

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 16

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED AMENDMENT,
amendment of ARM 2.5.201,	)	ADOPTION, AND REPEAL
2.5.202, 2.5.301, 2.5.302,	)	
2.5.402, 2.5.406, 2.5.502,	)	NO PUBLIC HEARING CONTEMPLATED
2.5.505, 2.5.509, 2.5.601,	)	
2.5.603 and 2.5.604, the	)	
adoption of New Rules I	)	
through III, and the repeal	)	
of ARM 2.5.403 concerning	)	
state procurement of	)	
supplies and services	)	

TO: All Concerned Persons

1. On October 1, 2001, the Department of Administration proposes to amend ARM 2.5.201, 2.5.202, 2.5.301, 2.5.302, 2.5.402, 2.5.406, 2.5.502, 2.5.505, 2.5.509, 2.5.601, 2.5.603 and 2.5.604, to adopt new rules I through III, and to repeal ARM 2.5.403 concerning state procurement of supplies and services.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on September 14, 2001, to advise us of the nature of the accommodation that you need. Please contact Sheryl Olson, State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135, telephone (406) 444-3315; fax (406) 444-2529.

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

2.5.201 DEFINITIONS

(1) and (2) remain the same.

(3) "Alternate procurement method" means a method of procuring supplies or services in a manner not specifically described in law, but instead authorized by the department under 18-4-302, MCA, following the requirements of 18-4-122, MCA.

(3) through (13) remain the same, but are renumbered (4) through (14).

~~(14) "Montana made" means manufactured or produced in the state and made with the use of parts, material, or supplies of which 50% or more were manufactured or produced in this state; or employment of persons of whom 50% or more are bona fide residents of Montana as defined in 18-2-401, MCA.~~

(15) "Lease-purchase agreement" means a lease contract containing a purchase option in which the lessee's periodic payments or parts thereof may be applied to serve both as the rental obligation and as installments for acquiring ownership of the property upon lessee exercising the purchasing option; a conditional sales contract.

(15) through (17) remain the same, but are renumbered (16) through (18).

(19) "Procurement" means acquisition with or without cost, buying, purchasing, renting, leasing, or otherwise acquiring any supplies or services. It includes all functions that pertain to the obtaining of any supply or service, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration. It does not include the acquiring of supplies or services by gift.

(18) remains the same, but is renumbered (20).

~~(19)~~ (21) "Publications and graphics bureau" "Print and mail services" means that bureau of the division responsible for supervising and attending to all public printing of the state and handling and processing of state mail for the capitol complex.

(20) through (25) remain the same, but are renumbered (22) through (26).

~~(26)~~ (27) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which that will assure ensure good faith performance.

~~(27)~~ (28) "Responsive bidder or offeror" means a person who has submitted a bid or offer which that conforms in all material respects to the invitation for bids or request for proposals.

(28) through (30) remain the same, but are renumbered (29) through (31).

~~(31)~~ (32) "State procurement bureau" means that bureau of the division responsible for procuring or supervising the procurement of all supplies and services needed by the state excluding those services procured by the property and supply bureau and publications and graphics bureau.

(32) and (33) remain the same, but are renumbered (33) and (34).

(35) "Total contract value" means the initial contract period and any options to renew.

(34) through (36) remain the same, but are renumbered (36) through (38).

AUTH: Sec. 18-1-114 and 18-4-221, MCA

IMP: Sec. 18-4-221, MCA

Reason: Through the passage of SB 90, the 2001 Legislature added and deleted definitions that affect the procurement of state supplies and services (Ch. 181, L. 2001). The above changes have been incorporated into ARM 2.5.201 for the convenience of those agencies subject to the Montana

Procurement Act. In addition, an internal reorganization of the Procurement and Printing Division has resulted in a bureau name change. The addition of subsection (15) is to provide the National Association of State Purchasing Official's definition of "lease-purchase agreement." The addition of subsection (35) is necessary to clarify the purchasing authority of state agencies.

2.5.202 DEPARTMENT OF ADMINISTRATION RESPONSIBILITIES

(1) remains the same.

(2) The department's procurement and printing division will establish a vendors list, determine eligibility for reciprocal residence preference of vendors for purchases made under Title 18, chapter 4, MCA, investigate complaints against vendors, and remove vendors from the state list as described in ARM 2.5.401, 2.5.402, 2.5.403, and 2.5.407.

(3) and (4) remain the same.

(5) The department is responsible for the review and approval of the following equipment or service procurements regardless of delegated authority:

(a) all printing-related equipment involving duplicating, printing, bindery, and graphic arts for state agencies within a 10-mile radius of the capitol area--approval by the publications and graphics bureau print and mail services is required;

(b) data processing equipment, software and contracts information technology resources, including hardware, software, and associated services and infrastructure used to store or transmit information in any form, including voice, video, and electronic data--approval by the information technology services division is required, except as provided in 2-17-501, MCA. 2-17-516, MCA;

(c) communications equipment and systems--approval by information technology services division is required; and

(d) mail equipment to be used within a 10-mile radius of the capitol area--approval by the procurement and printing division print and mail services is required.

(6) Delegation of authority. The department's procurement and printing division delegates its procurement authority as follows:

(a) Except for controlled items, or as specified in (5), authority is hereby delegated to all agencies for the procurement of supplies and services of \$5,000 or less;

(b) The department's procurement and printing division may delegate to agencies, authority to purchase supplies and services when the total contract value is expected to be greater than \$5,000. The division may also revoke this authority. Factors to be considered in making the decision to delegate include may be granted or revoked after consideration of the following factors:

(i) the expertise of the potential delegate in terms of procurement knowledge and any specialized knowledge pertinent to the authority to be delegated;

(ii) the past experience of the potential delegate in exercising similar authority;

(iii) the degree of economy and efficiency to be achieved in meeting the state's requirements if authority is delegated; and

(iv) the consistency of delegation under similar circumstances.

(c) Delegation greater than \$5,000 will be given through a written delegation agreement with the state procurement bureau. The written delegation shall specify:

(i) the activity or function authorized;

(ii) any limits or restrictions on the exercise of the delegated authority;

(iii) whether the authority may be further delegated; and

(iv) the duration of the delegation.

~~(d)~~(7) The department's procurement and printing division will provide training to agencies on purchasing in accordance with delegated responsibilities.

~~(e)~~(8) The department's procurement and printing division may perform reviews of agency purchasing procedures to insure compliance with the delegation agreement, these rules and Title 18, chapter 4, MCA.

~~(7)~~(9) The department's property and supply bureau will dispose of, or supervise the disposal of, all surplus supplies belonging to the state as provided in ARM 2.5.701 and 2.5.702.

AUTH: Sec. 18-4-221, MCA

IMP: Sec. 2-17-301, ~~2-17-302~~, 2-17-512, 18-4-221, 18-4-222, MCA,

Reason: The amendment to subsection (1) is made necessary by the passage of SB 90 by the 2001 Legislature (Ch. 181, L. 2001). An internal reorganization of the Procurement and Printing Division necessitates the bureau name change in subsections (5)(a) and (d). The changes to subsections (5)(b) and (c) are made necessary by the passage of SB 131 by the 2001 Montana Legislature (Ch. 313, L. 2001). The amendments to subsection (6) are necessary to clarify the purchasing authority of state agencies and make changes recommended by the Administrative Rules Bureau.

2.5.301 DELEGATION OF PURCHASING AUTHORITY (1) Agencies may exercise authority to purchase non-controlled items with a total contract value of \$5,000 or less. Agencies may exercise delegated purchasing authority greater than \$5,000 and for exigency purchases in accordance with written delegation agreements described in ARM 2.5.202, with the Montana Procurement Act and with these rules.

(2) remains the same.

(3) Delegation and competitive procedures are not necessary for the following purchases: salaries; fees for those professions exempted by 18-4-132, MCA; travel and per diem; ~~insurance~~; retirement and social security payments; freight; landfill charges; supplies or services whose prices



are regulated by the public service commission or other governmental authority; pastoral services; training; training and conference space rental and catering; and fresh fruits and vegetables.

AUTH: Sec. 18-4-221, MCA

IMP: Sec. 18-4-221, 18-4-222 and 18-4-302, MCA

Reason: The amendments are necessary to clarify the purchasing authority of state agencies.

#### 2.5.302 REQUISITIONS FROM THE AGENCIES TO THE DIVISION

(1) All agencies must complete the division's requisition form when a state purchase order or contract is required from the division. The requisition must be signed or electronically approved by an authorized agency official. Only items of a like nature (items ordinarily procurable from the same vendor) to be billed to one location shall be combined on one requisition. A separate requisition is required for each billing location. The requisition must be accompanied by specifications as described in ARM 2.5.501. Completed requisitions for coarse paper, computer paper, computer software supported by information technology services division, fine paper, forms, flags, fire extinguishers, janitorial supplies, and office supplies shall be forwarded to the property and supply bureau; requisitions for printing shall be forwarded to ~~publications and graphics bureau~~ print and mail services. Completed requisitions for supplies and services (not listed above) shall be forwarded to the state procurement bureau.

(2) through (5) remain the same.

AUTH: Sec. 18-4-221, MCA

IMP: Sec. 18-4-221, MCA

Reason: The amendments are necessary for clarification and to reflect name changes necessitated by the passage of SB 131 by the 2001 Montana Legislature (Ch. 313, L. 2001) and an internal reorganization within the Procurement and Printing Division.

#### 2.5.402 SUSPENSION OR REMOVAL FROM VENDORS LIST

(1) The division has the authority to suspend or remove a vendor from the vendors list if the division determines the vendor:

(a) has falsely submitted an affidavit for preference Montana residency; or

(b) is not a responsible or responsive vendor as defined in 18-4-301, MCA, and ARM 2.5.201 and 2.5.407.

(2) The division may suspend a vendor from the vendors list upon written determination by the division that probable cause exists for suspension under 18-1-113 and 18-4-241, MCA. A notice of suspension, including a copy of the determination, shall be sent to the affected vendor. The notice must state that:

(a) the suspension is for the period it takes to complete an investigation into possible removal;

(b) bids or proposals will not be accepted from the suspended vendor during the period of suspension; and

(c) the suspended vendor may request a redetermination.

~~(d)~~(3) Suspension is effective upon the notice of suspension and, unless the suspension is terminated by the division or a court, it will remain in effect until its expiration date.

~~(3)~~(4) The division may remove a vendor from the vendors list for cause:

~~(a)~~ upon written determination by the division that cause exists under 18-1-113 and 18-4-241, MCA.

~~(b)~~(5) ~~The~~ division shall prepare a written decision regarding a removal and send a copy to the affected vendor. The decision shall:

~~(a)~~ recite the facts relied upon;

~~(b)~~ indicate the term of the removal;

~~(c)~~ indicate the reasons for the action; and

~~(d)~~ indicate to what extent affiliates are affected.

~~(e)~~(6) ~~Removal~~ is effective upon issuance and remains effective until its expiration date unless otherwise terminated.

~~(4)~~(7) The division may remove a vendor from the vendors list for failure to respond to invitation for bids or proposals on three consecutive solicitations of those items. Prospective bidders and offerors may be reinstated on such lists as described in ARM 2.5.401.

~~(5)~~(8) The department shall maintain a list of vendors removed or suspended from the vendors list. The list shall be available to all state agencies and the public upon request.

AUTH: Sec. 18-4-221, MCA

IMP: Sec. 18-4-241 and 18-4-308, MCA

Reason: The amendment in subsection (1) is necessitated by the passage of SB 90 by the 2001 Legislature (Ch. 181, L. 2001). Other changes to the rule are at the suggestion of the Administrative Rules Bureau.

2.5.406 VENDOR PROTEST (1) Except for small purchases or limited solicitations made pursuant to 18-4-305, MCA, a bidder, offeror, or contractor aggrieved in connection with the solicitation, award, or administration of a contract may protest to the department. Protests involving a solicitation or award must follow the provisions of 18-4-242, MCA. The protest must be in writing and state in detail all of the protestor's objections and allegations of violations of the Montana procurement act. The complete protest must be submitted to the department no later than the close of business 14 calendar days after the execution of the contract in question. The department may exercise its discretion when it decides what is in the best interest of the state.

(2) through (4) remain the same.

AUTH: Sec. 18-4-221, MCA

IMP: Sec. 18-1-402 and 18-4-221, MCA

Reason: The amendment is reasonably necessary to provide clarification of the vendor protest procedure.

2.5.502 BID, PROPOSAL, AND CONTRACT PERFORMANCE SECURITY

(1) and (2) remain the same.

(3) The preferred types of security are bonds as described in 18-4-312(3)(a), MCA, and cash as described in 18-4-312(3)(c) and (d), MCA. The security must be payable to the state of Montana and the contract performance security must remain in effect for the entire contract period. The department will supply bid and proposal security bond and contract performance security bond forms when security is required. These are the only acceptable forms for bond submission.

(a) If a certificate of deposit, money market certificate, cashier's check, certified check, irrevocable letter of credit, bank money order, or bank draft is determined to be acceptable, it must be issued from a federally chartered or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation or that is drawn and issued by a credit union insured by the national credit union share insurance fund.

(b) Irrevocable letters of credit in excess of \$100,000 will not be accepted as security for contracts.

(c) Facsimile copies of bid or contract security are not acceptable.

(d) Certificates of deposit or money market certificates will not be accepted as security for bid, proposal, or contract security unless the certificates are assigned only to the state. All interest income from these certificates must accrue only to the contractor and not the state.

(4) and (5) remain the same.

AUTH: Sec. 18-4-221, MCA

IMP: Sec. 18-1-201 and 18-4-312, MCA

Reason: The amendment is reasonably necessary to inform vendors that only bond forms supplied by the Department of Administration will be acceptable.

2.5.505 MISTAKES AND MINOR VARIATIONS IN BIDS AND OFFERS

(1) and (2) remain the same.

(3) The division administrator of the procurement and printing division or designee may waive minor variations in a bid, ~~or offer, or solicitation.~~

AUTH: Sec. 18-4-221, MCA

IMP: Sec. 18-4-303 and 18-4-304, MCA

Reason: The amendment is to provide for waiver of minor variations in a solicitation.

2.5.509 LATE BIDS OR PROPOSALS (1) Regardless of cause, late bids and proposals will not be accepted and will automatically be disqualified from further consideration. It shall be solely the vendor's ~~sole~~ risk to assure delivery at the specified office by the specified time.

(2) remains the same.

AUTH: Sec. 18-4-221, MCA

IMP: Sec. 18-4-221, MCA

Reason: The amendment is to add clarity to the sentence.

2.5.601 COMPETITIVE SEALED BIDS

(1) through (7) remain the same.

(8) Following determination of product acceptability, bids will be reviewed to determine which bidder offers the lowest cost to the state in accordance with the specifications set forth in the invitation for bids, including the reciprocal preference provisions described in ~~ARM 2.5.403~~ RULE I.

(9) and (10) remain the same.

(11) The discretion of the division or the head of a purchasing agency, will be used to resolve tie bids ~~not resolved by the provisions of 18-1-111, MCA.~~

(12) through (15) remain the same.

AUTH: Sec. 18-4-221, MCA

IMP: Sec. 18-4-303, MCA

Reason: The amendment is necessitated by the passage of SB 90 by the 2001 Legislature (Ch. 181, L. 2001).

2.5.603 SMALL PURCHASES OR LIMITED SOLICITATIONS OF SUPPLIES AND SERVICES (1) The division or state agency may procure supplies or services ~~costing when the total contract value will be~~ \$5,000 or less using a purchase technique that best meets the agency's needs.

(2) The division or state agency, if authorized in a written delegation agreement, may procure supplies or services ~~costing~~ with a total contract value between \$5,001 and \$~~125,000~~ using a limited solicitation procedure. This procedure requires a minimum of three viable written or oral quotations, if available. The limited solicitation procedure must be documented and, wherever practical, use the department's vendor list.

(3) This rule does not apply to controlled items purchased through exclusive term contracts, requisition time schedules, the central stores program or ~~the publications and graphics bureau print and mail services~~ unless specifically delegated in a written delegation agreement to the agency.

(4) Procurements shall not be artificially divided or sequenced to avoid using the other source selection methods set forth in Title 18, chapter 4, MCA.

AUTH: Sec. 18-4-221, MCA

IMP: Sec. 18-4-305, MCA

Reason: The amendments to subsections (1) and (2) are necessary to clarify the purchasing power of state agencies and to revise the dollar limit for limited solicitation. The amendment to subsection (3) is necessary because an internal reorganization of the Procurement and Printing Division resulted in a bureau name change.

2.5.604 SOLE SOURCE PROCUREMENT (1) The provisions of this rule apply to all sole source procurements of \$5,000 or greater unless exigency procurements described in ARM 2.5.605 are necessary.

(2) ~~Sole source procurement is not permissible unless a required item is available from only a single supplier. A requirement for a particular proprietary item does not justify a sole source procurement if there is more than one potential bidder or offeror for that item. The following are examples of circumstances which could necessitate sole source procurement:~~ under the following circumstances:

(a) ~~The~~ compatibility of current services or equipment, accessories, or replacement parts is the paramount consideration; or

(b) ~~There is no existent equivalent product; or~~

(c) only one source is acceptable or suitable for the supply or service item.

(3) For purchases with a total contract value greater than \$5,000, the determination as to whether a procurement shall be made as a sole source shall be made by the division, unless specifically authorized in a written agency delegation agreement. In cases of reasonable doubt, competition should be solicited. A request by a state agency to the division that a procurement be restricted to one vendor must be accompanied by a written justification.

(4) remains the same.

(5) For the purpose of complying with 18-4-306, MCA, a record of sole source procurements greater than \$5,000 shall be maintained by the procuring agency using the "Sole Source Procurement Justification" form provided by the department. ~~that lists:~~

~~(a) each vendor's name;~~

~~(b) the amount and type of each contract;~~

~~(c) a listing of the supplies or services procured under each contract; and~~

~~(d) the identification number of each contract file.~~

(6) The following items do not require sole source justification and shall be purchased directly by the agency regardless of delegated authority:

(a) professional licenses;

(b) dues to associations;

(c) renewal of software license agreements; or

(d) purchase or renewal of maintenance agreements for software or hardware.

AUTH: Sec. 18-4-221, MCA

IMP: Sec. 18-4-306, MCA

Reason: The amendments are reasonably necessary to provide further clarification of the requirements for sole source procurement as amended by passage of SB 90 by the 2001 Legislature (Ch. 181, L. 2001).

4. The proposed rules provide as follows:

RULE I RECIPROCAL PREFERENCE (1) Section 18-1-102, MCA, requires a state agency to apply a reciprocal preference to the bid of a nonresident bidder equal to the percent of the preference given to the bidder in the state or country in which the bidder is a resident. Each of the following conditions must be met before a reciprocal preference is applied to a nonresident bidder:

(a) the lowest responsible and responsive bidder is from a state or country that gives a resident procurement preference;

(b) the next lowest responsible and responsive bidder is a Montana resident bidder as defined in 18-1-103, MCA. A resident bidder must complete a bidder affidavit at the request of the department to verify resident eligibility. This affidavit must be on file with the department before a bid award can be made;

(c) the item being purchased does not involve:

(i) a competitive sealed proposal process (request for proposal) as defined in 18-4-304, MCA and ARM 2.5.603;

(ii) a small purchase or limited solicitation as defined in 18-4-305, MCA, and ARM 2.5.603;

(iii) a cooperative purchase as defined in 18-4-401, MCA;

(iv) procurements involving services as defined in 18-4-123, MCA; or

(v) procurements involving federal funds obtained from the federal government, including term contracts, except in those cases where applicable federal statutes expressly mandate geographic preference.

(d) if it is determined that the nonresident bidder would receive a percentage preference in its resident state, that percent is added to the bid of the nonresident bidder; and

(e) if the nonresident bidder is still the lowest responsive and responsible bidder after the preference adjustment has been made, and the contract price is the price bid, not the adjusted price.

(2) The business name and federal identification number on the Montana resident affidavit must match the business name and federal identification number on the submitted bid documents in order to be considered for the application of reciprocal preference.

AUTH: Sec. 18-1-114 and 18-4-221, MCA

IMP: Sec. 18-1-102, MCA

Reason: This new rule implements changes made to the procurement statutes by the passage of SB 90 by the 2001 Legislature (Ch. 181, L. 2001).

RULE II DIRECT NEGOTIATION (1) When none of the invitations for bids or requests for proposals received in response to a valid solicitation are from a responsible and responsive bidder or offeror, as defined in 18-4-301, MCA, the procurement officer may:

(a) cancel and reissue the solicitation. If the procurement officer reissues the solicitation, the procurement officer shall attempt to increase the number of potential vendors and may modify any specification in the original solicitation to enhance vendor participation; or

(b) if approved by the department, directly negotiate with a vendor or vendors if the procurement officer determines that a second or subsequent solicitation would also be unsuccessful. The procurement officer may conduct negotiations as appropriate, as to price, delivery, and terms.

(2) Subject to conditions in (1) and the intent of 18-4-122, MCA, the determination as to whether a procurement will be made by direct negotiation must be in writing, must state the basis for the direct negotiation and for the selection of a particular vendor, and must be approved by the department.

AUTH: Sec. 18-4-133 and 18-4-221, MCA

IMP: Sec. 18-4-133, MCA

Reason: This new rule implements changes made to the procurement statutes by the passage of SB 90 by the 2001 Legislature (Ch. 181, L. 2001).

RULE III ALTERNATIVE PROCUREMENT METHODS (1) An agency may request authorization from the department to pursue an alternative procurement method for obtaining a supply or service.

(2) If an alternative procurement method is approved, the department shall:

(a) conduct the procurement on behalf of the agency;

(b) notify potential vendors of the alternative procurement method being used for the supply or service; and

(c) make a written determination as to the success of the method.

AUTH: Sec. 18-4-221, MCA

IMP: Sec. 18-4-302, MCA

Reason: This new rule implements changes made to the procurement statutes by the passage of SB 90 by the 2001 Legislature (Ch. 181, L. 2001).

5. ARM 2.5.403, the rule proposed to be repealed, is on page 2-144 of the Administrative Rules of Montana.

AUTH: Sec. 18-1-114 and 18-4-221, MCA

IMP: Sec. 18-4-221, MCA

Reason: The passage of SB 90 by the 2001 Legislature (Ch. 181, L. 2001) necessitates the repeal of this rule.

6. Concerned persons may submit their data, views and arguments orally or in writing at a public hearing. They must make written request for a hearing and submit this request, along with any written comments they have to Sheryl Olson, State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135, telephone: (406) 444-3315; fax (406) 444-2529, no later than 5 p.m. on September 21, 2001.

7. If persons who are directly affected by the proposed amendment, adoption and/or repeal wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request, along with any written comments they have, to Sheryl Olson, State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135, telephone: (406) 444-3315; fax (406) 444-2529. A written request for hearing must be received no later than 5 p.m. on September 21, 2001.

8. If the agency receives requests for a public hearing on the proposed action(s) from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed actions; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25 based on the number of possible vendors.

9. 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 that the person wishes to receive notice regarding state procurement. Such written request may be mailed or delivered to Sheryl Olson, P.O. Box 200135, Helena, MT 59620-0135, faxed to the office at (406) 444-2529, or may be made by completing a request form at any rules hearing held by the Department of Administration.

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

By: Barbara Ranf  
BARBARA RANF, Director  
Department of Administration



Dal Smilie  
DAL SMILIE, Rule Reviewer

Certified to the Secretary of State August 13, 2001.

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

In the matter of the proposed )	
amendment of ARM 6.6.4202, )	NOTICE OF PUBLIC HEARING
6.6.4203, 6.6.4204, 6.6.4205, )	
6.6.4209, 6.6.4210, 6.6.4211, )	
6.6.4212, and adoption of )	
Rule I pertaining to )	
continuing education program )	
for insurance producers and )	
consultants )	

TO: All Concerned Persons

1. On July 5, 2001, the State Auditor and Commissioner of Insurance published a notice at page 1161 of the 2001 Montana Administrative Register, Issue Number 13, of the proposed amendment and adoption of the above-captioned rules. The notice of proposed agency action is amended as follows because the required number of persons designated therein have requested a public hearing.

2. On September 25, 2001, a public hearing will be held in the 2nd floor conference room of the State Auditor's Office, 840 Helena Avenue, Helena, Montana, to consider the amendment of ARM 6.6.4202, 6.6.4203, 6.6.4204, 6.6.4205, 6.6.4209, 6.6.4210, 6.6.4211, 6.6.4212, and adoption of Rule I pertaining to continuing education program for insurance producers and consultants.

3. The State Auditor's Office will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the office no later than 5:00 p.m., September 17, 2001, to advise us as to the nature of the accommodation needed. Please contact Kevin Phillips, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601; telephone (406) 444-3496; Montana Relay 1-800-332-6145; TDD (406) 444-3246; facsimile (406) 444-3497; or e-mail to kephillips@state.mt.us.

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 Kevin F. Phillips, Montana Insurance Department, 840 Helena Avenue, Helena, Montana 59601, or by e-mail to kephillips@state.mt.us, and must be received no later than October 2, 2001.

5. Kevin E. Phillips has been designated to preside over and conduct the hearing.

6. The State Auditor's Office maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies whether the person wishes to receive notices regarding insurance rules, securities rules, or both. Such written request may be mailed or delivered to the State Auditor's Office, 840 Helena Avenue, Helena, MT 59601, faxed to 406-444-3497, e-mailed to dsautter@state.mt.us, or may be made by completing a request form at any rules hearing held by the State Auditor's Office.

JOHN MORRISON, State Auditor  
and Commissioner of Securities

By: /s/ Angela Caruso  
Angela Caruso  
Deputy Insurance Commissioner

By: /s/ Elizabeth L. Griffing  
Elizabeth L. Griffing  
Rules Reviewer

Certified to the Secretary of State on August 13, 2001.

BEFORE THE BOARD OF HOUSING  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the adoption ) NOTICE OF PUBLIC  
of rules pertaining to the ) HEARING ON PROPOSED  
affordable housing revolving ) ADOPTION OF RULES  
loan fund and TANF housing )  
assistance funds )

TO: All Concerned Persons

1. On September 19, 2001, at 1:00 p.m., in the meeting room at the Bozeman Comfort Inn, 1370 North 7th Ave., Bozeman, Montana, the Board of Housing will hold a public hearing to consider the proposed adoption of the above-stated rules pertaining to the affordable housing revolving loan fund and TANF housing assistance funds.

2. The Board of Housing will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Housing no later than 5:00 p.m. on September 17, 2001, to advise us of the nature of the accommodation that you need. Please contact Diana Hall, 836 Front Street, P.O. Box 200528, Helena, Montana 59620-0528; telephone (406)444-3040; Fax (406)444-4688; e-mail dihall@state.mt.us.

