule. The FTC only collects the phone number and the date of the call. The FTC is unclear if any other information will ever be needed. The flexibility is needed to allow the state and federal do-not-call list to match in the future if

new information is needed. Montana law also contemplated a future need to change the information collected and gives the Department of Administration discretion in deciding what information to collect.

Section (4) specifies a way for telemarketers to acquire the names on the list and designates what fee will be charged as required by Montana law. The federal government has specified a fee of \$25 per area code with the first five area codes being free to any telemarketer. The federal government will not collect any additional fees for the benefit of states using its lists. The Department of Administration believes that creating a system to collect an additional fee at this time is not necessary to allow enforcement of the law. The Department also believes charging a fee would discourage businesses from complying with the law.

Section 30-14-1603, MCA, authorizes the Department of Administration to make such other rules as it deems necessary to enforce the new telemarketing laws. The Department has proposed section (5) because it needs the ability to check whether a business is complying with the new law. If the Department was unable to check for compliance with the law, the law would be hard to enforce. This would lead to less protection for the citizens of Montana and would defeat the purpose of the legislation. Ten days was deemed a reasonable time as it allows a business enough time to comply with the Department's request, without allowing so much time to pass as to allow a violator to escape. Making the failure to provide proof a violation of 30-14-103, MCA, conforms with the fact that the new law is part of the Unfair Trade and Consumer Protection Act.

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 Cort Jensen, Consumer Protection Counsel, Department of Administration, 1219 Eighth Avenue, Helena, MT 59620, telephone (406) 444-5439, fax (406) 444-9680, e-mail cojensen@state.mt.us and must be received no later than 5:00 p.m. on October 17, 2003.

5. Cort Jensen, Consumer Protection Counsel, 1219 Eighth Avenue, Helena, MT 59620, has been designated to preside over and conduct the hearing.

6. The Department of Administration maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to this list shall make a written request which includes the name and mailing address of the person to receive notices and specifies the specific areas over which the Department of Administration has rulemaking authority that the person wishes to receive notice regarding. Such written

request may be mailed or delivered to Cort Jensen, Consumer Protection Counsel, Department of Administration, 1219 Eighth Avenue, Helena, MT 59620, telephone (406) 444-5439, fax (406) 444-9680, e-mail cojensen@state.mt.us or may be made by completing a request form at any rules hearing held by the Department of Administration.

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

By: /s/ Scott Darkenwald
SCOTT DARKENWALD, Director
Department of Administration

By: /s/ Dal Smilie
DAL SMILIE, Rule Reviewer

Certified to the Secretary of State September 15, 2003.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF PUBLIC
of ARM 23.6.101, 23.6.103,)	HEARING ON
23.6.105, 23.6.106, 23.6.108,)	PROPOSED AMENDMENT
23.6.109, 23.6.110, and 23.6.113)	
concerning definitions,)	
classification of tow truck)	
equipment, establishment of the)	
tow truck complaint resolution)	
committee, establishment of the)	
procedures governing the)	
committee, and clarification of)	
the rules governing the)	
state rotation system)	

TO: All Concerned Persons

1. On October 15, 2003 at 9:00 a.m., a public hearing will be held in the Auditorium of the Scott Hart Building, in Helena, Montana, to consider the amendment of ARM 23.6.101, 23.6.103, 23.6.105, 23.6.106, 23.6.108, 23.6.109, 23.6.110, and 23.6.113 concerning definitions, classification of tow truck equipment, establishment of the tow truck complaint resolution committee, establishment of the procedures governing the committee, and clarification of the rules governing the state rotation system.

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 of Justice no later than 5:00 p.m. on October 8, 2003, to advise us of the nature of the accommodation that you need. Please contact Ali Bovingdon, Department of Justice, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401; (406) 444-2026; FAX (406) 444-3549; e-mail abovingdon@state.mt.us.

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

23.6.101 DEFINITIONS In addition to the definitions contained in 61-8-903, MCA, and unless the context requires otherwise, the following definitions apply to this subchapter:

(1) "Cargo" means the contents inside or on a towed or hauled vehicle or any unit attached to a towed vehicle.

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

(6) "Committee" means the tow truck complaint resolution committee.

(5) remains the same but is renumbered (7).

~~(6)~~ (8) "Garage keeper's legal liability or on-hook insurance" means insurance coverage for loss or damage to motor vehicles (as defined in the policy) which are in the care of the insured, an entity that keeps customers' motor vehicles for storage or repair, which loss or damage is caused by the insured's failure to exercise the degree of care required by law.

~~(7)~~ (9) "Independent classification" means a classification ~~by a qualified person independent of the patrol, but having written authorization from~~ an independently qualified person or entity approved by the patrol to classify tow trucks pursuant to ARM 23.6.103.

(10) "Independent rating" means the weight rating set forth on the vehicle's nomenclature plate or in a written communication from an independently qualified person or entity approved by the patrol to rate tow trucks.

(8) through (11) remain the same but are renumbered (11) through (14).

AUTH: 61-8-911, MCA
IMP: 61-8-903, MCA

Statement of necessity: The proposed amendments are necessary to clarify the terminology used and to conform the definitions to those used in the tow truck and insurance industries and to clarify the safety and classification requirements for tow truck equipment. The new definition for "cargo" and the amended definition for "garage keeper's legal liability or on-hook insurance" are those used in the insurance industry and are necessary to eliminate confusion that has arisen among tow truck operators, the insurance industry and the public service commission. The new definition of "committee" is in response to amendments made to the law governing tow trucks by the 2003 legislative session in HB 636, which created a tow truck complaint resolution committee and provides a consistent definition of the term to be used throughout these rules. The amendment to "independent classification" and the proposed new definition for the term "independent rating" are necessary to clarify the safety and classification requirements for tow truck equipment.

23.6.103 CLASSIFICATION OF TOW TRUCK EQUIPMENT

(1) through (3) remain the same.

(4) Any structural modification to noncommercially manufactured or modified tow truck equipment must be independently rated.

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

AUTH: 61-8-911, MCA
IMP: 61-8-905, MCA

Proposed new section (4) is necessary to clarify the safety and classification requirements to tow truck equipment.

Confusion has arisen in the industry concerning modifications made to noncommercially manufactured or modified tow truck equipment and this rule will clarify how such modifications must be classified.

23.6.105 TOW TRUCK CLASSIFICATION DISPUTE COMPLAINT RESOLUTION ADVISORY COMMITTEE - ESTABLISHMENT (1) Pursuant to ~~61-8-905, MCA, 61-8-912, MCA,~~ there is a tow truck classification dispute complaint resolution advisory committee (hereafter "the committee"), consisting of ~~three~~ six members. ~~The committee shall act as a hearing examiner with the powers set forth in 2-4-611, MCA, and it shall issue a recommended proposal for decision as discussed in 2-4-621, MCA. The attorney general shall make the final decision.~~

(2) The attorney general shall appoint the members of the committee. Applications for appointment to the committee from the ~~highway patrol and the department of transportation~~ shall come from the ~~heads of those agencies~~ colonel of the patrol. Applications from the tow truck industry, the commercial motor carrier industry, and the insurance industry may be made by anyone involved in ~~that~~ those industries. Applications from the public may come from any interested person wishing to serve on the committee.

~~(3) All applications must be in writing and must be received by September 1 of the year of appointment. The deadline and procedure for initial appointment to the committee shall be established by the attorney general.~~

(3) The deadline and procedure for appointment to the committee shall be established by the attorney general and posted on the department of justice's website. The attorney general will provide reasonable notice of the deadline and application procedure.

~~(3) (4) All applications must be in writing and must be in accordance with the procedure established by the attorney general.~~

~~(4) (5) The terms of the members of the committee shall be three years, starting on October 1 of in the month of the year of the member's appointment. The attorney general shall stagger the terms and shall appoint the successor to any committee member unable to complete his or her term.~~

(6) The committee shall hold an annual meeting in December of each year. At its annual meeting, the committee shall elect a chair to preside over its meetings and hearings. The committee shall also elect a vice chair to preside in the chair's absence. A quorum of the committee shall consist of at least four members, one of whom must be from the tow truck industry. A majority vote of a quorum is necessary for the committee to take any official action.

AUTH: ~~61-8-911~~ 61-8-912, MCA
IMP: ~~61-8-905~~ 61-8-908, 61-8-912, MCA

The proposed amendments are in response to amendments made to the law governing tow trucks by the 2003 legislative

session in HB 636, which created a tow truck complaint resolution committee. The committee was established to review and resolve complaints about tow truck issues and the proposed amendments are necessary to establish the committee and its operating procedures.

23.6.106 TOW TRUCK CLASSIFICATION DISPUTE COMPLAINT RESOLUTION ADVISORY COMMITTEE - JURISDICTION AND PROCEDURE

(1) Pursuant to ~~61-8-905~~, 61-8-912, MCA, the dispute resolution advisory committee shall hear all disputes that arise regarding the classification of noncommercially manufactured or modified tow truck equipment review and resolve complaints about tow truck issues, including towing charges.

(2) The committee shall have the authority to act as a hearing examiner in contested cases with the powers set forth in 2-4-611, MCA, and shall have the authority to issue recommended proposals for decision as discussed in 2-4-621, MCA. The attorney general shall review the recommended proposal and make the final decision.

~~(2) At its initial meeting following the appointment of any new member, the committee shall elect a chairman to preside over its meetings and hearings. The committee shall also elect a vice chairman to preside in the chairman's absence. A quorum of the committee shall consist of at least two members, one of whom must be from the tow truck industry. A majority vote of a quorum shall be necessary to take any official action of the committee.~~

(3) Complaints must be signed and submitted in writing to a member of the committee. The complaint must identify the tow truck operator against whom it is filed and include a description of the underlying facts giving rise to the complaint.

(4) After receiving a written complaint, the committee will:

(a) give all parties to the dispute reasonable notice of the date, time, and location at which the committee will hear the complaint;

(b) request notification by any party of its desire to call witnesses, and the proposed subject of the witnesses' testimony;

(c) provide the complaining party an opportunity to address the committee regarding his or her complaint;

(d) provide the responding party an opportunity to answer the complaining party;

(e) provide any other party an opportunity to address the committee regarding the complaint;

(f) provide any witness the committee deems relevant an opportunity to address the committee;

(g) keep a tape recording of the hearing that may be copied or transcribed at the request of any person who pays the cost thereof; and

(h) issue a written proposal for decision which may be contested before the attorney general pursuant to 2-4-621, MCA.

~~(3) After receiving an operator's written notification that it disputes the classification of its equipment, the committee shall:~~

~~(a) give all parties to the dispute reasonable notice of the date, time, and location at which the committee will hear the dispute;~~

~~(b) request notification by any party of its desire to call witnesses, and the proposed subject of the witnesses' testimony;~~

~~(c) provide the complaining party an opportunity to present reasons the proposed action should not be taken;~~

~~(d) provide the responding party an opportunity to answer the complaining party;~~

~~(e) provide any other party an opportunity to address the committee regarding the dispute;~~

~~(f) provide any witness it deems relevant an opportunity to address the committee;~~

~~(g) keep a tape recording of any hearing that may be copied or transcribed at the request of any person who pays the cost thereof; and~~

~~(h) issue a written proposal for decision which may be contested before the attorney general pursuant to 2-4-621, MCA.~~

(5) If after a hearing, the committee finds the complaint to have merit, the committee may in its recommended proposal:

(a) issue a warning;

(b) suspend the operator from participating in the state rotation system for six months;

(c) permanently suspend the operator from participating in the state rotation system; or

(d) issue some other sanction that a majority of the committee agrees is appropriate.

AUTH: ~~61-8-911~~ 61-8-912, MCA

IMP: ~~61-8-905~~ 61-8-908, 61-8-912, MCA

The proposed amendments are in response to amendments made to the law governing tow trucks by the 2003 legislative session in HB 636 which created a tow truck complaint resolution committee. The committee was established to review and resolve complaints about tow truck issues and the proposed amendments are necessary to establish the committee and its operating procedures.

23.6.108 VEHICLE TOW AND STORAGE REQUIREMENTS - INSURANCE

(1) remains the same.

(2) The A representative of the patrol or chief of a local law enforcement agency ~~or of the patrol~~ may request that a qualified operator in the state rotation system improve its storage facility so as to comply with 61-8-906, MCA. If the

operator wishes to contest the request, he or she ~~must contact the office of the attorney general~~ may file a written complaint with the committee.

(3) remains the same.

(4) For each satellite operation, the tow truck operator must be able to provide proof of current insurance for that location to an inspector upon request.

~~(4) (5) If the department patrol is advised at any time by the public service commission that an operator's insurance is expired or cancelled, the operator will be given 48 hours to correct the problem, then he or she will be removed from the rotation list.~~

~~(5) (6) If the operator provides proof of insurance at a later date and is currently certified, the operator will be placed back on the rotation list; such placement is not retroactive. A complete inspection will not be required.~~

~~(6) If the operator's insurance expires on a date other than the due date of the inspection, the following procedure will be followed:~~

~~(a) The inspector will enter the date of the insurance expiration on the inspection form and decal; and~~

~~(b) If the decal indicates that the insurance is expired, the operator need only produce written proof of current insurance. Such proof is to be carried in the tow truck at all times.~~

(7) At the time of the annual safety inspection the operator must provide proof of current insurance to the inspector. Such proof must be carried in the tow truck at all times.

AUTH: 61-8-911, MCA
IMP: 61-8-906, MCA

The proposed amendments clarify the rules governing vehicle and storage requirements. HB 636 added a definition of satellite operations and the proposed amendments clarify that each satellite operation must be able to provide proof of insurance for its equipment upon request. This is necessary to avoid any confusion regarding proof of insurance requirements relating to parent and satellite operations.

23.6.109 SAFETY INSPECTION PROCESS

(1) through (5) remain the same.

(6) A ~~department patrol~~-approved inspection form will be completed by the inspector. If minimum standards are met, a ~~department patrol~~-approved decal will be affixed to the lower right hand corner of the windshield indicating passage of the inspection. The decal will indicate the date of the inspection, the expiration date of the tow truck's insurance, and the class and license plate number of the tow truck.

(7) through (9) remain the same.

(10) ~~If a~~Any additional tow truck ~~is put~~ placed into service ~~the tow truck~~ by an operator must be qualified and

classified prior to answering any calls from the law enforcement rotation system.

(11) and (12) remain the same.

(13) Once a successful inspection is completed, the ~~inspecting officer~~ inspector will provide a copy of the approved inspection report to the tow truck operator and affix the certification decal to the windshield. A copy of the safety certification must be carried in the tow truck at all times. ~~The inspector will also personally affix the certification decal to the windshield.~~

AUTH: 61-8-911, MCA

IMP: 61-8-907, MCA

The proposed amendments clarify the language of the rules governing the safety inspection process.

23.6.110 GENERAL TOW TRUCK EQUIPMENT SAFETY STANDARDS

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

(d) a boom as defined by 61-8-903, MCA and which is capable of safely handling loads equal to the minimum manufacturer's ratings established in 61-8-905, MCA.

(2) Any structural modifications to towing and recovery equipment must be independently rated.

AUTH: 61-8-911, MCA

IMP: 61-8-907, MCA

The proposed amendments clarify that the term "boom" is defined in statute and that structural modifications must be independently rated in order to meet safety standards for tow truck equipment.

23.6.113 STATE LAW ENFORCEMENT ROTATION SYSTEM - ADMISSION AND SUSPENSION (1) and (2) remain the same.

(3) An operator seeking to participate in the state law enforcement rotation program must submit a written application request to the patrol ~~showing~~ which includes:

(a) and (b) remain the same.

~~(c) that the operator meets the safety standards of the patrol, as set forth in ARM 23.6.109 and 23.6.110; and~~

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

(4) remains the same.

(5) In order to be eligible to participate in the state rotation system an operator must meet the safety standards of the patrol, as set forth in ARM 23.6.109 and 23.6.110.

~~(5)~~ (6) An operator participating in the state rotation system must respond to or decline any call from the rotation system area; he or she may not authorize any other operator or satellite operation to respond to that call. Violation of this rule may result in suspension (permanent or temporary) from the rotation system. An operator responding under this section must respond to the call with the class of equipment requested by the patrol.

~~(6)~~ (7) ~~This rule~~ Section (6) does not apply to a qualified operator who, with the approval of the officer at the scene, subcontracts with another operator for temporary assistance in the interests of public safety.

AUTH: 61-8-911, MCA
IMP: 61-8-908, MCA

The proposed amendments clarify the application process for participation in the state rotation system. They also clarify the rules governing satellite operations. This is necessary because the term satellite operation is a newly defined term added by HB 636 to the definition section 61-8-903, MCA.

4. Concerned persons may submit their data, views, or arguments concerning the proposed amendments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Ali Bovington, Assistant Attorney General, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401; FAX (406) 444-3549; e-mail abovington@state.mt.us to be received no later than October 27, 2003.

5. Ali Bovington, Assistant Attorney General, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401, has been designated to preside over and conduct the hearing.

6. 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 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, faxed to the office at (406) 444-3549, e-mailed to abovington@state.mt.us, or may be made by completing a request form at any rules hearing held by the Department.

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

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

/s/ Ali Bovington
ALI BOVINGDON, Rule Reviewer

Certified to the Secretary of State September 15, 2003.

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

In the matter of the proposed)	NOTICE OF PUBLIC HEARING
amendment of ARM 24.35.111,)	ON PROPOSED AMENDMENT
24.35.121, 24.35.201,)	AND REPEAL
24.35.205, 24.35.206,)	
24.35.207, 24.35.301 and)	
24.35.303, and the proposed)	
repeal of ARM 24.35.210,)	
24.35.212 and 24.35.213, all)	
relating to independent)	
contractor exemptions and)	
status determinations)	

TO: All Concerned Persons

1. On October 16, 2003, at 10:00 a.m. the Department of Labor and Industry will hold a public hearing in the Lewis Room in the basement of the Walt Sullivan Building, 1327 Lockey, Helena, Montana to consider the proposed amendment of ARM 24.35.111, 24.35.121, 24.35.201, 24.35.205, 24.35.206, 24.35.207, 24.35.301, and 24.35.303, the proposed repeal of ARM 24.35.210, 24.35.212 and 24.35.213 all relating to independent contractor exemptions and status determinations.

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., October 10, 2003, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Workers' Compensation Regulation Bureau, Attn: Maggie Connor, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-9586; fax (406) 444-3465; TDD (406) 444-5549; or email mconnor@state.mt.us.