3. The proposed rules will read as follows:

I PURPOSE OF REGULATIONS (1) These rules are enacted by the board to provide explanation and guidance for:

(a) loans from the affordable housing revolving loan account authorized by 90-6-133(2)(a) and 90-6-134, MCA, pursuant to the criteria and procedures described in [RULES III through VII]; and

(b) loans from the TANF program of the affordable housing revolving loan account authorized by 90-6-133(2)(b), MCA, pursuant to the criteria and procedures described in [RULES VIII through XV].

AUTH: Sec. 90-6-136, MCA; IMP: Sec. 90-6-134, MCA

II DEFINITIONS When used in these rules, unless the context clearly requires a different meaning:

(1) "Board" means the Montana board of housing created by 2-15-1814, MCA.

(2) "Caretaker relative" means an adult relative of a minor child related by blood, marriage or adoption within the fifth degree of kinship.

(3) "Federal poverty guidelines" means the poverty guidelines updated annually in the Federal Register by the U.S. department of health and human services under the authority of 42 U.S.C. 9902(2).

(4) "Housing assistance organization" means any local government, tribal government, local housing authority, nonprofit community or neighborhood based organization, or regional or statewide nonprofit housing assistance organization with experience in providing assistance to low and moderate income households with housing issues.

(5) "Loan supplement" means the loan supplement to the uniform application published by the board, a copy of which may be obtained by contacting the board by mail at P.O. Box 200528, Helena, Montana 59620-0528, by telephone at (406) 444-3040 or at the board's web site "<http://commerce.state.us/Housing/index.html>".

(6) "Median income" means median income as determined by the U.S. department of housing and urban development, with adjustments for smaller or larger families.

(7) "RLA loan" means a loan made from the revolving loan account authorized by 90-6-133(2)(a) and 90-6-134, MCA, and described in [RULES III through VII].

(8) "Rural area" means any area a distance of at least five miles from an incorporated city or town with a population in excess of 15,000 according to the latest estimate published by the United States census bureau.

(9) "Small city or town" means an incorporated city or town with a population of less than 15,000 according to the latest estimate published by the United States census bureau.

(10) "TANF line of credit" means a line of credit extended by the board to a housing assistance organization for the purpose of making TANF loans to eligible recipients, and described in [RULES VIII through XI].

(11) "TANF loan" means a loan to an eligible recipient by a housing assistance organization from a TANF line of credit of a housing assistance organization authorized by 90-6-133(2)(b), under the temporary assistance for needy families block grant pursuant to Title IV of the Social Security Act, 42 U.S.C. 601, et seq., and described in [RULES XII through XV].

(12) "Uniform application" means the Montana Board of Housing Uniform Application published by the board, a copy of which may be obtained by contacting the board by mail at P.O. Box 200528, Helena, Montana 59620-0528, by telephone at (406) 444-3040, or at the board's web site "<http://commerce.state.us/Housing/index.html>".

AUTH: Sec. 90-6-136, MCA; IMP: Sec. 90-6-134, MCA

III RLA LOAN ELIGIBLE LOAN ACTIVITIES (1) The board may make an RLA loan for the following purposes:

(a) matching funds for public or private funds available from other sources for the development of housing for low-income or moderate income households;

(b) bridge financing necessary to make development of housing for low-income or moderate income households feasible;

(c) acquisition of existing housing stock for the purpose of preservation of or conversion to housing for low-income or moderate income households; and

(d) preconstruction technical assistance as described in 90-6-134(4), MCA, for housing for low-income and moderate income households in rural areas and small cities and towns.

(2) An RLA loan may not be made that will supplant existing or available funding for eligible activities.

AUTH: Sec. 90-6-136, MCA; IMP: Sec. 90-6-134, MCA

IV RLA LOAN APPLICANT ELIGIBILITY (1) Organizations eligible for RLA loans are local governments, tribal governments, local housing authorities, nonprofit community or neighborhood based organizations, regional or statewide nonprofit housing assistance organizations and for-profit housing developers.

(2) The applicant must document to the satisfaction of the board experience in the development or management of housing for low and/or moderate income households. Criteria considered by the board includes, but are not limited to:

(a) number of years experience in development or management of housing for low and/or moderate income households;

(b) number of housing developments and units developed or managed;

(c) involvement in other low and moderate income housing programs of the board, federal agencies and tribal and local governments; and

(d) successful completion of other housing development projects.

AUTH: Sec. 90-6-136, MCA; IMP: Sec. 90-6-134, MCA

V RLA LOAN APPLICATION PROCEDURES (1) An application must be submitted using the board's uniform application and loan supplement.

(2) At the time the application is submitted, an applicant must also submit:

(a) a description of the efforts made by the applicant to coordinate the loan with other housing assistance programs administered by the board, the federal government, state agencies, tribal government, local public housing authorities and local governments;

(b) an explanation of how the loan will not supplant existing or available funding for the project; and

(c) a description of the priority the lien of the board will have in relationship with the liens of other lenders on the project.

(3) Applications will be reviewed by staff designated by the board and presented to the board for consideration as soon as the review is completed, but not later than 90 days following receipt of a complete application by the board.

(4) Applications that are substantially incomplete shall not be processed but will be returned to the applicant.

AUTH: Sec. 90-6-136, MCA; IMP: Sec. 90-6-134, MCA

VI RLA LOAN TERMS AND CONDITIONS (1) An RLA loan shall:

- (a) provide for complete amortization at maturity through substantially equal monthly payments of principal and interest;
- (b) have a term not to exceed 30 years; and
- (c) bear interest at an annual rate:
  - (i) not less than two percent for a project that is for households of 30% or less of median income in the area;
  - (ii) not less than three percent for a project that is for households between 31% and 50% of median income in the area;
  - (iii) not less than four percent for a project that is for households between 51% and 80% of median income in the area;
  - (iv) not less than six percent for a project that is for households between 81% and 95% of median income in the area; and
  - (v) a rate blended from those rates provided for in (1)(c)(i), (ii), (iii) and (iv) for a project that contains units for different area median income household groups.
- (d) be subject to a late charge of four percent of the monthly payment due for each monthly payment that is not made within 15 days of its due date; and
- (e) will be secured by a lien (perfected either by a mortgage or a trust indenture) against the real property benefited by the loan.

AUTH: Sec. 90-6-136, MCA; IMP: Sec. 90-6-133, 90-6-134, MCA

VII CRITERIA FOR APPROVAL OF RLA LOAN (1) The board will review the following criteria in considering an application for an RLA loan:

- (a) the applicant's experience in managing or developing housing for low and/or moderate income households;
- (b) the percentage of the units in the project that will be available for low and/or moderate income households;
- (c) the need for low and moderate income housing in the community where the project is to be located; and
- (d) the priority to be given the board's lien for the RLA loan in relation to the amount of the RLA loan and the priority given the liens and the amount of the loans of the other lenders on the project.

AUTH: Sec. 90-6-136, MCA; IMP: Sec. 90-6-134, MCA

VIII TANF LINE OF CREDIT ELIGIBLE PURPOSES (1) A TANF line of credit may be used by a housing assistance organization to make loans to eligible recipients:

- (a) for down payment assistance;

- (b) for reasonable and necessary closing costs;
  - (c) for the first month's payment on a first mortgage;
- or
- (d) to buy down the rate of interest charged on a first mortgage.

(2) A TANF loan made by a housing assistance organization from a TANF line of credit is not assumable and must be repaid upon sale of the real property pledged as security for the loan.

AUTH: Sec. 90-6-136, MCA; IMP: Sec. 90-6-134, MCA

IX TANF LINE OF CREDIT ELIGIBILITY (1) Housing assistance organizations are eligible to apply for a TANF line of credit from the board.

(2) The applicant must document to the satisfaction of the board experience in providing housing assistance to low income households. Criteria considered by the board includes, but are not limited to:

- (a) number of years experience in providing housing assistance to low-income households, which experience can include management of housing, originating or servicing housing loans or providing home ownership training or post purchase counseling for low or moderate income households;

- (b) number of low-income housing developments or units developed, financed or managed;

- (c) number of low-income households to whom applicant has provided home ownership training or post purchase counseling; and

- (d) involvement in other low and moderate income housing programs of the board, federal agencies and tribal and local governments.

(3) A housing assistance organization may apply for a TANF line of credit not to exceed \$500,000.00. At such time as the housing assistance organization has drawn on the full amount of the line of credit for the purpose of TANF loans to eligible recipients, it may apply for an additional line of credit not to exceed \$500,000.00.

AUTH: Sec. 90-6-136, MCA; IMP: Sec. 90-6-134, MCA

X TANF LINE OF CREDIT APPLICATION PROCEDURE (1) An application for a TANF line of credit must be submitted using the board's uniform application and loan supplement.

(2) At the time the application is submitted, an applicant must also submit:

- (a) a narrative addressing the population, including income levels, to be targeted by the housing assistance organization;

- (b) a management plan describing the housing assistance organization's plan for:

- (i) screening of applicants including the procedure to be followed to ensure compliance with TANF eligibility requirements;



- (ii) collection procedures for defaulted loans; and
  - (iii) servicing of loans made to eligible recipients.
  - (c) the housing assistance organization's estimate of annual loan losses and the methodology used to determine the estimate;
  - (d) a narrative description of the housing assistance organization's home ownership training and post purchase counseling programs.
- (3) Applications will be reviewed by staff designated by the board and presented to the board for consideration as soon as the review is completed, but not later than 90 days following receipt of a complete application by the board.
- (4) Applications that are substantially incomplete shall not be processed, but will be returned to the applicant.

AUTH: Sec. 90-6-136, MCA; IMP: Sec. 90-6-134, MCA

XI TANF LINE OF CREDIT TERMS AND CONDITIONS (1) A TANF line of credit shall:

- (a) have a term not to exceed 30 years; and
  - (b) bear interest at the rate of two percent per annum on the amount advanced.
- (2) A housing assistance organization may request the board to forgive a portion of the TANF line of credit that has been extended for TANF loans in an amount equal to legitimate, reasonable and uncollectible TANF loan losses.

AUTH: Sec. 90-6-136, MCA; IMP: Sec. 90-6-134, MCA

XII TANF LOAN ELIGIBILITY (1) To be eligible for a TANF loan from a housing assistance organization an applicant must be a caretaker relative whose household is 200% of the federal poverty guidelines or less.

- (2) An applicant for a TANF loan must successfully complete instruction on the responsibilities of home ownership to the satisfaction of the housing assistance organization through which the applicant is making application for a TANF loan.
- (3) An applicant for a TANF loan must agree to participate in post purchase counseling provided by the housing assistance organization.

AUTH: Sec. 90-6-136, MCA; IMP: Sec. 90-6-134, MCA

XIII TANF LOAN TERMS AND CONDITIONS (1) A TANF loan shall:

- (a) provide for complete amortization at maturity through substantially equal monthly payments of principal and interest;
- (b) have a term not to exceed 30 years;
- (c) bear interest at the same rate the housing assistance organization is being charged for the TANF line of credit;

(d) be subject to a late charge of four percent of the monthly payment due for each monthly payment that is not made within 15 days of its due date; and

(e) be secured at closing by a lien on the real property for which the loan is made, which lien shall be perfected through the use of a trust indenture subordinate to the first mortgage naming the housing assistance organization as beneficiary.

AUTH: Sec. 90-6-136, MCA; IMP: Sec. 90-6-133, 90-6-134, MCA

XIV TANF LOAN APPLICATION PROCEDURES (1) Application for a TANF loan shall be made through a housing assistance organization approved by the board.

(2) The housing assistance organization to which the application has been made shall verify eligibility of the caretaker relative for the TANF loan fund using guidelines provided by the Montana department of public health and human services.

(3) If the housing assistance organization considers the applicant eligible for a TANF loan, it shall submit the application to the board for approval.

(4) The board, or personnel designated by the board, shall review each application for a TANF loan to approve the application if the housing assistance has certified that eligibility requirements have been met and loan documentation has appropriately been completed.

(5) Applications that are substantially incomplete shall not be processed but will be returned to the housing assistance organization.

(6) When an application for a TANF loan has been approved by the board or its designated staff, funds shall be advanced on the housing assistance organization's TANF line of credit equal to the amount of the approved TANF loan and the administrative fee provided for in [RULE XV(2)]. The board shall advance the funds by making a request of the Montana department of public health and human services to disburse the funds to the housing assistance organization for the benefit of the TANF loan applicant.

AUTH: Sec. 90-6-136, MCA; IMP: Sec. 90-6-134, MCA

XV RESPONSIBILITIES OF TANF LOAN HOUSING ASSISTANCE ORGANIZATION (1) A housing assistance organization taking applications for TANF loans:

(a) must be approved by the board;

(b) shall follow such guidelines for TANF eligibility as are provided by the department of public health and human services;

(c) must provide training to applicants for TANF loans on the responsibilities of home ownership; and

(d) must provide post purchase counseling to recipients of TANF loans.

(2) As compensation for preparing and processing a TANF loan, providing home ownership training and post purchase counseling, the housing assistance organization shall receive from the board an administrative fee in an amount equal to seven percent of the amount of each TANF loan made by it.

(3) The housing assistance organization is responsible for servicing TANF loans.

(a) Servicing responsibility may be met by contracting for servicing with a loan servicer qualified and approved by the board under ARM 8.111.305A.

(b) As compensation for servicing a TANF loan the housing assistance organization is entitled to a monthly servicing fee in an amount equal to .5% of the outstanding principal balance of the TANF loan immediately prior to the application of the payment, which amount shall be deducted from the TANF loan payment.

(c) The housing assistance organization may also retain late charges collected from the TANF loan recipient.

AUTH: Sec. 90-6-136, MCA; IMP: Sec. 90-6-134, MCA

REASON: The Board of Housing is proposing the new rules to implement the affordable housing revolving loan account enacted by the 1999 Legislature in Ch. 312, 1999 Laws of Montana, and for which \$500,000.00 was appropriated by the 2001 Session of the Legislature for the 2002-2003 biennium, and to implement the Temporary Assistance to Needy Family (TANF) Housing Assistance Program added to the affordable housing revolving loan account by the 2001 Legislature in Ch. 502, 2001 Laws of Montana and for which \$3,415,928 was allocated by the Legislature for the 2002-2003 biennium.

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 Mathew Rude, Multi-family Program Manager, Montana Board of Housing, Montana Department of Commerce, P.O. Box 200528, Helena, Montana 59620-0528. Written data, views or arguments may also be submitted electronically via email addressed to Mathew Rude at mrude@state.mt.us no later than 5 p.m., September 26, 2001.

5. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the Board. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding single family housing programs, multifamily housing programs, affordable housing revolving loan account, or general procedural rules. The written request may be mailed or delivered to the Board of Housing, Montana Department of Commerce, P.O. Box 200528, Helena, Montana 59620-0528, faxed to the Board at (406) 444-4688, or submitted at any rules hearing held by the Board.

6. Mathew Rude, Multi-family Program Manager for the Board has been designated to preside over and conduct the hearing.

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

MONTANA BOARD OF HOUSING  
BOB THOMAS, CHAIR

By: /s/ Richard M. Weddle  
RICHARD M. WEDDLE, STAFF ATTORNEY  
DEPARTMENT OF COMMERCE

By: /s/ Richard M. Weddle  
RICHARD M. WEDDLE, RULE REVIEWER

Certified to the Secretary of State August 13, 2001.

BEFORE THE DEPARTMENT OF TRANSPORTATION  
OF THE STATE OF MONTANA

In the matter of the proposed )  
adoption of a new rule pertaining )  
to maximum allowable weight; )  
and amendment of ARM 18.8.101, )  
18.8.422, 18.8.517, 18.8.801, )  
18.8.901 )

NOTICE OF PUBLIC HEARING  
ON PROPOSED ADOPTION AND  
AMENDMENT

TO: All Concerned Persons

1. On September 24, 2001, at 9:00 a.m., a public hearing will be held in the auditorium of the Department of Transportation building, 2701 Prospect, Helena, Montana, to consider the adoption and amendment of the above-referenced rules.

2. The Department of Transportation 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 Montana Department of Transportation, Motor Carrier Services Division, P. O. Box 4639, Helena, MT 59604-4639, (406) 444-7601, no later than September 14, 2001 to advise us of the nature of the accommodation you need. TTY users can call (406) 444-7696, fax (406) 444-9263 or e-mail jalm@state.mt.us.

3. The proposed new rule provides as follows:

NEW RULE I MAXIMUM ALLOWABLE WEIGHT (1) The maximum allowable gross weight allowed for vehicle combinations hauling divisible loads is 131,060 pounds. Vehicles and vehicle combinations hauling divisible loads must comply with the federal bridge formula found in 61-10-107, MCA.

(2) The maximum allowable gross weight allowed for vehicle combinations hauling divisible loads and operating under the Montana/Alberta memorandum of understanding (MOU) is 137,800 pounds. A copy of this MOU is available and can be reviewed at the Montana Department of Transportation's main office at 2701 Prospect, Helena, Montana.

Auth: 61-10-155, MCA  
IMP: 61-10-107, MCA

REASON: Chapter 283, Laws of 2001, mandates that MDT shall adopt rules for weight limits, based on 23 CFR, part 658, Appendix C. A copy of this CFR can be obtained at Montana Department of Transportation, 2701 Prospect, Helena, MT 59620.

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

18.8.101 DEFINITIONS (1) The following definitions shall apply throughout this chapter:

(a) through (g) remain the same, but will be renumbered (1) through (7).

(h) (8) A special permit is a written or electronic document which may be issued for either width, height, length or weight in excess of the statutory limits, or a combination of width, height, length and weight. A special permit shall be issued for a non-reducible load only, except when otherwise expressly set forth in the rules. The duration of a special permit may be either a single trip or a term permit.

(i) through (k) remain the same, but will be renumbered (9) through (11).

AUTH: 60-10-155, MCA  
IMP: 61-10-121, 61-10-122, 61-10-124, 61-10-125,  
61-10-130, MCA

REASON: The amendment allows a carrier to call ahead to order a permit, pay with a credit card, and be assigned the permit number. The carrier is then considered to be in compliance, even without the written permit, to transport the load to the first weigh station where the written permit can be picked up. A carrier traveling on an electronic permit is subject to the same conditions and restrictions that apply when carrying the written permit.

18.8.422 TEMPORARY TRIP PERMITS (1) through (7) remain the same.

~~(8) An extension of mileage on a trip permit requires a new permit if the mileage increases the cost of the permit. No credit from the prior permit may be given and a new permit must be issued from the point of entry to the exit point with a full fee charged for miles traveled in Montana.~~

(9)(8) remains the same.

AUTH: 61-10-155, MCA  
IMP: 61-10-211, 61-10-212, 61-10-213, 61-10-214,  
MCA

REASON: Prior to the implementation of Vista PS (computerized permit system), temporary permits were issued on a computer system or manually on financial stationery using a pre-set fee schedule, with no partial fee charges. Since implementation of Vista PS, it is possible to override the fee schedule and issue a permit for a partial fee. By amending the rule, the carrier pays for the actual miles based on the fee schedule in 61-10-211, MCA, and does not have to pay more than is due. It is impossible to calculate how much money will be saved cumulatively through the change in fees, but it is not expected to be more than \$1,000.00 per year. Also, it is not expected to affect more than two or three individuals a year.

18.8.517 SPECIAL VEHICLE COMBINATIONS (1) through (6) remain the same.

(7) through (7)(i) remain the same.

(i) Truck-trailer-trailer combinations must have a minimum of 6 axles ~~and a maximum of 9 axles.~~

(7)(h)(ii) through (7)(k) remain the same.

(8) through (20) remain the same.

AUTH: 61-10-155, MCA

IMP: 61-10-124, MCA

REASON: Chapter 283, Laws of 2001, repealed the number of maximum axles allowed under 61-10-107, MCA.

18.8.801 INSURANCE (1) ~~A minimum of \$1 million public liability and a minimum of \$50,000 property damage insurance is required before a special permit may be issued. The permit must show the name of the insurance company. A minimum of \$1 million combined single limit bodily injury and property damage liability per occurrence is required before a special permit may be issued. The permit must show the name of the insurance company.~~

AUTH: 61-10-155, MCA

IMP: 61-10-121, 61-10-122, 61-10-123, 61-10-124, 61-10-125, MCA

REASON: Language has been changed to reflect the type of coverage that is now currently provided to motor carriers by the insurance industry. Also, the former language allowing \$50,000 coverage did not adequately protect the public.

18.8.901 CONFISCATION OF PERMITS (1) Any violation of a special permit, ~~term permit, or restricted route lead permit~~ will be grounds for confiscation by an inspecting officer.

(2) remains the same.

(3) In each case where a violation of an ~~oversize, overweight, restricted route load or special vehicle combination~~ permit is apparent to the inspecting officer, the violated portion of the permit will be confiscated. The inspecting officer will notify the M.C.S. office in Helena.

(4) remains the same.

AUTH: 61-10-155, MCA

IMP: 61-10-121, 61-10-122, and 61-10-143, MCA

REASON: The language is being changed to conform to the definition of special permit found in ARM 18.8.101(8), and throughout ARM Title 18, chapter 8.

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 Jodee Alm, Motor Carrier Services Division, Department of

Transportation, P.O. Box 4639, Helena, MT 59604-4639, and must be received no later than September 24, 2001, at 5:00 p.m.

6. Nick Rotering, legal services attorney, Department of Transportation, P.O. Box 201001, Helena, MT 59620-1001, (406) 444-6302, has been designated to preside over and conduct the hearing.

7. The Department of Transportation maintains a list of interested persons who wish to receive notices of the rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies the subject area or areas of interest of the person requesting notice, including, but not limited to, rules proposed by the Administration Division, Aeronautics Division, Highways and Engineering Division, Maintenance Division, Motor Carrier Services Division, and Rail, Transit and Planning Division. Such written request may be mailed or delivered to the Montana Department of Transportation, Legal Services, P.O. Box 201001, Helena, MT 59620-1001, faxed to the office at (406) 444-7206, e-mailed to lmanley@state.mt.us, or may be made by completing a request form at any rules hearing held by the department.

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

MONTANA DEPARTMENT OF TRANSPORTATION

By: /s/ David A. Galt  
Director, Department of Transportation

By: /s/ Lyle R. Manley  
Rule Reviewer

Certified to the Secretary of State August 13, 2001.



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

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment of ARM 8.52.616 ) ON PROPOSED AMENDMENT  
pertaining to fees )

TO: All Concerned Persons

1. On September 19, 2001, at 9:00 a.m., a public hearing will be held in the Business Standards Division conference room #487, 4th Floor, Federal Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rule.

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 Psychologists no later than 5:00 p.m., on September 12, 2001, to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail DLIBSDPSY@state.mt.us.

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

8.52.616 FEE SCHEDULE (1) The department will collect the following fees, none of which are refundable:

- (a) and (b) remain the same.
- (c) Renewal fee ~~200~~ 250
- (d) and (e) remain the same.

AUTH: 37-1-134, 37-17-202, MCA

IMP: 37-17-302, 37-17-303, 37-17-306, 37-17-307, MCA

REASON: The Board of Psychologists finds it reasonable and necessary to increase renewal fees from \$200 to \$250 in order to meet the Board's fiscal responsibilities. The Board is required by 37-1-134, MCA to set fees commensurate with costs. During the last two years reserve funds have been depleted for a new computer system, legal costs, and the expenses for the state mandated move to a new location. The current board fund balance is a deficit of \$13,295. The estimated income for the current fiscal year without the fee increase is \$47,715 and the appropriations are \$45,327. The board estimates that the proposed fee increase will generate additional revenue of \$10,000. This fee increase, in conjunction with cost containment measures, including travel reductions, implemented by the Board, are anticipated to result in a balanced budget by the end of the fiscal year. This fee increase will affect

all 217 licensees.

4. 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 Psychologists rule notice section. The Department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered.

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 Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [DLIBSDPSY@state.mt.us](mailto:DLIBSDPSY@state.mt.us) and must be received no later than 5:00 p.m., September 20, 2001. If comments are submitted in writing, the Board requests that the person submit eight copies of their comments.

6. Lewis Smith, attorney, has been designated to preside over and conduct this hearing.

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

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

BOARD OF PSYCHOLOGISTS  
MARIAN MARTIN, Ph.D., CHAIRMAN

By: /s/ MIKE FOSTER  
Mike Foster, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ KEVIN BRAUN  
Kevin Braun  
Rule Reviewer

Certified to the Secretary of State, August 13, 2001.

BEFORE THE BOARD OF REALTY REGULATION  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED
amendment of ARM 8.58.301,	)	AMENDMENT AND ADOPTION
8.58.414, 8.58.423, 8.58.426,	)	
8.58.707, and 8.58.709	)	
pertaining to definitions,	)	
trust account requirements,	)	
general license administration	)	
requirements, renewal, license	)	
renewal - late renewal and	)	
continuing property management	)	
education and the adoption of a	)	
new rule pertaining to	)	
continuing property management	)	
education reporting requirements	)	

NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On September 22, 2001, the Board of Realty Regulation proposes to amend and adopt the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Realty Regulation no later than 5:00 p.m., on September 12, 2001, to advise us of the nature of the accommodation that you need. Please contact Grace Berger, Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2320; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail DLIBSDRRE@state.mt.us.

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

8.58.301 DEFINITIONS The terms used in this chapter shall have their common meaning as used in the real estate industry, and, unless the context otherwise requires, the following meanings shall also apply:

(1) through (16) remain the same.

(17) "supervising broker/managing broker" is a broker ~~owner or broker associate~~ who has been designated by other ~~brokers~~ owners of a real estate brokerage company to be the designated broker responsible for the maintenance of a trust account, if any, supervision of all licensed salespersons associated with the office and the appropriate administration of all regulations and laws pertaining to the licensed functions of the individual real estate licensees associated

with the office;

(18) and (19) remain the same.

AUTH: 37-1-131, 37-51-203, MCA

IMP: 37-51-102, ~~37-51-202~~, MCA

8.58.414 TRUST ACCOUNT REQUIREMENTS (1) Each broker shall maintain a separate bank account which shall be designated a trust account wherein all down-payments, earnest money deposits, rent payments, security deposits or other trust funds received by the broker or his salesperson on behalf of a principal, third party or any other person shall be deposited. However, ~~any a broker, broker owner or managing broker~~ does not need to maintain a trust account if:

(a) ~~the broker, broker owner or managing broker~~ does not receive down payments, earnest money deposits, rent payments, security deposits or other trust funds on behalf of a principal, third party or any other person; or

(b) ~~the broker, broker owner or managing broker~~ elects to use a title company to hold all down payments, earnest money deposits, rent payments, security deposits or other trust funds received from principals, third parties or other persons.

(2) Broker trust accounts may be maintained in interest-bearing accounts with the interest payable to the broker, principal, third party or any other person, as may be designated by agreement. Interest payable to the broker shall be identified by agreement as consideration for services performed. Offices or firms having more than one broker, ~~whether broker owner or broker associate~~, may utilize a single trust account.

(3) through (6) remain the same.

(7) Each broker, ~~broker owner or managing broker~~ shall ensure that all real estate money received by the broker, ~~broker owner or managing broker~~ or his or her their salesperson is deposited in the broker or title company's trust account within three business days of the broker's or salesperson's (whichever is earlier) receipt of the money, unless otherwise provided in the buy/sell agreement, lease agreement or rental agreement.

(8) When a salesperson ~~or broker associate~~ is licensed with a broker ~~owner~~, the responsibility for maintaining the trust account shall be that of the broker ~~owner~~ or the brokerage's managing broker.

(9) The broker ~~owner~~ or the designated managing broker is responsible at all times for the proper handling of earnest money, security deposits or other funds received by the broker ~~owner~~ or the designated managing broker, or the broker's ~~owner's~~ or designated managing broker's salespersons, on behalf of customers or clients.

AUTH: 37-1-131, 37-1-316, 37-51-203, MCA;

IMP: 37-1-316, 37-51-202, 37-51-203, 37-51-321, MCA

8.58.423 GENERAL LICENSE ADMINISTRATION REQUIREMENTS

(1) At any time that a salesperson's ~~or broker~~

~~associate's~~ association with a broker owner is terminated, the license of the salesperson ~~or broker associate~~ shall be immediately mailed, by the broker ~~owner~~, to the board office with a letter noting the termination.

(2) No dispute between a salesperson ~~or broker associate~~ and a broker shall be cause for failing to immediately mail the license of the salesperson ~~or broker associate~~ to the board office.

(3) When requested in writing to do so by a salesperson formerly associated with a broker ~~owner~~, the broker ~~owner~~ or managing broker of the brokerage company shall promptly provide the former sales associate with a certified statement on the form prescribed by the board identifying all real estate transactions in which the sales associate was involved in connection with the sales associate's association with the broker ~~owner~~ or brokerage company within the preceding three years.

(4) Upon termination of a salesperson's association with a broker, the broker ~~owner or managing broker~~, the broker ~~owner~~ or managing broker shall immediately notify all principals as to the listings or pending transactions in which the salesperson was involved, that the salesperson is no longer affiliated or associated with the broker ~~owner~~ or brokerage company.

(5) Remains the same.

(6) The broker ~~owner~~ or managing broker is responsible for the salesperson under his or her supervision for the salesperson's performance as a real estate licensee. For any complaints submitted to the board of realty regulation alleging improper conduct on the part of a real estate salesperson licensee, a screening panel shall notify the salesperson's broker ~~owner~~ or managing broker that a complaint has been filed by providing a copy of the complaint to the broker ~~owner~~ or managing broker.

(7) The supervising broker or managing broker must provide on-going training in the area of real estate activity to all salespersons under his/her supervision. ~~Broker owners are not responsible to provide training or ongoing supervision of broker associates.~~

(8) and (9) remain the same.

(10) A broker ~~owner~~ shall not sign the application of a salesperson unless the broker ~~owner~~ and salesperson will be in lawful association, through employment contract or otherwise.

(11) The broker ~~owner~~ may designate another broker to be the managing broker of the office.

AUTH: 37-1-131, 37-51-203, MCA

IMP: 37-51-202, 37-51-203, 37-51-309, MCA

8.58.426 RENEWAL (1) Remains the same.

(2) Renewal forms will be mailed to all real estate licensees at their last address of record. Active salesperson licensee renewals will be sent to the broker/~~owner~~ of record. Inactive licensee renewals will be sent to their home address. Failure to receive a renewal form does not eliminate the

renewal requirement. Each licensee is required to renew.

(3) and (4) remain the same.

~~(5) Broker/owners must sign the renewal form for all salespersons under their supervision.~~

AUTH: 37-51-203, MCA

IMP: 37-51-310, MCA

8.58.707 LICENSE RENEWAL - LATE RENEWAL

(1) Remains the same.

(2) Licensees failing to renew their licenses by ~~December 31 of each year~~ the date set forth in ARM 8.2.208 may have their licenses reinstated by:

(a) Remains the same.

(b) payment of the penalty fee as prescribed by the board; and

(c) submission of a completed renewal form; ~~and.~~

~~(d) verification of completion of any continuing education that must be met by the licensee.~~

(3) Remains the same.

(4) Licensees cannot renew their license without also completing and submitting the affidavit of education at the time of renewal.

(5) Incomplete renewal forms will not be accepted and will be returned to the licensee. Any form returned to the licensee must be properly completed and resubmitted before the renewal deadline set forth in ARM 8.2.208, or late renewal fees will be required.

AUTH: 37-1-131, 37-51-202, 37-51-203, MCA

IMP: 37-1-101, 37-51-604, MCA

8.58.709 CONTINUING PROPERTY MANAGEMENT EDUCATION

(1) through (3) remain the same.

~~(4) Proof of successful completion must be submitted to the board with the licensee's renewal application at the conclusion of every year. No course completion certificates will be accepted by the board at any other time.~~

(5) though (7) remain the same but are renumbered (4) through (6).

AUTH: 37-1-131, 37-51-202, 37-51-203, MCA

IMP: 37-1-101, 37-51-604, MCA

REASON: The Board believes that the amendments to the foregoing rules are reasonable and necessary to bring the board rules into compliance with recently passed legislation that will become effective October 1, 2001. Chapter 492, Laws of Montana, 2001, eliminated the two levels of broker licensing and created a single broker level. The rules must be amended to eliminate any reference to the two levels of broker licensing.

The Board believes that the other amendments proposed are reasonable and necessary to ensure that property managers obtain the specified continuing education and allow the board to audit some of the licensees for compliance rather than

requiring a copy of the completion certificate to be included with the renewal form. The Board is proposing that the property managers file an affidavit of education rather than the completion certificates. The proposed amendments also eliminate the requirement that the supervising broker sign the salesperson's renewal form. Both of these proposed changes will allow the Board to implement on-line renewal for those licensees who wish to use that option.

4. The proposed new rule provides as follows:

NEW RULE I CONTINUING PROPERTY MANAGEMENT EDUCATION REPORTING REQUIREMENTS

(1) A sworn affidavit attesting to the successful completion of the continuing education requirement must be submitted to the board by December 31 of each year. Filing of an affidavit after December 31, but on or before February 15 will result in a late filing fee. No affidavit will be accepted after February 15.

(2) An incomplete affidavit of education will not be accepted and will be returned to the licensee. Any form returned to the licensee must be properly completed and resubmitted before the December 31 deadline, or late filing fees will be required.

(3) The board may audit licensees for compliance with continuing education requirements. Audited licensees must provide copies of completion certificates to the board as verification of compliance within 30 days after mailing of the audit request.

(4) Failure to comply with the completion or reporting requirements established by the board is unprofessional conduct and will result in disciplinary action by the board.

(5) Affidavits will be mailed to all property management licensees at their last address of record. Failure to receive an affidavit does not eliminate the reporting requirement. Each licensee is required to annually report continuing education.

AUTH: 37-1-131, 37-51-203 MCA  
IMP: 37-1-101, MCA

REASON: The Board believes that the proposed new rule is reasonable and necessary to ensure that property managers report the required continuing education credits and allow the board to audit some of the licensees for compliance rather than requiring a copy of the completion certificate to be included with the renewal form. The Board is proposing that the property managers file an affidavit of education rather than the completion certificates. This will allow the Board to implement on-line renewal for those licensees who wish to use that option.

5. Concerned persons may submit their data, views, or arguments concerning these changes in writing to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or



by e-mail to DLIBSDRRE@state.mt.us to be received no later than 5:00 p.m., September 20, 2001. If comments are submitted in writing, the Board requests that the person submit seven copies of their comments.

6. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to DLIBSDRRE@state.mt.us no later than 5:00 p.m., September 20, 2001.

7. If the Board receives requests for a public hearing on the proposed action from either 10 percent or 25 persons, whichever is less, of those individuals who are directly affected by the proposed action, from the appropriate administrative rule review committee of the legislature, from a governmental agency or subdivision, or from another association having no less than 25 members that are directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 460 based on the 4600 licensed brokers, salespersons and property managers in Montana.

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

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

BOARD OF REALTY REGULATION  
JOHN BEAGLE, CHAIRMAN

By: /s/ MIKE FOSTER  
Mike Foster, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ KEVIN BRAUN  
Kevin Braun  
Rule Reviewer

Certified to the Secretary of State August 13, 2001.

BEFORE THE BUSINESS STANDARDS DIVISION  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
transfer and amendment, )  
adoption, and repeal of rules )  
rules pertaining to the )  
Building Codes Bureau )

TO: All Concerned Persons

1. On September 26, 2001, at 10:00 a.m., a public hearing will be held in Basement Conference Room B07, Federal Building, 301 South Park, Helena, Montana, to consider the proposed amendment, adoption, and repeal of rules pertaining to the Building Codes Bureau.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., September 14, 2001, to advise us of the nature of the accommodation that you need. Please contact Eric Fehlig, Department of Labor and Industry, Building Codes Bureau, 301 South Park, Federal Building, Room 239, P.O. Box 200517, Helena, Montana 59620-0517; telephone (406) 841-2040; Montana Relay 1-800-253-4091; TDD (406) 444-0532; facsimile (406) 841-2050.

3. The Department of Labor and Industry (Department) proposes to amend the rules as follows: (new matter underlined, deleted matter interlined)

GENERAL REASON APPLICABLE TO ALL PROPOSED AMENDMENTS AND NEW RULES: Ch. 483, L. 2001 (SB445) transferred the functions of the Building Codes Division of the Department of Commerce to the Department of Labor and Industry. Throughout the following rule proposals, non-substantive modifications have been made to reflect this transfer and the associated new rule numbering system and new agency name. Certain non-substantive editorial changes have also been included to make the rules more precise and easier to read. Any proposal which is considered to be substantive is addressed in the Reason section following each rule proposal.

~~8.70.101~~ 24.301.101 INCORPORATION BY REFERENCE OF UNIFORM BUILDING CODE (1) The department of commerce, by and through the building codes division labor and industry, referred to as the department in this and all subsequent rules, adopts and incorporates by reference herein the Uniform Building Code, 1997 Edition, referred to as the Uniform Building Code or UBC, unless

another edition is specifically stated, together with the following appendix chapters and amendments:

(a) Appendix Chapter 3; Division I (Detention and Correctional Facilities), Division II (Agricultural Buildings), Division III (Requirements for Group R, Division 3 Occupancies) as amended by ARM 8.70.101(22) [NEW RULE VII(11)]; Division IV (Requirements for Group R, Division 4 Occupancies);

(b) Appendix Chapter 4; Division II (Aviation Control Towers);

(c) Appendix Chapter 11 (Accessibility);

(d) Appendix Chapter 13 (Energy Conservation in New Building Construction), as amended by ARM 8.70.101(18) [NEW RULE VII(10)];

(e) Appendix Chapter 15 (Reroofing);

(f) Appendix Chapter 16; Division I (Snow Load Design), Division IV (Earthquake Regulations for Seismic-Isolated Structures);

(g) Appendix Chapter 18 (Waterproofing and Dampproofing Foundations);

(h) Appendix Chapter 21 (Prescriptive Masonry Construction in High-Wind Areas);

(i) Appendix Chapter 23 (Conventional Light-Frame Construction in High-Wind Areas);

(j) Appendix Chapter 31; Division I (Flood-Resistant Construction), Division II (Membrane Structures), Division III (Patio Covers);

(k) ~~Add a new paragraph to section 107 of the Uniform Building Code to read, "107.7 Requested Inspection Fee \$45, provided that such service is not in excess of one hour in duration, and then \$25 for each 30 minutes or fractional part thereof in excess of one hour. Travel and per diem will be charged as per the state of Montana's existing rates for these items;"~~

(l) ~~Section 105 of the Uniform Building Code will be left as is for use by local governments (i.e., municipalities and counties), who by 50-60-303, MCA, must provide an appeal procedure. The division and state of Montana, however, will use the applicable provisions of the Montana Administrative Procedure Act in all cases of appeal in lieu of section 105;~~

(m) ~~Section 103 of the Uniform Building Code will be left as is for use by local governments (i.e., municipalities and counties). The division and the state of Montana will use 50-60-109 and 50-60-110, MCA, in cases requiring prosecution in lieu of section 103. When a person fails to submit required plans, obtain a permit, correct plans or comply with an order of the division, the division, as authorized by 50-60-109, MCA, will bring civil action to enjoin him from constructing or using the building;~~

(n) ~~Subsections 107.2 and 107.3 of section 107 of the Uniform Building Code are amended to read as follows:~~

(i) ~~Subsection 107.2 Permit fees. The fee for each permit shall be as set forth in Table No. 1-A of the Uniform Building Code.~~

~~(ii) Subsection 107.3 Plan review fees. When submittal documents are required by section 106.3.2, a plan review fee shall be paid. Said plan review fee shall be 35% of the building permit fee as set forth in Table No. 1-A of the Uniform Building Code. When only plan review services are provided, the plan review fee shall be 50% of the combined plan review and building permit fee.~~

~~(o) The determination of value or valuation under any of the provisions of this code shall be made by the building official. The value to be used in computing the building permit and building plan review fees shall be the total value of all construction work for which the permit is issued as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire-extinguishing systems and any other permanent equipment. Whenever the building official is the state of Montana, acting through the department of commerce, building codes division, the value or valuation of a building or structure under any of the provisions of the Uniform Building Code will be determined using the cost per square foot method of valuation and the cost per square foot figures for the type and quality of construction listed in the most current "Building Valuation Data" table published by "International Conference of Building Officials Building Standards" magazine, the trade magazine published by the international conference of building officials, as modified by the regional modifiers set forth in said "Building Valuation Data" table. When in unusual circumstances the valuation calculated by the use of the "Building Valuation Data" table is considered unreasonably low as compared to either the estimated project cost, firm bids or contract amounts, the building codes division reserves the right to base the building permit fee and plan review fee on the estimated project cost, firm bids or contract amounts. The building codes division may, for public buildings or projects that exceed \$25,000 in building value, use firm bids for establishing the building valuation as an alternative to using "Building Valuation Data" table when such bids include all construction work associated with the building as described earlier in this rule and the bidding process is determined as having been open and competitive. Valuation of projects may also be based on firm total project contract amounts if the entire project is contracted and such contracts cover all construction work associated with the building as described earlier in this rule, provided this contracted valuation is less than 75% of the valuation as determined by use of "Building Valuation Data" table. Valuation of remodel and/or addition projects, where use of "Building Valuation Data" table is not appropriate, will be based on use of typical and reasonable construction costs. When only plan review fees are charged, the building valuation for determining fees will be based on the design professional's preliminary cost estimate, if such estimate is available or "Building Valuation Data" table, if such estimate is not available. For purposes of calculation of fees, the building valuation shall be rounded off to the nearest~~

~~\$1,000 and any calculated building and plan review fees shall be rounded off to the nearest \$1. As provided in ARM 8.70.208, local governments certified to enforce the state building code may establish their own permit fees. Local governments may also establish their own method of building valuation.~~

~~(p) Subsection 1004.3.4.3.2.1 Doors. The requirements of the Uniform Building Code of self-closing or automatic closing corridor doors to patient rooms does not apply to health care facilities as defined in 50-5-101, MCA. Section 50-5-101, MCA, defines "health care facility" as any building used to provide health services, medical treatment, nursing, rehabilitative or preventive care to persons. The term does not include offices of private physicians or dentists. The term includes, but is not limited to, ambulatory surgical facilities, health maintenance organizations, home health agencies, hospitals, infirmaries, kidney treatment centers, long-term care facilities, mental health centers, out-patient facilities, public health centers, rehabilitation facilities and adult day-care centers.~~

~~(q) No plumbing, mechanical or electrical permit shall be issued for a building or structure, under the jurisdiction of the bureau, until the building permit has been issued for said building or structure.~~

~~(2) As specified in 50-60-102, MCA, the building codes division may not enforce the state building codes on residential buildings containing less than five dwelling units or their attached-to structures, any farm or ranch building and any private garage or private storage structure used only for the owner's own use, or mines and buildings on mine property regulated under Title 82, chapter 4, MCA, and subject to inspection under the Federal Mine Safety and Health Act. Local governments that have made the state building codes applicable to the aforementioned buildings, except for mines and buildings on mine property regulated under Title 82, chapter 4, MCA, may enforce within their jurisdictional areas the state building code as adopted by the respective local government.~~

~~(3) As specified in 76-2-412(3), MCA, building codes which are not applicable to residential occupancies may not be applied to a community residential facility serving eight or fewer persons or to a day-care home serving 12 or fewer children.~~

~~(4) Subsection 1614 of the Uniform Building Code requires that snow loads be determined by the building official. In areas of the state outside of certified local government jurisdictions, the design snow load shall be based on the ground snow loads developed in "Snow Loads for Structural Design in Montana", authored by F.F. Videon and J.P. Schilke/Civil & Agricultural Engineering/Montana State University August 1989. The minimum design roof snow load after allowed reductions shall be 30 psf. Figure No. A-16-1 of Appendix Chapter 16 is hereby amended to provide that the building official is to establish the ground snow load for the entire state of Montana. For purposes of plan review, a snow exposure coefficient (Ce) of 0.9 and an occupancy importance factor (I) of 1.0 (1.15 for~~

essential facilities and A-1, 2 and 2.1 occupancies) will be used unless other coefficients and factors can be justified by a Montana licensed design professional to the satisfaction of the building official.

(5) Subsection 1806.1 of the Uniform Building Code requires that footings and foundations shall extend below the frost line. In all areas of the state outside of certified local government jurisdictions, the minimum depth from finished grade to the bottom of footings shall be 3.0 ft. for single story wood and metal frame buildings and 4.0 ft. for multi-story and masonry buildings. Buildings located on highly expansive or unstable soils may need engineered footings and foundation walls that extend below the minimum depths indicated above. At the discretion of the building official, the above minimum depths may not be required for properly designed so-called monolithic slabs for single story storage and similar use buildings. At its sole discretion, the building official may require monolithic slabs to be designed and stamped or certified by a Montana registered engineer who practices structural design. The design and stamp of a Montana licensed architect may be accepted in lieu of an engineer's stamp when the monolithic slab design is an incidental part of an architectural building design, as allowed by 37-67-103, MCA.

(6) Subsections 108.2 and 108.5 of the Uniform Building Code are deleted for the division, but left unamended for use by local governments.

(7) Subsection 108.4 of the Uniform Building Code is amended for the division by deletion of the first paragraph. The section is left unamended for use by local governments.

(8) Subsection 109.3 of the Uniform Building Code is amended for the division to read: "109.3 Certificate issued. After the building official or his agent inspects the building or structure and finds substantial compliance with the intent of the Uniform Building Code, the building official may issue a certificate of occupancy which shall contain the following:

1. The building permit number.
2. The address of the building.
3. The name and address of the owner.
4. A description of that portion of the building for which the certificate is issued.
5. A statement that the described portion of the building has been inspected for substantial compliance with the Uniform Building Code for the group and division of occupancy and the use for which the proposed occupancy is classified.
6. The name of the building official."

(a) Since the division has insufficient staff to conduct all of the key inspections identified in subsection 108.5 of the Uniform Building Code at the proper times, the issued certificate of occupancy is not a certification or guarantee of total compliance with the Uniform Building Code.

(b) This section is left unamended for use by the local governments.

(9) The first sentence of the second paragraph of

subsection 106.4.1 of the Uniform Building Code is deleted and replaced with the following sentence: "When the building official issues the permit where plans are required, the building official shall approve the plans and specifications, with corrections as required, or with adequate written resolution of deficiencies noted in plan review comments."

(10) The division, in its sole discretion, may waive minor building code violations that do not constitute an imminent threat to property or to the health, safety or welfare of any person.

(11) Section 50-60-102(1)(a), MCA, exempts certain buildings from application of the state building codes. Provisions of the Uniform Building Code shall not be applied in determining whether a building or structure is exempt from the state building codes. For example, area separation walls as described in subsection 504.6 of the Uniform Building Code shall not be used to separate buildings otherwise covered by the state building codes into smaller buildings that would, if alone, be exempted by 50-60-102(1)(a), MCA.

(12) The exemptions in 50-60-102(1)(a), MCA, do not apply to any building used as or in conjunction with a hotel, motel, inn, motor court, guest or dude ranch, tourist home, public lodging house, bed and breakfast establishment or other place where sleeping accommodations are furnished for a fee to a transient guest. "Transient guest" means a guest for only a brief stay, such as the traveling public.

(13) An owner seeking to do work that the owner believes is not subject to a building code requirement shall provide the division, if in the state's jurisdiction, with any documentation or information that it may require so that the division may determine whether the work is subject to the building code requirement. The documentation or information provided must be in the form of an affidavit or affirmation.

(14) At its sole discretion, the building official may accept high quality, essentially defect-free, rough sawn lumber as being equal and an alternative to graded and stamped dimension lumber. As the building official deems necessary, in-place installations of rough sawn lumber may be required to be inspected and certified by a Montana licensed engineer or inspected and approved by a certified lumber grader.

(15) At its sole discretion, the building official may accept high quality log construction as being equal and an alternative to graded and stamped dimension lumber. Typically, nine inch or greater nominal diameter log wall construction is considered to be equivalent to one-hour fire resistive construction provided the minimum dimension is five inches or more. Uniform Building Code Standard No. 7-7, Part VI, is used to determine the fire resistive capacity of log walls.

(16) Exception 6 of subsection 1004.2.3.2 of the Uniform Building Code is amended by addition of the following sentence: "Basements exceeding 500 square feet in area are considered to be used for more than only service of the building and must be provided with a minimum of two exits unless specifically



approved by the building official on an individual case basis."

(a) The section is left unamended for use by local governments.

(17) Subsection 904.2.6.2 of the Uniform Building Code is amended for the division by addition of the following sentence: "Group H, Division 4. Occupancies having more than 3,000 square feet but less than 5,100 square feet need not be required to install an automatic fire-extinguishing system, provided the building is one-hour fire resistive construction throughout, has yards of 40 feet or more in width on three sides and provides a minimum of three exits, all properly signed and illuminated.

(18) In subsection 1302.2, Appendix Chapter 13, of the Uniform Building Code, the first paragraph is amended as follows: "In order to comply with the purpose of this appendix, buildings shall be designed to comply with the requirements of the Model Energy Code promulgated jointly by the international conference of building officials (ICBO), the southern building code congress international (SBCCI), the building officials and code administrators international (BOCA) and the national conference of states on building codes and standards (NCSBCS), latest edition adopted by the division in ARM 8.70.104."

(19) The purpose of the Uniform Building Code is to provide minimum standards to safeguard life or limb, health, property and the public welfare by regulating and controlling the design, construction, quality of materials, use and occupancy, location and maintenance of all buildings and structures and certain equipment specifically regulated therein.

(20) The Uniform Building Code adopted by reference in (1) of this rule, is a nationally recognized model code setting forth minimum standards and requirements for building construction. A copy of the Uniform Building Code may be obtained from the Department of Commerce, Building Codes Division, 301 S. Park, Room 239, Helena, Montana 59620, at cost plus postage and handling. A copy may also be obtained by writing the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.

(21) The "International Conference of Building Officials Building Standards" magazine mentioned in (1)(o) of this rule is the trade magazine for building officials published by the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601. A copy of the most current "Building Valuation Data" table mentioned in (1)(g) of this rule may be obtained free of charge from the Department of Commerce, Building Codes Division, 301 S. Park, Room 239, Helena, Montana 59620.

(22) In section 332, of the Uniform Building Code, Appendix Chapter 3, Division III, the first paragraph is amended as follows: "Buildings regulated by this division shall be designed and constructed to comply with the requirements of the One and Two Family Dwelling Code, latest edition adopted by the division in ARM 8.70.108, promulgated jointly by the international conference of building officials, the building officials and code administrators international, inc. and the

southern building code congress international, inc."

(23) Section 50-60-102(1), MCA, exempts any private garage or private storage structure used only for the owner's own use from application of the state building codes. A private garage is a building or a portion of a building, in which only motor vehicles used by the tenants of the building or buildings on the premises are stored or kept. A building in which vehicles are repaired or stored as part of commercial enterprise or business, even if on the premises of a dwelling, is not a private garage. A private storage structure used only for the owner's own use is a building used for storage of personal effects of the owner and not used for storage of equipment, vehicles, materials, supplies or products used in a commercial enterprise or business.

(24) Section 904.1 (Installation Requirements) is amended for the division by addition of the following:

This subsection shall apply to buildings which are required by the Uniform Building Code to be provided with an automatic sprinkler system, but have an inadequate water supply.

In accordance with Uniform Building Code Standard 9-1, Section 9.101 the building official shall be the designated authority responsible for administering and enforcing NFPA-13. When the available water supply does not meet NFPA-13 requirements, it may be modified by the building official.

The modified water supply shall include sufficient storage on site to operate 50% of the sprinklers in the hydraulically remote area for the response time of the local fire department. This reduction shall not reduce the number of operating sprinklers to less than four. Response time is the time from alarm to the time the fire department can apply water to the fire. Response time shall be established by the use of the formula  $T = 0.65 + 1.7D$ , where T is response time, in minutes, and D is distance, in miles, from the fire station to the building, but shall not be less than 20 minutes.

Water supply requirements shall be established by using the area/density method. A 50% reduction in water supply is allowed. Density is not modified.

When a modified water supply is allowed, the sprinkler system must utilize quick response heads, be equipped with a flow alarm, digital alarm communicator transmitter and a fire department connection.

(25) Aircraft hangars, even if for private use, are not exempt as private garages or private storage structures unless located on the same parcel of private property or lot as the owner's residence. Aircraft hangars that are used in conjunction with a commercial activity of any kind are not exempt as private garages or private storage structures regardless of location. Aircraft hangars, less than 3,000 square feet in size, that are used only for parking of an aircraft and where no repair work or welding is performed and where no fuel is dispensed, will be classified as utility buildings (Group U, Division 1).

(26) Subsection 1004.3.4.2.1 of the Uniform Building Code is amended for the division by addition of subsection 3407.3 of

Appendix Chapter 34, Division I for application to upgrading of corridors in existing E occupancies.

(27) Section 312.1 of the Uniform Building Code is amended for the division by addition of the following sentences to the exception to Division I: Riding arenas limited to occupant loads of 200 or less and used for boarding, breeding and training of horses, horse shows and competitions, clinics and rider instruction and open riding are considered agricultural buildings subject to the provisions of Appendix Chapter 3, Division II, as amended. Uses such as rodeos, barn dances, craft and other nonlivestock shows, conventions and similar events which result in large numbers of spectators or occupants are not allowed in riding arenas classified as agricultural buildings.

(28) Appendix Chapter 3, Section 326 of the Uniform Building Code is amended by addition of 5. Riding arenas as defined in amended section 312.1.

(29) Appendix Chapter 3, Section 330 of the Uniform Building Code is amended for the division by addition of the following sentences to exception 2: The portion of riding arena buildings where riding will occur or where spectators may be present or seating is provided shall be provided with a minimum of four exits directly to the outside, with the exits located in a manner acceptable to the division that enhances exit from spectator areas. Exits from this portion of the building shall not be provided with a latch or lock unless it is panic hardware.