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

24.35.111 APPLICATION FOR INDEPENDENT CONTRACTOR EXEMPTION

(1) As provided by 39-71-401~~(3)~~, MCA, a sole proprietor, working member of a partnership, working member of a limited liability partnership, or working member of a member-managed limited liability company who represents to the public that the person is an independent contractor shall elect to be bound by the provisions of a workers' compensation plan but may apply for an exemption from the Workers' Compensation Act. In order to obtain an independent contractor exemption, an applicant ~~must~~ shall:

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

(g) that the applicant understands and agrees that if the independent contractor exemption is granted, the applicant ~~is~~

might not be eligible for workers' compensation benefits or unemployment insurance benefits for work performed as an independent contractor for which the exemption is granted.

(3) An application that is approved and for which the exemption certificate is issued, shall be in effect for ~~three~~ two years unless the department revokes the exemption certificate or is notified in writing prior to the expiration date that the exemption holder wishes to have the exemption revoked.

AUTH: 39-71-203 and 39-71-401, MCA

IMP: 39-71-120, 39-71-401 and 39-71-409, MCA

REASON: There is reasonable necessity to amend (3) of this rule in order to implement the 2003 changes to 39-71-401, MCA, enacted by Chapter 193, Laws of 2003 (Senate Bill 108). The amendments to (2)(g) are reasonably necessary in order to reflect recent Montana Supreme Court decisions, including Mathews v. BJS Construction & Liberty NW Ins. Corp., 2003 MT 116, 315 Mont. 441, 68 P.3d 865 and Wild v. Fregien Construction & Montana State Fund, 2003 MT 115, 315 Mont. 425, 68 P.3d 855, which held the independent contractor exemption of 39-71-401, MCA, does not, as a matter of law, conclusively preclude any factual inquiry into whether an employer/employee relationship exists once the worker has been issued the exemption. The change to the statutory section reference in (1) has been made in order to conform to the style guidelines of the Secretary of State.

24.35.121 APPLICATION FEE FOR INDEPENDENT CONTRACTOR EXEMPTION (1) remains the same.

~~(2) There is a \$25 fee for each initial and renewal application. A fee, as set by 39-71-401, MCA, will be charged for each initial, subsequent and renewal application.~~

~~(3) The department may charge a \$25 fee for each subsequent application.~~

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

AUTH: 39-71-203 and 39-71-401, MCA

IMP: 39-71-120, 39-71-401 and 39-71-409, MCA

REASON: There is reasonable necessity to amend this rule in order to implement the 2003 changes to 39-71-401, MCA, enacted by Chapter 193, Laws of 2003 (Senate Bill 108), and to renumber remaining sections. Based on the current number of independent contractor exemptions issued by the Department, the Department estimates that approximately 28,435 persons will be affected by this rule amendment. The previous fee, established by 39-71-401, MCA, was \$25.00 for a three-year certificate, for an annual cost of \$8.33 a year. The new statutory fee provided by 39-71-401, MCA, is \$17.00 for a two-year certificate, for an annual cost of \$8.50 a year. The Department therefore estimates that the cumulative fiscal impact for those persons affected will be \$0.17 a year, for an average annual impact of \$4,833.95.

24.35.201 DEFINITIONS For the purposes of ARM Title 24, chapter 35, subchapters 2 and 3, the following definitions apply:

~~(1) "Board" means the board of labor appeals.~~

(2) and (3) remain the same but are renumbered (1) and (2).

~~(4) "Hearing" means a contested case hearing conducted by the department's hearings bureau, and may include the tax appeal hearing referenced in 39-51-1109 and 39-71-415, MCA.~~

~~(5)~~(3) "Hiring agent" means the entity which hires an individual to perform services and may include:

(a) "employer" as defined in 39-3-201~~(6)~~, MCA;

(b) the individual or other legal entity as described in the definition of "employing unit" in 39-51-201~~(9)~~, MCA;

(c) "employer" as defined in 39-51-202, MCA;

(d) "employer" as defined in 39-71-117, MCA; and

(e) similar definitions contained in the applicable statutes of agencies which have elected to participate in the independent contractor central unit.

(6) through (8) remain the same but are renumbered (4) through (6).

AUTH: 39-3-202, 39-3-403, 39-51-301, 39-51-302 and 39-71-203, MCA

IMP: 39-3-208, 39-3-209, 39-3-210, 39-51-201, 39-51-203, 39-71-120 and 39-71-415, MCA

REASON: There is reasonable necessity to amend this rule in order to implement the amendments to 39-71-415, MCA, made by Section 1, Chapter 229, Laws of 2001 (SB 323), which inserted an informal mediation process conducted by the department and replaced the contested case process conducted by the department with a contested case process conducted by the Workers' Compensation Court. Earmarking is added to new (3) to improve the clarity of that section. Other sections are renumbered, and statutory section references are removed to conform to the style guidelines of the Secretary of State.

24.35.205 BINDING NATURE OF DETERMINATIONS REGARDING EMPLOYMENT STATUS

(1) Unless appealed pursuant to ARM 24.35.206, written determinations issued by the ICCU are binding on all parties with respect to employment status issues under the jurisdiction of the department of labor and industry and the jurisdiction of any other agency which elects to be included as a member of the ICCU. These determinations may affect a party's liability in matters related to unemployment insurance, the uninsured employers' fund, ~~the underinsured employers' fund,~~ wage and hour issues, and state income tax withholding ~~and old fund liability tax.~~

(2) and (3) remain the same.

(4) Nothing in these rules shall be construed to limit the right of any similarly situated individual to a hearing mediation as provided for in ARM 24.35.206.

AUTH: 39-3-202, 39-3-403, 39-51-301, 39-51-302 and
39-71-203, MCA
IMP: 39-3-212, 39-51-1109, 39-71-120 and 39-71-415, MCA

REASON: There is reasonable necessity to amend this rule in order to reflect the termination of the old fund liability tax, to reflect the amendment of 39-71-503, MCA in 1999 (Sec. 8, Ch. 377, (SB 117)), which eliminated the underinsured employers' fund, and in order to implement the amendments to 39-71-415, MCA, made by Section 1, Chapter 229, Laws of 2001 (SB 323), which inserted an informal mediation process conducted by the department and replaced the contested case process conducted by the department with a contested case process conducted by the Workers' Compensation Court.

24.35.206 APPEAL OF DETERMINATIONS REGARDING EMPLOYMENT STATUS (1) Disputes over an An ICCU determination regarding employment status may be appealed to the department's hearings bureau for a hearing must be mediated by the department, and then, if mediation does not resolve the dispute, may proceed to the workers' compensation court. The party requesting ~~the appeal~~ mediation shall file a written request with the ICCU within 10 days of notice of the ICCU's determination.

(2) A party is considered to have been given notice on the date a written notice is personally delivered or ~~3~~ three days after a written notice is mailed to the party. ~~A request for hearing~~ An appeal must be received by the ICCU within the time limits set forth above. However, the time limits may be extended by the ICCU for good cause shown.

AUTH: 39-3-202, 39-3-403, 39-51-301, 39-51-302 and
39-71-203, MCA
IMP: 2-4-201, 39-3-216, 39-51-1109 and 39-71-415, MCA

REASON: There is reasonable necessity to amend this rule in order to implement the amendments to 39-71-415, MCA, made by Section 1, Chapter 229, Laws of 2001 (SB 323), which inserted an informal mediation process conducted by the department and replaced the contested case process conducted by the department with a contested case process conducted by the Workers' Compensation Court.

24.35.207 TRANSFER OF FILE TO HEARINGS BUREAU (1) Upon receiving a notice of appeal, the ICCU shall identify and mark all exhibits relied on in making the employment status determination and send copies of its administrative record, including the marked exhibits, to the ~~hearings bureau~~ mediator and to the parties of record.

AUTH: 39-3-202, 39-3-403, 39-51-301, 39-51-302 and
39-71-203, MCA
IMP: 2-4-201, 39-3-216, 39-51-1109 and 39-71-415, MCA

REASON: There is reasonable necessity to amend this rule in order to implement the amendments to 39-71-415, MCA, made by Section 1, Chapter 229, Laws of 2001 (SB 323), which inserted an informal mediation process conducted by the department and replaced the contested case process conducted by the department with a contested case process conducted by the Workers' Compensation Court.

24.35.301 DEFINITION OF INDEPENDENT CONTRACTOR

~~(1) Except as provided in ARM 24.35.301(2), the following two part test is used to determine whether an individual is an independent contractor or an employee: "Independent contractor" has the same meaning as provided by 39-71-120(1), MCA.~~

~~(a) whether the individual is and will continue to be free from control or direction over the performance of the services, both under contract and in fact; and~~

~~(b) whether the individual is engaged in an independently established trade, occupation, profession, or business.~~

~~(2) For independent contractor determinations made pursuant to 39 71 120, MCA, the above two part test is augmented by the requirement that the individual also receive "an exemption granted under 39 71 401(3)." Rules regarding the exemption process are located at ARM Title 24, chapter 35, subchapter 1.~~

AUTH: 39-3-202, 39-3-403, 39-51-301, 39-51-302 and 39-71-203, MCA

IMP: 39-3-201, 39-51-201, 39-51-204, 39-71-120 and 39-71-401(3), MCA

REASON: There is reasonable necessity to amend this rule because the changes made to 39-71-120, MCA, in 1997 eliminated then-subsection (1)(c), related to independent contractor exemptions, and all remaining language of this rule unnecessarily repeats statutory language in 39-51-201 and 39-71-120, MCA. Therefore, a statutory reference has been utilized.

24.35.303 DEFINITION OF INDEPENDENT CONTRACTOR--INDEPENDENTLY ESTABLISHED BUSINESS

(1) To be an independent contractor, an individual must be engaged in an independently established trade, occupation, profession or business. An independently established business may exist if the individual:

(a) through (j) remain the same.

(k) has an independent contractor exemption ~~as required by 39 71 120 and~~ obtained pursuant to 39-71-401(3), MCA.

(l) through (2) remain the same.

AUTH: 39-3-202, 39-3-403, 39-51-301, 39-51-302 and 39-71-203, MCA

IMP: 39-3-201, 39-51-201, 39-51-204, 39-71-120 and 39-71-401(3), MCA

REASON: There is reasonable necessity to amend these rules in order to reflect the changes made to 39-71-120, MCA, in 1997, which eliminated then-subsection (1)(c), related to independent contractor exemptions, to more accurately implement the intent of 39-71-401, MCA, and to remove statutory subsection references so as to conform to the style guidelines of the Secretary of State.

4. The Department proposes to repeal the following rules:

24.35.210 HEARING ON EMPLOYMENT STATUS ISSUE found at ARM page 24-3556.

AUTH: 39-3-202, 39-3-403, 39-51-301, 39-51-302 and 39-71-203, MCA
IMP: 2-4-201, 2-4-611, 39-3-216, 39-51-1109 and 39-71-415, MCA

24.35.212 APPEAL REFEREE'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION ON EMPLOYMENT found at ARM page 24-3556.

AUTH: 39-3-202, 39-3-403, 39-51-301, 39-51-302 and 39-71-203, MCA
IMP: 2-4-611, 2-4-623, 39-3-216, 39-51-1109 and 39-71-415, MCA

24.35.213 APPEAL OF FINDINGS, CONCLUSIONS AND DECISION ON EMPLOYMENT STATUS found at ARM pages 24-3556 and 24-3557.

AUTH: 39-3-202, 39-3-403, 39-51-301, 39-51-302 and 39-71-203, MCA
IMP: 2-4-611, 2-4-623, 39-3-216, 39-51-1109, 39-71-415, 39-71-504, 39-71-532 and 39-71-2401, MCA

REASON: There is reasonable necessity to repeal these rules in order to implement the amendments to 39-71-415, MCA, made by Section 1, Chapter 229, Laws of 2001 (SB 323), which inserted an informal mediation process conducted by the department and replaced the contested case process conducted by the department with a contested case process conducted by the Workers' Compensation Court.

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:

Keith Messmer, Bureau Chief
Employment Relations Division
Workers' Compensation Regulation Bureau
Department of Labor and Industry
P.O. Box 8011
Helena, Montana 59604-8011

and must be received by no later than 5:00 p.m., October 24, 2003. 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 site on the World Wide Web at <http://dli.state.mt.us/calendar.htm>, under the Calendar of Events, Administrative Rules Hearings section. Interested persons may make comments on the proposed rules via the comment forum, <http://forums.dli.state.mt.us>, linked to the Notice of Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m., October 24, 2003. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the comment forum do not excuse late submission of comments.

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

8. The bill sponsor notice provisions 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,
Alternate Rule Reviewer

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

Certified to the Secretary of State: September 15, 2003

BEFORE THE BOARD OF REAL ESTATE APPRAISERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC
amendment of ARM 24.207.401,) HEARING ON PROPOSED
and the adoption of NEW RULES) AMENDMENT AND ADOPTION
I and II, pertaining to)
trainee and mentor requirements)

TO: All Concerned Persons

1. On October 21, 2003, at 9:00 a.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Real Estate Appraisers no later than October 15, 2003, at 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2386; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 831-2305; e-mail dlibsirea@state.mt.us.

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

24.207.401 FEES (1) through (1)(1) remain the same.
(m) original trainee license 300
(n) trainee renewal fee 300
(2) remains the same.

AUTH: 37-1-131, 37-54-105, MCA
IMP: 37-1-131, 37-54-105, 37-54-112, 37-54-201, 37-54-202, 37-54-210, 37-54-211, 37-54-212, 37-54-302, 37-54-310, 37-54-403, ~~37-54-406~~, MCA

REASON: There is reasonable necessity to amend ARM 24.207.401 to implement provisions of Chapter 341, Laws of 2003 (Senate Bill 432), effective October 1, 2003, and to comply with 37-1-134, MCA, which mandates that fees must be commensurate with costs. The review and approval of initial registration and tracking of a mentor, original trainee, and new trainee will require the board compliance officer to review two appraisal reports for compliance with the Uniform Standards of Appraisal Practice (USPAP) for each mentor. Annually, the compliance officer will review two appraisal reports prepared by the trainee for compliance with USPAP. Each review is estimated to take eight hours per report for a total of 16 hours. Additional staff time is required to track the trainee and process applications [16 hours x \$18

(personnel costs) = \$288 + \$12 (processing expenses)]. That totals expenditures of \$300 per trainee, annually.

The Board estimates that approximately 48 individuals are currently in training to become real estate appraisers, and that it may take up to two years to complete their training. As the current 48 trainees complete training, the Board estimates that there will be approximately 12 new trainees being licensed annually, starting in fiscal year 2005. The proposed fees will affect an estimated 24 persons annually, beginning in fiscal year 2006. The total estimated annual fiscal impact to those 24 individual trainees is \$7,200.

4. The proposed new rules provide as follows:

NEW RULE I TRAINEE REQUIREMENTS (1) A trainee shall:

(a) be 18 years of age or older;
(b) make application to the board on forms approved by the board;
(c) have completed 40 hours of approved qualifying education in the principals of real estate appraisal prior to making application; and

(d) complete an additional 50 hours of approved qualifying education within the next 12 months or the next renewal, whichever is greater. Fifteen hours must be in the area of the Uniform Standards of Professional Appraisal Practice (USPAP).

(2) For the purposes of ARM 24.207.503, appraisal experience obtained after October 1, 2003, will be credited only if earned by a licensed trainee. A licensed trainee may claim credit for appraisal experience obtained between October 1, 2000, and September 30, 2003, if the appraisal experience was obtained within the 36 months immediately prior to the individual's licensure as a trainee.

(3) A trainee shall be under the direct supervision of at least one appraiser mentor. A trainee may have more than one mentor.

(4) A trainee shall maintain an activity log for each mentor on forms approved by the board for qualifying activity completed in accordance with USPAP.

(5) A trainee license must be renewed by March 31 of each expiration year following the trainee's original year of licensure. A trainee license may be renewed a total of four times, but may be extended by the board for cause.

(6) All qualifying appraisals performed by a trainee must meet USPAP standards.

(7) After the original trainee licensing year, a trainee shall meet continuing education requirements established by rule. Qualifying education may be used to meet the continuing education requirements.

(8) A trainee shall submit two copies of two different appraisal reports the trainee completed in accordance with USPAP with the trainee's annual renewal.

(9) A trainee may not perform qualifying experience without a mentor.

(10) A trainee shall perform qualifying experience within 100 miles of the mentor's business address.

(11) A trainee may not perform qualifying experience outside the scope of the mentor's licensure or certification.

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

IMP: 37-1-131, 37-54-105, 37-54-201, 37-54-202, 37-54-303, 37-54-403, MCA

REASON: It is reasonably necessary for the Board to adopt these proposed trainee requirements to implement the provisions of Chapter 341, Laws of 2003 (Senate Bill 432), effective October 1, 2003. An applicant for an appraisal trainee must be of majority age in order to enter into employment contracts and be held accountable for the care of property in their possession. An applicant must have a minimum amount of education to carry out the duties and responsibilities of an appraisal trainee and to continue the education portion of license advancement while obtaining practical experience as a trainee. With the implementation of SB 432, trainees must be enrolled in the training program to receive credit for any appraisal activity they complete. This ensures that they are receiving quality mentoring by at least one competent mentor, but they may have more than one approved mentor to enhance the scope and breadth of their outlooks and approaches to the appraisal practice. Appraisal activity must be logged to keep track of hours of experience toward completing advanced licensing and to track who was supervising during a particular assignment. All trainee appraisals must meet Uniform Standards of Professional Appraisal Practice guidelines. Trainees are limited to five years as a trainee. The intent of the trainee program is to offer a supervised program to obtain necessary experience for an advanced appraisal license but not to serve as a means to practice the appraisal profession indefinitely. Trainees will be required to submit two appraisal reports annually for review, thus ensuring that the trainee is obtaining proper instruction from their mentor(s) and prevent inaccurate appraisal practices while in the trainee program. It is imperative that the Board be apprised of the trainee's supervision to ensure it is being done under an approved mentor and ensures that proper requirements and standards are maintained. The Board has established a minimum level of supervision required by a mentor. A mentor must accompany their trainee on a minimum number of property inspections to instruct the trainee on the proper methods of inspection, what to look for and how to record that information in compliance with Uniform Standards of Professional Appraisal Practice. A trainee may only assist in completing assignments of their mentor that are within the scope of the mentor's license. This ensures that the trainee is instructed on proper completion requirements of various

property types and works within the definition of various levels of certification within the appraisal profession.