(30) Appendix Chapter 3, Section 330 of the Uniform Building Code is amended for the division by addition of the following sentence to exception 3: Exit openings for riding arenas shall not be less than 3 feet by 6 feet 8 inches.

(31) Upon the effective date of new requirements, administrative rules and/or adoption of new editions of model codes, any building or project for which a legal building permit has been issued shall not be required to meet the new requirements. If the building or project is subsequently altered or remodeled, the alteration or remodel shall be subject to the applicable requirements in effect at the time of permit issuance for the new work. On a case-by-case basis, the building official shall have the discretion to determine if the process for issuance of a legal permit was substantially complete enough to warrant the exemption of said project or building from the new requirements, rules or code provisions.

(32) As required by 50-60-212, MCA, compliance with the requirements of the state building code for physical accessibility to persons with disabilities or the issuance of a building permit or certificate of occupancy by the state or a municipality or county does not necessarily guarantee compliance with the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, the Fair Housing Amendments Act of 1988, Title 49, chapter 2, MCA, commonly known as the Montana Human Rights Act, or other similar federal, state or local laws that mandate accessibility to commercial construction or

multifamily housing.

(33) The building official, at his discretion, may require an applicant for a building permit to obtain, at the applicant's expense, an independent plan review from a plan review firm or agency acceptable to the building official. The independent plan review shall include, but is not limited to, a structural review for compliance with the requirements of the building code. On a case-by-case basis, the building official may modify the plan review fee for projects which were required to obtain the independent plan review to be commensurate with the services provided by the agency in relation to the fee charged the applicant by the independent plan review firm or agency.

(34) In new or existing structures, the building official has the discretion to allow the installation of non-code compliant equipment, facilities or structural elements including, but not limited to, fire-extinguishing (sprinkler) systems or fire-resistive construction, which are not required by the building code, upon the finding that such installation does not negatively impact the overall compliance of the structure with the building code.

(35) Plans and specifications for public buildings, owned by the state and its political subdivisions as outlined by 18-2-122, MCA, shall bear the seal of a design professional. The building official, on a case-by-case basis, shall have the discretion to waive the requirements for a design professional seal for minor projects such as storage sheds and minor renovations which do not have a direct bearing on the public health and safety. In addition, the requirement for the seal of a design professional may be waived, on a case-by-case basis, for projects for which documentation has been submitted including, but not limited to, a letter from the attorney for the local jurisdiction where the project is located, which supports a conclusion that the scope of the project does not have the potential to have a direct bearing on public health and safety.

(36) The term "public building" as used in 18-2-122, MCA, refers only to the buildings owned by the state and its political subdivisions for the purposes of requiring a design professional's seal and does not include privately owned buildings as included in the definition of a "public building" in 50-60-101, MCA.

(37) Subsection 3004 of the Uniform Building Code is amended by striking the sentence "Vents shall be capable of manual operation only." and inserting the following wording: "EXCEPTION: When energy conservation requires that the vents be normally closed, automatic venting by actuation of an elevator lobby detector or power failure may be accepted. When hoistway pressurization is used, venting upon power failure may be accepted. In either case, a manual override shall be provided."

(38) The following appendix chapters of the Uniform Building Code are adopted for use by local governments, in part or in whole, if the local government has specifically provided for their adoption. These appendix chapters are not adopted for

use by the division:

- ~~(a) Appendix Chapter 3; Division IV (Requirements for Group R Division 4 Occupancies);~~
- ~~(b) Appendix Chapter 9 (Basement Pipe Inlets);~~
- ~~(c) Appendix Chapter 12; Division II (Sound Transmission Control);~~
- ~~(d) Appendix Chapter 16; Division II (Earthquake Recording Instrumentation);~~
- ~~(e) Appendix Chapter 19 (Protection of Residential Concrete Exposed to Freezing and Thawing);~~
- ~~(f) Appendix Chapter 33 (Excavation and Grading); and~~
- ~~(g) Appendix Chapter 34 (Existing Structures).~~

~~(39) Footnote 5, Table 3-F of the Uniform Building Code is amended with the addition of the following sentence:~~

~~(a) A magazine which is regulated by the United States bureau of alcohol, tobacco and firearms, may be considered as in compliance with the Uniform Building Code distance provisions if distances are determined by utilizing either Table 3-F of the Uniform Building Code or Table A-VI-E-5 of the Uniform Fire Code, 1994 Edition or the equivalent Table A-VI-F-5 of the Uniform Fire Code, 1997 Edition, when the 1997 Edition is adopted by the department of justice, at the discretion of the building official.~~

~~(40) The term "farm or ranch building" as used in 50-60-102, MCA, is defined as a building located on and used in conjunction with, or in support of an agricultural use of a parcel of land, that either totals 160 or more contiguous acres under one ownership or is classified as agricultural pursuant to Title 15, chapter 7, part 2, MCA. The term "farm and ranch building" does not include buildings which are classified as either Group F or Group M Occupancies by the Uniform Building Code.~~

~~(41) Subsection 106.1 of the Uniform Building Code is amended with the addition of the following sentence:~~

~~(a) At the discretion of the building official, a single annual permit may be issued for multiple buildings owned by a single entity, located in a single geographic location, which require similar and repetitive repair, restoration and maintenance work.~~

AUTH: 50-60-203, MCA

IMP: 50-60-203, MCA

REASONS: The Department proposes to amend ARM 8.70.101 for the following reasons, referred to by subsection number:

(1)(a) Adopts for statewide application rather than as a local government option, UBC Appendix Chapter 3, Division 4, providing for Group R, Division 4 occupancies which establishes standards for group care facilities.

(2) Deletes ARM 8.70.101(2) as unnecessary repetition of statutory language.

(1)(k) through (q) and (3) through (41) Deletes all other subsections of this rule so that they can be renumbered as New Rules I through VII.

~~8.70.203~~ 24.301.202 ADOPTION OF CODES (1) The codes adopted by local governments must be the same as those adopted by the division department. This is as required by ~~50-60-301, MCA~~. However, local governments need only adopt those codes which they intend are certified to enforce; that is, plumbing, electrical, building, or mechanical, etc. The codes adopted by local governments must also be of the same edition with the same amendments as those adopted by the division department. Each time the division department updates modifies the codes, local governments must also update modify their codes to conform with the department's codes. The division department will notify local governments of these code updates modifications, at which time local governments will have 90 days from receipt of the notice to update conform their codes. Local governments shall notify the division department in writing when the updated codes have been adopted and are being enforced. Such notification shall include a copy of the appropriate code adoption ordinance(s) or administrative action.

(2) An ordinance authorizing the adoption of a building code by administrative action must state, at a minimum:

(a) the type of codes which will be enforced, i.e. plumbing, electrical, building, or mechanical;

(b) the individual, identified by position title, who has the authority to sign the administrative action; and

(c) whether the administrative action authority applies to discretionary provisions such as fee structures or the adoption of optional appendix chapters.

(3) An automatic adoption ordinance which simply refers to the codes as may be adopted by the department, is not an acceptable code adoption ordinance as it is not sufficiently clear as to what codes are being enforced.

AUTH: 50-60-203, MCA

IMP: 50-60-301, MCA

REASONS: The Department proposes to amend ARM 8.70.203 for the following reasons, referred to by subsection number:

(2) and (3) New authority provided by Ch. 150, L. 2001 (HB298) allows for local adoption of state building code by administrative action. This rule clarifies the basic ordinance requirements a local government must have in place to be able to adopt the state building code by administrative action.

~~8.70.214~~ 24.301.205 CERTIFICATION OF CODE ENFORCEMENT PROGRAMS (1) A county or municipality without a previously approved code enforcement program in existence on June 30, 1998,

shall submit the equivalent of an initial annual report to support a request for certification of the a new code enforcement program. Certification of the proposed code enforcement program shall be effective upon the division's department's written determination that the local government would be in compliance with applicable statutes and rules.

AUTH: 50-60-203, MCA

IMP: 50-60-302, MCA

**REASON:** The Department proposes to amend ARM 8.70.214 by deleting outdated language which is no longer needed.

~~8.70.216~~ 24.301.207 **ANNUAL REPORT** (1) A local government with a certified code enforcement program shall may submit to the department of commerce labor and industry, building codes division, detailed and fully documented reports on an annual basis an annual report. The department may request a local government with a certified code enforcement program which has not filed an annual report to respond to inquiries regarding its code enforcement program so the department can ensure program functions are being properly performed as required by 50-60-302(2), MCA.

(2) The voluntary annual report should Annual reports shall be filed with the division department on or before September 1st of each year for the immediately preceding fiscal year.

(3) The annual report shall should contain the following information if there is a change in that particular item of information as reported from the previous year:

(a) a map or legal description of the jurisdictional area;  
(b) a list of building related codes, with edition dates being enforced with copies of adopting ordinances or administrative order if not previously provided as required by ARM 8.70.203 24.301.202;

(c) through (g) Remain the same.

(h) a list of employees inspecting, reviewing plans or approving any installation with description of responsibilities and qualification status of each employee as provided in ARM 8.70.215 24.301.206;

(i) a calculation of the payment to the division of 0.5% of building fees or charges collected in the previous fiscal year for the building codes education fund, calculated using building permit, inspection and plan review fees and charges only and not those fees and charges collected for plumbing, mechanical and electrical permits, plan review and inspections.

AUTH: 50-60-203 and 50-60-302, MCA

IMP: 50-60-302, MCA

**REASON:** Ch. 278, L. 2001 (SB138) repealed the reference to mandatory annual reports. However, 50-60-302(2), MCA, still requires the Department ensure local government program functions are being properly performed.

~~8.70.217~~ 24.301.208 **AUDIT** (1) A local government with a certified building code enforcement program that had a building code program reserve fund balance in the preceding fiscal year in excess of \$10,000 and/or had building permit revenues in the previous fiscal year of more than \$10,000 shall require its independent auditor, in conjunction with the audit required by 2-7-503, MCA, to perform agreed-upon procedures to determine whether the local government has complied with the financial

related statutes and administrative rules relating to local building code enforcement programs. The department may require local governments with a certified building code enforcement program which do not meet the above criteria to provide such an audit on a case-by-case basis so the department can ensure program functions are being properly performed as required by 50-60-302(2), MCA. The agreed-upon procedures engagement must be performed and reported in accordance with standards prescribed by the American institute of certified public accountants. The engagement must include, but is not limited to, procedures necessary to determine:

(a) all construction-related fees or charges imposed and collected by the local building code enforcement program are used and accounted for as provided in 50-60-106(2)(f), MCA and ~~ARM 8.70.208~~ 24.301.203.

(2) Remains the same.

(3) Copies of the report on applying agreed-upon procedures shall be filed with both the ~~building codes division~~ department and the ~~local government assistance division~~ services bureau of the department of commerce administration.

AUTH: 50-60-203 and 50-60-302, MCA

IMP: 50-60-302, MCA

**REASON:** The Department proposes to amend ARM 8.70.217 for the following reason: Ch. 278, L. 2001 (SB138) repealed the reference to mandatory annual reports. However, 50-60-302(2), MCA, still requires the Department ensure local government program functions are being properly performed.

~~8.70.219~~ 24.301.210 DECERTIFICATION OF CODE ENFORCEMENT PROGRAMS (1) If the department of commerce ~~labor and industry,~~ building codes division determines a code enforcement program is not in compliance with the applicable statutes or rules it shall:

(a) Give the local government notice of such non-compliance and may allow a reasonable amount of time, not to exceed six months, for the local government to come into compliance or have the code enforcement program decertified.

(b) Failure of the local government to come into compliance within the time prescribed by the ~~division~~ department will result in the decertification of the local government to the extent the code enforcement program is out of compliance.

(c) The local government shall be given the opportunity to contest the ~~division's~~ department determination through contested case proceedings as provided by the Montana Administrative Procedure Act.

(2) A local government may voluntarily decertify all or part of its code enforcement program upon a 90-day written notice to the ~~division~~ department, unless the ~~division~~ department otherwise accepts a lesser notice or the public health, safety and welfare is at risk.

(3) If a local government's code enforcement program is decertified, either involuntarily or voluntarily, in whole or in



part, the local government shall be obligated to complete all construction projects started with permits issued under the local government's program, unless the division department otherwise consents or determines that the public health, safety or welfare is at risk.

~~(4) A county which has previously granted written consent to a municipality for extended jurisdiction may rescind that consent if the municipality changes the scope of the building codes enforced or the type of structures covered without the approval of the county. The county shall notify the division, which shall in turn grant the municipality the opportunity to come into compliance or risk decertification pursuant to the procedure described in (1) above. If the non-compliance is corrected by the municipality, the county's rescission of consent shall be dismissed.~~

AUTH: 50-60-203, MCA

IMP: 50-60-302, MCA

REASONS: The Department proposes to delete ARM 8.70.219(4) because Ch. 546, L. 2001 (SB242) repealed the provisions for county consent of an extended jurisdictional area.

~~8.70.220 24.301.211 BUILDING CODES EDUCATION FUND ASSESSMENT (1) and (2) Remain the same.~~

~~(3) The first local government contribution to the building codes education fund shall be calculated for the nine month period of October 1, 1999, through June 30, 2000. A first prorated semi-annual payment is due on or before February 1, 2000, for those local governments required to make semi-annual payments. Contributions made thereafter shall be calculated for full fiscal years or portions thereof.~~

AUTH: 50-60-203, MCA

IMP: 50-60-116, MCA

REASON: The Department proposes to amend ARM 8.70.220 to delete outdated language which is no longer required.

~~8.70.402 24.301.411 WIRING STANDARDS (1) The following rules supplement or modify sections of the National Electrical Code is amended as follows:~~

~~(a) NEC ARTICLE 110-2 (SUPPLEMENTARY). When requested, complete wiring diagrams shall be provided.~~

~~(b) NEC ARTICLE 760-1 (SUPPLEMENTARY). Smoke detectors shall be installed in any building or structure as required under the currently adopted Uniform Building Code or CABO One and Two Family Dwelling Code, whichever applies, regardless of whether or not the building or structure is exempt by 50-60-102, MCA.~~

~~(b) NEC Article 210-12(b): This requirement shall not become effective until the department adopts the 2002 edition of the National Electrical Code.~~

~~(c) NEC Article 550-23(a): The allowable distance for service equipment from the exterior wall of a manufactured or~~

mobile home is increased from 30 ft (9.14 m) to 50 ft (15.24 m).

(d) NEC Article 550-23(b)(3): Add the following: It shall be permissible to feed a manufactured (mobile home) with type SER cable when the service equipment is mounted on the exterior of the home. Physical protection of the cable is required by enclosing the cable in an approved raceway where the cable is run on the outside of the home. The cable is to be properly supported and attached per Article 338 where installed under the home.

(2)(e) NEC Article 550-23(b): (a) Add the following: "(5) The manufactured (mobile) home is of a construction type that is comparable to conventional frame construction for single family dwellings and is placed on a permanent perimeter foundation wall with the footings placed below frost line or the service entrance equipment is completely installed at the factory by the manufacturer of the structure."

(f) NEC ARTICLE 760-1 (SUPPLEMENTARY). Smoke detectors shall be installed in any building or structure as required under the currently adopted Uniform Building Code or CABO One and Two Family Dwelling Code, whichever applies, regardless of whether or not the building or structure is exempt by 50-60-102, MCA.

AUTH: 50-60-603, MCA

IMP: 50-60-603, MCA

REASONS: The Department proposes to amend ARM 8.70.302 for the following reasons, referred to by subsection:

(a) and (f) Non-substantive editorial and renumbering changes.  
(b) Delays for approximately 1 year the new requirements of Article 210.12(b). This allows a better opportunity to educate the trade on this generally unknown, but wide ranging code change.

(c) Increases from 30 feet to 50 feet the distance service equipment can be from either a mobile home or a manufactured home. The increased distance does not create a safety hazard and allows for greater flexibility in setting up mobile and manufactured homes.

(d) Allows the use of SER cable for manufactured houses on permanent foundations the same as SER cable is used with site built houses. There is no difference between the two types of houses which warrants different requirements.

~~8.70.404~~ 24.301.431 ELECTRICAL PERMIT (1) Remains the same.

(2) Prior to the commencement of any electrical installation, in an area where the electrical code is enforced by the department, the installer or owner shall submit an official request for electrical permit to the building codes bureau department in Helena with fee(s) as provided in ~~ARM 8.70.407~~ 24.301.461. Request for electrical permit forms will be made available by the department and may also be available at any power supplier or the electrical inspector. At the time of application for a permit, the applicant shall

indicate on the application for a permit whether or not the applicant will be the permittee for the entire project. Owners shall designate which electrical contractor will be performing work on the project.

(a) The department may issue a provisional electrical permit authorizing electrical installations for a period not to exceed 14 days when the applicant remits an application with fees that exceed the current fee required. The department will notify the applicant of the correct fee due and retain the original permit fee until the applicant remits the correct fee. If the applicant fails to remit the correct fee within 14 days, the department will return the incorrect fee and application and request the power supplier disconnect the electrical service until such time as the required electrical permit is issued.

(3) Remains the same.

(4) The term "inspection tag" listed in 50-60-605 and 50-60-606, MCA, means the electrical permit issued by the bureau to the permittee for the electrical installation. A local government certified to enforce the electrical code may require, in addition to the electrical permit required by 50-60-605, MCA, the power supplier be provided with proof of an approved inspection before the power supplier can energize the electrical installation. The local government shall provide the power supplier with written notice of this requirement if it wishes to enforce this option.

(5) The requirements listed in 50-60-605, MCA, requiring an "inspection tag" "electrical permit" before the energizing of an electrical installation by a power supplier means the power supplier may energize said installation, before an inspection has been performed by the bureau department, after issuing a power supplier limited service certificate or upon receipt of the power supplier's copy of the electrical permit issued by the bureau department.

(6) and (7) Remain the same.

(8) Electrical permits on which the fees, as provided in ARM 8.70.407 24.301.461, are under \$250 are valid for a period of one year from the date of issuance. Extensions of up to one year may be granted on a case-by-case basis by the bureau for good cause provided such extension is requested prior to expiration of the permit and payment is made of the renewal fee.

(9) Remains the same.

(10) Only installation, alteration or repair of electrical signal or communication equipment owned or operated by either a public utility or a city is exempt from permitting by 50-60-602, MCA. "City" as referenced in 50-60-602, MCA, shall be interpreted to include state and local governments. Lighting projects, except those owned and installed by a public utility, are not exempt from the requirement to obtain an electrical permit.

(11) Remains the same except is renumbered (10)

{12}(11) No electrical permit shall be issued for a building or structure under the jurisdiction of the bureau department until the building permit has been issued for said

building or structure or it has been determined that a building permit is not required or special circumstances exist which make issuance of the permit appropriate.

AUTH: 50-60-603, MCA

IMP: 50-60-602 and 50-60-604, MCA

REASONS: The Department is proposing the amendment to ARM 8.70.404 for the following reasons, referred to by subsection number: (2) Clarifies that the permit process outlined in this rule only refers to the Department's electrical program and not certified local government electrical programs.

(2)(a) Gives flexibility when the fee remitted is too high to provide a provisional permit which will allow work to progress until a check for a lesser amount is received rather than returning the application for re-submittal with the proper fee creating a delay in the ability to perform work.

(4) Deletes the definition of "inspection tag" because the term was deleted from statute by Ch. 47, L. 2001 (HB145). New language provides that in lieu of inspection tags a certified local government can still require proof of approved inspection before the electrical installation can be energized. This allows for the continuation of the system utilized by some of the certified local governments that electrical installations may be energized only after inspection. For electrical installations in the Department's jurisdictional area, only a permit is required prior to energizing.

(5) Deletes the term "inspection tag" because it was deleted from statute and substitutes the term "electrical permit."

(10) Deletes what was a clarification of terms used in 50-60-602, MCA. The statute was amended and terms are now sufficiently clear that the rule was an unnecessary repetition of statutory language.

8.70.407 24.301.461 ELECTRICAL INSPECTIONS FEES (1) The following is the schedule of electrical inspection fees: as charged by the department. As provided in ARM 24.301.203 local governments certified to enforce the electrical code may establish their own electrical permit fees.

<u>Type of Installation</u>	<u>Permit Fee</u>
(a) temporary construction service	no separate charge
(b) single-family dwellings or cabins (includes garage wired at the same time as the house or cabin)	
(i) 100 to 300 amp service	\$150*
(ii) 301 or more amp service	300*
*Fee includes maximum of three inspections. Additional inspections charged at requested electrical inspection rates.	
(c) private property accessory buildings (garages, barns, sheds, etc.)	
(i) up to 200 amp panel	60

(ii) 201 to 300 amp panel	120
(iii) 301 or more amp panel	150
(d) multi-family dwellings (duplex through 12 units)	120 per bldg*
*Plus \$60 per unit, up to and including 12 units. *For buildings containing more than 12 units, use the commercial schedule that follows.	
(e) multi-family dwellings (duplex through 12 units) - rewire or remodel only - per dwelling unit	80
(f) interior rewire only or new addition to a home	80
(g) change of service	25
(h) mobile home installations (in a court)	25*
(i) mobile home installation (outside a court)	60*
*Fee includes only one inspection. Reinspections require new permit.	
(j) modular homes	
(i) no basement	60
(ii) with a basement and/or garage	100
(k) mobile home courts and/or recreational vehicle parks (new, rewire or addition)	
(i) first 3 spaces (1-3 spaces)	45
(ii) additional spaces over 3 spaces installed at the same time (per space)	5
(l) new service only (livestock well, irrigation well, etc.)	40
(m) irrigation pumps or machines	
(i) per unit (one pump and/or one pivot)	40
(n) permit renewal fee	45
(o) refund/credit fee	25
(p) all other installations (commercial, industrial, institutional or for public use):	

Cost of Electrical Installation

Fee

\$ 0 - \$1,000	\$45 for 1st \$500 plus 6.0% of balance of construction cost
\$ 1,001 - \$10,000	\$75 for 1st \$1,000 plus 2.0% of balance of construction cost
\$10,001 - \$50,000	\$255 for 1st \$10,000 plus .5% of balance of construction cost
\$50,001 or more	\$455 for 1st \$50,000 plus .3% of balance of construction cost

(q) temporary construction service (for commercial, industrial, institutional or public use jobs only)	25
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NOTE: this additional \$25 fee is required in addition to the above inspection fees if a temporary service will be used, and is to be paid at the same time as the regular permit fee before construction begins.

(r) permit issuance fee\* 20

\*This fee does not apply to permits issued pursuant to ARM ~~8.70.407~~ 24.301.461(1)(n) or ARM ~~8.70.407~~ 24.301.461(3).

(2) and (3) Remain the same.

(4) The payment of the \$20 permit issuance fee is temporarily suspended from October 1, 2001, through December 31, 2002. Upon written application to the department, on forms which may be prescribed by the department, a refund of the \$20 permit issuance fee shall be given to the person who paid the permit issuance fee, and the fee was received by the department during this period.

AUTH: 50-60-603, MCA

IMP: 50-60-604, MCA

REASON: The Department proposes to amend ARM 8.70.407 for the following reason:

1. Greater than anticipated construction activity has resulted in greater than anticipated collection of fees. Increased program costs have been kept to a minimum. To keep fees commensurate with the cost of the electrical code enforcement program, a retroactive (by the time this rule becomes effective) suspension of the \$20 issuance fee from October 1, 2001 through December 31, 2002 is proposed.

~~8.70.601~~ 24.301.601 INCORPORATION BY REFERENCE OF SAFETY CODE FOR ELEVATORS AND ESCALATORS ELEVATOR CODE (1) The department of commerce, by and through the building codes division labor and industry, referred to as department in this and all subsequent rules, adopts and incorporates by reference herein:

(a) Safety Code for Elevators and Escalators, ~~ASME A17.1-1996, A17.1a 2 1997 Addenda and A17.1b 3 1998 Addenda~~, collectively referred to as the Safety Code for Elevators and Escalators or elevator code, unless another edition is specifically stated. A copy of the Safety Code for Elevators and Escalators may be obtained from The American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, NY 10017. ASME A17.1-2001;

(b) Safety Code for Existing Elevators and Escalators, ASME A17.3-1996; and

(c) Safety Standard for Platform Lifts and Stairway Chairlifts, ASME A18.1-1999 and A18.1a-2001 Addenda.

(d) The above referenced codes and standard are collectively referred to as the elevator code. A copy of the elevator code may be obtained from the American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017.

(2) and (3) Remain the same.

(4) The plan review/permit fee for new installations and major alterations shall be as follows:

(a) passenger elevator, escalator, moving walk and other conveyances covered within the scope of the elevator code and subject to the inspection requirements of Title 50, chapter 60, MCA:

(i) up to and including \$40,000 of valuation - \$55

(ii) over \$40,000 of valuation - \$55 plus \$1 for each \$1,000 or fraction thereof over \$40,000.

(5) The elevator code applies only to conveyances used by members of the general public. Plans, applications and fees for new units shall be submitted to the department 30 days prior to commencement of construction and installation of the unit. Plan approval and the issuance of the permit shall be obtained from the department prior to the commencement of construction and installation.

AUTH: 50-60-702, MCA

IMP: 50-60-701, MCA

REASONS: The Department proposes to amend ARM 8.70.601 for the following reasons, referred to by subsection number:

(1) Updates to the most recent editions of the elevator code in order to keep current with the latest technical developments in the industry.

(4) and (5) Deletes references to use by the general public. The public use limitation as to which elevators are subject to inspection is deleted by Ch. 439, L. 2001 (HB437).

(4) New language clarifies the plan review fee is included in the established fee system and includes freight elevators and other devices not previously subject to inspection.

(5) New language clarifies that plans must be submitted and approved and a permit issued prior to commencement of construction. This is the standard procedure with construction related permits and is necessary to prevent the installation of non-code complying elevators.

(All) Implements HB437 (Ch. 439, L. 2001)

~~8.70.604~~ 24.301.613 CERTIFICATES OF INSPECTION (1) After the annual inspection by the division department reveals a unit complies with the requirements of the code and the annual certificate of inspection fee has been paid, a final certificate will be issued.

(2) After the annual inspection by the division department reveals a unit has minor deficiencies that do not offer imminent hazard to life and safety but that should be corrected before the next annual inspection, a conditional certificate will be issued after the certificate of inspection fee has been paid.

(3) New or upgraded elevators shall not be placed in operation prior to an inspection by the building codes Division department and the issuance of a temporary certificate of inspection. Installers shall call the department for an inspection a minimum of 10 days prior to the scheduled date for

placing the elevator in use. A temporary certificate may be withdrawn at any time, for cause, by the ~~building codes division department.~~

(4) After the ~~annual~~ inspection by the ~~division department~~ reveals a unit has deficiencies rendering it an imminent hazard to life and safety, the unit shall be sealed from operation by the ~~division department~~ and an unsafe certificate shall be placed on the unit. The ~~annual~~ certificate fee will be charged even though the unit is not certified for operation, and at such time as the deficiencies are corrected, a reinspection fee will be charged.

(5) through (7) Remain the same.

(8) It shall be unlawful to operate any elevator, escalator or moving walk without a current certificate of inspection issued by the ~~division department~~. Such certificate shall be issued annually upon payment of prescribed fees and the presentation of a valid inspection report indicating that the conveyance is safe and that the inspection was made within the previous six months. Certificates shall not be issued when the conveyance is posted as unsafe pursuant to (7) above. Obtaining a certificate of inspection shall be the responsibility of the owner of the conveyance.

AUTH: 50-60-702, MCA

IMP: 50-60-701, MCA

REASONS: The Department proposes to amend ARM 8.70.604 for the following reasons:

1. Delete references to annual inspections as other inspection schedules are now authorized by statute.
2. Establish a ten day advance notice of a request for final inspection to allow inspectors sufficient time to arrange inspection schedules and make the necessary travel arrangements.
3. Implements HB437 (Ch. 439, L. 2001).

~~8.70.902 24.301.710 INCORPORATION BY REFERENCE OF CERTAIN ASME PUBLICATIONS OF BOILER AND PRESSURE VESSEL CODE~~ (1) The department of commerce, by and through the ~~building codes division labor and industry,~~ referred to as department in this and all subsequent rules, adopts and incorporates by reference herein, the following sections of the American society of mechanical engineers, Boiler and Pressure Vessel Code, 1998 2001 Edition, referred to as Boiler and Pressure Vessel Code unless another edition is specifically stated:

- (a) Section I, power boilers;
- (b) Section II, parts a, b, c and d, material specifications;
- (c) Section IV, heating boilers, except part HLW, lined water heaters;
- (d) Section V, nondestructive examination;
- (e) Section VI, recommended rules for the care and operation of heating boilers;
- (f) Section VII, recommended guidelines for the care of power boilers; and



(g) Section IX, welding and brazing qualifications.

(2) and (3) Remain the same.

AUTH: 50-74-101, MCA

IMP: 50-74-101, MCA

**REASON:** The Department proposes the amendment to ARM 8.70.902 to update to the most recent edition of the Boiler and Pressure Vessel Code in order to keep current with the latest technical developments in the industry. Implements HB230 (Ch. 499, L. 2001).

~~8.70.906~~ 24.301.714 FEES (1) and (2) Remain the same.

(3) The term "inspection certificate" in 50-74-219, MCA, shall mean the boiler operating certificate issued by the department. If two or more boilers in the same room are inspected at the same time, the total inspection fee imposed for all boilers must be the fee for inspection of one boiler, and the inspection fee is the amount for the type of boiler with the highest fee. The operating certificate fee is required for each boiler inspected.

(4) and (5) Remain the same.

AUTH: 50-74-101, MCA

IMP: 50-74-219, MCA

**REASON:** The Department proposes to amend ARM 8.70.906 to delete the definition of inspection certificate. The statute was amended and the term is now sufficiently clear in statute that the rule was an unnecessary repetition of statutory language. New language clarifies that even though only one inspection fee is paid for multiple boilers located in one room, an operating certificate fee is still charged for each boiler. Implements HB230 (Ch. 499, L. 2001).

~~8.70.907~~ 24.301.715 BOILERS EXEMPTED (1) Remains the same.

(2) A piece of equipment is a boiler, subject to the inspection and operating certificate requirements established in Title 50, chapter 74, MCA, if the manufacturer's listing is as a boiler, the ASME code symbol stamp is for a boiler or the criteria for certification as a state special boiler established in ARM 24.301.710(24) and 24.301.719(3) are met. Water heaters that are listed to an appropriate ANSI standard and do not have components with an ASME listing are not boilers and do not require boiler safety inspections or boiler operating certificates.

AUTH: 50-74-101, MCA

IMP: 50-74-103, MCA

**REASON:** The Department proposes to amend ARM 8.70.907 to clarify exemptions from the boiler code by distinguishing a boiler which is subject to inspection from a hot water heater which is not subject to inspection. Implements HB230 (Ch. 499, L. 2001).

~~8.70.910~~ 24.301.918 BOILER INSPECTIONS (1) The requirements imposed by 50-74-206 and 50-74-209, MCA, regarding the requirements for boiler inspections, shall be as follows:

(a) and (b) Remain the same.

(c) All manually fired boilers and all boilers and banks of boilers rated with a total input of 400,000 Btu an hour or greater are to be inspected at least once in every year except, upon written application and approval by the department, longer inspection intervals may be authorized by the department based on boiler maintenance records and/or actual service conditions. A bank of boilers is a row of similar or matched boilers connected to common header piping. Total input of a bank of boilers is the aggregate input of the individual boilers comprising the bank.

(d) Agricultural class boilers, such as those operated during the harvest by mint and honey producers, will be considered for longer inspection intervals on a case-by-case basis, in regard to the provisions contained in (c) above.

(e) Smaller All automatically fired package boilers, such as those normally operated in the residential market, which are operated in public or commercial buildings, will be considered for longer inspection intervals on a case-by-case basis, in regard to the provisions contained in (c) above rated with an input of less than 400,000 Btu per hour must be inspected at least once every two (2) years. An automatically fired boiler in a school, daycare center, hospital, rest home, retirement center, or place of assembly with a capacity for more than 100 persons must be inspected once a year regardless of the boiler's Btu per hour input rating.

(f) Remains the same.

AUTH: 50-74-101, MCA

IMP: 50-60-204, 50-60-206 and 50-74-209, MCA

**REASON:** The Department proposes the amendment to ARM 8.70.910 to clarify the term "bank of boilers" and to establish new inspection intervals in response to new statutory requirements found in 50-74-204, MCA. Implements HB230 (Ch. 499, L. 2001).

4. The Department proposes to adopt new rules as follows:

NEW RULE I OPTIONAL APPENDIX CHAPTERS FOR LOCAL GOVERNMENT ADOPTION (1) The following appendix chapters of the Uniform Building Code are adopted for use by local governments, in part or in whole, if the local government has specifically provided for their adoption. These appendix chapters are not adopted for use by the department:

(a) Appendix Chapter 9 (Basement Pipe Inlets);

(b) Appendix Chapter 12; Division II (Sound Transmission Control);

(c) Appendix Chapter 16; Division II (Earthquake Recording Instrumentation);

(d) Appendix Chapter 19 (Protection of Residential Concrete Exposed to Freezing and Thawing);

- (e) Appendix Chapter 33 (Excavation and Grading); and
- (f) Appendix Chapter 34 (Existing Structures).

AUTH: 50-60-203, MCA

IMP: 50-60-203, MCA

REASONS: The Department proposes this new rule for the following reasons: This is a renumbering of existing rule ARM 8.70.101(38). It makes non-substantive editorial and name changes associated with renumbering and transfer to Department of Labor and Industry except for the deletion of the reference to Appendix Chapter 3, Division IV which is a required code provision pursuant to ARM 24.301.101(2).

NEW RULE II PURPOSE OF THE UNIFORM BUILDING CODE

(1) The purpose of the Uniform Building Code is to provide minimum standards to safeguard life or limb, health, property and the public welfare by regulating and controlling the design, construction, quality of materials, use and occupancy, location and maintenance of all buildings and structures and certain equipment specifically regulated therein. The Uniform Building Code is a nationally recognized model code setting forth minimum standards and requirements for building construction.

AUTH: 50-60-203, MCA

IMP: 50-60-203, MCA

REASONS: The Department proposes this new rule for the following reasons: This is a renumbering of existing rule ARM 8.70.101(19) and (20). It makes non-substantive editorial and name changes associated with renumbering and transfer to Department of Labor and Industry.

NEW RULE III OBTAINING COPIES OF THE UNIFORM BUILDING CODE

(1) A copy of the Uniform Building Code may be obtained from the Department of Labor and Industry, Building Codes Bureau, 301 South Park, Room 239, P.O. Box 200517, Helena, Montana 59620-0517, at cost plus postage and handling. A copy may also be obtained by writing the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.

AUTH: 50-60-203, MCA

IMP: 50-60-203, MCA

REASONS: The Department proposes this new rule for the following reasons: This is a renumbering of existing rule ARM 8.70.101(20). It makes non-substantive editorial and name changes associated with renumbering and transfer to Department of Labor and Industry.

NEW RULE IV CALCULATION OF FEES (1) Section 107 Fees, of the Uniform Building Code is modified for use by the department with the following amendments and additions:

(a) Subsection 107.2 Permit fees. The fee for each permit shall be as set forth in Table No. 1-A of the Uniform

Building Code.

(b) Subsection 107.3 Plan review fees. When submittal documents are required by section 106.3.2, a plan review fee shall be paid in addition to the permit fee. Said plan review fee shall be 35% of the building permit fee as set forth in Table No. 1-A of the Uniform Building Code. If only plan review services are provided, the review fee for such services shall be 50% of the combined plan review and building permit fee.

(c) For the period between July 1, 2000, and December 31, 2002, both the building permit fee and plan review fee shall be reduced by 35%. Upon written application to the department, on forms which may be prescribed by the department, a refund of the 35% reduction shall be given to the person or persons who paid the fee or fees to the department during this period and was not reduced by 35%.

(d) A minimum 50% of the combined building permit fee and the plan review fee must be paid before a building permit application is reviewed beyond the initial screening. Both the building permit fee and the plan review fee must be paid before a building permit will be issued.

(e) The determination of value or valuation under any of the provisions of this code shall be made by the building official. The value to be used in computing the building permit and building plan review fees shall be the total value of all construction work for which the permit is issued as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire-extinguishing systems and any other permanent equipment.

(f) The value or valuation of a building or structure under any of the provisions of the Uniform Building Code will be determined using one of the following methods of determining valuation, listed in their order of priority:

(i) firm bids or contract amounts, if available;

(ii) the design professional's preliminary cost estimate, if such estimate is available;

(iii) the cost per square foot method of valuation and the cost per square foot figures for the type and quality of construction listed in the most current "Building Valuation Data" table published by "International Conference of Building Officials Building Standards" magazine, the trade magazine published by the international conference of building officials, as modified by the regional modifiers set forth in said "Building Valuation Data" table;

(iv) when in unusual circumstances the valuation calculated by the use of the "Building Valuation Data" table, the design professional's estimated project cost, firm bids or contract amounts are determined to be unreasonable for the nature of the project, the department reserves the right to base the building permit fee and plan review fee on the best valuation information it has available to it.

(g) For purposes of calculation of fees, the building valuation shall be rounded off to the nearest \$1,000 and any calculated building and plan review fees shall be rounded off to

the nearest \$1.

(h) As provided in ARM 24.301.203, local governments certified to enforce the state building code may establish their own permit fees. Local governments may also establish their own method of building valuation.

(i) Add a new paragraph to section 107 of the Uniform Building Code to read, "107.7 Requested Inspection Fee - \$45, provided that such service is not in excess of one hour in duration, and then \$25 for each 30 minutes or fractional part thereof in excess of one hour. Travel and per diem will be charged as per the state of Montana's existing rates for these items."

AUTH: 50-60-203, MCA

IMP: 50-60-104, MCA

REASONS: The Department proposes this new rule for the following reasons:

1. This is a renumbering of existing rule ARM 8.70.101(n), (o) and (k), with non-substantive editorial and name changes associated with renumbering and transfer to Department of Labor and Industry.

2. The proposed rule also simplifies and prioritizes the basis upon which building valuation is determined in order of accuracy making the valuation process more consistent.

3. Greater than anticipated construction activity has resulted in a greater than anticipated collection of fees. Increased program costs have been kept to a minimum. To keep fees commensurate with the cost of the building code enforcement program, a retroactive 35% reduction in fees dating back to July 1, 2000 and effective through December 31, 2002 is proposed.

NEW RULE V OBTAINING PUBLICATIONS AND VALUATION TABLES

(1) The "International Conference of Building Officials Building Standards" is the trade magazine for building officials published by the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.

(2) A copy of the most current "Building Valuation Data" table may be obtained free of charge from the Department of Labor and Industry, Building Codes Bureau, 301 South Park, Room 239, P.O. Box 200517, Helena, Montana 59620-0517.

AUTH: 50-60-203, MCA

IMP: 50-60-203, MCA

REASONS: The Department proposes this new rule for the following reasons: This is a renumbering of existing rule ARM 8.70.101(21), with non-substantive editorial and name changes associated with renumbering and transfer to Department of Labor and Industry.

NEW RULE VI MODIFICATIONS TO THE UNIFORM BUILDING CODE APPLICABLE ONLY TO THE DEPARTMENT'S CODE ENFORCEMENT PROGRAM

(1) The following modifications to the Uniform Building

Code are applicable only to the department's building code enforcement program. The referenced sections remain not amended for local government building code enforcement programs.

(2) The department will use the applicable provisions of the Montana Administrative Procedure Act in all cases of appeal in lieu of section 105 of the Uniform Building Code.

(3) The department will use 50-60-109 and 50-60-110, MCA, in cases requiring prosecution in lieu of section 103 of the Uniform Building Code. When a person fails to submit required plans, obtain a permit, correct plans or comply with an order of the department, the department, as authorized by 50-60-109, MCA, will bring civil action to enjoin him from constructing or using the building.

(4) No plumbing, mechanical or electrical permit shall be issued for a building or structure, under the jurisdiction of the department, until the building permit has been issued for said building or structure or it is determined a building permit is not required.

(5) Subsection 1614 of the Uniform Building Code requires that snow loads be determined by the building official. In areas of the state outside of certified local government jurisdictions, the design snow load shall be based on the ground snow loads developed in "Snow Loads for Structural Design in Montana", authored by F.F. Videon and J.P. Schilke/Civil & Agricultural Engineering/Montana State University August 1989. The minimum design roof snow load after allowed reductions shall be 30 psf. Figure No. A-16-1 of Appendix Chapter 16 is hereby amended to provide that the building official is to establish the ground snow load for the entire state of Montana. For purposes of plan review, a snow exposure coefficient ( $C_e$ ) of 0.9 and an occupancy importance factor ( $I$ ) of 1.0 (1.15 for essential facilities and A-1, 2 and 2.1 occupancies) will be used unless other coefficients and factors can be justified by a Montana licensed design professional to the satisfaction of the building official.

(6) Subsection 1806.1 of the Uniform Building Code requires that footings and foundations shall extend below the frost line. In all areas of the state outside of certified local government jurisdictions, the minimum depth from finished grade to the bottom of footings shall be 3.0 ft. for single story wood and metal frame buildings and 4.0 ft. for multi-story and masonry buildings. Buildings located on highly expansive or unstable soils may need engineered footings and foundation walls that extend below the minimum depths indicated above. At the discretion of the building official, the above minimum depths may not be required for properly designed so-called monolithic slabs for single story storage and similar use buildings. At its sole discretion, the building official may require monolithic slabs to be designed and stamped or certified by a Montana registered engineer who practices structural design. The design and stamp of a Montana licensed architect may be accepted in lieu of an engineer's stamp when the monolithic slab design is an incidental part of an architectural building

design, as allowed by 37-67-103, MCA.

(7) Subsections 108.2 and 108.5 of the Uniform Building Code are deleted for the department.

(8) Subsection 108.4 of the Uniform Building Code is amended for the department by deletion of the first paragraph.

(9) Subsection 109.3 of the Uniform Building Code is amended for the department to read: "109.3 Certificate issued. After the building official or his agent inspects the building or structure and finds substantial compliance with the intent of the Uniform Building Code, the building official may issue a certificate of occupancy which shall contain the following:

1. The building permit number.
2. The address of the building.
3. The name and address of the owner.
4. A description of that portion of the building for which the certificate is issued.

5. A statement that the described portion of the building has been inspected for substantial compliance with the Uniform Building Code for the group and division of occupancy and the use for which the proposed occupancy is classified.

6. The name of the building official."

(a) Since the department has insufficient staff to conduct all of the key inspections identified in subsection 108.5 of the Uniform Building Code at the proper times, the issued certificate of occupancy is not a certification or guarantee of total compliance with the Uniform Building Code.

(10) An owner seeking to do work that the owner believes is not subject to a building code requirement shall provide the department, if in the department's jurisdiction, with any documentation or information that it may require so that the department may determine whether the work is subject to the building code requirement. The documentation or information provided must be in the form of an affidavit or affirmation.

(11) The first sentence of the second paragraph of subsection 106.4.1 of the Uniform Building Code is deleted and replaced with the following sentence: "When the building official issues the permit where plans are required, the building official shall approve the plans and specifications, with corrections as required, or with adequate written resolution of deficiencies noted in plan review comments."

(12) Subsection 904.2.6.2 of the Uniform Building Code is amended for the department by addition of the following sentence: "Group H, Division 4. Occupancies having more than 3,000 square feet but less than 5,100 square feet need not be required to install an automatic fire-extinguishing system, provided the building has one-hour fire resistive construction throughout, has yards of 40 feet or more in width on three sides and provides a minimum of three exits, all properly signed and illuminated.

(13) Subsection 1004.3.4.1 of the Uniform Building Code is amended for the department by addition of subsection 3407.3 of Appendix Chapter 34, Division I for application to upgrading of corridors in existing E occupancies.

(14) Riding Arenas

(a) Section 312.1 of the Uniform Building Code is amended for the department by addition of the following sentences to the exception to Division I: Riding arenas limited to occupant loads of 200 or less and used for boarding, breeding and training of horses, horse shows and competitions, clinics and rider instruction and open riding are considered agricultural buildings subject to the provisions of Appendix Chapter 3, Division II, as amended. Uses such as rodeos, barn dances, craft and other non-livestock shows, conventions and similar events which result in large numbers of spectators or occupants are not allowed in riding arenas classified as agricultural buildings.

(b) Appendix Chapter 3, Section 326 of the Uniform Building Code is amended by addition of 5. Riding arenas as defined in amended section 312.1.

(c) Appendix Chapter 3, Section 330 of the Uniform Building Code is amended for the department by addition of the following sentences to exception 2: The portion of riding arena buildings where riding will occur or where spectators may be present or seating is provided shall be provided with a minimum of four exits directly to the outside, with the exits located in a manner acceptable to the department that enhances exit from spectator areas. Exits from this portion of the building shall not be provided with a latch or lock unless it is panic hardware.

(d) Appendix Chapter 3, Section 330 of the Uniform Building Code is amended for the department by addition of the following sentence to exception 3: Exit and exit access openings for riding arenas shall not be less than 3 feet by 6 feet 8 inches.

AUTH: 50-60-203, MCA

IMP: 50-60-203, MCA

REASONS: The Department proposes this new rule for the following reasons:

1. This is a renumbering of existing rules as follows: ARM 8.70.101(1)(1) as VI(2), 8.70.101(1)(m) as VI(3), 8.70.101(1)(q) as VI(4), 8.70.101(4) as VI(5), 8.70.101(5) as VI(6), 8.70.101(6) as VI(7), 8.70.101(7) as VI(8), 8.70.101(8) as VI(9), 8.70.101(13) as VI(10), 8.70.101(9) as VI(11), 8.70.101(17) as VI(12), 8.70.101(26) as VI(13), 8.70.101(27) as VI(14)(a), 8.70.101(28) as VI(14)(b), 8.70.101(29) as VI(14)(c), and 8.70.101(30) as VI(14)(d).

2. Unless specifically noted, the modifications contained in these renumbered rules are non-substantive editorial changes or cross reference, name or address changes associated with renumbering and the transfer to the Department of Labor and Industry.

3. The following rule has a substantive modification:  
VI(4): The general rule that electrical, plumbing or mechanical permits will not be issued until the building permit is issued is modified to address situations where a building permit may



not be required.

NEW RULE VII MODIFICATIONS TO THE UNIFORM BUILDING CODE APPLICABLE TO BOTH DEPARTMENT'S AND LOCAL GOVERNMENT CODE ENFORCEMENT PROGRAMS

(1) The following modifications to the Uniform Building Code are applicable to both the department's building code enforcement program and local government building code enforcement programs:

(2) Subsection 1004.3.4.3.2.1 Doors. The requirements of the Uniform Building Code of self-closing or automatic closing corridor doors to patient rooms does not apply to health care facilities as defined in 50-5-101, MCA. Section 50-5-101, MCA, defines "health care facility" as any building used to provide health services, medical treatment, nursing, rehabilitative or preventive care to persons. The term does not include offices of private physicians or dentists. The term includes, but is not limited to, ambulatory surgical facilities, health maintenance organizations, home health agencies, hospitals, infirmaries, kidney treatment centers, long-term care facilities, mental health centers, out-patient facilities, public health centers, rehabilitation facilities and adult day-care centers.

(3) As specified in 76-2-412(3), MCA, building codes which are not applicable to residential occupancies may not be applied to a community residential facility serving eight or fewer persons or to a day-care home serving 12 or fewer children.

(a) A community residential facility does not include a Personal Care Facility defined in 50-5-101(39), MCA, regardless of the number of persons for which the building is designed or for which it is licensed.

(b) A licensed Adult Foster Care Home, as defined in 50-60-101(3), MCA, which by definition is limited to four or fewer residents, is the equivalent to a licensed Adult Foster Family Care Home referenced in 76-2-411, MCA, and is therefore a community residential facility. Within the jurisdictional area of a local government that is certified to enforce building codes for single family dwellings, a licensed Adult Foster Care Home will be classified as a Group R, Division 3 structure for building permit and construction standard purposes. Within the state's jurisdictional area a licensed Adult Foster Care Home will be treated as a residential building exempt from the state building code as provided in 50-60-102, MCA.

(4) Exception 6 of subsection 1004.2.3.2 of the Uniform Building Code is amended by addition of the following sentence: "Basements exceeding 500 square feet in area are considered to be used for more than only service of the building and must be provided with a minimum of two exits unless specifically approved by the building official on an individual case basis."

(5) The building official may waive minor building code violations that do not constitute an imminent threat to property or to the health, safety or welfare of any person.

(6) Section 50-60-102(1)(a), MCA, exempts certain buildings from application of the state building codes.

Provisions of the Uniform Building Code shall not be applied in determining whether a building or structure is exempt from the state building codes. For example, area separation walls as described in subsection 504.6 of the Uniform Building Code shall not be used to separate buildings otherwise covered by the state building codes into smaller buildings that would, if alone, be exempted by 50-60-102(1)(a), MCA.

(7) The exemptions in 50-60-102(1)(a), MCA, do not apply to any building used as or in conjunction with a hotel, motel, inn, motor court, guest or dude ranch, tourist home, public lodging house, bed and breakfast establishment or other place where sleeping accommodations are furnished for a fee to a transient guest. "Transient guest" means a guest for only a brief stay, such as the traveling public.

(8) The building official may accept high quality, essentially defect-free, rough sawn lumber as being equal and an alternative to graded and stamped dimension lumber. The building official may require in-place installations of rough sawn lumber to be inspected and certified by a Montana licensed engineer or inspected and approved by a certified lumber grader.

(9) The building official may accept high quality log construction as being equal and an alternative to graded and stamped dimension lumber. Typically, nine inch or greater nominal diameter log wall construction is considered to be equivalent to one-hour fire resistive construction provided the minimum dimension is five inches or more. Uniform Building Code Standard No. 7-7, Part VI, is used to determine the fire resistive capacity of log walls.

(10) In subsection 1302.2, Appendix Chapter 13, of the Uniform Building Code, the first paragraph is amended as follows: "In order to comply with the purpose of this appendix, buildings shall be designed to comply with the requirements of the Model Energy Code promulgated jointly by the international conference of building officials (ICBO), the southern building code congress international (SBCCI), the building officials and code administrators international (BOCA) and the national conference of states on building codes and standards (NCSBCS), latest edition adopted by the department in ARM 8.70.104."

(11) In section 332, of the Uniform Building Code, Appendix Chapter 3, Division III, the first paragraph is amended as follows: "Buildings regulated by this division shall be designed and constructed to comply with the requirements of the One and Two Family Dwelling Code, latest edition adopted by the department in ARM 24.301.180, promulgated jointly by the international conference of building officials, the building officials and code administrators international, inc. and the southern building code congress international, inc."

(12) A private garage is a building or a portion of a building, in which only motor vehicles used by the tenants of the building or buildings on the premises are stored or kept. A building in which vehicles are repaired or stored as part of commercial enterprise or business, even if on the premises of a dwelling, is not a private garage. A private storage structure

used only for the owner's own use is a building used for storage of personal effects of the owner and not used for storage of equipment, vehicles, materials, supplies or products used in a commercial enterprise or business.

(13) Aircraft hangars, even if for private use, are not exempt as private garages or private storage structures unless located on the same parcel of private property or lot as the owner's residence. Aircraft hangars that are used in conjunction with a commercial activity of any kind are not exempt as private garages or private storage structures regardless of location. Aircraft hangars, less than 3,000 square feet in size, that are used only for parking of an aircraft and where no repair work or welding is performed and where no fuel is dispensed, will be classified as utility buildings (Group U, Division 1).

(14) Upon the effective date of new requirements, administrative rules and/or adoption of new editions of model codes, any building or project for which a legal building permit has been issued shall not be required to meet the new requirements. If the building or project is subsequently altered or remodeled, the alteration or remodel shall be subject to the applicable requirements in effect at the time of permit issuance for the new work. On a case-by-case basis, the building official shall have the discretion to determine if the process for issuance of a legal permit was substantially complete enough to warrant the exemption of said project or building from the new requirements, rules or code provisions.

(15) As required by 50-60-212, MCA, compliance with the requirements of the state building code for physical accessibility to persons with disabilities or the issuance of a building permit or certificate of occupancy by the state or a municipality or county does not necessarily guarantee compliance with the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, the Fair Housing Amendments Act of 1988, Title 49, chapter 2, MCA, commonly known as the Montana Human Rights Act, or other similar federal, state or local laws that mandate accessibility to commercial construction or multifamily housing.

(16) The building official may require an applicant for a building permit to obtain, at the applicant's expense, an independent plan review from a plan review firm or agency acceptable to the building official. The independent plan review shall include, but is not limited to, a structural review for compliance with the requirements of the building code. On a case-by-case basis, the building official may modify the plan review fee for projects which were required to obtain the independent plan review to be commensurate with the services provided by the agency in relation to the fee charged the applicant by the independent plan review firm or agency.

(17) In new or existing structures, the building official may allow the installation of non-code compliant equipment, facilities or structural elements including, but not limited to, fire-extinguishing (sprinkler) systems or fire-resistive

construction, which are not required by the building code, upon the finding that such installation does not negatively impact the overall compliance of the structure with the building code.

(18) Plans and specifications for public buildings, owned by the state and its political subdivisions as outlined by 18-2-122, MCA, shall bear the seal of a design professional. The building official may waive the requirements for a design professional seal for minor projects such as storage sheds and minor renovations which do not have a direct bearing on the public health and safety. In addition, the requirement for the seal of a design professional may be waived for projects for which documentation has been submitted including, but not limited to, a letter from the attorney for the local jurisdiction where the project is located, which supports a conclusion that the scope of the project does not have the potential to have a direct bearing on public health and safety.