NEW RULE II MENTOR REQUIREMENTS (1) Beginning October 1, 2003, a mentor for a licensed real estate appraisal trainee shall:

(a) be a certified residential or certified general appraiser. A licensed appraiser mentoring a trainee prior to October 1, 2003, may continue to mentor the licensed trainee for not more than 18 months;

(b) be approved by the board prior to beginning mentoring duties;

(i) a mentor shall make application on forms approved by the board and submit two appraisal reports prepared by the mentor in accordance with USPAP standards;

(ii) failure to prepare appraisal reports in compliance with USPAP can result in denial of mentor status;

(c) have a minimum of two years licensed or certified appraisal experience;

(d) be in good standing with the board;

(e) certify the mentor's agreement to provide on-going supervision of the licensed trainee;

(f) be responsible for and must provide direct supervision of all appraisal work performed by the trainee in accordance with USPAP standards;

(g) review and sign the experience log of their trainee, certifying its accuracy;

(h) inspect the first 100 properties with each trainee under the mentor's supervision; and

(i) be limited to mentoring a total of two trainees at any particular time.

(2) A mentor must notify the board within 10 days when mentoring of a trainee has terminated.

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

IMP: 37-1-131, 37-54-105, 37-54-201, 37-54-202, 37-54-301, 37-54-403, 37-54-411, 37-54-416, MCA

REASON: It is reasonably necessary, for the purposes of implementing the provisions of SB 432, to adopt a rule defining qualifications and responsibilities of a mentor in the training of an appraisal trainee. Mentors must have an advanced level of licensing and expertise. This rule provides for a period of time during which current mentors may achieve that advanced level. Mentors must have a minimum of two years experience as a licensed or certified appraiser to ensure adequate knowledge of professional requirements. It is important that mentors have their work product reviewed by the Board to ensure compliance with Uniform Standards of Professional Appraisal Practice (USPAP). If a mentor is unable to meet USPAP standards, it is unlikely they will be able to teach a trainee how to comply. Mentors must be willing and must agree to invest the time, money and energy needed to mentor a trainee. A mentor must agree to the

supervision requirements and be willing to be held accountable for the performance of their trainee. Mentors are limited in the number of trainees they can mentor as it is a very demanding act and requires a great deal of time and attention.

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 the Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsirea@state.mt.us and must be received no later than 5:00 p.m., October 28, 2003.

6. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at <http://discoveringmontana.com/dli/bsd> under the Board of Real Estate Appraisers rule notice 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 comment forum do not excuse late submission of comments.

7. The Board of Real Estate Appraisers maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the board. 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 regarding all Board of Real Estate Appraisers administrative rulemaking proceedings. Such written requests may be mailed or delivered to the Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsirea@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

8. The Board of Real Estate Appraisers will meet on December 1, 2003, during the Board's regular meeting in Helena, Montana at the Board's offices, 301 South Park Avenue, Helena, Montana, to consider the comments made by the public, the proposed responses to those comments, and take final action on the proposed amendments and New Rules. Members of the public are welcome to attend the meeting and listen to the Board's deliberations.

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

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

BOARD OF REAL ESTATE APPRAISERS
TIMOTHY MOORE, CHAIRMAN

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

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State September 15, 2003.

BEFORE THE BOARD OF LAND COMMISSIONERS AND
THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the)
establishment of a negotiated) NOTICE OF NEGOTIATED
rulemaking committee on land) RULEMAKING
banking)

TO: All Interested Persons

1. The Board of Land Commissioners and the Department of Natural Resources and Conservation intend to establish a negotiated rulemaking committee to negotiate and develop proposed rules relating to House Bill 223 "Land Banking" which has been codified as 77-2-361 through 77-2-367, MCA.

2. The proposed rules must include a process for implementing Land Banking with the intention of diversifying and increasing the return on the trust land investment portfolio. The statute allows up to 100,000 acres of state trust land to be sold, and the proceeds reinvested in land, easements, or improvements that are likely to provide greater or equal revenue to the various trusts.

3. The resulting proposed rules are likely to significantly affect the following interests:

- (a) trust land beneficiaries,
- (b) user groups referred to as lessees,
- (c) the department,
- (d) members of the agricultural industry,
- (e) environmental interest groups,
- (f) timber industry,
- (g) hunting and recreation interests, and
- (h) counties.

4. At this time, Arthur R. Clinch, Director, has selected Jeanne Holmgren to review applications for appointment to the rulemaking committee. The director has identified the following as entities from which potential committee members may be selected:

- (a) Department of Natural Resources and Conservation
- (b) Farm Bureau
- (c) Montana Association of Counties
- (d) Montana Audubon/Montana Environmental Information Center
- (e) Montana State University
- (f) Montana Stockgrowers Association
- (g) Montana Wildlife Federation
- (h) Montana Wood Products Association
- (i) Montanans for Responsible Use of the School Trust
- (j) School Boards Association
- (k) Skyline Sportsmen/Sportsmen Associations
- (l) State Board of Land Commissioners

(m) University of Montana

5. The proposed working schedule for the negotiated rulemaking committee is as follows:

(a) Applications for participation on the negotiated rulemaking committee must be received no later than Monday, October 27, 2003. The director will make appointments on or before October 31, 2003.

(b) The negotiated rulemaking committee will meet twice a month from November through February, with the goal of completing the negotiated rulemaking process by March 1, 2004.

(c) Anticipated meeting dates are as follows:

(i) November 4 and 19, 2003;

(ii) December 9 and 15, 2003;

(iii) January 6 and 20, 2004;

(iv) February 3 and 25, 2004;

(v) March 4 and 17, 2004, in the event that the committee requires additional time.

(A) All expenses such as travel and meals incurred by the committee members will be each member's responsibility.

(d) After receipt and consideration of comments and applications, the department will establish a negotiated rulemaking committee no later than October 31, 2003. The members selected to serve on the committee must be able to adequately represent the interest of the persons that will be significantly affected by the proposed rules. The committee members will be notified in writing of their selection and will be sent an information packet.

(e) The negotiated rulemaking committee will convene its first meeting on November 4, 2003 to negotiate and develop proposed rules. The committee will have as a goal the development of draft rules by March 1, 2004. Teleconferencing and e-mail correspondence will be utilized as much as possible because of the short time frame necessary to accomplish the rulemaking action. The November 4th meeting will convene at the department headquarters building, 1625 11th Avenue, Helena, MT. The committee will define the ground rules of meetings including the ability to come to a consensus, and work plan.

(f) If the negotiated rulemaking committee is successful in achieving a consensus on the proposed rules, the committee will transmit to the department a report containing the proposed rules. If a consensus cannot be reached on the proposed rules, the committee will transmit to the department a report specifying the areas in which the committee has reached a consensus, and the issues that remain unresolved.

(g) Thereafter, in accordance with Title 2, chapter 4, part 3, MCA (Adoption and Publication of Rules), the department will file with the Secretary of State for publication in the Montana Administrative Register the proposed rules relating to 77-2-361 through 77-2-367, MCA.

(h) The department may seek the assistance and advice of the negotiated rulemaking committee with respect to comments received during the formal rulemaking process.

6. The department is seeking applications from interested parties to serve on the committee. The committee will have 12 members. Any individual or entity interested in applying for or nominating another person for membership on the committee must submit the following information in writing to the department's Negotiated Rulemaking Committee, no later than October 27, 2003:

(a) The person's name and/or nominee's name, address, and contact information including telephone or fax number, and/or e-mail address.

(b) A description of the interests the person or nominee represents.

(c) Evidence that the person or nominee is authorized to represent parties related to the interests of the persons proposed to be represented.

(d) The relationship of the person or nominee to the parties significantly impacted by the proposed rules, and the name of the organization or trade association.

(e) A commitment that the person or nominee will be able to participate in the negotiated rulemaking process as contemplated in (6)(b) and (c) and will actively participate in good faith in the development of the rules under consideration.

(f) The ability of the person or nominee to cover committee participation costs (such as telephone calls, travel and per diem expenses).

7. Concerned persons may submit their data, views or arguments concerning the proposed negotiated rulemaking process in writing to DNRC Negotiated Rulemaking Committee, 1625 11th Avenue, Helena, MT 59620-1601. Comments must be received by October 27, 2003.

8. The department proposes to limit the size of the negotiated rulemaking committee to 12 persons. However, after receipt of comments and applications, the department may determine that a smaller or larger number of committee members is appropriate. The selected committee members will represent all identified interests affected by the rules, and state and local officials. The selected committee members may represent other parties or agencies.

9. The Department of Natural Resources and Conservation and the Board of Land Commissioners will make reasonable accommodations for persons with disabilities who wish to participate in this negotiated rulemaking or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Natural Resources and Conservation no later than 5:00 p.m. on October 1, 2003, to advise us of the nature of the accommodation that you need. Please contact Jeanne Holmgren, Special Uses Management Bureau, Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601; telephone (406) 444-2074; FAX (406) 444-2684; e-mail to jholmgren@state.mt.us.

10. Please note the following concerning the process of negotiated rulemaking:

(a) "Interest" for the purpose of this process means multiple parties that have a similar point of view or that are likely to be affected in a similar manner in relation to matters affected by the rules. (2-5-103(5), MCA)

(b) Negotiated rulemaking is not a substitute for the public notification and participation requirements of the Montana Administrative Procedure Act, and consensus agreement by a negotiated rulemaking committee may be modified by an agency as a result of the subsequent rulemaking process. (2-5-102, MCA)

(c) The negotiated rulemaking committee may not continue to function and must be disbanded after the adoption of the final rules. (2-5-106(4), MCA)

11. The specific grant of rulemaking authority authorizing the proposed rules is found in HB 223, Section 12(3). The proposed rules will implement 77-2-361 through 77-2-367, MCA.

BOARD OF LAND COMMISSIONERS

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

By: /s/ Karl Ohs
for JUDY MARTZ
Chair

By: /s/ Arthur R. Clinch
ARTHUR R. CLINCH
Director

By: /s/ Donald D. MacIntyre
DONALD D. MACINTYRE
Rule Reviewer

Certified to the Secretary of State September 15, 2003.

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

In the matter of the amendment) NOTICE OF PROPOSED
of ARM 37.12.401 pertaining to) AMENDMENT
laboratory fees for the public)
health laboratory and)
environmental laboratory) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Interested Persons

1. On October 25, 2003, the Department of Public Health and Human Services proposes to amend the above-stated rule.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you need to request an accommodation, contact the department no later than 5:00 p.m. on October 15, 2003, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

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

37.12.401 LABORATORY FEES FOR ANALYSES (1) Fees for clinical analyses performed by the laboratory of the department of public health and human services are as follows, with the exception noted in (3) below:

Table with 2 columns: Description and Fee. Rows include Microbiology Tests (a) with sub-items (i) through (xii), Miscellaneous Tests (b) with sub-items (i) through (iii), and Mycology Tests (c) with sub-items (i) through (iii). Fees are listed in dollars and cents, with some values crossed out and new values underlined.

(iv) <u>(iii)</u> Fungal Culture, Blood	29.29	<u>30.46</u>
(d) Newborn Tests		
(i) IRT (Cystic Fibrosis)		9.88
(ii) Galactose	16.85	<u>11.10</u>
(iii) PKU		10.19
<u>(iv) Hemoglobinopathy</u>		<u>8.17</u>
(iv) <u>(v)</u> Thyroxine		9.88
<u>(vi) TSH</u>		<u>8.71</u>
(e) Parasitology Tests		
(i) Crypto/Cyclo stain	22.05	<u>22.93</u>
(ii) O & P Conc. ID	11.96	<u>12.44</u>
(iii) O & P, Trichrome	10.09	<u>10.49</u>
(f) Serology Tests		
(i) Adenovirus		14.04
(ii) <u>(i)</u> Blood Lead	15.60	<u>16.22</u>
(iii) <u>(ii)</u> Brucella	14.30	<u>14.87</u>
(iv) Chlamydia group		<u>10.92</u>
(v) <u>(iii)</u> CMV, IgG	14.04	<u>16.44</u>
(vi) <u>(iv)</u> CMV, IgM	28.39	<u>29.53</u>
(vii) <u>(v)</u> Colorado Tick Fever	15.81	<u>16.44</u>
(viii) Enterovirus		7.80
(ix) Epstein Barr virus		14.04
(x) <u>(vi)</u> FTA	25.69	<u>26.72</u>
(xi) <u>(vii)</u> Hantavirus IgG	22.10	<u>37.00</u>
(xii) <u>(viii)</u> Hantavirus IgM	22.10	<u>37.00</u>
(xiii) <u>(ix)</u> Hepatitis A IgM	9.78	<u>25.00</u>
(xiv) <u>(x)</u> Hepatitis B core IgM	9.78	<u>25.00</u>
(xv) <u>(xi)</u> Hepatitis B Antibody	18.51	<u>19.25</u>
<u>(xii) Hepatitis B core total</u>		<u>28.66</u>
(xvi) <u>(xiii)</u> Hep B Surface Antigen	16.43	<u>17.09</u>
(xvii) <u>(xiv)</u> Hepatitis C	27.56	<u>28.66</u>
(xviii) <u>(xv)</u> Herpes simplex 1 & 2	10.71	<u>32.88</u>
(xix) <u>(xvi)</u> HIV screen	13.31	<u>13.84</u>
(xx) <u>(xvii)</u> HIV Western Blot	45.76	<u>96.00</u>
(xxi) Influenza A		<u>10.92</u>
(xxii) Influenza B		<u>10.92</u>
(xxiii) <u>(xviii)</u> Legionella	10.92	<u>16.44</u>
(xxiv) <u>(xix)</u> Mumps	15.81	<u>16.44</u>
(xxv) Mycoplasma		<u>10.92</u>
(xxvi) Parainfluenza 1,2,3		5.66
(xxvii) <u>(xx)</u> Q Fever	10.24	<u>16.44</u>
(xxviii) <u>(xxi)</u> RMSF	15.81	<u>16.44</u>
(xxix) RSV		<u>15.81</u>
(xxx) <u>(xxii)</u> Rubella	15.18	<u>16.44</u>
(xxxi) <u>(xxiii)</u> Rubeola	15.81	<u>16.44</u>
(xxxii) <u>(xxiv)</u> Tularemia	14.30	<u>14.87</u>
(xxxiii) <u>(xxv)</u> Toxo IgG	14.04	<u>16.44</u>
(xxiv) <u>(xxvi)</u> Toxo IgM	28.39	<u>29.53</u>
(xxxv) <u>(xxvii)</u> Varicella Zoster	15.81	<u>16.44</u>
(xxxvi) <u>(xxviii)</u> VDRL, qua	10.22	<u>10.83</u>
<u>(xxix) West Nile Virus</u>		<u>15.00</u>
(xxxvii) <u>(xxx)</u> VDRL, quant	10.56	<u>10.98</u>
<u>(xxxix) SLE</u>		<u>15.00</u>
(g) Tuberculosis Tests		

(i) Acid Fast Stain	11.02	<u>11.46</u>
(ii) Mycobact. Culture	25.58	<u>17.01</u>
<u>(iii) Mycobact. Concentration</u>		<u>9.59</u>
(iii) <u>(iv) Mycobact. Suscept., each drug</u>	7.32	<u>12.00</u>
(iv) <u>(v) Mycobact. Sp. Probe</u>	18.30	<u>19.03</u>
(v) <u>(vi) Mycobact. Avium Probe</u>	18.30	<u>19.03</u>
(vi) <u>(vii) Mycobact. TB Probe</u>	18.30	<u>19.03</u>
(vii) <u>(viii) Mycobact. TB AMP</u>		<u>145.60</u>
(h) Virology Tests		
(i) Chlamydia Culture	29.33	<u>30.50</u>
(ii) Herpes Culture	25.48	<u>20.00</u>
(iii) RSV Direct Detection <u>(RSV, VZV, HSV)</u>	18.30	<u>19.03</u>
(iv) <u>Virus ID (IFA)</u>		<u>9.52</u>
<u>(v) Viral Culture</u>	29.33	<u>30.50</u>
<u>(vi) Virus ID (neutralize)</u>		<u>40.00</u>
<u>(i) Molecular Testing</u>		
<u>(i) PCR, 1 agent</u>		<u>60.00</u>
<u>(ii) PFGE, 1 enzyme</u>		<u>66.25</u>
<u>(iii) Hep C, PCR</u>		<u>101.92</u>

(2) ~~Effective June 4, 1999~~ December 1, 2003, fees for environmental analyses performed by the laboratory of the department of public health and human services are as follows, with the exceptions noted in (3) and (4) ~~below~~:

(a) Fees for nutrient analyses are as follows:

(i) Nitrate plus nitrate as N	\$ 12.60	<u>14.50</u>
(ii) Nitrite	12.60	<u>14.50</u>
(iii) Ortho phosphorus	12.60	<u>14.50</u>
(iv) Soluble phosphorus	12.60	<u>14.50</u>
(v) Total ammonia as N	12.60	<u>14.50</u>
(vi) Total phosphorus	21.50	<u>24.75</u>
(vii) Total kjeldahl nitrogen	25.00	<u>28.75</u>

(b) Fees for metal analysis by ICP are as follows:

(i) Aluminum	8.00	<u>9.20</u>
(ii) Antimony	8.00	<u>17.25</u>
(iii) Arsenic	8.00	<u>17.25</u>
(iv) Barium	8.00	<u>9.20</u>
(v) Beryllium	8.00	<u>9.20</u>
(vi) Bismuth	8.00	<u>9.20</u>
(vii) Boron	8.00	<u>9.20</u>
(viii) Calcium	8.00	<u>9.20</u>
(ix) Cadmium	8.00	<u>9.20</u>
(x) Cobalt	8.00	<u>9.20</u>
(xi) Copper	8.00	<u>9.20</u>
(xii) Chromium	8.00	<u>9.20</u>
(xiii) Dust wipes	10.00	<u>18.00</u>
(xiv) Iron	8.00	<u>9.20</u>
(xv) Lead	8.00	<u>17.25</u>
(xvi) Lithium	8.00	<u>9.20</u>
(xvii) Magnesium	8.00	<u>9.20</u>
(xviii) Manganese	8.00	<u>9.20</u>
(xix) <u>Metals scan, water, 17 element</u>	30.00	<u>34.50</u>
<u>(xx) Metals scan, water, 25 element</u>		<u>86.25</u>
<u>(xxi) Metals scan, solids, 20 element</u>		<u>63.25</u>
(xx) <u>(xxii) Molybdenum</u>	8.00	<u>9.20</u>