(19) The term "public building" as used in 18-2-122, MCA, refers only to the buildings owned by the state and its political subdivisions for the purposes of requiring a design professional's seal and does not include privately owned buildings as included in the definition of a "public building" in 50-60-101, MCA.

(20) Subsection 3004 of the Uniform Building Code is amended by striking the sentence "Vents shall be capable of manual operation only" and inserting the following wording: "EXCEPTION: When energy conservation requires that the vents be normally closed, automatic venting by actuation of an elevator lobby detector or power failure may be accepted. When hoistway pressurization is used, venting upon power failure may be accepted. In either case, a manual override shall be provided."

(21) Footnote 5, Table 3-F of the Uniform Building Code is amended with the addition of the following sentence: A magazine which is regulated by the United States bureau of alcohol, tobacco and firearms, may be considered as in compliance with the Uniform Building Code distance provisions if distances are determined by utilizing either Table 3-F of the Uniform Building Code or Table A-VI-F-5 of the Uniform Fire Code, 1997 Edition, at the discretion of the building official.

(22) The term "farm or ranch building" as used in 50-60-102, MCA, is defined as a building located on and used in conjunction with, or in support of an agricultural use of a parcel of land, that either totals 160 or more contiguous acres under one ownership or is classified as agricultural pursuant to Title 15, chapter 7, part 2, MCA. The term "farm and ranch building" does not include buildings which are classified as either Group F or Group M Occupancies by the Uniform Building Code.

(23) Subsection 106.1 of the Uniform Building Code is amended with the addition of the following sentence: A single annual permit may be issued for multiple buildings owned by a single entity, located in a single geographic location, which require similar and repetitive repair, restoration and maintenance work.

(24) Section 904.1 (Installation Requirements) is amended by addition of the following: 904.1.4 Inadequate Water Supply. This subsection shall apply to buildings which are required by the Uniform Building Code to be provided with an automatic fire extinguishing system and do not have access to an existing multiple user water supply system, such as a municipal water supply system or a private community water supply system, capable of providing the water supply requirements of National Fire Protection Association Standard for the Installation of Sprinkler Systems, 1999 edition (NFPA 13). Under such circumstances, water storage requirements may be modified by the building official. The modified design shall include sufficient storage for 50% of the sprinkler discharge requirements in the hydraulically remote area for the response time of the local fire department. This reduction shall not reduce the number of operating sprinklers to less than four. Response time is the time from alarm to the time the fire department can apply water to the fire. Response time shall be established by the use of the formula  $T = 0.65 + 1.7D$ , where T is response time, in minutes, and D is distance, in miles, from the fire station to the building. The modified water supply shall be sufficient to operate the system for the response time calculated above but not be less than 20 minutes. Water supply requirements shall be established by using the area/density method as defined in NFPA 13. A 50% reduction in water storage is allowed. Density shall not be modified. All automatic fire sprinkler system designs and components shall be in compliance with NFPA 13. When a modified water storage is allowed, the automatic fire sprinkler system must be equipped with a flow alarm, digital alarm communicator transmitter and a fire department connection. The automatic fire sprinkler system shall be monitored by an approved central station in accordance with NFPA 72, National Fire Alarm Code, 1999 edition.

(25) The standards for fire-extinguishing systems and standpipe systems referenced in Chapter 9 of the Uniform Building Code shall be the following unamended National Fire Protection Association (NFPA) Standards:

1. Fire-extinguishing system.
  - 1.1 UBC Standard 9-1, Installation of Sprinkler Systems: NFPA 13 Standard for the Installation of Sprinkler Systems, 1999 edition.
  - 1.2 UBC Standard 9-3, Installation of Sprinkler Systems in Group R Occupancies Four Stories or Less: NFPA 13R Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height, 1999 edition.
2. Standpipe systems.

UBC Standard 9-2, Standpipe Systems: NFPA 14 Standard for the Installation of Standpipe and Hose Systems, 2000 edition.

(a) Notwithstanding any other provisions or references to the contrary within the Uniform Building Code or a NFPA standard, the authority having jurisdiction over any fire

protection system required by Chapter 9 of the Uniform Building Code shall be the building official.

(26) Notwithstanding any other provisions within the Uniform Building Code, the following Adult Group Residential Facilities, licensed by the department of public health and human services will be classified and treated as follows:

(a) Category A Personal Care Facilities with 1 to 19 residents, as referenced in 50-5-226, MCA, will be classified as an R-4 occupancy for building permit and construction standard purposes and shall meet accessibility standards as provided in the UBC 1103.1.9.

(b) Category B Personal Care Facilities with 1 to 19 residents, as referenced in 50-5-226, MCA, will be classified as an R-4 occupancy for building permit and construction standards purposes. In addition, a Category B Personal Care Facility shall be fire sprinklered (NFPA 13R standard is acceptable) and provide an accessible sleeping room or space for each Category B resident.

(c) A Personal Care Facility with 20 or more residents, in any combination of Category A or Category B, will be classified as an R-1 occupancy for building permit and construction standards and shall meet accessibility standards as provided in the UBC 1103.1.9. An area separation wall can not be used to isolate and reduce occupant loads in order to avoid an R-1 classification.

AUTH: 50-60-203, MCA

IMP: 50-60-203, MCA

REASONS: The Department proposes this new rule for the following reasons:

1. This is a renumbering of existing rules as follows: ARM 8.70.101(1)(p) as VII(2), 8.70.101(16) as VII(4), 8.70.101(11) as VII(6), 8.70.101(12) as VII(7), 8.70.101(14) as VII(8), 8.70.101(15) as VII(9), 8.70.101(18) as VII(10), 8.70.101(22) as VII(11), 8.70.101(23) as VII(12), 8.70.101(25) as VII(13), 8.70.101(31) as VII(14), 8.70.101(32) as VII(15), 8.70.101(33) as VII(16), 8.70.101(34) as VII(17), 8.70.101(35) as VII(18), 8.70.101(36) as VII(19), 8.70.101(37) as VII(20), 8.70.101(39) as VII(21), 8.70.101(40) as VII(22), 8.70.101(41) as VII(23), and 8.70.101(24) as VII(24).

2. Unless specifically noted, the modifications contained in these renumbered rules are non-substantive editorial changes or cross reference, name or address changes associated with renumbering and the transfer to the Department of Labor and Industry.

3. The following rules have substantive modifications:

VII(5): Clarify that the building official in any jurisdiction, not just the state's jurisdiction, has the option of waiving minor code violations.

VII(12): Clarify that the definition of a private garage is not limited to defining when a garage is exempt from the state building code but also clarifies the distinction between private use and commercial use for classification purposes.

VII(24): Clarifies what constitutes an inadequate water supply which would allow for special provisions for reduced flow fire sprinklers.

4. The following rules are new without a previous equivalent:  
VII(3)(b) and (c): The purpose of this rule is to clarify, for a consistent interpretation between all building code enforcement jurisdictions and affected state agencies, what constitutes community residential facilities within the meaning of 76-2-411, MCA.

VII(25): Updates the NFPA Standards for fire protection system components from the 1991 and 1993 editions referenced in the UBC to the current 1999 and 2000 editions in order to keep current with technological developments in fire protection systems.

VII(26): The purpose of this rule is to clarify, for a consistent interpretation between all building code enforcement jurisdictions and affected state agencies, what building code standards will be applied to adult group residential facilities.

NEW RULE VIII ADOPTION OF THE UNIFORM HOUSING CODE OR THE UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS (1) The adoption or use of the Uniform Housing Code or the Uniform Code for the Abatement of Dangerous Buildings by a local government is independent from any authority or requirement of the state building code. Local governments may not utilize fees paid from any permits authorized by Title 50, chapter 60, parts 1 through 6, MCA, to finance inspections, enforcement or a repair or demolition fund associated with the Uniform Housing Code or the Uniform Code for the Abatement of Dangerous Buildings.

AUTH: 50-60-302, MCA

IMP: 50-60-106, MCA

REASON: The Department proposes the repeal of the Uniform Housing Code and the Uniform Code for the Abatement of Dangerous Building as part of the state building code, as being outside of the purpose, scope and authority of the state building code. However, the limitation of authority for the state to enforce these codes does not prevent local governments from independently adopting and enforcing these codes outside of the program limitations of the state building code.

5. The Department proposes to repeal the following rules:

8.70.102 INCORPORATION BY REFERENCE OF UNIFORM HOUSING CODE which can be found on pages 8-1979 and 8-1981 of the Administrative Rules of Montana.

AUTH: 50-60-203, MCA

IMP: 50-60-203, MCA

REASON: The Department proposes to repeal ARM 8.70.102 for the following reason: The Uniform Housing Code is essentially a maintenance code for existing buildings. The Department's statutory authority to enter and inspect a building is limited to construction activities. Fees collected through permits may

only be spent on plan reviews and construction inspections. Building permit fees may not be used to inspect buildings outside of construction related activities. Building permit fees may not be used for the demolition or repair of buildings. The repeal of the Uniform Housing Code by the Department as part of the state building code does not preclude a local government from adopting the Uniform Housing Code independently from the state building code program.

8.70.103 INCORPORATION BY REFERENCE OF UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS which can be found on pages 8-1981 and 8-1982 of the Administrative Rules of Montana.

AUTH: 50-60-203, MCA

IMP: 50-60-203, MCA

REASONS: The Department proposes to repeal ARM 8.70.103 for the following reasons: The Uniform Code for the Abatement of Dangerous Buildings is essentially a maintenance code for existing buildings. The Department's authority to enter and inspect a building is limited to construction activities. Fees collected through permits may only be spent on plan reviews and construction inspections. Building permit fees may not be used to inspect buildings outside of construction related activities. Building permit fees may not be used for the demolition or repair of building. The repeal of the Uniform Code for the Abatement of Dangerous Buildings by the Department as part of the state building code does not preclude a local government from adopting the Uniform Code for the Abatement of Dangerous Buildings independently from the state building code program.

8.70.218 CERTIFICATION OF EXTENDED JURISDICTIONAL AREA which can be found on pages 8-2019 of the Administrative Rules of Montana.

AUTH: 50-60-203, MCA

IMP: 50-60-302, MCA

REASON: The Department proposes to repeal ARM 8.70.218 for the following reason: Ch. 546, L. 2001 (SB242) repealed the authority for any new extended jurisdictional areas.

8.70.602 UNITS COVERED BY ELEVATOR INSPECTION PROGRAM which can be found on pages 8-2137 and 8-2138 of the Administrative Rules of Montana.

AUTH: 50-60-203 and 50-60-701, MCA

IMP: 50-60-703, MCA

REASON: The Department proposes to repeal ARM 8.70.602 for the following reason: The language in the statute has been modified and clarified by Ch. 439, L. 2001 (HB439). Clarification by rule is no longer necessary.

6. Interested persons may present their data, views, or comments, either orally or in writing, at the hearing. Written



data, views, or comments may also be submitted to:

Department of Labor and Industry  
Building Codes Bureau  
301 South Park  
Federal Building, Room 239  
P.O. Box 200517  
Helena, Montana 59620-0517  
or by facsimile (406) 841-2050

so that they are received by no later than 5:00 p.m.,  
September 26, 2001.

7. 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 Rule Hearings section. Interested persons may make comments on the proposed rules via the comment forum, <http://forums.dli.state.mt.us>, linked to the Notice of Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m., September 26, 2001. 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 does not excuse late submission of comments.

8. The Building Codes Bureau maintains a list of interested persons who wish to receive notices of rule-making actions proposed by this Bureau. 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 specifies that the person wishes to receive notices regarding all Building Codes Bureau administrative rule-making proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Building Codes Bureau, 301 South Park, Federal Building, Room 239, P.O. Box 200517, Helena, Montana, 59620-0517, or may be made by completing a request form at any rules hearing held by the Department.

9. Monetary Impact: New Rule IV proposes a reduction in building permit fees. The Department estimates 1500 persons will be eligible for refunds totaling \$627,000.00. The Department estimates an additional 1400 persons will be eligible for reduced fees totaling \$487,000.00. Amended Rule 8.70.407 proposes a reduction in electrical permit fees. The Department estimates 15,000 persons will be eligible for reduced fees

totaling \$300,000.00.

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

11. Eric Fehlig has been designated to preside over and conduct the hearing.

/s/ WILLIAM H. JELLISON  
William H. Jellison, Bureau Chief  
Building Codes Bureau

/s/ KEVIN BRAUN  
Kevin Braun  
Rule Reviewer

/s/ MIKE FOSTER  
Mike Foster, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: August 13, 2001

BEFORE THE BOARD OF OIL AND GAS CONSERVATION  
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PROPOSED  
amendment of ARM 36.22.1242 ) AMENDMENT  
relating to privilege and )  
license tax rates on oil and ) NO PUBLIC HEARING  
gas ) CONTEMPLATED

TO: All Concerned Persons

1. On October 12, 2001, the board proposes to amend ARM 36.22.1242 relating to privilege and license tax rates for oil and gas production.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Oil and Gas Conservation no later than 5:00 p.m. on September 5, 2001, to advise us of the nature of the accommodation that you need. Please contact Terri Perrigo, Board of Oil and Gas Conservation, P.O. Box 201601, Helena, Montana 59620-1601; telephone (406) 444-6675; fax number (406) 444-2684; e-mail address tperrigo@state.mt.us.

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

36.22.1242 REPORTS BY PRODUCERS - TAX REPORT - TAX RATE

(1) Remains the same

(2) The privilege and license tax on each barrel of crude petroleum and each 10,000 cubic feet of natural gas produced, saved, and marketed, or stored within the state or exported therefrom shall be ~~100—86.66~~ per cent (2.6/10ths of 1%) of the rate authorized in 82-11-131, MCA, (3/10ths of 1%) of the market value thereof. This rule is effective on all crude petroleum and natural gas produced on and after ~~July 1, 1995~~ July 1, 2001 through June 30, 2006, at which time the rate returns to the maximum authorized in 82-11-131, MCA.

AUTH: 82-11-111, MCA

IMP: 82-11-123, 82-11-131, and 82-11-133, MCA

REASONABLE NECESSITY: The board is proposing to amend ARM 36.22.1242 to reflect the increase in value of oil and gas, which has resulted in the current tax rate generating revenue in excess of that needed by the board to support its operations. The board estimates that the revenue generated under the proposed tax rates will be adequate to meet its needs until the natural decline in production offsets the increase in oil and gas values; the board believes that this point will occur in June 2006.

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

Terri Perrigo  
Board of Oil and Gas Conservation  
P.O. Box 201601  
Helena MT 59620-1601

no later than September 20, 2001.

5. If persons who are directly affected by the proposed action wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Terri Perrigo at the above address no later than September 20, 2001.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the appropriate administrative rule review committee; from a governmental subdivision or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 35 persons based on 350 active oil and gas operators.

7. The Board of Oil and Gas Conservation maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in paragraph 4 above or faxed to the office at (406) 444-2684, or may be made by completing a request form at any rules hearing held by the Board.

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

DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

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

BOARD OF OIL AND GAS  
CONSERVATION

/s/ Terri Perrigo  
TERRI PERRIGO  
Executive Secretary  
Board of Oil and Gas  
Conservation

Certified to Secretary of State August 13, 2001

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

In the matter of the repeal	)	NOTICE OF PROPOSED
of ARM 16.22.101, 16.22.102,	)	REPEAL
16.22.103, 16.22.104,	)	
16.22.105, 16.22.106,	)	
16.22.107, 16.22.108,	)	
16.22.109, 16.22.110,	)	
16.22.111, 16.22.112,	)	NO PUBLIC HEARING
16.22.113 and 16.22.114	)	CONTEMPLATED
pertaining to fluoridation of	)	
public water supplies	)	

TO: All Interested Persons

1. On September 22, 2001, the Department of Public Health and Human Services proposes to repeal the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you need to request an accommodation, contact the department no later than 5:00 p.m. on September 13, 2001, 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 dphslegal@state.mt.us.

2. The rules 16.22.101 through 16.22.114 as proposed to be repealed are on pages 16-1115 through 16-1121 of the Administrative Rules of Montana.

AUTH: Sec. 50-1-202, MCA  
IMP: Sec. 50-1-202, MCA

3. The rules date from 1972 and need to be repealed now because the Department of Environmental Quality, rather than the Department of Public Health and Human Services, has the authority to set fluoride standards for public drinking water. In addition, while 50-1-202, MCA, cited as authority for the rules, directs the Department of Public Health and Human Services to develop and administer activities to protect and improve dental health, it does not give the department the authority to adopt substantive rules on the subject setting standards that must be met by those responsible for public water supplies.

4. Interested persons may submit their data, views or arguments concerning the proposed action in writing to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on September 20, 2001. Data, views or arguments

may also be submitted by facsimile (406)444-1970 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 Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us no later than 5:00 p.m. on September 20, 2001.

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 in excess of 25 based on the fact that the rules apply to all state public water supplies, including those maintained by cities and towns as well as individual systems, and affect all of those served by those supplies.

/s/ Dawn Sliva  
Rule Reviewer

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

Certified to the Secretary of State August 13, 2001.

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

In the matter of the repeal	)	NOTICE OF PROPOSED
of ARM 16.4.101, 16.4.102,	)	REPEAL
16.4.103, 16.4.104, 16.4.105	)	
and 16.4.106 pertaining to	)	
distribution of funds for	)	NO PUBLIC HEARING
local health services	)	CONTEMPLATED

TO: All Interested Persons

1. On September 22, 2001, the Department of Public Health and Human Services proposes to repeal the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you need to request an accommodation, contact the department no later than 5:00 p.m. on September 13, 2001, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

2. The rules 16.4.101 through 16.4.106 as proposed to be repealed are on pages 16-61 through 16-64 of the Administrative Rules of Montana.

AUTH: Sec. 2-4-201, MCA  
IMP: Sec. 50-2-103, MCA

3. Repeal of these rules is necessary because they date from 1972 and are out of step with current preferred practice, and, by establishing substantive standards both the state and local health departments have to meet, they go beyond the scope of the law cited as authority for the rules, 2-4-201, MCA, which authorizes the adoption of procedural rules.

4. Interested persons may submit their data, views or arguments concerning the proposed action in writing to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on September 20, 2001. Data, views or arguments may also be submitted by facsimile (406)444-1970 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 Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us no later than 5:00 p.m. on September 20, 2001.

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 in excess of 25 based on the fact that they apply to all Montana local public health programs and therefore the population of the entire state.

/s/ Dawn Sliva  
Rule Reviewer

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

Certified to the Secretary of State August 13, 2001.



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

In the Matter of the Proposed ) NOTICE OF PUBLIC HEARING  
Adoption of a Rule Pertaining ) ON THE PROPOSED ADOPTION  
to Electronic Filings ) OF NEW RULE I

TO: All Concerned Persons

1. On September 24, 2001, 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 Rule I.

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 September 17, 2001, to advise us of the nature of the accommodation that you need. Please contact Rhonda Simmons, 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.

3. The proposed new rule provides as follows:

RULE I. ELECTRONIC COPY OF FILINGS (1) All papers, including pleadings initiating the proceeding and all thereafter, filed with the commission by any party to a proceeding which pertains to an application by any energy utility, including energy transportation and distribution providers, any telecommunications utility, or any water or sewer utility serving more than 5,000 customers, to establish, modify, or abolish tariffed rates or operating rules must, in addition to the paper original and copies required by commission rules, policies, or orders, be accompanied by an electronic copy at the time of filing.

(2) The electronic copy must be filed on a floppy disk (3 1/2 inch, MS-DOS format) or compact disc and must be a single file in Adobe, Portable Document Format (PDF) format (see [www.adobe.com](http://www.adobe.com)). The first digital pages of the single-file electronic copy must be an index, by heading and subheading and, when testimony is included, by witness identification, referencing to PDF background page numbers. Except for the index to PDF background page numbers, the electronic copy must be identical to the paper original which it represents.

(3) Documents which have been designated trade secret or have been otherwise protected from public disclosure by action of the commission are not subject to the electronic copy requirement. The nonproprietary summaries of such documents are subject to the electronic filing requirement.

AUTH: 69-1-110, 69-2-101, 69-3-103, MCA

IMP: 69-1-110, 69-2-101, 69-3-103, MCA

4. Adoption of this rule is reasonably necessary for convenience and efficiency of the PSC and parties appearing in proceedings before it, primarily in regard to application of computer technology in those proceedings and in maintaining electronic records of those proceedings. This rule, depending on what is learned from its implementation, might also be viewed as a necessary first formal step towards possible replacement of some or all paper original and copies filed before the PSC.

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 September 24, 2001, 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 September 24, 2001. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-01.6.2-RUL.")

6. The PSC, a commissioner, or a duly appointed presiding officer may 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 Rhonda Simmons at 406-444-7618, or may be made by completing a request form at any rule hearing held by the PSC.

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

/s/ Gary Feland  
Gary Feland, Chairman

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

CERTIFIED TO THE SECRETARY OF STATE AUGUST 10, 2001.

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

In the Matter of the Proposed ) NOTICE OF PUBLIC HEARING  
Adoption of a Rule Pertaining ) ON THE PROPOSED ADOPTION  
to Consumer Requested Privacy ) OF RULE I  
Regarding Telephone Numbers )

TO: All Concerned Persons

1. On September 24, 2001, at 2:30 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 Rule I.

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 September 17, 2001, to advise us of the nature of the accommodation that you need. Please contact Rhonda Simmons, 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.

3. The proposed new rule provides as follows:

RULE I. TELECOMMUNICATIONS CUSTOMER PRIVACY REGARDING TELEPHONE NUMBERS (1) A residential class telecommunications service customer may request that a local, commission-regulated telecommunications carrier serving the customer neither use nor disclose the customer's telephone number in a manner not agreed to by the customer or authorized by this rule. Local carriers shall offer commission-approved privacy-in-number services to customers and may charge the customers requesting such service for the service in accordance with commission-approved rates.

(2) Local carriers may make available commission-approved options for number privacy to better meet the specific needs of customers. However, unless the customer, at the time of requesting privacy regarding the number assigned to the customer, specifically agrees otherwise, the local carrier will provide the customer with strict privacy, which means, except as otherwise provided in this rule, the carrier must not disclose the number in any manner, including through service features allowing caller identification, and must not use the telephone number in any manner.

(3) Privacy of customer telephone numbers does not apply to requests to the carrier by emergency personnel in an emergency, court orders specifically directing disclosure of the number, or use by the telecommunications carrier providing the service in service-related emergencies, line maintenance, or carrier billing inquiries related to customer non-payment.

AUTH: 69-3-103, MCA  
IMP: 69-3-201, MCA

4. Adoption of the new rule is reasonably necessary to allow customers who prefer relatively strict privacy in telephone numbers to obtain that privacy as a service. The rule also resolves occasional problems regarding some existing carrier privacy-in-number options which are not intuitive to customers and regarding complexities in carrier and customer privacy-in-number communications regarding those options.

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 September 24, 2001, 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 September 24, 2001. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-01.6.3-RUL.")

6. The PSC, a commissioner, or a duly appointed presiding officer may 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 Rhonda Simmons at 406-444-7618, 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, do not apply.

/s/ Gary Feland  
Gary Feland, Chairman

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

CERTIFIED TO THE SECRETARY OF STATE AUGUST 10, 2001.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PROPOSED
amendment of ARM 42.25.1809 )	AMENDMENT
and 42.25.1810 relating to )	
tax rates and distribution of)	NO PUBLIC HEARING
oil and gas proceeds )	CONTEMPLATED

TO: All Concerned Persons

1. On October 12, 2001, the department proposes to amend ARM 42.25.1809 and 42.25.1810 relating to tax and distribution rates for oil and gas production to conform to the amendments being made by the Board of Oil and Gas Conservation's rule, ARM 36.22.1242, as shown in this register.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m. on September 5, 2001, 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 number (406) 444-3696; e-mail address canderson@state.mt.us.

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

42.25.1809 TAX RATES (1) Table I below reflects the tax rates effective on July 1, 2001, and includes the rates contained in 15-36-304, MCA, and ARM 36.22.1242 (board of oil and gas). The rate is subject to change by the board of oil and gas.

<u>Table I - Effective 7/1/2001 Type of Production</u>	<u>Working Interest</u>	<u>Nonworking Interest</u>
<u>(a) Natural gas</u>		
<u>(i) Primary recovery production</u>		
<u>(A) First 12 months of production</u>	<u>.76%</u>	<u>15.06%</u>
<u>(B) Pre-1999 wells after first 12 months of production</u>	<u>15.06%</u>	<u>15.06%</u>
<u>(C) Post-1999 wells after first 12 months of production</u>	<u>9.26%</u>	<u>15.06%</u>

<p style="text-align: center;"><u>Table I -</u> <u>Effective 7/1/2001</u> <u>Type of Production</u></p>	<p style="text-align: center;"><u>Working</u> <u>Interest</u></p>	<p style="text-align: center;"><u>Nonworking</u> <u>Interest</u></p>
<p><u>(ii) Stripper wells</u> <u>(averaging &lt; 60 MCF/day)</u></p>		
<p><u>(A) Pre-1999 wells</u></p>	11.26%	15.06%
<p><u>(iii) Horizontally completed</u> <u>well production</u></p>		
<p><u>(A) First 18 months of</u> <u>qualifying production</u></p>	.76%	15.06%
<p><u>(B) After 18 months</u></p>	9.26%	15.06%
<p><u>(b) Oil</u></p>		
<p><u>(i) Primary recovery production</u></p>		
<p><u>(A) First 12 months of production</u></p>	.76%	15.06%
<p><u>(B) Pre-1999 wells after</u> <u>first 12 months of production</u></p>	12.76%	15.06%
<p><u>(C) Post-1999 wells after</u> <u>first 12 months of production</u></p>	9.26%	15.06%
<p><u>(ii) Stripper wells (averaging</u> <u>&lt; 15 bbls/day)</u></p>		
<p><u>(A) Pre-1999 and post-1999 wells</u> <u>first 1 - 10 bbls</u></p>	5.76%	15.06%
<p><u>(B) Pre-1999 and post-1999 over</u> <u>10 bbls</u></p>	9.26%	15.06%
<p><u>(C) Pre-1999 and post-1999</u> <u>stripper well exemption</u></p>	.76%	15.06%
<p><u>(iii) Horizontally drilled</u></p>		
<p><u>(A) Pre-1999 and post-1999</u> <u>wells first 18 months</u></p>	.76%	15.06%
<p><u>(B) Pre-1999 wells after 18 months</u></p>	12.76%	15.06%
<p><u>(C) Post-1999 wells after 18</u> <u>months</u></p>	9.26%	15.06%
<p><u>(iv) Incremental production</u></p>		
<p><u>(A) New or expanded secondary</u> <u>recovery production</u></p>	8.76%	15.06%
<p><u>(B) New or expanded tertiary</u> <u>production</u></p>	6.06%	15.06%
<p><u>(v) Horizontally recompleted</u> <u>wells</u></p>		
<p><u>(A) Pre-1999 and post-1999 wells</u> <u>first 18 months</u></p>	5.76%	15.06%
<p><u>(B) Pre-1999 wells after 18 months</u></p>	12.76%	15.06%



<u>Table I - Effective 7/1/2001</u>	<u>Working Interest</u>	<u>Nonworking Interest</u>
<u>Type of Production</u>		
<u>(C) Post-1999 wells after 18 months</u>	<u>9.26%</u>	<u>15.06%</u>

(1)(2) Table I II below reflects the tax rates effective on January 1, 2000, and include the rates contained in 15-36-304, MCA, and ~~82-11-131, MCA~~ ARM 36.22.1242 (board of oil and gas). The rate of tax set under ~~82-22-131~~ 82-11-131, MCA, is at the maximum allowable rate of .3% of value. The rate is subject to change by the board of oil and gas.

<u>Table I II - Effective 1/1/2000</u>	<u>Working Interest</u>	<u>Nonworking Interest</u>
<u>Type of Production</u>		
(a) Natural gas		
(i) Primary recovery production		
(A) First 12 months of production	.8%	15.1%
(B) Pre-1999 wells after the first 12 months	15.1%	15.1%
(C) Post-1999 wells after the first 12 months	9.3%	15.1%
(ii) Stripper wells (averaging < 60 MCF/day)		
(A) Pre-1999 wells	11.3%	15.1%
(iii) Horizontally completed well production		
(A) First 18 months of qualifying production	.8%	15.1%
(B) After 18 months	9.3%	15.1%
(b) Oil		
(i) Primary recovery production		
(A) First 12 months of production	.8%	15.1%
(B) Pre-1999 wells after the first 12 months	12.8%	15.1%
(C) Post-1999 wells after the first 12 months	9.3%	15.1%
(ii) Stripper wells (averaging		

<p>Table <del>II</del> <u>III</u> -                      Effective <del>1/1/2000</del>                      Type of Production                      &lt; 15 bbls/day)</p>	<p>Working Interest</p>	<p>Nonworking Interest</p>
(A) Pre-1999 and post-1999 wells first - 1 - 10 bbls	5.8%	15.1%
(B) Pre-1999 and post-1999 over 10 bbls	9.3%	15.1%
(C) Pre-1999 and post-1999 stripper well exemption	.8%	15.1%
(iii) Horizontally drilled		
(A) Pre-1999 and post-1999 wells first 18 months	.8%	15.1%
(B) Pre-1999 wells after 18 months	12.8%	15.1%
(C) Post-1999 wells after 18 months	9.3%	15.1%
(iv) Incremental production		
(A) New or expanded secondary recovery production	8.8%	15.1%
(B) New or expanded tertiary production	6.1%	15.1%
(v) Horizontally recompleted wells		
(A) Pre-1999 and post-1999 wells first 18 months	5.8%	15.1%
(B) Pre-1999 wells after 18 months	12.8%	15.1%
(C) Post-1999 wells after 18 months	9.3%	15.1%

(2)(3) Table ~~II~~ III below reflects the tax rates effective on July 1, 1999 through December 31, 1999, and includes the rates contained in 15-36-304, MCA, and ~~82-11-131~~, MCA ARM 36.22.1242 (board of oil and gas). The rate of tax set under ~~82-22-131~~ 82-11-131, MCA, is at the maximum allowable rate of .3% of value. The rate is subject to change by the board of oil and gas.

Table II III - Effective 7/1/1999 through 12/31/1999 Type of Production	Working Interest	Nonworking Interest
(a) Natural gas		
(i) Pre-1985 wells	18.85%	15.1%
(ii) Post-1985 wells (qualifying production)		
(A) First 12 months	.8%	15.1%
(B) After first 12 months, but less than first 25 months	12.8%	15.1%
(C) After first 24 months	15.45%	15.1%
(iii) Stripper (wells averaging < 60 MCF/day)		
(A) Pre-1985 and post-1985 wells	11.3%	15.1%
(iv) Post-1999 wells		
(A) First 12 months of qualifying production	.8%	15.1%
(B) After 12 months	9.3%	15.1%
(v) Horizontally completed well production		
(A) First 18 months of qualifying production	.8%	15.1%
(B) After 18 months	9.3%	15.1%
(b) Oil		
(i) Primary recovery production		
(A) Pre-1985 wells	14.2%	17.2%
(ii) Stripper wells (averaging < 15 bbls/day)		
(A) Pre-1985 and post-1985 wells first 1 - 10 bbls	5.8%	15.1%
(B) Pre-1985 and post-1985 wells over 10 bbls	9.3%	15.1%
(C) Pre-1985 and post-1985 stripper well exemption	.8%	15.1%
(iii) Horizontally drilled		
(A) Post-1985 wells		
(I) First 18 months	.8%	15.1%

<p>Table II III - Effective 7/1/1999 through 12/31/1999 Type of Production</p>	<p>Working Interest</p>	<p>Nonworking Interest</p>
(II) After first 18 months, but less than first 25 months	7.8%	12.8%
(III) After 24 months	12.8%	12.8%
(B) Post-1999 wells		
(I) First 18 months	.8%	15.1%
(II) After 18 months	9.3%	15.1%
(iv) Incremental production		
(A) New or expanded secondary recovery production		
(I) Pre-1985 wells	8.8%	16.3%
(II) Post-1985 wells	8.8%	10.8%
(III) Post-1999 wells	8.8%	15.1%
(B) New or expanded tertiary production		
(I) Pre-1985 wells	6.1%	15.3%
(II) Post-1985 wells	6.1%	9.8%
(III) Post-1999 wells	6.1%	15.1%
(v) Horizontally recompleted well		
(A) First 18 months of qualifying production		
(I) Post-1985 wells	5.8%	5.8%
(II) Post-1999 wells	5.8%	15.1%
(B) After 18 months		
(I) Post-1985 wells	12.8%	12.8%
(II) Post-1999 wells	9.3%	15.1%

AUTH: Sec. 15-36-322, MCA

IMP: Sec. 15-36-304 and 82-11-131, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.25.1809 to comply with the requirements of 15-36-324, MCA. The Board of Oil and Gas Conservation (Board) sets rates in accordance with 82-11-131, MCA. The Board is amending its rule (ARM 36.22.1242) reducing the rate from 3% to 2.6/10th of 1%. Section 15-36-324, MCA, requires the department to adopt rules to reflect the tax and distribution rates for oil and gas production as prescribed by the Board. The law further requires the department to amend its rules if the Board revises the tax pursuant to 82-11-131, MCA.

Therefore, as shown in this register, the Board is amending its rule to reduce the tax and the department must amend its rules to comply with the law.

New Table I reflects the proposed reduced tax rate. Tables I and II are renumbered II and III in order to keep the current tax rates first in the rule.

42.25.1810 DISTRIBUTION (1) The department will determine whether tax payments received are for production from pre-1999 wells, or are for production from post-1999 wells. Tax payments will be allocated between the state and local government and schools as provided in Table I of this rule. The portion of money allocated to the state will be distributed as provided in Table I. Effective July 1, 2006, Table II replaces Table I. The portion of money allocated to local governments and schools will be distributed as provided in (1)(a) and (b) below.

(a) and (b) remain the same.

<u>Table I - Effective 7/1/2001</u>	<u>Local Govt Share</u>	<u>State Govt Share</u>	<u>General Fund</u>	<u>Board of Oil and Gas</u>	<u>Distri- buted to RIGWAT</u>
<u>TYPE</u>					
<u>OIL PRODUCTION - WORKING INTEREST:</u>					
<u>Stripper Pre-1999 and Post- 1999 Wells</u>					
<u>First 1 - 10 Barrels</u>	<u>86.31%</u>	<u>13.69%</u>	<u>0.00%</u>	<u>36.52%</u>	<u>63.48%</u>
<u>Stripper Well Exemption 3 barrels or less</u>	<u>0.00%</u>	<u>100.0%</u>	<u>0.00%</u>	<u>36.52%</u>	<u>63.48%</u>
<u>Qualifying Production (post 1999 wells)</u>					
<u>First 12 months of production</u>	<u>0.00%</u>	<u>100.0%</u>	<u>0.00%</u>	<u>36.52%</u>	<u>63.48%</u>
<u>Horizontally Drilled</u>					
<u>Newly Drilled Post-1999 Wells</u>					
<u>First 18 months of production</u>	<u>0.00%</u>	<u>100.0%</u>	<u>0.00%</u>	<u>36.52%</u>	<u>63.48%</u>
<u>Recompleted Incremental Pre-1999 and Post-1999 Wells</u>					
<u>First 18 months of production</u>	<u>0.00%</u>	<u>100.0%</u>	<u>86.95%</u>	<u>4.30%</u>	<u>8.75%</u>

<u>Table I -</u> <u>Effective 7/1/2001</u>  <u>TYPE</u>	<u>Local</u> <u>Govt</u> <u>Share</u>	<u>State</u> <u>Govt</u> <u>Share</u>	<u>General</u> <u>Fund</u>	<u>Board</u> <u>of Oil</u> <u>and</u> <u>Gas</u>	<u>Distri-</u> <u>buted</u> <u>to</u> <u>RIGWAT</u>
<u>ALL OTHER OIL PRODUCTION:</u>					
<u>Working and Royalty</u> <u>Interests</u>	<u>60.91%</u>	<u>39.09%</u>	<u>86.95%</u>	<u>4.30%</u>	<u>8.75%</u>
<u>GAS PRODUCTION - WORKING</u> <u>INTEREST:</u>					
<u>Qualifying Production</u> <u>(post 1999 wells)</u> <u>First 12 months of</u> <u>production</u>	<u>0.00%</u>	<u>100.0%</u>	<u>0.00%</u>	<u>36.52%</u>	<u>63.48%</u>
<u>Horizontally drilled</u>					
<u>Newly drilled - Post 1999</u> <u>Wells</u> <u>First 18 months of</u> <u>production</u>	<u>0.00%</u>	<u>100.0%</u>	<u>0.00%</u>	<u>36.52%</u>	<u>63.48%</u>
<u>ALL OTHER GAS PRODUCTION</u>					
<u>Working and Royalty</u> <u>Interests</u>	<u>86.27%</u>	<u>13.73%</u>	<u>78.56%</u>	<u>6.45%</u>	<u>14.99%</u>

<p>Table <del>F</del> <u>II</u> - Effective 1/1/2000  TYPE</p>	Local Govt Share	State Govt Share	General Fund	Board of Oil and Gas	Distri- buted to RIGWAT
<p><u>OIL PRODUCTION - WORKING INTEREST:</u></p>					
<p><del>Working Interest</del> Stripper Pre-1999 and Post-1999 Wells First 1 - 10 Barrels</p>	86.20%	13.80%	0.00%	37.50%	62.50%
<p>Stripper Well Exemption 3 barrels or less</p>	0.00%	100.0%	0.00%	37.50%	62.50%
<p><del>Pre-1999 and Post-1999 Wells</del> <del>(Qualifying Production</del> <del>post 1999 wells)</del> First 12 months of production</p>	0.00%	100.0%	0.00%	37.50%	62.50%
<p>Horizontally Drilled  Newly Drilled <del>Pre-1999 and Post-1999 Wells</del> First 18 months of production</p>	0.00%	100.0%	0.00%	37.50%	62.50%
<p>Recompleted Incremental Pre-1999 and Post-1999 Wells First 18 months of production</p>	0.00%	100.0%	86.21%	5.17%	8.62%
<p><u>ALL OTHER OIL PRODUCTION:</u></p>					
<p>Working and Royalty Interests</p>	60.70%	39.30%	86.21%	5.17%	8.62%
<p><u>GAS PRODUCTION - WORKING INTEREST:</u></p>					
<p><del>Pre-1999 and Post-1999 Wells</del> <del>(Qualifying Production</del> <del>post 1999 wells)</del> First 12 months of production</p>	0.00%	100.0%	0.00%	37.50%	62.50%
<p>Horizontally drilled  Newly drilled - <u>post 1999 wells</u> First 18 months of production</p>	0.00%	100.0%	0.00%	37.50%	62.50%
<p><u>ALL OTHER GAS PRODUCTION:</u></p>					
<p>Working and Royalty Interests</p>	86.00%	14.00%	76.80%	8.70%	14.50%

Table I <u>II</u> - Effective 1/1/2000 TYPE	Local Govt Share	State Govt Share	General Fund	Board of Oil and Gas	Distri- buted to RIGWAT
<del>Table II - Effective 7/1/99 TYPE</del>	<del>Local Govt Share</del>	<del>State Govt Share</del>	<del>General Fund</del>	<del>Board of Oil and Gas</del>	<del>Distri- buted to RIGWAT</del>
<u>OIL PRODUCTION</u>					
<del>Working Interest Stripper Pre-1985, post-1985, and post-1999 wells — First 1 - 10 barrels</del>	<del>86.20%</del>	<del>13.80%</del>	<del>0.00%</del>	<del>37.50%</del>	<del>62.50%</del>
<del>Stripper well exemption</del>	<del>0.00%</del>	<del>100.0%</del>	<del>0.00%</del>	<del>37.50%</del>	<del>62.50%</del>
<del>Post-1985 wells (qualifying — production) First 12 months of production After first 12 months, but — less than 24 months</del>	<del>0.00%</del>	<del>100.0%</del>	<del>0.00%</del>	<del>37.50%</del>	<del>62.50%</del>
<del>Post-1999 Wells (qualifying — production) First 12 months of production</del>	<del>89.75%</del>	<del>10.25%</del>	<del>0.00%</del>	<del>37.50%</del>	<del>62.50%</del>
<del>Post-1999 Wells (qualifying — production) First 12 months of production</del>	<del>0.00%</del>	<del>100.0%</del>	<del>0.00%</del>	<del>37.50%</del>	<del>62.50%</del>
<del>Horizontally drilled — Newly drilled Post-1985 and Post-1999 wells First 18 months of production</del>	<del>0.00%</del>	<del>100.0%</del>	<del>0.00%</del>	<del>37.50%</del>	<del>62.50%</del>
<del>Post-1985 wells First 18 months but less than — 24 months</del>	<del>0.00%</del>	<del>100.0%</del>	<del>0.00%</del>	<del>37.50%</del>	<del>62.50%</del>
<del>Recompleted Incremental First 18 months of production</del>	<del>89.75%</del>	<del>10.25%</del>	<del>0.00%</del>	<del>37.50%</del>	<del>62.50%</del>
<del>Recompleted Incremental First 18 months of production</del>	<del>0.00%</del>	<del>100.0%</del>	<del>86.21%</del>	<del>5.17%</del>	<del>8.62%</del>
<u>ALL OTHER OIL PRODUCTION</u>					
<del>Working and Royalty Interests</del>	<del>60.70%</del>	<del>39.30%</del>	<del>86.21%</del>	<del>5.17%</del>	<del>8.62%</del>



<del>Table II — Effective 7/1/99</del> TYPE	Local Govt Share	State Govt Share	General Fund	Board of Oil and Gas	Distri- buted to RIGWAT
<u>GAS PRODUCTION</u>					
<del>Post-1985 Wells (qualifying — production)</del>					
<del>First 12 months of production</del>	0.00%	100.0%	0.00%	37.50%	62.50%
<del>After first 12 months, but — less than 24 months</del>	93.75%	6.25%	0.00%	37.50%	62.50%
<del>Post-1999 wells (qualifying — production)</del>					
<del>First 12 months of production</del>	0.00%	100.0%	0.00%	37.5%	62.50%
<del>Horizontally drilled — Newly drilled</del>					
<del>First 18 months</del>	0.00%	100.0%	0.00%	37.5%	62.50%
<u>ALL OTHER GAS PRODUCTION</u>					
<del>Working and Royalty Interests</del>	86.00%	14.00%	76.80%	8.70%	14.5%

(e)(2) The department may enter into revenue sharing agreements with Indian tribes, which may change the distribution described in this rule for production within an Indian reservation.

AUTH: Sec. 15-36-322, MCA

IMP: Sec. 15-36-324, MCA

REASONABLE NECESSITY: It is necessary to amend ARM 42.25.1810 for the same reasons as stated in the reasonable necessity for ARM 42.25.1809. The Board is proposing to make the reduction rate change effective July 1, 2001 through June 30, 2006. Therefore, the department is proposing new Table I to reflect this period of time. The amendment in (1) states that the rate will revert to the previous rate as shown in new Table II on July 1, 2006.

The previous Table II, which was effective July 1, 1999, is no longer necessary and is being deleted.

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

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

no later than September 20, 2001.

5. If persons who are directly affected by the proposed action wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Cleo Anderson at the above address no later than September 20, 2001.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the appropriate administrative rule review committee; from a governmental subdivision or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 35 persons based on 350 licensees.

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

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in paragraph 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Kurt G. Alme  
KURT G. ALME  
Director of Revenue

Certified to Secretary of State August 13, 2001

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
 amendment of ARM 42.23.103, ) ON PROPOSED AMENDMENT  
 42.23.107, 42.23.108, 42.23.109,) AND REPEAL  
 42.23.112, 42.23.113, 42.23.212,) )  
 42.23.301, 42.23.303, 42.23.311,) )  
 42.23.313, 42.23.401, 42.23.403,) )  
 42.23.405, 42.23.407, 42.23.411,) )  
 42.23.412, 42.23.413, 42.23.414,) )  
 42.23.418, 42.23.421, 42.23.422,) )  
 42.23.423, 42.23.424, 42.23.601,) )  
 42.23.605, 42.23.607, 42.23.609,) )  
 and 42.23.702 and repeal of ARM )  
 42.23.104, 42.23. 118, )  
 42.23.119 and 42.23.120 )  
 relating to corporation license )  
 taxes )

TO: All Concerned Persons

1. On September 13, 2001, at 9:00 a.m., a public hearing will be held in the Fourth Floor - Director's Office Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of ARM 42.23.103, 42.23.107, 42.23.108, 42.23.109, 42.23.112, 42.23.113, 42.23.212, 42.23.301, 42.23.303, 42.23.311, 42.23.313, 42.23.401, 42.23.403, 42.23.405, 42.23.407, 42.23.411, 42.23.412, 42.23.413, 42.23.414, 42.23.418, 42.23.421, 42.23.422, 42.23.423, 42.23.424, 42.23.601, 42.23.605, 42.23.607, 42.23.609, and 42.23.702 and repeal of ARM 42.23.104, 42.23.118, 42.23.119 and 42.23.120 relating to corporation license taxes.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Room 455, Helena.

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., August 31, 2001, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax (406) 444-3696; or e-mail canderson@state.mt.us.

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

42.23.103 EXEMPTIONS (1) remains the same.

(2) In order to establish its exemption and thus be relieved of the duty of filing returns and paying the tax, each organization claiming exemption must file with the department of revenue an affidavit showing:

(a) the character of the organization;

- (b) the purpose for which it was organized~~;~~<sub>i</sub>
- (c) its actual activities~~;~~<sub>i</sub>
- (d) the sources and the disposition of its income~~;~~<sub>i</sub> and
- (e) whether or not any of its income may inure to the benefit of any private shareholder or individual~~;~~<sub>i</sub>
- (f) A a copy of the articles of incorporation~~;~~<sub>i</sub>
- (g) a copy of the by-laws~~;~~<sub>i</sub> and
- (h) copies of the latest financial statements showing the assets, liabilities, receipts, and disbursements must be submitted with the affidavit.

(3) In addition, if the ~~internal revenue service~~ IRS has granted the organization exemption from the federal income tax, a certified copy of the exemption certificate or letter shall also be filed.

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-31-101 and 15-31-102, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.23.103 for housekeeping purposes only.

42.23.107 DEFINITIONS The following definitions apply to rules found in this chapter:

(1) "Gross income" means all income from sources within Montana recognized as gross income to the corporation in determining federal income tax liability, including interest income exempt from federal income tax.

(2) "Small Business Investment Company business investment company", for the purposes of Rules 42.23.107, 42.23.108, 42.23.109 and 42.23.110 contained herein shall include means only those companies approved and licensed to operate as small business investment companies by the Small Business Administration federal small business administration.

AUTH: Sec. 15-33-105, MCA

IMP: Sec. 15-33-103, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.23.107 to include the term gross income, which was previously found in ARM 42.23.104, and for housekeeping purposes.

42.23.108 CONDITIONS FOR EXEMPTION FOR DIVIDENDS (1) Dividends and capital gains received by a corporation from an investment in a ~~Small Business Investment Company~~ small business investment company are exempt from tax and the provisions of Title 15, chapter 31, MCA, provided all the following conditions are met:

(1) (a) The ~~Small Business Investment Company~~ small business investment company is organized for the purpose of diversifying and strengthening employment opportunities of companies within Montana.

(2) (b) Within one year of licensing by the ~~Small Business Administration~~ federal small business administration, 75% of the ~~Small Business Investment Company's~~ small business investment company's investments are in manufacturing companies as defined

in ~~(a)~~ (i) or timber product companies, or agricultural companies as defined in ~~(b)~~ (ii), and such companies' processing plants are located within Montana. The companies must have at least 50% of their employees working in Montana.

~~(a)~~ (i) Manufacturing, for the purposes of this section rule, is defined as engaging in the mechanical or chemical transformation of materials or substances into new products. The manufacturing facilities are usually described as plants, factories, or mills and characteristically use power driven machines and material handling equipment. Businesses engaged in assembling component parts of manufactured products are all considered to be manufacturing if the product is neither a structure affixed to real estate nor a fixed improvement. Manufacturing facilities shall not include facilities engaged in whole or part in the extraction of any mineral or nonrenewable energy resource.

~~(b)~~ (ii) Agricultural refers to the raising or processing of livestock, swine, poultry, field crops, fruit and other animal and vegetable matter.

~~(3)~~ (c) It is substantiated that the taxpayer has invested in the ~~Small Business Investment Company~~ small business investment company and that the ~~Small Business Investment Company~~ small business investment company has invested in companies located within Montana. The ~~Small Business Investment Company~~ small business investment company must provide a report as part of the annual filing of the Montana corporation license tax return.

AUTH: Sec. 15-33-105, MCA

IMP: Sec. 15-33-102 and 15-33-106, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.23.108 for housekeeping purposes only.

42.23.109 REPORTING REQUIREMENTS (1) The ~~Small Business Investment Company~~ small business investment company shall report as part of the corporation license tax return the following information on a form provided for that purpose:

(a) the names of all investors in the ~~Small Business Investment Company~~ small business investment company;

(b) the amount of investment of each of the investors; and

(c) a list of all companies invested and showing:

(i) the name and location of the companies; and

(ii) the amount invested in the company.

(2) If any of the information required to be reported in subsection (1) above shall change after the return is made, such changes must be reported to the department by the last day of the month the change occurred.

AUTH: Sec. 15-33-105, MCA

IMP: Sec. 15-33-104, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.23.109 for housekeeping purposes only.

42.23.112 RESEARCH AND DEVELOPMENT - APPLICATION AND ELIGIBILITY (1) The department, ~~through its natural resource and corporation tax division,~~ will certify the eligibility of firms for both the five-year corporation tax exemption and the class five research and development property classification.

(2) and (3) remain the same.

(4) To obtain the corporate license tax exemption, the firm must file an annual application with the department before the end of the first calendar quarter during which the firm does business in Montana. The initial application must be filed before the end of the first complete calendar quarter during which the corporation is engaged in business in Montana. For example, if a corporation began operating in Montana on September 15, that corporation would have until December 31 of that year to file for the exemption.

(5) Taxpayers will be required to submit information determined to be necessary by the department for evaluating the eligibility ~~elibility~~ of firms for the research and development tax benefits.

AUTH: Sec. 15-31-501 and 15-1-201, MCA

IMP: Sec. 15-6-135 and 15-31-103, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.23.112 for housekeeping purposes and to delete the reference to divisions.

42.23.113 RESEARCH AND DEVELOPMENT FIRM - EXEMPTION PERIOD

(1) An entity that qualifies as a research and development firm as defined in 15-1-101~~(1)(e)~~, MCA, and is incorporated or qualified to do business in Montana on or after July 1, 1987, is exempt from the corporation license tax on the net income earned from research and development activities for its first five tax periods.

(2) A corporation which qualifies as a research and development firm under 15-1-101~~(1)(e)~~, MCA, and began operating in Montana prior to July 1, 1987, will be allowed an exemption from the Montana ~~Corporation License Tax~~ corporation license tax on research and development net income earned on or after July 1, 1987, for the balance of its first five tax periods of activity in Montana.

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-1-101 and 15-31-103, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.23.113 for housekeeping purposes only.

42.23.212 BASIS FOR DISPOSITION OF PROPERTY (1) The basis for determining gain or loss from the sale or other disposition of property shall be the basis prescribed by the ~~Internal Revenue Code~~ IRC and regulations in effect during the reporting period, except such provisions therein as are inconsistent with the express provisions of these regulations or the Corporate License Tax Act.

(2) In applying the federal rules pertaining to basis, the

effective date of this act shall be substituted for the effective date of the Federal Income Tax Act.

AUTH: Sec. 15-31-313 and 15-31-501, MCA

IMP: Title 15, chapter 31, part 3, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.23.112 for housekeeping purposes only.

42.23.301 PERIOD COVERED BY RETURN (1) The return must be made prepared and net income computed on the basis of an annual accounting period. A return may not be made prepared for a period of more than 12 months.

(2)(a) A return for a fractional part of a year is required in the following cases:

(i) (a) when a foreign corporation qualifies or a domestic corporation organizes on a day other than the first day of the reporting period it intends to establish;

(ii) (b) when a foreign corporation withdraws or when a domestic corporation dissolves on a day other than the last day of its established reporting period; or

(iii) (c) when a corporation changes its annual reporting period.

(b) (3) In such cases shown in (2), a return must be filed for the short period beginning with the day following the close of the old period and ending with the day preceding the first day of the new period.

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-31-111, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.23.301 for housekeeping purposes only.

42.23.303 CHANGE IN FEDERAL TAX OR RETURN (1) ~~If a taxpayer's federal taxable income is changed or corrected by the internal revenue service or other competent authority, and if the taxpayer fails to file a report of the proposed change or correction with the department within 90 days after receiving official notice thereof, the period within which a deficiency in tax may be assessed extends for 5 years from the date the changes or corrections in the taxpayer's federal taxable income becomes final.~~ Taxpayers are required to report to the department adjustments or corrections to their taxable income made by the IRS or other competent authority within 90 days after receiving official notice of such change. If the taxpayer fails to report these adjustments or corrections within 90 days thereafter:

(a) for tax periods beginning before March 13, 1997, the period within which a deficiency in tax may be assessed extends for five years from the date the changes or corrections in the taxpayer's federal taxable income become final and are filed with the department.

(b) for tax periods beginning after March 13, 1997, the period within which a deficiency in tax may be assessed extends for three years from the date the changes or corrections in the

taxpayer's federal taxable income become final and are filed with the department.