(xxi) (xxiii) Nickel	8.00	<u>9.20</u>
(xxii) (xxiv) Potassium	8.00	<u>9.20</u>
(xxiii) (xxv) Silicon	8.00	<u>9.20</u>
(xxiv) (xxvi) Silver	8.00	<u>9.20</u>
(xxv) (xxvii) Sodium	8.00	<u>9.20</u>
(xxvi) (xxviii) Strontium	8.00	<u>9.20</u>
(xxvii) (xxix) Tin	8.00	<u>9.20</u>
(xxviii) (xxx) Titanium	8.00	<u>9.20</u>
(xxix) (xxxii) Vanadium	8.00	<u>9.20</u>
(xxx) (xxxii) Zinc	8.00	<u>9.20</u>
(xxxii) Other metals		<u>10.00</u>
(c) Fees for metals analyses by graphite furnace		
that are requested for lower limits are as follows:		
(i) Antimony		<u>15.00</u>
(ii) Arsenic		<u>15.00</u>
(iii) Cadmium		<u>15.00</u>
(iv) Chromium		<u>15.00</u>
(v) Copper		<u>15.00</u>
(vi) Lead		<u>15.00</u>
(vii) (xxxiii) Selenium	15.00	<u>17.25</u>
(viii) Silver		<u>15.00</u>
(ix) (xxxiv) Thallium	15.00	<u>17.25</u>
(x) Zinc		<u>30.00</u>
(xi) Other metals		<u>20.00</u>
(d) (c) Fees for organic analyses are as follows:		
(i) Organic analyses in drinking water:		
(A) Benzene		<u>70.00</u>
(B) (A) 505 - Organohalide pesticides	150.00	<u>172.50</u>
(C) (B) 508 - Chlorinated pesticides	150.00	<u>172.50</u>
(D) (C) 515-2 - Chlorophenoxy herbicides	180.00	<u>149.50</u>
(E) 515-2C - Chlorophenoxy herbicides composited		<u>60.00</u>
(F) (D) 525 - Synthetic organic compounds	240.00	<u>276.00</u>
(G) (E) 531 - Carbamate pesticides	150.00	<u>172.50</u>
(H) 531C - Carbamate pesticides composited		<u>60.00</u>
(I) (F) Haloacetic acids	140.00	<u>149.50</u>
(J) (G) Trihalomethanes	90.00	<u>103.50</u>
(K) (H) VOC - volatile organic compounds	110.00	<u>126.50</u>
(ii) For organic analyses in other substrates,		
EPA 600 and 8000 series, the fees are:		
(A) Benzene		<u>100.00</u>
(B) (A) Organohalide pesticides	200.00	<u>230.00</u>
(C) (B) Chlorinated pesticides	200.00	<u>230.00</u>
(D) (C) Chlorophenoxy herbicides	230.00	<u>265.00</u>
(E) (D) Synthetic organic compounds	300.00	<u>276.00</u>
(F) (E) Carbamate pesticides	200.00	<u>230.00</u>
(G) (F) Haloacetic acids	180.00	<u>207.00</u>
(H) (G) Trihalomethanes	130.00	<u>150.00</u>
(I) (H) VOC - volatile organic compounds	160.00	<u>276.00</u>
(e) (d) Fees for fuel analyses are as follows:		
(i) Blue dye in fuel	7.50	<u>8.63</u>
(ii) Red dye in fuel	7.50	<u>8.63</u>
(iii) Dyed fuel combo	60.00	<u>69.00</u>
(iv) Diesel characterization	30.00	<u>34.50</u>
(v) Sulfur by XRF	20.00	<u>23.00</u>

(f) (e) Fees for commons are as follows:		
(i) Alkalinity	12.60	15.00
(ii) Chloride	17.40	20.00
(iii) Conductivity	6.00	6.90
(iv) Fluoride	15.00	17.25
(v) pH	6.00	6.90
(vi) Sulfate	17.40	20.00
(vii) TDS	23.00	9.20
(viii) TSS	8.00	9.20
(ix) Volatile suspended solids	22.40	25.76
(g) (f) Fees for air quality analyses are as follows:		
(i) Dustfall	30.00	34.50
(ii) Fiberglass hi vol filters		7.00
(iii) PM 10		7.00
(iv) PM 2.5	15.00	17.25
(v) PM 2.5p	20.60	23.00
(vi) Lead analysis on filters	17.00	19.55
(h) (g) Fees for miscellaneous tests are as follows:		
(i) Acidity	12.60	14.50
(ii) Ash free dry mass - small volume samples		22.40
(iii) Ash free dry mass - large volume samples		32.00
(iv) (ii) BOD	35.00	40.25
(v) (iii) Chlorophyll	35.00	31.75
(vi) (iv) CBOD	30.00	40.25
(vii) (v) COD	35.00	40.25
(viii) (vi) Color	20.00	23.00
(ix) (vii) Cyanide - drinking water	35.00	40.25
(x) (viii) Hardness	18.00	20.70
(xi) (ix) Hexavalent chromium	25.00	28.75
(xii) (x) Mercury	36.00	41.40
(xiii) (xi) Mercury composited	12.60	14.50
(xiv) (xii) Oil and grease	45.00	51.75
(xv) (xiii) Phenol	25.00	28.75
(xvi) (xiv) Sulfide	35.00	40.25
(xvii) (xv) TOC	26.00	29.90
(xviii) (xvi) Turbidity	6.00	6.90
(xix) Hourly chemist rate		60.00
(i) (h) Fees for microbiology testing are as follows:		
(i) Total coliform	16.50	19.00
(ii) Fecal coliform - membrane filtration	16.50	19.00
(iii) Fecal coliform - sludge		35.00
(iii) Iron bacteria		19.00
(iv) Sulfur bacteria		19.00
(iv) (v) Heterotrophic plate count	16.50	19.00
(j) (i) Fees for special handling are as follows:		
(i) Rush fee - FAX		3.00
(ii) (i) Rush fee - per sample order		10.00
(A) additional per analyte		+2.00
(iii) (ii) Microwave digestion	17.00	19.55
(iv) Lyophilization		5.00
(v) (iii) Nutrient extraction	10.00	15.00
(vi) (iv) Total metals digestion	15.00	17.25
(v) Total recoverable metals digestion		11.50
(vii) Substrate processing, sediment fee	10.00	min

(viii) Supplies purchasing	Cost +15%
(ix) (vi) VOC extraction - TCLP	50.00 57.50
(x) (vii) Metals extraction - TCLP	45.00 51.75

(3) The fees specified in (1) and (2) ~~of this rule~~ will be lowered by the department of public health and human services to a level not exceeding the cost to the department of the test in question whenever ~~larger batches of samples or~~ a change of analysis method warrants lower fees.

(4) Fees for analyses other than those listed in (1) and (2) ~~of this rule~~ will be established at the level of comparable analyses ~~or by calculating the chemists' hourly charge for time worked, if there is no comparable analysis.~~

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202, MCA

3. The Department of Public Health and Human Services, Laboratory Services Bureau, operates two laboratories. The Public Health Laboratory provides testing for the state's hospitals, physician clinics, and public clinics. The Department's Environmental Laboratory performs testing for a variety of customers including municipal water supply systems, private well owners and other state agencies.

Through changes in ARM 37.12.401, the Department proposes a 4% increase for the Public Health Laboratory, as covered in ARM 37.12.401(1), and 15% for the Environmental Laboratory, specified in ARM 37.12.401(2). The fee increases are needed to meet projected expenses for the current fiscal year. The fees for the Public Health Laboratory have not been increased since July 2000. Fees for the Environmental Laboratory have remained unchanged since June 1999.

The proposed fee changes reflect the expectations of the state legislature. Section 50-1-202, MCA, requires laboratories to adopt fees that reflect the costs of the tests performed. The Department's current fee structure does not reflect the costs of the laboratory tests.

The cumulative affect of the 4% fee increase for tests performed by the Public Health Laboratory is estimated to generate increased revenues of \$66,661. The cumulative affect of the 15% testing fee increase for the Environmental Laboratory is estimated to produce increased revenues of \$69,429. The Department estimates that 600 persons, based on the number of its active laboratory accounts, will be affected by the increases.

Alternatives to the fee changes include leaving the current fee structure in place. Those fees will be insufficient to meet expenses and services for Fiscal Year 2004. The laboratories may need to reduce personnel, which may lead to decreased services for customers.

Another alternative is obtaining additional general fund support. Garnering such funding is not feasible at this time because it must be budgeted by the state legislature.

The Department also proposes to add and delete certain tests. Section (1) covers the tests performed by the Public Health Laboratory. ARM 37.12.401(1)(a)(vii) and (x) include Chlamydia and Gonorrhea amplification, which are better descriptions of current testing methodology. ARM 37.12.401(1)(c) eliminates air mold spore testing because the Public Health Laboratory has discontinued it.

ARM 37.12.401(1)(d)(iv) and (vi) add tests for hemoglobinopathy and TSH levels. Such testing is required by ARM 37.57.301(2) which specifies "tests for inborn errors of metabolism" including tests for phenylketonuria, galactosemia, congenital hypothyroidism and hemoglobinopathies. The testing requirements listed under ARM 37.57.301 were recently updated in 2003.

Serology tests for Chlamydia group, Enterovirus, and Epstein Barr virus listed under ARM 37.12.401(1)(f) are proposed to be eliminated because the Department's Public Health Laboratory has had few requests for those tests. The addition of Hepatitis B core total analysis listed in ARM 37.12.401(1)(f)(xii) is a new type of test. Testings for Influenza A, Influenza B, mycoplasma and Parainfluenza 1, 2, 3 are proposed to be eliminated due to the low number of requests for these testings. Testing for West Nile Virus and St. Louis Encephalitis (SLE), listed in ARM 37.12.401(1)(f)(xxix) and (xxxii), were added because of the recent spread of West Nile Virus. St. Louis Encephalitis testing is needed because the virus causes the same symptoms of West Nile Virus.

In ARM 37.12.401(1)(g)(iii), mycobacteria concentration tests are a modified description of current testing methods. ARM 37.12.401(1)(h) includes the new virology tests through direct detection (RSV, VZV, and HSV) and virus ID (neutralize). Molecular testing, PCR, 1 agent, PFGE, 1 enzyme and Hepatitis C, PCR are new tests that have been added.

The Department also added and deleted some of the tests listed under section (2) which lists the tests performed by the Department's Environmental Laboratory. New panels of tests were added under (2)(b) for metals scan, including (xix) metals scan, water, 17 element; (xx) metals scan, water, 25 element; and (xxi) metals scan, solids, 20 element.

Tests listed under the rule's original subsection (2)(c) regarding metal analyses by graphite furnace were eliminated because the testing fees are duplications of other testing fees and hence are not necessary.

Testing by composites for chlorophenoxy herbicides and pesticides for organic analyses listed in the new ARM

37.12.401(2)(c) were eliminated because the laboratory no longer composites these tests. The Environmental Laboratory uses single testing methods. Testing for benzene was eliminated because it is duplicative of other testing fees where benzene is included as part of a panel.

Tests for ash free dry mass, listed under ARM 37.12.401(2)(g), are proposed to be eliminated because the Environmental Laboratory no longer performs those tests. For the same reason, testing procedures for fecal coliform-sludge and lyophilization, listed under ARM 37.12.401(2)(h), were deleted. New procedures allow for the testing of sulfur bacteria and total recoverable metals digestion, which were added under ARM 37.12.401(2)(h).

Fees not specific to particular tests but which cover laboratory overhead and administration costs are proposed to be eliminated. Those fees include ARM 37.12.401(2)(g)(xix) regarding hourly chemist rates, which have never been charged in the past; and ARM 37.12.401(2)(i) concerning fees for faxing reports, additional fees per analyte submitted, sediment fees for substrate processing, and supply purchases. The fees associated with each test are meant to cover overhead and administration.

Changes regarding individual laboratory tests in ARM 37.12.401(1) and (2) are necessary because they reflect the actual services offered by the Department's laboratories, and they constitute the latest in testing procedures. Not having the changes would result in misrepresentations about laboratory services.

ARM 37.12.401(3) provides flexibility for the Department to charge less than the specified fees in ARM 37.12.401(1) and (2) if the Department's costs have been lowered for any reason, such as receiving discounts from vendors for the purchase of testing equipment and supplies. The Department proposes to eliminate the provision of discounts for the submission of larger batches of samples because in many instances large batches are not more economical for the laboratories.

For ARM 37.12.401(4), the Department proposes to eliminate the requirement for calculating analyses costs based on the hours of chemists' time. The Department wishes to eliminate all fees based on chemists' rates because the rates do not accurately represent the laboratories' costs. True costs involve chemists' rates and expenses involved in overhead and administration.

The Department's main objective in amending ARM 37.12.401 is to increase laboratory fees. Such fee increases are typically not controversial and usually result in few adverse comments.

4. Interested persons may submit their data, views or arguments concerning the proposed action in writing to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later

than 5:00 p.m. on October 23, 2003. Data, views or arguments may also be submitted by facsimile (406)444-9744 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. If a person who is directly affected by the proposed action wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, by facsimile (406)444-9744 or by electronic mail via the Internet to dphhslegal@state.mt.us no later than 5:00 p.m. on October 23, 2003.

6. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those who are directly affected by the proposed action, from the Administrative Rule Review Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date and a notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 60 based on the 600 clients affected by rules covering laboratory fees.

Russell E. Cater
Rule Reviewer

/s/ Gail Gray
Director, Public Health and
Human Services

Certified to the Secretary of State September 15, 2003.

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

In the matter of the proposed)
adoption of New Rules) NOTICE OF PUBLIC HEARING
I through VI pertaining to) ON PROPOSED ADOPTION
Inter-carrier Compensation)

TO: All Concerned Persons

1. On November 13, 2003, at 1:30 p.m. a public hearing will be held in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, to consider the adoption of new Rules I through VI.

2. The PSC will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the PSC no later than 5:00 p.m. on November 3, 2003, to advise us of the nature of the accommodation that you need. Please contact Connie Jones, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number (406) 444-6170, TTD number (406) 444-6199, fax number (406) 444-7618, e-mail conniej@state.mt.us.

3. The proposed new rules provide as follows:

RULE I TYPES OF RECORDS TO BE MADE AVAILABLE

(1) "Transit record" is defined as telecommunications network transit traffic usage data and wireless telecommunications network transit traffic usage data pertaining to telecommunications traffic that an originating carrier delivers to a transiting carrier or carriers for delivery to a terminating carrier.

(a) The term does not mean traffic carried by interlocal access transport area carriers or providers of intralocal access transport area toll services.

(b) Such network usage data must be compiled in accordance with current telecommunications industry guidelines and in compliance with current ordering and billing forum (OBF) standards.

(2) To the extent the information has been transmitted by the originating carrier to the transiting carrier, transit records shall enable terminating carriers to identify originating carriers and other call information by means of a category 11 type format record as defined in the EMR Bellcore Practice BR010-200-010, or a successor record adopted by the OBF, which enables a terminating carrier to identify each originating carrier's operating company number (OCN), or carrier identification code (CIC), or other call detail information necessary to identify, measure and appropriately

charge for traffic that terminates on terminating carriers' networks.

(3) To the extent the information has been transmitted by the originating carrier to the transiting carrier, category 11 type format records must provide terminating carriers with necessary call identification data such as the:

- (a) calling party number;
- (b) called party number;
- (c) date, time and duration of the call;
- (d) billed to number;
- (e) area code and number prefix; and
- (f) related information associated with originating telecommunications traffic to enable the terminating carrier to identify, measure and appropriately charge the originating carrier for termination of local telecommunications service.

(4) Any transiting carrier shall deliver telecommunications traffic to a terminating carrier by means of facilities that enable the terminating carriers to receive from the originating carrier any and all information that the originating carrier or the interlocal access transport area carrier or intralocal access transport area toll provider of nonlocal telecommunications traffic that enables the terminating carrier to identify, measure, and appropriately charge the originating carrier or the interlocal access transport area carrier or intralocal access transport area toll provider of nonlocal telecommunications traffic for the termination of its telecommunications traffic.

AUTH: 69-3-803, 69-3-815, MCA
IMP: 69-3-815, MCA

RULE II COST OF THE TRANSIT RECORDS (1) The rate for the transit records shall be the transit record rate set forth in qwest corporation's most recent Statement of Generally Available Terms on file with the commission or such other rate as the commission may establish.

(2) Nothing in this rule precludes two carriers from mutually agreeing in writing to any other arrangement pertaining to recovery of costs associated with acquiring billing records from the transiting carrier or from the originating carrier.

AUTH: 69-3-803, 69-3-815, MCA
IMP: 69-3-815, MCA

RULE III PARTY RESPONSIBLE FOR THE PAYMENT OF TRANSIT RECORDS TO THE TRANSITING CARRIER (1) A transiting carrier must pass to the terminating carrier, unaltered, all information the transiting carrier receives in the signaling stream of the call from the originating carrier.

(2) Where a carrier requests transit records from a transiting carrier, the transiting carrier shall provide the transit records.

(3) The requesting carrier shall pay the transiting carrier for the records provided.

(4) Rates of compensation are as set forth in [RULE II].

AUTH: 69-3-803, 69-3-815, MCA

IMP: 69-3-815, MCA

RULE IV AUDITS AND VERIFICATION (1) A transiting carrier required to provide transit records to a terminating carrier upon request shall ensure that the terminating carrier can independently verify that the records provided by the transiting carrier to the terminating carrier reasonably account for all transit traffic as defined in [HB 641, section 1, subsection 16] that the transiting carrier delivers to the terminating carrier.

AUTH: 69-3-803, 69-3-815, MCA

IMP: 69-3-815, MCA

RULE V RESPONSIBILITIES OF ORIGINATING CARRIER (1) An originating carrier shall transmit to the terminating carrier or to the terminating carrier as part of the call transaction, information that permits the terminating carrier to:

(a) identify the originating carrier;
(b) measure the call (if appropriate); and
(c) charge the originating carrier for the termination of the call.

(2) At a minimum, the call transaction information set forth in (1) must include:

(a) the originating carrier's OCN or CIC or other call detail information necessary to identify the source of traffic that terminates on terminating carriers' networks;

(b) the calling party number (CPN);

(c) the called party number;

(d) the date, time and duration of the call;

(e) the billed to number;

(f) the area code and number prefix;

(g) the jurisdictional identification parameter (JIP) or equivalent identifying parameter; and

(h) related information associated with originating telecommunications traffic to enable the terminating carrier to identify, measure and appropriately charge the originating carrier for termination of local telecommunications service.

AUTH: 69-3-803, 69-3-815, MCA

IMP: 69-3-815, MCA

RULE VI EXPEDITED RESOLUTION OF COMPLAINTS

(1) Complaints that are filed pursuant to this rule shall be designated as a complaint filed under the interconnection statutes, 47 USC Sections 251 and 252 and 69-3-831, 69-3-832, 69-3-833, 69-3-834, 69-3-835, 69-3-836, 69-3-837, 69-3-838 and 69-3-839, MCA, or as a complaint filed under [HB 641, section 2, subsection 6].

(2) Where a complaint filed with the commission is designated a complaint filed under the relevant interconnection agreement statutes, the commission shall follow the procedures set forth in those statutes.

(3) Complaints that are filed under [HB 641, section 2, subsection 6] shall be expedited according to a procedural schedule that will be implemented on a case-by-case basis in accordance with commission rules.

AUTH: 69-3-803, 69-3-815, MCA
IMP: 69-3-815, MCA

4. Rationale: Adoption of the new rules is necessary to implement legislation passed in the 2003 legislative session under House Bill 641.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, and must be received no later than November 13, 2003, or may be submitted to the PSC through the PSC's web-based comment form at <http://psc.state.mt.us/PublicComment/PublicComment.htm> no later than November 13, 2003. (PLEASE NOTE: When filing comments pursuant to this notice please reference Docket No. L-03.8.2.-RUL)

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

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

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

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

/s/ Bob Rowe
Bob Rowe, Chairman
Public Service Commission

/s/ Robin McHugh
Reviewed By: Robin McHugh

CERTIFIED TO THE SECRETARY OF STATE SEPTEMBER 15, 2003.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
adoption of New Rule I; and) ON PROPOSED ADOPTION AND
amendment of ARM 42.11.104,) AMENDMENT
42.11.201, 42.11.205, 42.11.211,))
42.11.212, 42.11.217, 42.11.243,))
42.11.245, 42.11.251, 42.11.401,))
42.11.402, 42.11.405, 42.11.406,))
42.11.407, 42.11.409, 42.11.421,))
42.11.422, 42.11.423, 42.11.424,))
and 42.11.425 relating to liquor))
distribution and liquor vendors)

TO: All Concerned Persons

1. On December 3, 2003, at 1:30 p.m., a public hearing will be held in the Director's Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption and amendment of the above-stated rules relating to liquor distribution and liquor vendors.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue not later than 5:00 p.m., November 26, 2003, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax (406) 444-3696; or e-mail canderson@state.mt.us.

3. The proposed new rule does not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rule provides as follows:

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

(1) "Base case cost," as it applies to liquor and fortified wine, means the supplier's quoted price plus freight charges from the supplier to the state warehouse and the average freight to all state agency liquor stores.

AUTH: Sec. 16-1-103 and 16-1-303, MCA

IMP: Sec. 16-1-103, 16-1-302, 16-1-401, 16-1-404, 16-1-411, 16-2-201, and 16-2-301, MCA

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

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

42.11.104 RETAIL SELLING PRICE (1) The retail selling price of liquor, other than fortified wine, as defined in 16-1-106(11), MCA, is determined by adding:

(a) the department's base case cost; and

(b) the state mark-up of 40% on the department's base case cost.

(2) The retail selling price of fortified wine containing more than 16% but no greater than 24% alcohol by volume is determined by adding:

(a) the department's base case cost; and

(b) the state mark-up for fortified wine bottled in the following sizes:

(i) 1.50 liter is marked up at 42% on the department's base case cost plus 27 cents per bottle;

(ii) 1.0 and .750 liters ~~is~~ are marked up at 51% on the department's base case cost plus 12 cents per bottle;

(iii) .375 liter is marked up at 59% on the department's base case cost plus two cents per bottle.

(c) Fortified wine bottled as .720 liter is marked up the same as .750 liter.

~~(3) The retail selling price of table wine as defined in 16-1-106(22), MCA, containing not less than 0.5% or more than 16% alcohol by volume is determined by adding:~~

~~(a) the department's base case cost; and~~

~~(b) the state markup for table wine bottled in the following sizes:~~

~~(i) 1.50 liter and larger sizes are marked up at 41% on the department's base case cost plus 68 cents per bottle;~~

~~(ii) 1.00 liter is marked up at 58% on the department's base case cost plus 25 cents per bottle;~~

~~(iii) .750 liter and smaller sizes are marked up at 49% on the department's base case cost plus 49 cents per bottle.~~

~~(c) The selling price of table wine that results from adding (a) and (b) is rounded up to the nickel.~~

~~(4) For liquor and fortified wine, "base case cost" means the supplier's quoted price plus freight charges from the supplier to the state warehouse and the average freight to all state liquor facilities. For table wine, "base case cost" means the statewide weighted average cost, which is the supplier's quoted price plus freight charges from the supplier to the state warehouse and the average freight to all state liquor facilities, and applicable taxes as provided in Title 16, chapter 1, part 4, MCA.~~

~~(5) For liquor and fortified wine, the cost to the retail purchaser is the retail selling price plus applicable state taxes as provided in Title 16, chapter 1, part 4, MCA, the total of which is rounded up to the nickel. For table wine, the cost to the retail purchaser is the retail selling price as provided in (3).~~

~~(6)~~(4) The department may reduce the retail selling price of products which the department has designated for closeout or are determined to be overstocked in order to encourage their purchase

and elimination from the state inventory. Closeout products are those that the department has removed from its published listing of classes, varieties, and brands of liquor ~~and table wine~~ to be kept for sale at any state agency liquor facility store. Overstocked products are those classes, varieties, and brands of liquor ~~and table wine~~ which are in the state's inventory in an amount greater than would be sold in a 12-month period.

AUTH: Sec. 16-1-103 and 16-1-303, MCA

IMP: Sec. 16-1-103, 16-1-106, 16-1-302, 16-1-401, 16-1-404, 16-1-411, ~~16-2-202~~, and 16-2-301, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.104 because the department no longer sells table wine, so the references made here are no longer applicable. The amendments bring the rule into compliance with the laws that this rule implements. The definition of "base case cost" was moved to New Rule I, which is the definition rule for this sub-chapter.

Section 16-1-103, MCA, is added as an authority cite because this statute authorizes the department to enforce the regulation and control of the sale and distribution of alcoholic beverages within the state through compliance with the laws implemented by the legislature and rules adopted by the department.

Section 16-1-106, MCA, is being added as implementing cite because the rule refers to the retail selling price of liquor and other fortified wines as defined in this statute.

Section 16-2-202, MCA, is being deleted because the law was repealed.

42.11.201 DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) and (2) remain the same.

(3) "Promote" means to:

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

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

(c) advertise products regularly listed by the department in accordance with ARM 42.11.245;

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

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

(4) and (5) remain the same.

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

AUTH: Sec. 16-1-103 and 16-1-303, MCA

IMP: Sec. 16-3-103 and 16-3-107, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM

42.11.201 to make general housekeeping changes based on the biennial review of chapter 11.

Section 16-1-103, MCA, is added as an authority cite because this statute authorizes the department to enforce the regulation and control of the sale and distribution of alcoholic beverages within the state through compliance with the laws implemented by the legislature and rules adopted by the department.

Section 16-3-107, MCA, is added as an implementing cite to support the definition of vendor as it is defined in the code.

42.11.205 VENDORS' EMPLOYMENT OF REPRESENTATIVES

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

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

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

AUTH: Sec. 16-1-103 and 16-1-303, MCA

IMP: Sec. 16-3-103 and 16-3-107, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.205 to comply with the amendment made by the 2003 legislature in SB 334, which amended 16-3-107, MCA. The law, as amended, allows for the registration of two additional vendor representatives rather than one in Montana.

42.11.211 REGISTRATION OF REPRESENTATIVES (1) remains the same.

(2) No person may be registered as a representative if ~~they~~ he or she:

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

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

(c) ~~are~~ is under the age of 18 years;

(d) ~~have~~ has been convicted of violating laws and regulations; or

(e) ~~are~~ is a non-resident of Montana.

(3) remains the same.

(4) An application to register a representative must be signed by the vendor or an official of the vendor or a the vendor's broker.

(5) and (6) remain the same.

(7) In addition to the definition of "resident" found in ARM Title 42, chapter 2, evidence of residency includes:

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

(b) filing a Montana income tax return.

AUTH: Sec. 16-1-103 and 16-1-303, MCA

IMP: Sec. 16-3-107, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.211 to make general housekeeping changes to comply with the biennial review requirement for chapter 11.

Section 16-1-103, MCA, is added as an authority cite because this statute authorizes the department to enforce the regulation and control of the sale and distribution of alcoholic beverages within the state through compliance with the laws implemented by the legislature and rules adopted by the department.

42.11.212 RESTRICTION ON NUMBER OF REPRESENTATIVES

(1) No vendor may have less than one or more than ~~two~~ three representatives registered to promote the sale of ~~its~~ the vendor's products in Montana.

AUTH: Sec. 16-1-103 and 16-1-303, MCA

IMP: Sec. 16-3-103 and 16-3-107, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.212 to comply with the amendment made by the 2003 legislature in SB 334, which amended 16-3-107, MCA. The law, as amended, allows for the registration of two additional vendor representatives rather than one in Montana.

Section 16-1-103, MCA, is added as an authority cite because this statute authorizes the department to enforce the regulation and control of the sale and distribution of alcoholic beverages within the state through compliance with the laws implemented by the legislature and rules adopted by the department.

Section 16-3-103, MCA, is added as an implementing cite because it addresses the limitations and exceptions that apply to persons, including a vendor's representative, with regard to the sales, solicitation, and advertising of a vendor's product in Montana.

42.11.217 CANCELLATION OF REGISTRATION (1) The department shall cancel the registration of a vendor's representative if requested in writing by the vendor or a the vendor's broker.

AUTH: Sec. 16-1-103 and 16-1-303, MCA

IMP: Sec. ~~16-3-103~~ 16-3-107, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.217 as general housekeeping.

Section 16-1-103, MCA, is added as an authority cite

because this statute authorizes the department to enforce the regulation and control of the sale and distribution of alcoholic beverages within the state through compliance with the laws implemented by the legislature and rules adopted by the department.

The department is proposing to delete 16-3-103, MCA, because it believes that this rule is implementing 16-3-107, MCA instead.

42.11.243 SAMPLES (1) A sample of liquor may only be purchased through state agency liquor stores at the state-posted price. A separate order for a sample must be placed with a state agency liquor store agent by each registered representative whose name ~~and identification number~~ must appear on the order.

AUTH: Sec. 16-1-103 and 16-1-303, MCA

IMP: Sec. 16-3-103, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.243 to eliminate the requirement for an identification number on the order form since it is no longer a requirement of the department.

Section 16-1-103, MCA, is added as an authority cite because this statute authorizes the department to enforce the regulation and control of the sale and distribution of alcoholic beverages within the state through compliance with the laws implemented by the legislature and rules adopted by the department.

42.11.245 ADVERTISING SPECIALTIES (1) Regulation number 6.84 of the ~~bureau of alcohol, tobacco and firearms~~ tobacco tax and trade bureau (TTB), United States department of the treasury as set forth in 27 CFR as revised on April 1, 2000, is hereby incorporated by reference as though fully set forth herein as the regulations for consumer advertising specialties and retailer advertising specialties. Copies may be obtained by contacting the Department of Revenue, P.O. Box 5805, Helena, MT 59604-5805.

(2) remains the same.

AUTH: Sec. 16-1-103 and 16-1-303, MCA

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

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.245 to correct the name of the federal agency regulation that is adopted by reference by the department.

Section 16-1-103, MCA, is added as an authority cite because this statute authorizes the department to enforce the regulation and control of the sale and distribution of alcoholic beverages within the state through compliance with the laws implemented by the legislature and rules adopted by the department.

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

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

(2) Although not limiting the scope of the statutory provisions and with the exception of the advertising specialties stated in ARM 42.11.245, the following practices violate ~~are in violation of~~ one or more of ~~these sections~~ the statutes cited in (1):

(a) to grant, allow, pay, or rebate merchandise or any other thing of value to any licensee or ~~his servants~~, the licensee's agents, or employees, including the purchase of merchandise at retail for delivery to a licensee;

(b) to grant, allow, or pay anything of value to a licensee or ~~his servants~~, the licensee's agents, or employees for the privilege of advertising display;

(c) to purchase drinks "for the house" to induce the purchase of particular brands;

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

(e) to grant, allow, or pay money or anything of substantial value to licensees or their agents or employees in order to induce the sale of particular brands;

(f) to represent, expressly or by implication, that a vendor, broker, or representative is affiliated with or has any influence over any department of the state government; or

(g) to repurchase, replace, or exchange any liquors purchased by licensees or other persons from state agency liquor stores.

AUTH: Sec. 16-1-103 and 16-1-303, MCA

IMP: Sec. 16-3-103, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.251 as general housekeeping changes.

Section 16-1-103, MCA, is added as an authority cite because this statute authorizes the department to enforce the regulation and control of the sale and distribution of alcoholic beverages within the state through compliance with the laws implemented by the legislature and rules adopted by the department.

42.11.401 DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) through (3) remain the same.

(4) "Delist" means to remove a product from ~~all but the regular list to the "warehouse supply and or special order" categories~~ category of availability that are designated in ARM 42.11.405.

(5) remains the same.

(6) "Product" means a ~~unique brand of liquor or table wine in one bottle size, differentiated from other products of the same brand and size by vendor's price, weight or product bottle~~

shape.

AUTH: Sec. 16-1-103 and 16-1-303, MCA

IMP: Sec. 16-1-103, 16-1-104, and 16-1-302, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.401 to bring the rule into compliance with current practice.

Section 16-1-103, MCA, is added as an authority cite because this statute authorizes the department to enforce the regulation and control of the sale and distribution of alcoholic beverages within the state through compliance with the laws implemented by the legislature and rules adopted by the department.

42.11.402 POLICY (1) ~~Any~~ Liquor products that ~~the department~~ can be obtained without prohibitive inventory investment or freight charges to the department will be made available for sale through state agency liquor stores in a manner consistent with the demand for and profitability of each product and consistent with distribution limitations established in the alcoholic beverage code.

(2) Notwithstanding any other criteria in this subchapter, products which are packaged, labeled, or advertised in a manner that tends to blur the distinction between alcoholic and non-alcoholic products by emphasizing the features that are normally associated with non-alcoholic products and minimizing ~~their~~ the product's alcoholic content will not be made available for sale.

(3) Any interested party may contest a decision made to list, not list, or delist a product in accordance with the provisions for contested cases in the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA.

AUTH: Sec. 16-1-103 and 16-1-303, MCA

IMP: Sec. 16-1-103, 16-1-104, and 16-1-302, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.402 as housekeeping changes.

Section 16-1-103, MCA, is added as an authority cite because this statute authorizes the department to enforce the regulation and control of the sale and distribution of alcoholic beverages within the state through compliance with the laws implemented by the legislature and rules adopted by the department.

42.11.405 PRODUCT AVAILABILITY (1) ~~Liquor and table wine~~ products will be made available for sale in the following classifications:

(a) A "regular" product ~~or a "test market" product~~ will be ~~so~~ designated in the department's quarterly price list, and have sufficient supply maintained in the bailment warehouse in accordance with ARM 42.11.421-;

~~(b) A "variable supply" product will be so designated in the department's quarterly price list, and will have supply maintained in the warehouse on a limited basis with no~~

~~commitment to a minimum service level.~~

~~(c) A "special order" product will not be published in the department's quarterly price list, and will not have supply maintained in the warehouse, but that has sold at least one case in the prior 12 months will be published in the department's quarterly price list. It will not have supply maintained in the warehouse and will only be available on an order-by-order basis; and~~

~~(d)(b) A "warehouse supply" product will be so designated in the department's quarterly price list, and will have supply maintained in the warehouse to satisfy approximately 12 single bottle requests per month with no commitment to a minimum service level; and~~

~~(e) A "seasonal" product will not be published in the department's quarterly price list but will be noticed in a supplemental requisition for merchandise, will have supply maintained in the bailment warehouse in advance of the sales season, and will have orders distributed to state agency liquor stores to meet the estimated seasonal demand.~~

~~(f)(d) A "promotional" product will not be published in the department's quarterly price list, but will be noticed in a supplemental requisition for merchandise, will have Supply will be maintained in the bailment warehouse in advance of the sales promotion, and will be shipped to stores in the quantity approved for the promotion.~~

~~(g) A "collectible" product will be so designated in the department's quarterly price list, and will be purchased for limited distribution in less than full case quantities to provide access to collectors based upon past sales histories to similarly designed collectibles with no commitment to a minimum service level.~~

AUTH: Sec. 16-1-103 and 16-1-303, MCA

IMP: Sec. 16-1-103, 16-1-104, and 16-1-302, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.405 to bring the rule into compliance with current practice. The deleted categories are no longer used by the department. The department is proposing to rearrange subsections (a) through (d) to put the requirements in the order in which they occur. The amendment to (c) "special order" is necessary because these products will appear in the department's price list but under current practice will not have a supply maintained in the warehouse.

Section 16-1-103, MCA, is added as an authority cite because this statute authorizes the department to enforce the regulation and control of the sale and distribution of alcoholic beverages within the state through compliance with the laws implemented by the legislature and rules adopted by the department.

42.11.406 PRODUCT LISTING (1) remains the same.

~~(2) A product will be listed as a "test market" product if the department receives a written proposal that:~~

~~(a) is for a product that has not been listed as a~~

~~"regular" product or submitted as a proposed "test market" product during the three years prior to receipt of the proposal and is not for a product in the 50 milliliter size;~~

~~(b) is submitted by a vendor who has a Montana vendor permit in accordance with ARM 42.11.213 and has at least one representative registered in accordance with ARM 42.11.205 and 42.11.211;~~

~~(c) states that the product will be maintained in the bailment warehouse in accordance with ARM 42.11.421;~~

~~(d) has no major obstacles to merchandising the product;~~

~~(e) is approved according to procedures in ARM 42.11.408;~~
and

~~(f) provides the following information for each product by bottle size:~~

~~(i) a complete standard quotation and specification form signed by the vendor or an officer of the vendor which references the national alcoholic beverage control association control state code for the product, makes the price firm for the first three months following the effective date of the listing, and provides an agreement that subsequent price increases will be noticed not less than 60 days prior to the price list effective date;~~

~~(ii) a list of the test market locations proposed for the new product and the expected initial order amount at each location; and~~

~~(iii) a description of the promotions specific to each location that the vendor and the vendor's registered representative will undertake during the 18 month test market period.~~

~~(3) A product will be listed as a "variable supply" product if it is not listed as a "regular" product or a "test market" product but has a sales volume higher than can be efficiently managed under the "special order" or "warehouse supply" classifications.~~

~~(4)(3) A product will be listed as a "special order" product if it is rare or unusual and not maintained in the warehouse. Depending on supplier requirements, demand for a product, and availability of a product, orders may take six weeks or more to be filled the product is not listed in another classification other than as a "warehouse supply" product, and a state agency liquor store has submitted a special order form with an agreement signed by the agent to pay for the entire quantity ordered on delivery.~~

~~(5)(2) A product will be listed as a "warehouse supply" product if it is a specialty product meeting sales criteria and is maintained in the warehouse not listed in another classification other than as a "special order" product, can be reasonably expected to achieve one turn of inventory in a year or the warehouse already holds a case or more of the product, and is approved according to procedures in ARM 42.11.408.~~

~~(6) A product will be listed as a "seasonal" product if the department receives a proposal that:~~

~~(a) provides a picture and complete description along with the standard quotation and specification form signed by the~~

~~vendor or an officer of the vendor, which is completed for the proposed product, references the national alcoholic beverage control association control state code, and makes the price firm for the first three months following the effective date of the listing;~~

~~(b) is submitted by a vendor who has a Montana vendor permit in accordance with ARM 42.11.213 and has at least one representative registered in accordance with ARM 42.11.205 and 42.11.211;~~

~~(c) states that the product will be maintained in the bailment warehouse in accordance with ARM 42.11.421;~~

~~(d) has no major obstacles to merchandising the product; and~~

~~(e) the product is approved according to procedures in ARM 42.11.408.~~

~~(7)(4) A liquor product will be listed as a "promotional" product if the department receives and approves a written proposal that:~~

~~(a) is for a liquor product that is in the 50, 200, or 375 milliliter sizes, and has a larger size listed as a "regular" product or as a "test market" product;~~

~~(b) is submitted by a vendor who has a Montana vendor permit in accordance with ARM 42.11.213 and has at least one representative registered in accordance with ARM 42.11.205 and 42.11.211;~~

~~(c)(b) states that the product will be maintained in the bailment warehouse in accordance with ARM 42.11.421;~~

~~(d)(c) has no major obstacles to merchandising the product; and~~

~~(e) is approved according to procedures in ARM 42.11.408; and~~

~~(f)(d) provides the following information for each product by bottle size:~~

~~(i) a completed standard quotation and specification form signed by the vendor or an officer of the vendor which:~~

~~(A) references the national alcoholic beverage control association control state code for the product;~~

~~(B) makes the price firm for the first three months following the effective date of the listing; and~~

~~(C) provides an agreement that subsequent price increases will be noticed not less than 60 days prior to a price list effective date;~~

~~(ii) a list of the test market locations proposed for the new product and the expected initial order amount at each location; and~~

~~(iii) a description of the promotional strategy that the vendor and the vendor's registered representative will undertake during the ~~18~~ six-month ~~test market~~ promotion period.~~

~~(8) A liquor product that is designed as a collector's item will be listed as a "collectible" product if:~~

~~(a) it can be convincingly demonstrated that the product can be reasonably expected to achieve one turn of inventory in a year, there are no major obstacles to merchandising the product,~~

~~the product is approved according to procedures in ARM 42.11.408; and~~

~~(b) the vendor has provided a picture or brochure which contains a complete and authentic description of the container and a standard quotation and specification form signed by the vendor or an officer of the vendor, which is completed for the proposed product, references the national alcoholic beverage control association control state code, makes the price firm for the first three months following the effective date of the listing; or~~

~~(c) a state agency liquor store agent has submitted a special order form with an agreement signed by the agent to purchase one of the "collectibles" on delivery.~~

AUTH: Sec. 16-1-103 and 16-1-303, MCA

IMP: Sec. 16-1-103, 16-1-104, and 16-1-302, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.406 to bring the rule into compliance with the practice of the department regarding product listings. Many internal changes have occurred at the warehouse regarding product inventory and handling. The text found in the rule was outdated and these amendments will align the rule with the current practices.

Section 16-1-103, MCA, is added as an authority cite because this statute authorizes the department to enforce the regulation and control of the sale and distribution of alcoholic beverages within the state through compliance with the laws implemented by the legislature and rules adopted by the department.

42.11.407 MINIMUM SALES STANDARDS (1) To be listed as a "regular" product, a liquor product must achieve 100 cases of sales or \$1,000 annual net profit in the 12-month period prior to preparation to publish the department's quarterly price list.

~~(2) To be listed as a "seasonal" product, a liquor or table wine product must have achieved 25 cases of sales or \$250 annual net profit in the three month sales season prior to preparation for publication of the department's quarterly price list applicable to the coming sales season or be projected to achieve these amounts in the coming season.~~

AUTH: Sec. 16-1-103 and 16-1-303, MCA

IMP: Sec. 16-1-103, 16-1-104, and 16-1-302, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.407 because "seasonal product" is no longer a category used within the department. The amendment brings the rule into compliance with current practice.

Section 16-1-103, MCA, is added as an authority cite because this statute authorizes the department to enforce the regulation and control of the sale and distribution of alcoholic beverages within the state through compliance with the laws implemented by the legislature and rules adopted by the department.

42.11.409 DELISTING, REVISED LISTING, CLOSEOUT, AND OVERSTOCK (1) through (3) remain the same.

(4) The effective date of a delisting, revised listing, closeout sale, or overstock sale is as soon as written notice can be disseminated to state agency liquor stores.

AUTH: Sec. 16-1-103 and 16-1-303, MCA

IMP: Sec. 16-1-103, 16-1-104, and 16-1-302, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.409 as housekeeping changes.

Section 16-1-103, MCA, is added as an authority cite because this statute authorizes the department to enforce the regulation and control of the sale and distribution of alcoholic beverages within the state through compliance with the laws implemented by the legislature and rules adopted by the department.

42.11.421 BAILMENT LIMITS (1) Products listed as "regular," ~~"test market," "seasonal," or "promotional"~~ must be maintained in the bailment warehouse in an amount above the minimum level and below the maximum level.

(2) The minimum bailment level for "regular" products is a three-week supply based on ~~the seasonally adjusted historical average. The minimum level for "test market," "seasonal," and "promotional" products is a three week supply based on a vendor's estimate of demand that the department concurs in past sales history.~~

(3) Vendors will be charged a space reservation fee of \$1 per case per day for each case below minimum for any product for which the department is unable to fill store orders. A space reservation fee will not be charged if the unavailability of supply is due to an incident beyond the vendor's control for which it has no recourse against any other party. Vendors will also be charged the costs incurred by the department when there is insufficient product to fill orders during sales periods.

(4) The maximum bailment level for "regular" products is an eight-week supply based on ~~the seasonally adjusted historical average or one and a half pallets, whichever is greater. The maximum level for "test market," "seasonal," and "promotional" products is an eight week supply based on the vendor's estimate of demand that the department concurs in or one and a half pallets, whichever is greater warehouse space.~~ The maximum bailment level may be exceeded from time to time if a vendor demonstrates that a larger amount is needed to obtain an economical shipment and the department agrees.

~~(5) Vendors will be charged the direct and indirect costs the department incurs for warehousing any cases that have been in excess of the maximum level for more than five consecutive days.~~

~~(6) Each quarter the department will notify vendors of the seasonally adjusted historical weekly average or the concurred in estimate of demand for their products. Quarters are those used for the department quarterly price list.~~

~~(7)~~(5) Fees and charges will be offset ~~on~~ against

department payments for products.

AUTH: Sec. 16-1-103 and 16-1-303, MCA

IMP: Sec. 16-1-103, 16-1-104, and 16-1-302, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.421 as housekeeping changes that bring the rule into compliance with the current practice of the department.

Section 16-1-103, MCA, is added as an authority cite because this statute authorizes the department to enforce the regulation and control of the sale and distribution of alcoholic beverages within the state through compliance with the laws implemented by the legislature and rules adopted by the department.

42.11.422 BAILMENT RECEIVINGS (1) Vendors may ship products to the bailment warehouse only if they are listed as "regular," ~~"test market," "seasonal,"~~ "warehouse," "special order," or "promotional" products in accordance with ARM 42.11.406.

(2) Vendors must send the department a bill-of-lading for each shipment to the bailment warehouse ~~ten~~ 10 days in advance of the expected date of arrival or send a telefacsimile copy of the bill-of-lading on the day of shipment. The bill-of-lading must include the quantity, the national alcoholic beverage control association control state code, and description of each item shipped.

(3) The department will send vendors an acknowledgement of receipt within 24 hours of receipt. Any variance with the bill-of-lading, and the number of undamaged cases received, will be noted on the acknowledgement receipt.

(4) The number of undamaged cases received per product will be credited to the bailment warehouse control account.

(5) ~~Substantially damaged~~ Damaged cases will ~~not~~ be ~~credited~~ adjusted to the control account. Vendors will be given the opportunity to have damaged cases returned at their cost or destroyed.

AUTH: Sec. 16-1-103 and 16-1-303, MCA

IMP: Sec. 16-1-103, 16-1-104, and 16-1-302, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.422 as housekeeping changes that bring the rule into compliance with the current practice of the department.

Section 16-1-103, MCA, is added as an authority cite because this statute authorizes the department to enforce the regulation and control of the sale and distribution of alcoholic beverages within the state through compliance with the laws implemented by the legislature and rules adopted by the department.

42.11.423 BAILMENT DEPLETIONS (1) and (2) remain the same.

(3) Payment amount for a purchase will be a vendor's price per case ~~F-O-B-~~ Helena, Montana, that was quoted to the department not less than 60 days prior to the department's price

list publication date except special order and warehouse supply products.

(4) remains the same.

(5) ~~The department will notify vendors~~ Upon request, a vendor may be notified once a weekly of the amount and date ~~their a vendor's~~ products were depleted from the bailment warehouse during ~~the that same~~ week.

AUTH: Sec. 16-1-103 and 16-1-303, MCA

IMP: Sec. 16-1-103, 16-1-104, and 16-1-302, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.423 as housekeeping changes that bring the rule into compliance with the current practice of the department.

Section 16-1-103, MCA, is added as an authority cite because this statute authorizes the department to enforce the regulation and control of the sale and distribution of alcoholic beverages within the state through compliance with the laws implemented by the legislature and rules adopted by the department.

42.11.424 BAILMENT ADJUSTMENTS (1) through (6) remain the same.

(7) ~~The department will notify vendors~~ A vendor may be notified once a weekly of the number of cases credited to the bailment warehouse control account that were found to be deficient (i.e., hidden breakage, packed short, or have bottles with no fill or low fill) during the week. Vendors will be given the opportunity to have the deficient cases redelivered at their cost or destroyed.

(8) ~~The department will notify vendors~~ A vendor may be notified once a weekly of the number of cases credited or debited to the bailment warehouse control account in error during the week and an explanation of the errors that were found.

AUTH: Sec. 16-1-103 and 16-1-303, MCA

IMP: Sec. 16-1-103, 16-1-104, and 16-1-302, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.424 as housekeeping changes that bring the rule into compliance with the current practice of the department.

Section 16-1-103, MCA, is added as an authority cite because this statute authorizes the department to enforce the regulation and control of the sale and distribution of alcoholic beverages within the state through compliance with the laws implemented by the legislature and rules adopted by the department.

42.11.425 BAILMENT WAREHOUSE MANAGEMENT (1) and (2) remain the same.

(3) Vendors and vendors' representatives may make a request to the department to observe the operation of the bailment warehouse at any time during regular working hours by ~~requesting the department for~~ arranging an appointment.

(4) remains the same.

(5) The department will take physical inventory in the bailment warehouse four times a year and reconcile the count with the bailment warehouse control account. ~~Inventory is taken during the last week in March, June, September and December.~~

AUTH: Sec. 16-1-103 and 16-1-303, MCA

IMP: Sec. 16-1-103, 16-1-104, and 16-1-302, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.425 as housekeeping changes that bring the rule into compliance with the current practice of the department.

Section 16-1-103, MCA, is added as an authority cite because this statute authorizes the department to enforce the regulation and control of the sale and distribution of alcoholic beverages within the state through compliance with the laws implemented by the legislature and rules adopted by the department.

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

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

and must be received no later than December 5, 2003.

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

7. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at http://www.state.mt.us/revenue/rules_home_page.htm, under the Notice of Rulemaking section. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written

request may be mailed or delivered to the person in 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State September 15, 2003

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 2.4.406)
pertaining to a roster of)
independent auditors)
authorized to conduct audits)
of local government entities)

TO: All Concerned Persons

1. On July 31, 2003, the Department of Administration published MAR Notice No. 2-2-334 regarding the proposed amendment of ARM 2.4.406 concerning a roster of independent auditors authorized to conduct audits of local government entities at page 1572 of the 2003 Montana Administrative Register, Issue Number 14.

2. The agency has amended ARM 2.4.406 exactly as proposed.

3. No comments or testimony were received.

By: /s/ Scott Darkenwald
SCOTT DARKENWALD, Director
Department of Administration

By: /s/ Dal Smilie
DAL SMILIE, Rule Reviewer

Certified to the Secretary of State September 15, 2003.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 2.21.3603,)
2.21.3607, 2.21.3616 and)
2.21.3623, pertaining to the)
Veterans' Employment)
Preference policy)

TO: All Concerned Persons

1. On August 14, 2003, the Department of Administration published MAR Notice No. 2-2-335 regarding the proposal to amend ARM 2.21.3603, 2.21.3607, 2.21.3616 and 2.21.3623 pertaining to the Veterans' Employment Preference policy at page 1699 of the 2003 Montana Administrative Register, Issue Number 15. The notice also advised that the Department did not contemplate holding a public hearing prior to amending these rules.

2. The Department has amended ARM 2.21.3623 exactly as proposed. The department has amended ARM 2.21.3603, 2.21.3607 and 2.21.3616, as proposed with the following changes. Matter to be added is underlined, matter to be deleted is interlined.

2.21.3603 DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) through (11) remain as proposed.

AUTH: Sec. 39-29-112, MCA

IMP: Sec. 39-29-101, ~~et seq.~~ 39-29-102, 39-29-103, 39-29-104, 39-29-105, 39-29-111, 39-29-112, MCA

2.21.3607 ELIGIBILITY

(1) remains as proposed.

(2) As provided in 39-29-101, MCA, a veteran must be a person who:

(a) "was separated under honorable conditions from active federal military duty in the armed forces after having served more than 180 consecutive days, other than for training;

(b) remains as proposed.

(c) is or has been a member of the Montana army or air national guard and who has satisfactorily completed a minimum of six years service in the armed forces, the last three years of which have been served in the Montana army or air national guard."

(3) and (4) remain as proposed.

AUTH: Sec. 39-29-112, MCA

IMP: Sec. 39-29-101, ~~et seq.~~ and 39-29-102, MCA

2.21.3616 CLAIMING PREFERENCE - DOCUMENTATION AND VERIFICATION (1) through (10) remain as proposed.

AUTH: Sec. 39-29-112, MCA
IMP: Sec. ~~39-29-101~~, et seq. 39-29-103, MCA

3. The amended rules will become effective on the same date that House Bill 35 becomes effective, which is October 1, 2003.

4. No requests to hold a public hearing were received. The Department received one written comment in support of the amendments as proposed. The Department received one comment asking for clarification of a proposed rule, and one comment suggesting the Department use more specific cites to the Montana Code Annotated.

COMMENT NO. 1: When it states [in ARM 2.21.3607, ELIGIBILITY] that the person must have satisfactorily completed a minimum of six years service in the armed forces, the last three years which have been served in the Montana army or air national guard, could the person serve the entire six years in the Montana army or air national guard and still be eligible for veteran's preference?

RESPONSE: Yes. A person who serves their entire six years of duty in the Montana army or air national guard will be eligible for veterans' employment preference.

COMMENT NO. 2: We suggest you list the specific implementing cites rather than showing the cites as 39-29-101, et seq., MCA.

RESPONSE: The Department agrees and has clarified those cites as shown above.

By: /s/ Scott Darkenwald
Scott Darkenwald, Director,
Department of Administration

By: /s/ Dal Smilie
Dal Smilie, Rule Reviewer

Certified to the Secretary of State September 15, 2003.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 4.4.303 relating to)
insured crops)

TO: All Concerned Persons

1. On August 14, 2003, the Department of Agriculture published MAR Notice No. 4-14-142 regarding the proposed amendment of ARM 4.4.303 relating to insured crops at page 1710 of the 2003 Montana Administrative Register, Issue Number 15.

2. The department has amended ARM 4.4.303 exactly as proposed.

3. No comments or testimony were received.

/s/ W. Ralph Peck

Ralph Peck
Director

/s/ Tim Meloy

Tim Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State on September 15, 2003.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 10.55.602)
regarding the definition of)
combined school district)

TO: All Concerned Persons

1. On August 14, 2003, the Board of Public Education published MAR Notice No. 10-55-230 regarding the public hearing on the proposed amendment of a rule concerning the definition of "combined school district" at page 1715 of the 2003 Montana Administrative Register, Issue Number 15.

2. The Board of Public Education has amended ARM 10.55.602 exactly as proposed.

3. No comments or testimony were received.

/s/ Dr. Kirk Miller
Dr. Kirk Miller, Chair
Board of Public Education

/s/ Steve Meloy
Steve Meloy, Executive Secretary
Rule Reviewer
Board of Public Education

Certified to the Secretary of State September 15, 2003.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the)	NOTICE OF AMENDMENT
amendment of ARM 10.57.420,)	
10.57.421, 10.57.422, and)	
10.57.423 regarding)	
reinstatement and renewal)	
of Class 4 career and)	
vocational/technical)	
educator licenses)	

TO: All Concerned Persons

1. On August 14, 2003, the Board of Public Education published MAR Notice No. 10-57-229 regarding the public hearing on the proposed amendment of rules concerning reinstatement and renewal of Class 4 career and vocational/technical educator licenses at page 1717 of the 2003 Montana Administrative Register, Issue Number 15.

2. The Board of Public Education has amended ARM 10.57.420, 10.57.421, 10.57.422, and 10.57.423 exactly as proposed.

3. No comments or testimony were received.

/s/ Dr. Kirk Miller
Dr. Kirk Miller, Chair
Board of Public Education

/s/ Steve Meloy
Steve Meloy, Executive Secretary
Rule Reviewer
Board of Public Education

Certified to the Secretary of State September 15, 2003.

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

In the matter of the repeal)
of ARM 12.9.203 pertaining)
to the abandonment of the) NOTICE OF REPEAL
Green Meadow Game Preserve)

TO: All Concerned Persons

1. On June 26, 2003, the Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-292 regarding the proposed repeal of ARM 12.9.203 pertaining to the abandonment of the Green Meadow Game Preserve at page 1224 of the 2003 Montana Administrative Register, Issue Number 12.

2. The commission has repealed ARM 12.9.203 as proposed.

3. No comments or testimony were received.

By: /s/ Dan Walker
Dan Walker, Chairman
Fish, Wildlife and Parks
Commission

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

Certified to the Secretary of State September 15, 2003

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

In the matter of the transfer) NOTICE OF TRANSFER
of ARM 8.36.101 through)
8.36.804, pertaining to the)
board of optometry)

TO: All Concerned Persons

1. Pursuant to Chapter 483, Laws of Montana 2001, effective July 1, 2001, the Board of Optometry was transferred from the Department of Commerce to the Department of Labor and Industry ARM Title 24, Chapter 168.

2. The transfer of rules is necessary because this board was transferred from the Department of Commerce to the Department of Labor and Industry by the 2001 legislature by Chapter 483, Laws of Montana 2001.

3. The Department of Labor and Industry has determined that the transferred rules will be numbered as follows:

<u>OLD</u>	<u>NEW</u>	
8.36.101	24.168.101	Board Organization
8.36.201	24.168.201	Procedural Rules
8.36.202	24.168.202	Citizen Participation Rules
8.36.401	24.168.203	Board Meetings
8.36.403	24.168.402	Application For Examination
8.36.404	24.168.405	Examinations
8.36.406	24.168.411	General Practice Requirements
8.36.409	24.168.401	Fee Schedule
8.36.412	24.168.2301	Unprofessional Conduct
8.36.415	24.168.301	Anterior Segment Defined
8.36.416	24.168.421	Optometrist's Role In Post-Operative Care
8.36.417	24.168.408	Licensure of Out-Of-State Applicants
8.36.418	24.168.2307	Screening Panel
8.36.419	24.168.2304	Complaint Procedure
8.36.601	24.168.2101	Requirements
8.36.602	24.168.2104	Approved Programs Or Courses
8.36.701	24.168.701	Approved Courses And Examinations
8.36.702	24.168.704	New Licensees
8.36.704	24.168.711	Permissible Drugs
8.36.801	24.168.907	Therapeutic Pharmaceutical Agents
8.36.802	24.168.904	Applicants For Licensure
8.36.803	24.168.901	Approved Course And Examination
8.36.804	24.168.911	Approved Drugs

BOARD OF OPTOMETRY
LARRY OBIE, PRESIDENT

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

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State September 15, 2003

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

In the matter of the amendment) NOTICE OF AMENDMENT,
of ARM 38.5.3801, 38.5.3802,) ADOPTION, AND REPEAL
38.5.3815, 38.5.3901 and)
38.5.3904 pertaining to)
Slamming, and the adoption)
of New Rules I through III)
pertaining to Cramming, and)
the repeal of ARM 38.5.3001)
through 38.5.3009 pertaining)
to Interim Universal Access)

TO: All Concerned Persons

1. On June 26, 2003, the Department of Public Service Regulation, Public Service Commission (PSC) published MAR Notice No. 38-2-171 regarding a public hearing on the proposed amendment, adoption, and repeal of the above stated rules at page 1261 of the 2003 Montana Administrative Register, issue number 12.

2. The PSC has amended ARM 38.5.3801, 38.5.3815, 38.5.3901; adopted New Rule III (38.5.4202); and repealed ARM 38.5.3001 through 38.5.3009 exactly as proposed.

3. The PSC has amended ARM 38.5.3802 and 38.5.3904 with the following changes, stricken matter interlined, new matter underlined:

38.5.3802 LETTER OF AGENCY FORM AND CONTENT

(1) through (7) remain as proposed.

(8) Letters of agency submitted with an electronically signed authorization must include the consumer disclosures required by Section 101(c) of the Electronic Signatures in Global and National Commerce Act ~~(2003) (47 CFR 64.1130)~~ (October 2000) which is adopted and incorporated by reference. A copy of this section may be obtained from the Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601.

(9) A carrier shall submit a carrier change order on behalf of a subscriber within no more than 60 days of obtaining a written or electronically signed letter of agency. However, letters of agency for multi-line and/or multi-location business customers that have entered into negotiated agreements with carriers to add presubscribed lines to their business locations during the course of a term agreement shall be valid for the period specified in the agreement.

AUTH: ~~68~~ 69-3-1301, 69-3-1302 and 69-3-1303, MCA
IMP: 69-3-1304, MCA

38.5.3904 LETTER OF AGENCY FORM AND CONTENT

(1) through (7) remain as proposed.

(8) Letters of agency submitted with an electronically signed authorization must include the consumer disclosures required by Section 101(c) of the Electronic Signatures in Global and National Commerce Act ~~(2003) (47 CFR 64.1130)~~ (October 2000) which is adopted and incorporated by reference. A copy of this section may be obtained from the Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601.

(9) A carrier or other entity shall submit an order for placement of the charge for the product or service on the subscriber's telephone bill within no more than 60 days of obtaining a written or electronically signed letter of agency authorizing the charge from the subscriber. However, letters of agency for multi-line and/or multi-location business customers that have entered into negotiated agreements with carriers to add presubscribed lines to their business locations during the course of a term of agreement shall be valid for the period specified in the term agreement.

AUTH: 69-3-1301, 69-3-1302 and 69-3-1303, MCA

IMP: 69-3-1304, MCA

4. The PSC has adopted New Rules I (38.5.3819) and II (38.5.4201) with the following changes, stricken matter interlined, new matter underlined:

RULE I (38.5.3819) SALE OR TRANSFER OF SUBSCRIBER BASES

~~(1) A carrier shall submit a carrier change order on behalf of a subscriber within no more than 60 days of obtaining a written or electronically signed letter of agency.~~

(2) remains as proposed, but is renumbered (1).

(a) remains as proposed.

(b) If, subsequent to the filing of the letter notification with the commission required by ~~(3) (2)(a)~~, any material changes to the required information should develop, the acquiring carrier shall file written notification of these changes with the commission no more than 10 days after the transfer date announced in the prior notification. The commission may require the acquiring carrier to send an additional notice to the affected subscribers regarding such material changes.

(c) through (c)(vii) remain as proposed.

AUTH: 69-3-1301, 69-3-1302 and 69-3-1303, MCA

IMP: 69-3-1304, MCA

RULE II (38.5.4201) REGISTRATION REQUIREMENTS AND OBLIGATIONS OF SERVICE PROVIDERS, BILLING AGGREGATORS, AND BILLING AGENTS (1) through (3)(b) remain as proposed.

(c) A billing agent that ~~places a charge on a customer's bill~~ directly bills on behalf of a service provider that ~~is~~ has not properly registered with the commission must

immediately remove the charge from the customer's bill and will be liable to the customer for reimbursement of charges paid by the customer, subject to the limitations of ARM 38.5.3910.

(4) remains as proposed.

AUTH: 69-3-1305, 69-3-1308, 69-3-1309, 69-3-1310, 69-3-1311, 69-3-1315 and 69-3-1316, MCA
IMP: 69-3-1304, MCA

5. As shown above, the PSC has made changes to ARM 38.5.3802(8) and 38.5.3904(8) to correct in both rules the reference to the year 2003 and an unnecessary reference to the Code of Federal Regulations.

6. The following comments were received and appear with the PSC's responses:

At the public hearing the PSC received written comments from Montana Telecommunications Association (MTA) and Montana Independent Telecommunications Systems (MITS), both of whom appeared through representatives at the public hearing and raised objections to New Rule II. AT&T Communications of the Mountain States, Inc. (AT&T) submitted written comments raising objections to the proposed amended rules and to proposed New Rule I.

COMMENT 1: Proposed New Rule II(3) doesn't distinguish between billing agent and service provider. MTA comments indicated that the registration requirements are not clear as to whether affiliates of telecommunications carriers that are billing agents need to register as service providers.

RESPONSE: With regard to the concern that the rule doesn't specify whether an affiliate of a billing agent is required to register as a service provider under the statute, the PSC considers the statute to be authoritative on what entities are required to register. The statute defines service provider as any entity, other than the billing agent, that offers a product or service to a customer, the charge for which appears on the bill of a billing agent. An affiliate or subsidiary of a billing agent is an entity other than the billing agent and, therefore, is required by the law to register as a service provider.

COMMENT 2: Concerning requirement for immediate removal of charges. Comments received indicated that the requirement in New Rule II(3)(c) that a billing agent must immediately remove charges from customers' bills does not comport with the statutory language.

RESPONSE: The PSC agrees with this comment and the word immediately has been deleted from New Rule II(3)(c).

COMMENT 3: Concern about liability where there is no direct relationship between the billing agent and service provider. MITS and MTA indicated that New Rule II(3)(c) didn't reflect the statutory requirement that there be a direct relationship between the billing agent and the service provider in order for liability to be imposed.

RESPONSE: The PSC agrees that the statute requires a direct relationship between the billing agent and the service provider in order for liability to be imposed, and New Rule II(3)(c) will be revised to reflect that it is the billing agent directly billing on behalf of a service provider that might be liable to the customer for reimbursement of charges paid by the customer.

COMMENT 4: Location of Letter of Agency. Comments from AT&T suggested that the requirement that an LOA on a web page must be located on a separate screen or webpage be modified to allow inclusion of personal information about the customer, such as name, address, social security number or credit card.

RESPONSE: An existing, unchanged rule, ARM 38.5.3802(5), sets out the minimum requirements for LOAs and does not prohibit an LOA that includes confirmation of the types of personal information about the customer that AT&T apparently includes on its internet LOA. Additionally, ARM 38.5.3802(5)(a) specifically requires that an LOA confirm the subscriber's billing name and address.

COMMENT 5: Definition of product or service. AT&T commented that it is concerned that lack of definition of product or service could be interpreted to require an LOA for the addition of any feature or function, and that rules 38.5.3901(5), 38.5.3904(1) and 38.5.3904(9) should be limited to service initiation only.

RESPONSE: The definitional section has remained the same, and therefore comments on prior definitions contained in the rules are untimely. The PSC notes that House Bill 479, section 5, subsection (4) provides as follows: "The provisions of subsections (1) through (3) do not apply to a transaction between a customer and that customer's selected providers of local exchange or interexchange service, except upon a finding by the commission that services billed were neither requested nor received."

COMMENT 6: New Rule I misplaced. AT&T suggested that section (1) of the proposed new Rule I should not be included in the Sale or Transfer of Subscriber Base rule, but would more appropriately be in the letter of agency section. AT&T further suggests that multi-line/multi-location business customers should be exempted from the 60 day limit for submitting LOAs under the proposed New Rule I(1).

RESPONSE: The PSC agrees that the language of New Rule I(1) is better placed under the amended rules, and so has moved the provision that was proposed as New Rule I(1) to new section (9) under amended rule 38.5.3802. The PSC agrees with AT&T's exemption suggestion of multi-line/multi-location businesses from the 60 day limit and has added language to reflect this change to new section (9) of amended rule 38.5.3802 and to 38.5.3904(9).

COMMENT 7: 30 day notice. Comments from AT&T indicated that the 30 day notice requirement for affected subscribers when service is being changed is frequently insufficient and should be extended to 60 days.

RESPONSE: The PSC's New Rule I(2)(c) mirrors the Federal Communications Commission (FCC) rule in this regard. The PSC notes that carriers may give more notice than that required by the rule, but may not give less notice.

COMMENT 8: Exiting carrier requirements. AT&T indicates that the PSC should consider outlining requirements that the exiting carrier must meet in order to protect a customer from loss of service.

RESPONSE: The PSC agrees that this may be an appropriate subject for a later rulemaking.

/s/ Bob Rowe
Bob Rowe, Chairman

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

Certified to the Secretary of State on September 15, 2003.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the)	NOTICE OF AMENDMENT
amendment of ARM 44.5.114)	
Corporations - Profit and)	
Nonprofit Fees, 44.5.116)	
Limited Liability Partnership)	
Fees, 44.5.119 Assumed)	
Business Name Fees, and)	
44.5.121 Miscellaneous Fees)	
regarding the Reduction or)	
Elimination of Business)	
Document Filing Fees)	

TO: All Concerned Persons

1. On June 12, 2003, the Secretary of State published MAR Notice No. 44-2-120 regarding a public hearing on the proposed amendment of the above-stated rules at page 1179 of the 2003 Montana Administrative Register, Issue No. 11.

2. The Secretary of State has amended the above-stated rules exactly as proposed.

3. No comments or testimony were received.

4. The effective date of these amendments is October 1, 2003.

/s/ Bob Brown
BOB BROWN
Secretary of State

/s/ Janice Doggett
JANICE DOGGETT
Rule Reviewer

Dated this 15th day of September 2003.

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, 2003. This table includes those rules adopted during the period July 1, 2003 through September 30, 2003 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, 2003, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 2002 and 2003 Montana Administrative Registers.

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BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in August 2003, appear. Vacancies scheduled to appear from October 1, 2003, through December 31, 2003, 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 September 9, 2003.

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 AUGUST 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Nursing (Labor and Industry)			
Ms. Anna Lythgoe Clancy	Governor	Schultz	8/12/2003 7/1/2007
Qualifications (if required): registered nurse			
Ms. Roberta Threet Clancy	Governor	Dschaak	8/12/2003 7/1/2007
Qualifications (if required): licensed practical nurse			
Board of Veteran's Affairs (Military Affairs)			
Ms. Karen Furu Bozeman	Governor	reappointed	8/1/2003 8/1/2008
Qualifications (if required): veteran			
District Court Judge 12th Judicial District Department 1 (Justice)			
Judge David G. Rice Havre	Governor	Warner	8/1/2003 1/1/2005
Qualifications (if required): appointed			
Family Education Savings Oversight Committee (Commissioner of Higher Education)			
Mr. Ed Jasmin Bigfork	Governor	reappointed	8/12/2003 7/1/2007
Qualifications (if required): representative of the Board of Regents			
Ms. Sarah Kelly Helena	Governor	reappointed	8/12/2003 7/1/2007
Qualifications (if required): public member			
Mental Health Managed Care Ombudsman (Governor)			
Ms. Bonnie Adee Helena	Governor	reappointed	8/3/2003 8/2/2007
Qualifications (if required): none specified			

BOARD AND COUNCIL APPOINTEES FROM AUGUST 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Children's Trust Fund Board (Public Health and Human Services)			
Ms. Shirley Brown	Governor	LeFebvre	8/13/2003
Helena			1/1/2004
Qualifications (if required): representative of the Department of Public Health and Human Services			
Montana Correctional Enterprises Ranch Advisory Council (Corrections)			
Sen. Sherm Anderson	Governor	not listed	8/7/2003
Deer Lodge			1/29/2004
Qualifications (if required): public member			
Sen. Gerald Pease	Governor	Bardanoue	8/7/2003
Lodge Grass			1/29/2004
Qualifications (if required): public member			
Montana Wheat and Barley Committee (Agriculture)			
Mr. Dan DeBuff	Governor	reappointed	8/20/2003
Shawmut			8/20/2006
Qualifications (if required): representative of District V and a Republican			
Mr. Brian Kaae	Governor	reappointed	8/20/2003
Dagmar			8/20/2006
Qualifications (if required): representative of District I and a Democrat			
Ms. Karen Schott	Governor	Mosdal	8/20/2003
Broadview			8/20/2006
Qualifications (if required): representative of District VI and a Democrat			
State-Tribal Economic Development Commission (Indian Affairs)			
Mr. Shawn Real Bird	Governor	Big Hair, Jr.	8/12/2003
Crow Agency			6/30/2006
Qualifications (if required): representative of the Crow Tribe			

BOARD AND COUNCIL APPOINTEES FROM AUGUST 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Water Pollution Control Advisory Council (Environmental Quality)			
Ms. Barbara Butler Billings	Governor	reappointed	8/6/2003 0/0/0
Qualifications (if required): public works director			
Mr. Shannon Dunlap Whitehall	Governor	Parker	8/6/2003 0/0/0
Qualifications (if required): representative of industry concerned with the disposal of inorganic waste			
Mr. Bill Griffin Ismay	Governor	Cobb	8/6/2003 0/0/0
Qualifications (if required): representative of irrigated agriculture			
Mr. Marc Lorenzen Somers	Governor	Stultz	8/6/2003 0/0/0
Qualifications (if required): public member			
Mr. Terry McLaughlin Missoula	Governor	Noble	8/6/2003 0/0/0
Qualifications (if required): representative of industry concerned with the disposal of organic waste			
Mr. John Schwarz Kalispell	Governor	Peck	8/6/2003 0/0/0
Qualifications (if required): engineer with experience in sanitary engineering			
Mr. Scott Seilstad Denton	Governor	Hagner	8/6/2003 0/0/0
Qualifications (if required): representative of production agriculture			

BOARD AND COUNCIL APPOINTEES FROM AUGUST 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Water Pollution Control Advisory Council (Environmental Quality) cont.			
Mr. Donald Skaar Helena	Governor	Parks	8/6/2003 0/0/0
Qualifications (if required): fisheries biologist			
Ms. Peggy Trenk Helena	Governor	Halverson	8/6/2003 0/0/0
Qualifications (if required): representative of realtors and developers			
Mr. Bob Willems Harlowton	Governor	reappointed	8/6/2003 0/0/0
Qualifications (if required): representative of a conservation district			
Mr. John Wilson Helena	Governor	reappointed	8/6/2003 0/0/0
Qualifications (if required): representative of a soil and conservation organization			
Youth Justice Council (Justice)			
Ms. Frances Combs Poplar	Governor	not listed	8/11/2003 6/20/2005
Qualifications (if required): representative of law enforcement and Native American issues			
Ms. Shae Saunders Bozeman	Governor	not listed	8/11/2003 6/20/2005
Qualifications (if required): youth representative			

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2003 through DECEMBER 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Occupational Therapy Practice (Commerce) Ms. Debra J. Ammondson, Great Falls Qualifications (if required): occupational therapist	Governor	12/31/2003
Board of Outfitters (Commerce) Mr. Raymond Rugg, Superior Qualifications (if required): hunting and fishing outfitter	Governor	10/1/2003
Mr. Richard Pasquale, Cascade Qualifications (if required): fishing outfitter	Governor	10/1/2003
Capitol Restoration Commission (Administration) Mr. Loren Smith, Great Falls Qualifications (if required): public member appointed by the Lieutenant Governor	Lt. Governor	12/3/2003
Ms. Jeanne Michael, Billings Qualifications (if required): public member appointed by the Lieutenant Governor	Lt. Governor	12/3/2003
Ms. Gayle Shanahan, Helena Qualifications (if required): public member appointed by the Governor	Governor	12/3/2003
Rep. Linda L. Holden, Valier Qualifications (if required): public member	Governor	12/3/2003
Department of Corrections Advisory Council (Corrections) Rep. Dorothy Bradley, Bozeman Qualifications (if required): public member	Governor	11/13/2003
Rev. Steven Rice, Miles City Qualifications (if required): public member	Governor	11/13/2003
Sen. Royal C. Johnson, Billings Qualifications (if required): public member	Governor	11/13/2003

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2003 through DECEMBER 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Department of Corrections Advisory Council (Corrections) cont.		
Mr. Dennis McCave, Billings Qualifications (if required): public member	Governor	11/13/2003
Rep. Jim Shockley, Victor Qualifications (if required): public member	Governor	11/13/2003
Sen. Tom Zook, Miles City Qualifications (if required): public member	Governor	11/13/2003
Sen. Bill Tash, Dillon Qualifications (if required): public member	Governor	11/13/2003
Lt. Gov. Karl Ohs, Harrison Qualifications (if required): public member	Governor	11/13/2003
Judge Deborah Kim Christopher, Polson Qualifications (if required): public member	Governor	11/13/2003
Rep. Steve Gallus, Butte Qualifications (if required): public member	Governor	11/13/2003
Rep. Carol C. Juneau, Browning Qualifications (if required): public member	Governor	11/13/2003
Judge Stewart Stadler, Whitefish Qualifications (if required): public member	Governor	11/13/2003
Mr. Bill Furois, East Helena Qualifications (if required): public member	Governor	11/13/2003
Ms. Gloria Edwards, Bozeman Qualifications (if required): public member	Governor	11/13/2003

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2003 through DECEMBER 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Department of Corrections Advisory Council (Corrections) cont.		
Ms. Leah Acord, Bozeman Qualifications (if required): public member	Governor	11/13/2003
Dr. Pat McGree, Butte Qualifications (if required): public member	Governor	11/13/2003
Mr. Tony Pfaff, Deer Lodge Qualifications (if required): public member	Governor	11/13/2003
Mr. Tom Blaz, Anaconda Qualifications (if required): public member	Governor	11/13/2003
Mr. Dick Boutillier, Great Falls Qualifications (if required): public member	Governor	11/13/2003
Ms. Lindsay Clodfelter, Missoula Qualifications (if required): public member	Governor	11/13/2003
Mr. Marty Lambert, Bozeman Qualifications (if required): public member	Governor	11/13/2003
Mr. Allan Underdal, Shelby Qualifications (if required): public member	Governor	11/13/2003
Historical Preservation Review Board (Montana Historical Society)		
Ms. Kathy Doeden, Miles City Qualifications (if required): public member	Governor	10/1/2003
Mr. Chris King, Winnett Qualifications (if required): public member	Governor	10/1/2003

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2003 through DECEMBER 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Historical Preservation Review Board (Montana Historical Society) cont. Ms. Germaine White, St. Ignatius Qualifications (if required): public member	Governor	10/1/2003
Independent Living Council (Public Health and Human Services) Mr. John Pipe, Poplar Qualifications (if required): representing consumers	Director	12/1/2003
Judicial Nomination Commission (Justice) Ms. Elizabeth Brennan, Missoula Qualifications (if required): none specified	Supreme Court	12/31/2003
Lewis and Clark Bicentennial Commission (Historical Society) Mr. John G. Lepley, Fort Benton Qualifications (if required): public member	Governor	10/1/2003
Ms. Kathy Doeden, Miles City Qualifications (if required): public member	Governor	10/1/2003
Mr. Darrell Martin, Hays Qualifications (if required): representative of a Montana Indian tribe	Governor	10/1/2003
Montana Alfalfa Seed Committee (Agriculture) Mr. John Wold, Laurel Qualifications (if required): representative of alfalfa seed growers	Governor	12/21/2003
Mr. Kim Martinson, Townsend Qualifications (if required): representative of alfalfa seed sellers	Governor	12/21/2003
Montana Geographic Information Council (Administration) Mr. Tony Herbert, Helena Qualifications (if required): designee of the director of the Department of Administration	Governor	11/28/2003

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2003 through DECEMBER 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Geographic Information Council (Administration) cont. Ms. Karen Strege, Helena Qualifications (if required): State Librarian	Governor	11/28/2003
Mr. Jon Sesso, Butte Qualifications (if required): representative of local government	Governor	11/28/2003
Mr. Lance Clampitt, Denver, CO Qualifications (if required): representative of federal government	Governor	11/28/2003
Mr. Stuart Blundell, Helena Qualifications (if required): representative of private business active in land information systems	Governor	11/28/2003
Mr. Richard Aspinall, Bozeman Qualifications (if required): representative of the university system	Governor	11/28/2003
Mr. Art Pembroke, Helena Qualifications (if required): representative of local government	Governor	11/28/2003
Mr. Michael Randall, Helena Qualifications (if required): representative of the Montana Department of Transportation	Governor	11/28/2003
Mr. Chris Smith, Helena Qualifications (if required): designee of a director of a state agency	Governor	11/28/2003
Mr. Steve Shannon, Butte Qualifications (if required): representative of public utilities	Governor	11/28/2003
Mr. Ken Jenkins, Missoula Qualifications (if required): president of the Montana Association of Land Surveyors	Governor	11/28/2003

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2003 through DECEMBER 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Geographic Information Council (Administration) cont.		
Mr. Martin Prather, Missoula Qualifications (if required): representative of federal government	Governor	11/28/2003
Ms. Dolores Cooney, Helena Qualifications (if required): designee of a director of a state agency	Governor	11/28/2003
Mr. Harold Blattie, Helena Qualifications (if required): representative of local government	Governor	11/28/2003
Mr. Tom Deiling, Billings Qualifications (if required): representative of federal government	Governor	11/28/2003
Ms. Kathie Jewell, Billings Qualifications (if required): representative of the Montana GIS Interagency Technical Working Group	Governor	11/28/2003
Mr. R.J. Zimmer, Helena Qualifications (if required): representative of the Montana Local Government GIS Coalition	Governor	11/28/2003
Mr. Don Wetzal, Jr., Billings Qualifications (if required): representative of Montana tribes	Governor	11/28/2003
Montana Higher Education Student Assistance Corporation (Education)		
Mr. Rick Bartos, Helena Qualifications (if required): at large member	Board of Regents	12/31/2003
Montana Vocational Rehabilitation Council (Public Health and Human Services)		
Mr. David E. Boyd, Sr., Poplar Qualifications (if required): federally mandated business industry and labor position	Director	10/1/2003

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2003 through DECEMBER 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Vocational Rehabilitation Council (Public Health and Human Services) cont.		
Mr. Mike Hermanson, Billings	Director	10/1/2003
Qualifications (if required): federally mandated advocate position		
Mr. Wayne Nankivel, Helena	Director	11/26/2003
Qualifications (if required): federally mandated business industry and labor position		
Noxious Weed Management Advisory Council (Agriculture)		
Rep. Bob Gilbert, Sidney	Director	10/12/2003
Qualifications (if required): Montana Weed Control Association		
Mr. Bob Marks, Clancy	Director	10/12/2003
Qualifications (if required): consumer group		
Mr. Charles M. Jarecki, Polson	Director	10/12/2003
Qualifications (if required): at-large member		
Mr. W. Ralph Peck, Helena	Director	10/12/2003
Qualifications (if required): Director		
Mr. Bob Ullom, Billings	Director	10/12/2003
Qualifications (if required): herbicide dealer and applicator		
Ms. Carol Sparks, Plevna	Director	10/12/2003
Qualifications (if required): livestock production		
Ms. Josie Dahlberg, Brockton	Director	10/12/2003
Qualifications (if required): agriculture crop production		
Ms. Ramona Ehnes, Great Falls	Director	10/12/2003
Qualifications (if required): sportsman/wildlife group		

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2003 through DECEMBER 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Noxious Weed Management Advisory Council (Agriculture) cont.		
Mr. Jerry Marks, Missoula Qualifications (if required): biological research and control	Director	10/12/2003
Mr. Jack Eddie, Dillon Qualifications (if required): Western County representative	Director	10/12/2003
Mr. Jerry Weber, Joliet Qualifications (if required): Eastern County representative	Director	10/12/2003
Noxious Weed Seed Free Forage Advisory Council (Agriculture)		
Mr. W. Ralph Peck, Helena Qualifications (if required): Director	Director	12/11/2003
Mr. LaMonte Schnur, Townsend Qualifications (if required): forage producer	Director	12/11/2003
Mr. Dennis Cash, Bozeman Qualifications (if required): ex officio	Director	12/11/2003
Mr. Ray Ditterline, Bozeman Qualifications (if required): ex officio	Director	12/11/2003
Mr. Kelly Flynn, Townsend Qualifications (if required): outfitters and guides	Director	12/11/2003
Mr. Clay Williams, Livingston Qualifications (if required): weed districts	Director	12/11/2003
Mr. Tim Schaff, Fishtail Qualifications (if required): forage producer	Director	12/11/2003

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2003 through DECEMBER 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Noxious Weed Seed Free Forage Advisory Council (Agriculture) cont. Mr. Wayne Maughn, Fort Benton Qualifications (if required): livestock/agriculture	Director	12/11/2003
Ms. Marcy Mack, Pablo Qualifications (if required): weed districts	Director	12/11/2003
Mr. David Leininger, Lewistown Qualifications (if required): forage producer	Director	12/11/2003
Mr. Ross Wagner, Kalispell Qualifications (if required): forage producer	Director	12/11/2003
Mr. Jim Pfau, Stevensville Qualifications (if required): feed pellets/cubes products	Director	12/11/2003
SABHRS Executive Advisory Council (Administration) Mr. Tony Herbert, Helena Qualifications (if required): Tier 1/Administration	Director	11/15/2003
Mr. Mike Billings, Helena Qualifications (if required): Tier 2/DPHHS	Director	11/15/2003
Mr. Terry Johnson, Helena Qualifications (if required): Tier 1/Legislative Branch	Director	11/15/2003
Ms. Lynn Chenoweth, Helena Qualifications (if required): Tier 3	Director	11/15/2003
Ms. Cathy Muri, Helena Qualifications (if required): Tier 1/Administration	Director	11/15/2003

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2003 through DECEMBER 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
SABHRS Executive Advisory Council (Administration) cont. Ms. Jane Hamman, Helena Qualifications (if required): Tier 1/Governor's Office	Director	11/15/2003
Ms. Frieda Houser, Helena Qualifications (if required): Tier 5	Director	11/15/2003
Mr. John McEwen, Helena Qualifications (if required): Tier 1/Administration	Director	11/15/2003
Ms. Tammy Peterson, Helena Qualifications (if required): Tier 3	Director	11/15/2003
Ms. Ann Bauchman, Helena Qualifications (if required): Tier 4	Director	11/15/2003
Ms. Teri Juneau, Helena Qualifications (if required): Tier 4	Director	11/15/2003
Mr. Darrell Zook, Helena Qualifications (if required): Tier 2/MDT	Director	11/15/2003
Ms. Julia Dilly, Helena Qualifications (if required): Tier 2/OPI	Director	11/15/2003
Mr. D.J. Whitaker, Helena Qualifications (if required): Tier 2/CHE	Director	11/15/2003
Mr. David Clark-Snustad, Helena Qualifications (if required): Tier 3	Director	11/15/2003
Ms. Ann Danzer, Helena Qualifications (if required): Tier 4	Director	11/15/2003

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2003 through DECEMBER 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
SABHRS Executive Advisory Council (Administration) cont. Ms. Kris Schmitz, Helena Qualifications (if required): Tier 6	Director	11/15/2003
State Emergency Response Commission (Military Affairs) Mr. Craig B. Palmer, Helena Qualifications (if required): representing the Department of Justice	Governor	10/1/2003
Mr. Paul Spengler, Helena Qualifications (if required): representing local emergency medical responders	Governor	10/1/2003
Sen. Barry "Spook" Stang, Helena Qualifications (if required): public member	Governor	10/1/2003
Sen. Thomas Beck, Helena Qualifications (if required): representative of the Governor's Office	Governor	10/1/2003
Mr. Thomas Ellerhoff, Helena Qualifications (if required): representing the Department of Environmental Quality	Governor	10/1/2003
Mr. William T. Rhoads, Butte Qualifications (if required): representing a Montana utility company	Governor	10/1/2003
Sheriff Clifford Brophy, Columbus Qualifications (if required): representing local law enforcement agencies	Governor	10/1/2003
Mr. Seldon Weedon, Great Falls Qualifications (if required): representing state fire organizations	Governor	10/1/2003
Mr. Tim Murphy, Missoula Qualifications (if required): representing the Department of Natural Resources and Conservation	Governor	10/1/2003

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2003 through DECEMBER 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Emergency Response Commission (Military Affairs) cont.		
Mr. Donald Skaar, Helena	Governor	10/1/2003
Qualifications (if required): representing the Department of Fish, Wildlife, and Parks		
Mr. Terry Phillips, Helena	Governor	10/1/2003
Qualifications (if required): representing state fire organizations		
Ms. Carole Raymond, Forsyth	Governor	10/1/2003
Qualifications (if required): representing local emergency medical responders		
Mr. Jim Greene, Helena	Governor	10/1/2003
Qualifications (if required): representing the National Guard		
Mr. Royce A. Shipley, Great Falls	Governor	10/1/2003
Qualifications (if required): representing Malmstrom Air Force Base		
Ms. Lorrie Leighton-Boster, Helena	Governor	10/1/2003
Qualifications (if required): representative of Department of Public Health and Human Services		
Mr. Jim Hyatt, Helena	Governor	10/1/2003
Qualifications (if required): Department of Transportation representative		
Mr. Steve Larson, Helena	Governor	10/1/2003
Qualifications (if required): representative of local fire departments		
Brig. Gen. Frank Tobel, Helena	Governor	10/1/2003
Qualifications (if required): representative of National Guard		
Mr. Jim Johnson, Missoula	Governor	10/1/2003
Qualifications (if required): representative of a railroad company		

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2003 through DECEMBER 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Emergency Response Commission (Military Affairs) cont.		
Ms. Jolene Jacobson, Pablo	Governor	10/1/2003
Qualifications (if required): representative of the Tribal Emergency Response Committee		
Tow Truck Dispute Resolution Advisory Council (Attorney General)		
Col. Bert Obert, Helena	Attorney General	10/1/2003
Qualifications (if required): highway patrol		
Mr. Maurice W. Quanbeck, Bozeman	Attorney General	10/1/2003
Qualifications (if required): tow truck industry		
Mr. Dennis Eddelmon, Helena	Attorney General	10/1/2003
Qualifications (if required): motor carrier services division		
Trauma Care Committee (Public Health and Human Services)		
Dr. Joseph Leal, Glendive	Governor	11/2/2003
Qualifications (if required): representing the Eastern Regional Trauma Advisory Committee		
Dr. Michael B. Orcutt, Great Falls	Governor	11/2/2003
Qualifications (if required): representing the Central Regional Trauma Advisory Committee		
Dr. Kendall Flint, Browning	Governor	11/2/2003
Qualifications (if required): representing Indian Health Service		
Dr. Gregory J. Moore, Missoula	Governor	11/2/2003
Qualifications (if required): representing the Western Regional Trauma Advisory Committee		
Ms. Colleen Overcast, Chinook	Governor	11/2/2003
Qualifications (if required): representing Montana Emergency Medical Services Association		

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<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Trauma Care Committee (Public Health and Human Services) cont.		
Mr. Michael P. McGree, Butte	Governor	11/2/2003
Qualifications (if required): representing the Montana Private Ambulance Operators		
Dr. Douglas Kuntzweiler, Clancy	Governor	11/2/2003
Qualifications (if required): representing the American College of Emergency Physicians		
Dr. Thomas Bennett, Billings	Governor	11/2/2003
Qualifications (if required): representing the Eastern Regional Trauma Advisory Committee		
Upland Game Bird Advisory Council (Fish, Wildlife, and Parks)		
Mr. Ben Deeble, Missoula	Director	11/1/2003
Qualifications (if required): none specified		
Mr. Robert Eng, Bozeman	Director	11/1/2003
Qualifications (if required): none specified		
Mr. Richard Kirstein, Scobey	Director	11/1/2003
Qualifications (if required): none specified		
Mr. Marty Lau, Great Falls	Director	11/1/2003
Qualifications (if required): none specified		
Mr. Dale Manning, Missoula	Director	11/1/2003
Qualifications (if required): none specified		
Mr. Ellis Misner, Fairfield	Director	11/1/2003
Qualifications (if required): none specified		
Mr. Pat Pierson, Red Lodge	Director	11/1/2003
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2003 through DECEMBER 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Upland Game Bird Advisory Council (Fish, Wildlife, and Parks) cont. Mr. Craig Roberts, Lewistown Qualifications (if required): none specified	Director	11/1/2003
Mr. Dale Tribby, Miles City Qualifications (if required): none specified	Director	11/1/2003
Mr. Ben Williams, Livingston Qualifications (if required): none specified	Director	11/1/2003
Mr. Lowell Young, Plentywood Qualifications (if required): none specified	Director	11/1/2003
Water and Wastewater Operators Advisory Council (Environmental Quality) Mr. Robert Cottom, Dillon Qualifications (if required): wastewater treatment plant operator holding a valid certificate	Governor	10/16/2003