(2) If a taxpayer files an amended federal income tax return for any year changing or correcting his taxable income and if the taxpayer fails to file a corresponding amended Montana corporation license tax return with the department within 90 days thereafter:

(a) for tax periods beginning after March 13, 1997, the period within which a deficiency in tax may be assessed extends for 5 ~~three~~ years from the date the ~~amended federal income corresponding amended Montana corporation license tax return was is~~ filed; and

(b) for tax periods beginning before March 13, 1997, the period within which a deficiency in tax may be assessed extends for five years from the date the corresponding amended Montana corporation license tax return is filed.

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-31-506 and 15-31-509, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.23.303 to address statutory changes and to harmonize sections 15-31-506 and 15-31-509, MCA. The amendments are necessary as a result of a First Judicial District Court decision in Towe Farms, Inc. v. Montana Department of Revenue, CDV 2000-113.

42.23.311 FILING REQUIREMENTS UPON MERGER OR CONSOLIDATION

(1) remains the same.

(2) Any corporation which acquires another corporation, by ~~whatever~~ any available method, shall be required to report that income ~~which was not included in computing the corporation excise tax,~~ and shall be liable for the corporate tax due on their combined entire net income for the year ~~to ensue~~ ensuing.

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-31-141, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.23.311 for housekeeping purposes only.

42.23.313 FILING REQUIREMENTS UPON DISSOLUTION, WITHDRAWAL, OR CESSATION OF BUSINESS (1) When a domestic corporation seeks to dissolve, or when a foreign corporation seeks to withdraw or ceases business in Montana, the following requirements must be met for the purpose of corporation license tax clearance:

(1) (a) A return clearly marked "Final Return" must be filed for the short period commencing with the closing date of the last period for which a return was filed and extending to the date of dissolution, withdrawal, or cessation of business in this state.

(2) (b) A schedule must be attached to the final return showing the disposition made of the corporate assets. If the corporation sold its assets, any gain or loss from the disposition thereof must be included in the determination of net income, unless:

(a) (i) the liquidation of the corporation comes within the



purview of section 337, ~~Internal Revenue Code of~~ IRC (1954); and  
(b) (ii) the corporation is not required to report gain pursuant to 15-31-113(1)(a)(i), MCA.

(3) (c) Payment of the tax must be made of the tax for the final period and all other corporation license tax for which the corporation may then be liable.

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-31-113 and 15-31-143, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.23.313 for housekeeping purposes only.

42.23.401 BUSINESS EXPENSES (1) ~~All the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of the business and properties, including a reasonable allowance for salaries and other compensation for personal services actually rendered (subject to the limitation set forth in 15-31-114, MCA,) and rentals or other payments required to be made as a condition to the continued use and possession of property to which the corporation is not taking title or in which it has no equity.~~

(2) To be deductible as an "ordinary and necessary expense" within the meaning of this section 15-31-114, MCA, a payment must have a direct relation to the business of the corporation and it must be shown that it is necessary to the taxpayer's business, that it is ordinary with reference to the relation of the expense to the business, and that it is made with the expectation of a financial return or its equivalent commensurate with the amount of payment.

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-31-114, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.23.401 to delete subsection (1) because 15-31-114, MCA, contains the exact wording as did the rule. The other amendments are strictly housekeeping.

42.23.403 TREATMENT OF OTHER TAXES PAID (1) through (1)(c) remain the same.

(d) taxes imposed by any other state or country upon or measured by net income or profits. These taxes are not allowable as deductions irrespective of how characterized by regulations adopted by the ~~Internal Revenue Service~~ IRS for purposes of foreign tax credit calculations. (i.e., 26 CFR 1.901 through 1.903.)

(i) A tax based on or measured by net income is a tax which is based on the residual of gross revenues less expenses.

(e) (ii) To the extent any portion of the tax paid to foreign governments is imposed upon or measured by the difference between the posted price and the market price for a barrel of oil, then the tax attributable to this increment is not a tax based upon or measured by net income or profits and is therefore deductible.

(2) remains the same.

AUTH: Sec. 15-31-313 and 15-31-501, MCA

IMP: Sec. 15-31-114, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.23.403 for housekeeping purposes only.

42.23.405 DEPLETION ALLOWANCE (1) remains the same.

(2) The allowance for depletion shall be determined according to the provisions of the ~~Internal Revenue Code~~ IRC, relating thereto ~~in effect for~~ to the reporting period.

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-31-114, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.23.405 for housekeeping purposes only.

42.23.407 LIMITATION ON CHARITABLE CONTRIBUTION DEDUCTION

(1) The charitable contribution deduction provided for in 15-31-114, MCA, cannot exceed 10% of the Montana taxable income figured or 10% of the income subject to apportionment for multistate corporations calculated without regard to the charitable contribution deduction or any net operating loss carryback to that year.

(2) remains the same.

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-31-114, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.23.407 to provide additional clarification of charitable contribution limitations for multistate corporations.

42.23.411 LOSSES NOT COMPENSATED FOR (1) ~~All losses actually sustained and charged off within the year and not compensated for by insurance or otherwise.~~ A capital loss, which may be subject to carryover provisions for federal purposes, must be deducted in the year incurred and not carried over for state purposes. A loss must have been sustained within the year in the sense that the full measure of the loss was ascertained within the year. The determination of the year in which a loss is sustained must be made on the basis of the facts as they exist at the close of the reporting period.

(2) remains the same.

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-31-114, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.23.411 to delete a portion already included in 15-31-114, MCA, and housekeeping changes.

42.23.412 NET OPERATING LOSSES (1) The net operating loss deduction is allowed in accordance with the ~~Internal Revenue Code of~~ IRC (1954), as amended, for taxable periods ending on or before December 3, 1970. For taxable periods, which begin on and after

January 1, 1971, the net operating loss deduction is allowed as provided in ARM 42.23.412 through 42.23.415.

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

AUTH: Sec. 15-31-501, MCA

IMP: Sec. ~~15-31-114~~ 15-31-119, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.23.412 for housekeeping purposes only.

42.23.413 CARRYOVERS OF NET OPERATING LOSSES (1) A net operating loss is carried back to the third preceding taxable period from which it was incurred. Any balance remaining must be carried to the second preceding period, then to the first preceding period, and then forward to the next ~~five~~ seven succeeding taxable periods in the order of their occurrence ~~(or the next seven succeeding periods if the loss is sustained in a tax period ending after December 31, 1975).~~

(2)(a) When a net operating loss exceeds the net income of the year to which it is carried, the net income for such year must be adjusted by making the following modifications to determine the unused portion of the net operating loss to be carried forward:

~~(i)~~(a) No deduction is allowed for any net operating loss carryover or carryback from another year.

~~(ii)~~ (b) Any excess of percentage depletion over cost depletion must be eliminated.

(b) (3) The taxable income as modified by ~~these~~ the adjustments shown in (2) shall not be considered to be less than zero. The amount of the net operating loss which may be carried forward is the excess of the loss over the modified net income.

(3) remains the same but is re-earmarked (4).

AUTH: Sec. 15-31-501, MCA

IMP: Sec. ~~15-31-114~~ 15-31-119, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.23.413 for housekeeping purposes only.

42.23.414 FILINGS IN CONNECTION WITH NET OPERATING LOSSES

(1) remains the same.

(2) If a corporation has a net operating loss which when carried back to a prior taxable period results in an overpayment of tax for such taxable period, a refund may be obtained by filing an amended return for that period claiming the net accordingly. Interest does not accrue on overpayments of tax resulting from a net operating loss carryback or carryover.

(a) Claims For tax periods beginning after March 13, 1997, claims for refund of tax resulting from a net operating loss carryback must be filed within 5 years from the due date of the return for the year to which the loss is carried or within 1 year from the date of the overpayment, whichever period expires later in accordance with 15-31-509, MCA.

(b) For tax periods beginning before March 13, 1997, claims for refund of tax resulting from a net operating loss carryback must be filed within five years from the due date of the return for the year to which the loss is carried or within one year from the

date of the overpayment, whichever period expires later.

(3) remains the same.

AUTH: Sec. 15-31-501, MCA

IMP: Sec. ~~15-31-114~~ 15-31-119 and 15-31-509, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.23.414 to address statutory changes to 15-31-509, MCA, and for housekeeping changes. The amendments are necessary as a result of a First Judicial District Court decision in Towe Farms, Inc. v. Montana Department of Revenue, CDV 2000-113.

42.23.418 DEDUCTIONS FOR CORPORATE DONATIONS OF COMPUTER EQUIPMENT TO SCHOOLS (1) A taxpayer claiming a deduction for gifts of computer equipment as provided for in ~~section 15-31-114(9)~~, MCA, must attach the following information to the tax return claiming the deduction:

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

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-31-114, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.23.418 for housekeeping purposes only.

42.23.421 DEDUCTION FOR INVESTMENT FOR ENERGY CONSERVATION

(1) remains the same.

(2) This deduction must be claimed on ~~form CLT-2E, which may be obtained from the Department of Revenue, Corporation Tax Bureau, Mitchell Building, Helena, Montana 59620~~ the form provided by the department. The complete form must be attached to the taxpayer's corporation license tax return for the year in which the deduction is claimed.

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-32-103, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.23.421 for housekeeping purposes only.

42.23.422 DETERMINATION OF CAPITAL INVESTMENT FOR ENERGY CONSERVATION

(1) In new construction no deduction is allowed for that portion of capital expense incurred in meeting established standards. In new buildings only the cost for that portion of a capital expenditure that is in excess of established standards will be entitled to a deduction in computing taxable income. The standards utilized by the ~~department of revenue~~ in determining allowances will be taken from the currently recognized energy building code in Montana. If Montana does not have an applicable energy building code, then national standards meeting the demands of this geographical area will be followed. The energy code or standard relied upon by the department is to be updated on an annual basis.

(2) and (3) remain the same.

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-32-103, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.23.422 for housekeeping purposes only.

42.23.423 TYPES OF APPROPRIATE INVESTMENTS FOR ENERGY CONSERVATION PURPOSES (1) The department of ~~revenue~~ has determined that the following capital investments are among those that can result in the conservation of energy:

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

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-32-103, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.23.423 for housekeeping purposes only.

42.23.424 SALE OF LAND TO A BEGINNING FARMER - CORPORATION LICENSE TAX DEDUCTION (1)(a) A deduction from Montana net income is allowed for each sale of 80 acres or more to a beginning farmer as provided in 80-12-211, MCA, provided the sale is approved by the agricultural loan authority. The deduction is the amount ~~which~~ that would have to be included in net income resulting from the sale, up to a maximum deduction of \$50,000. The deduction will be taken each year a payment is received until the loan is paid or the deductions for all years equal \$50,000.

(b) remains the same but is re-earmarked (2).

(2) and (3) remain the same but are re-earmarked (3) and (4).

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 80-12-211, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.23.424 to reference the applicable code section and provide other housekeeping changes.

42.23.601 REFUNDS AND CREDITS (1) ~~No~~ For tax periods beginning after March 13, 1997, no refund or credit may be allowed or paid with respect to the year for which a return is filed, unless, within 5 three years from the last day prescribed for filing the return or after ± one year from the date of the overpayment (whichever period expires later), the taxpayer files a claim for refund thereof or the department has determined the existence of the overpayment and has approved refunding or crediting thereof. The ~~5-year~~ three-year period is determined without regard to any extension ~~which~~ that may have been granted.

(2) For tax periods beginning before March 13, 1997, no refund or credit may be allowed or paid with respect to the year for which a return is filed, unless, within five years from the last day prescribed for filing the return or after one year from the date of the overpayment (whichever period expires later), the taxpayer files a claim for refund thereof or the department has determined the existence of the overpayment and has approved refunding or crediting thereof. The five-year period is

determined without regard to any extension which may have been granted.

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-31-509, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.23.601 to address statutory changes in 15-31-509, MCA. The amendments are necessary as a result of a First Judicial District Court decision in Towe Farms, Inc. v. Montana Department of Revenue, CDV 2000-113.

42.23.605 PENALTY ON DEFICIENCY ASSESSMENTS (1) Whenever a deficiency assessment is made by the department pursuant to 15-31-503, MCA, ~~and the tax becomes final as provided in 15-31-503(2), MCA, and the payment for the deficiency is due within the statutory 10-day period~~ 30 days as stated on the notice of deficiency assessment. If the payment is not made by the end of this ~~10-day~~ period, the taxpayer is subject to imposition of a ~~10%~~ penalty of 1.5% per month, not to exceed 18% of the tax due, as provided in ~~15-31-502~~ 15-1-216, MCA.

(2) A penalty assessment may be appealed by the taxpayer under the provisions of ARM ~~42.2.601 through 42.2.612~~ 42.2.613 through 42.2.621.

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-1-216, 15-1-222, 15-31-502, and 15-31-503, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.23.605 to correct the statutory timeframe for payment of taxes and reference 15-1-216, MCA, regarding the imposition of penalty for delinquent payments.

42.23.607 COMPUTATION OF QUARTERLY ESTIMATED TAX UNDER-PAYMENT INTEREST PENALTY (1) Except as provided in (2) below, a taxpayer is presumed to have earned its income evenly throughout the year. Accordingly, if the tax liability is \$5,000 or more at the end of the year, the taxpayer is required to make estimated tax payments as described in 15-31-502, MCA. If the payments are not made in accordance with 15-31-502, MCA, the taxpayer must ~~complete form CLT-4-UT to compute the quarterly estimated tax underpayment interest penalty on a form provided by the department.~~

(2) The provisions of (1) above will not apply if the taxpayer can establish that it did not earn its income evenly throughout the year. To do so, the taxpayer must ~~complete~~ show on the form CLT-4-UT indicating provided by the department when the income was earned. Approval of the calculations shown on the form rests with the department, which can request additional information to support the calculations.

(3) If estimated payments are required to be submitted and those payments are insufficient, not submitted, or are not submitted timely, the ~~20%~~ 12% per annum underpayment interest penalty will be computed on the lesser of 80% of the current year's liability or 100% of last year's liability, provided that

the last year was a period of 12 months and the corporation filed a return.

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-1-216 and 15-31-510, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.23.607 to correct the percentage rate for underpayment interest and delete a reference to a form no longer used by the department.

42.23.609 SHORT PERIOD RETURNS (1) Payments of estimated tax with respect to short taxable years are to be made at the times and in the amounts required for regular tax years as listed in 15-31-502, MCA, except that any installment that is not paid before the 15th day of the last month of the short taxable year must be paid on that date. For example:

~~For example:~~

(a) Corporation X, a calendar year corporation, changes to a fiscal year starting September 1. Corporation X was required to make estimated payments for the short tax year ~~that runs covering the periods~~ from January 1 through August 31. Corporation X had was required to make two 25% installments of estimated tax, the first on or before April 15, and the second on or before June 15, and had to pay 50% of the estimated tax on or before August 15 (the 15th day of the last month of the short tax year), as the last installment.

(2) If the tax period was three months or less, there would be no quarterly estimated payment requirement.

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-31-502, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.23.609 for housekeeping purposes only.

42.23.702 TAXATION OF A LIMITED LIABILITY COMPANY

(1) The taxation of a limited liability company in Montana depends upon its federal classification as a corporation or a partnership as determined by the ~~internal revenue service~~ IRS, regardless of whether an entity is recognized as a limited liability company under the Montana Limited Liability Company Act. For example, a limited liability company may be formed in Montana with one member~~;~~ however, in order to be taxed as a partnership for federal purposes, and consequently for Montana purposes, the limited liability company must have at least two members. If the limited liability company is taxed as a "C" or an "S" corporation for federal tax purposes, then it must file a the corresponding Montana corporation license tax return, ~~form CLT-4,~~ with the ~~natural resource and corporation tax division of the Montana department of revenue~~ as provided for under Title 15, chapter 31, MCA. If a limited liability company is treated as a partnership for federal tax purposes, then it must file a partnership return reflecting each member's share of the income/~~(loss)~~, and also, the members must file Montana individual income tax returns reflecting their share of the income/~~(loss)~~ of the limited liability company.

These returns are to be filed with the ~~income and miscellaneous tax division, Montana department of revenue~~ as provided for under Title 15, chapter 30, MCA.

(2) remains the same.

AUTH: Sec. 15-1-201, MCA

IMP: Title 35, chapter 8, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.23.702 to delete reference to specific forms and divisions.

4. The department proposes to repeal the following rules:

42.23.104 GROSS INCOME which can be found on page 42-2305 of the Administrative Rules of Montana.

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-31-113, MCA

REASONABLE NECESSITY: There is reasonable necessity to repeal ARM 42.23.104 because this definition was moved to ARM 42.23.107 which is the definition rule for this chapter.

42.23.118 NATURE OF PROPERTY BEING SOLD which can be found on page 42-2311 of the Administrative Rules of Montana.

AUTH: Sec. 15-31-313 and 15-31-501, MCA

IMP: Sec. 15-31-301 and 15-31-303, MCA

REASONABLE NECESSITY: There is reasonable necessity to repeal ARM 42.23.118 due to the adoption of Multistate Tax Commission rules for conformity purposes, which are included in ARM Title 42, chapter 26.

42.23.119 SOLICITATION OF ORDERS which can be found on page 42-2311 of the Administrative Rules of Montana.

AUTH: Sec. 15-31-313 and 15-31-501, MCA

IMP: Sec. 15-31-301 and 15-31-303, MCA

REASONABLE NECESSITY: There is reasonable necessity to repeal ARM 42.23.119 due to the adoption of Multistate Tax Commission rules for conformity purposes, which are included in ARM Title 42, chapter 26.

42.23.120 INDEPENDENT CONTRACTORS which can be found on page 42-2312.1 of the Administrative Rules of Montana.

AUTH: Sec. 15-31-313 and 15-31-501, MCA

IMP: Sec. 15-31-301 and 15-31-303, MCA

REASONABLE NECESSITY: There is reasonable necessity to repeal ARM 42.23.120 due to the adoption of Multistate Tax Commission rules for conformity purposes, which are included in ARM Title 42, chapter 26.

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 September 21, 2001.

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

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

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

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Kurt G. Alme  
KURT G. ALME  
Director of Revenue

Certified to Secretary of State August 13, 2001

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the proposed )	NOTICE OF PUBLIC HEARING
amendment of ARM 42.24.102 )	ON PROPOSED AMENDMENT
and 42.24.121; and repeal of )	AND REPEAL
ARM 42.24.103, 42.24.211, )	
42.24.212, and 42.24.213 )	
relating to special provisions)	
applicable to corporation )	
license taxes )	

TO: All Concerned Persons

1. On September 13, 2001, at 10:00 a.m., a public hearing will be held in the Fourth Floor - Director's Office Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of ARM 42.24.102 and 42.24.121; and repeal of ARM 42.24.103, 42.24.211, 42.24.212, and 42.24.213 relating to corporation license taxes.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Room 455, 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., August 31, 2001, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax (406) 444-3696; or e-mail canderson@state.mt.us.

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

42.24.102 ELECTION AS TO TAX TREATMENT ~~(1) For taxable years beginning before December 31, 1991, a qualified small business corporation may elect not to be subject to the tax imposed by Title 15, chapter 31, part 1, MCA. If a corporation elects not to be subject to Title 15, chapter 31, part 1, MCA, the stockholders of the corporation must include the corporate net income or loss in their Montana adjusted individual gross income.~~

~~(2) An election is effective for the entire taxable year of the corporation for which it is made and for all succeeding taxable years, unless it is terminated with respect to any taxable year. The election has a continuing effect and it does not need to be renewed annually.~~

~~(3) For taxable years beginning before December 31, 1991, a qualified corporation elects to be taxed as a Montana small business corporation if it does either of the following:~~

~~(a) files a copy of the approved federal election with the department on or before the 15th day of the third month of the~~

~~tax year for which the election becomes effective. A statement that the election is requested for state tax purposes and the year the election is to become effective must be attached. This statement is to be signed by an officer of the corporation; or, (b) attaches to the Montana corporate tax return a copy of the federal tax return filed in compliance with the provisions of Subchapter S, Chapter 1, Internal Revenue Code. This election method applies for taxable years ending after July 1, 1989, and beginning before December 31, 1991.~~

~~(4)(1) For taxable years beginning after December 31, 1991, a corporation with a valid Subchapter S election for federal purposes must file as a small business corporation for state purposes, and the stockholders of the corporation must include the corporate net income or loss in their Montana adjusted gross income. The only exception to this requirement is provided in ~~ARM 42.24.103(2)~~ 15-31-201, MCA.~~

~~AUTH: Sec. 15-31-501, MCA~~

~~IMP: Sec. 15-31-202, MCA~~

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.24.102 because 15-31-201, MCA, was amended in 1991. As a result, with the exceptions addressed in the statute, a small business corporation can no longer elect to be treated as a "C" corporation at the state level; consequently, only subsection (4) of this rule is still applicable.

42.24.121 RETURN OF ELECTING CORPORATION (1) Every electing small business corporation shall file either ~~Form CT-4~~ the form provided by the department or a certified copy of federal return 1120S for each taxable year the election is in effect, showing the distribution of income to its shareholders.

(2) Such return shall be filed with the department on or before the 15th day of the 5th fifth month following the close of the taxable year.

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-31-202, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.24.121 for housekeeping purposes only.

4. The department proposes to repeal the following rules:

42.24.103 NOTIFICATION TO DEPARTMENT THAT THE FILING OF A FEDERAL RETURN DOES NOT CONSTITUTE AN ELECTION UNDER ARM 42.24.102(3)(b) which can be found on page 42-2406 of the Administrative Rules of Montana.

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-31-202, MCA

REASONABLE NECESSITY: There is reasonable necessity to repeal ARM 42.24.103 because 15-31-201, MCA, was amended in 1991 and as a result, with the exceptions addressed in the statute, a small business corporation can no longer elect to be treated as a "C" corporation at the state level; consequently, this rule is

no longer relevant.

42.24.211 DEPARTMENT TRANSMITTAL OF TAX REVENUE DERIVED FROM CERTAIN FINANCIAL INSTITUTIONS which can be found on page 42-2425 of the Administrative Rules of Montana.

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-31-701, MCA

REASONABLE NECESSITY: There is reasonable necessity to repeal ARM 42.24.211. Due to passage of HB 124, 2001 Legislative Session, this rule is no longer applicable.

42.24.212 ALLOCATION OF REVENUE WHEN BRANCH OFFICES EXIST which can be found on page 42-2425 of the Administrative Rules of Montana.

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-31-702, MCA

REASONABLE NECESSITY: There is reasonable necessity to repeal ARM 42.24.212. Due to passage of HB 124, 2001 Legislative Session, this rule is no longer applicable.

42.24.213 REPORT ON BRANCH OFFICES which can be found on page 42-2425 of the Administrative Rules of Montana.

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-31-702, MCA

REASONABLE NECESSITY: There is reasonable necessity to repeal ARM 42.24.213. Due to passage of HB 124, 2001 Legislative Session, this rule is no longer applicable.

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 September 21, 2001.

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

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

Department of Revenue.

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

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Kurt G. Alme  
KURT G. ALME  
Director of Revenue

Certified to Secretary of State August 13, 2001

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
OF THE STATE OF MONTANA

In the matter of the proposed )	NOTICE OF PROPOSED
amendment of ARM 44.10.101, )	AMENDMENT
44.10.201, 44.10.303, 44.10.305, )	
44.10.307, 44.10.309, 44.10.321, )	
44.10.325, 44.10.327, 44.10.329, )	
44.10.330, 44.10.331, 44.10.332, )	
44.10.333, 44.10.335, 44.10.401, )	
44.10.405, 44.10.409, 44.10.413, )	
44.10.501, 44.10.511, 44.10.521, )	NO PUBLIC HEARING
44.10.525, 44.10.601, 44.10.603, )	CONTEMPLATED
44.10.605, 44.10.607, 44.10.608, )	
44.10.612, 44.10.613 regarding )	
organizational, procedural, )	
campaign finance and practices, )	
and ethics rules )	

TO: All Concerned Persons

1. On September 24, 2001, the Commissioner of Political Practices proposes to amend the above-state rules regarding organizational, procedural, campaign finance and practices, and ethics rules.

2. The Commissioner of Political Practices will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Commissioner of Political Practices no later than 5:00 p.m. on September 17, 2001, to advise us of the nature of the accommodation that you need. Please contact Linda Vaughey, 1205 Eighth Avenue, PO Box 202401, Helena MT 59620-2401; telephone 406-444-2942; FAX 406-444-1643; e-mail lvaughey@state.mt.us.

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

44.10.101 ORGANIZATIONAL RULE (1) Organization of the Office of the Commissioner of Political Practices.

(a) History The position of the Commissioner of Political Practices was created by the Legislature in 1975.

(b) Administrative Attachment The Office of the Commissioner of Political Practices is attached to the Office of the Secretary of State for the following administrative purposes only: set forth in 2-15-121 and 2-15-411, MCA.

~~(i) The Office of the Secretary of State shall collect all revenues for the agency and deposit them in the proper fund or account.~~

~~(ii) The Secretary of State shall allocate office space as necessary, subject to the approval of the Department of Administration.~~

(c) Commissioner The Commissioner of Political Practices is appointed for a term of six years and may be removed pursuant to ~~sections~~ 13-37-102(2) and 13-37-105, MCA.

(2) Functions of the Commissioner

(a) The Commissioner of Political Practices is to establish clear and consistent requirements for the full disclosure and reporting of the sources and disposition of funds used in Montana to support or oppose candidates, political committees, or issues, and in conjunction with the county attorneys, to enforce the election and campaign finance laws as specified in Title 13, chapters ~~35, 36,~~ and 37, MCA. The powers and duties of the Commissioner are provided in Title 13, chapter 37, part 1, MCA.

(b) The Commissioner also has enforcement responsibilities related to the Code of Ethics for government officers and employees in Title 2, chapter 2, part 1, MCA.

(c) In addition the Commissioner administers and enforces the provisions of the Montana Lobbyist Disclosure Act, Title 5, chapter 7, MCA.

~~(3) Information or Submission Any inquiries regarding the commission, hearings, and participation in rule making may be addressed to the Commissioner of Political Practices.~~

~~(4) (3) Personnel Roster Commissioner of Political Practices, Capitol Station, 1205 Eighth Avenue, PO Box 202401, Helena, Montana 59620-2401.~~

AUTH: 13-37-114, MCA

IMP: 2-4-201, MCA

44.10.201 INCORPORATION OF MODEL RULES, IN PART

(1) The ~~C~~ommissioner of ~~Campaign Finances and political P~~practices herein adopts and incorporates the Attorney General's Model Procedural Rules Introduction through rule 7 by reference to such rules as stated in ARM 1.3.101 through ~~1.3.211~~ 1.3.210 and the Attorney General's Model Procedural Rules 22 through ~~28~~ 24 by reference to such as stated in ARM 1.3.227 through ~~1.3.234~~ 1.3.229 in cases when a formal declaratory ruling proceeding is requested by a person through the filing of a petition as prescribed in ARM ~~1.3.228~~ 1.3.226. In all other cases, the ~~C~~ommissioner will issue ~~declaratory rulings, designated as~~ "advisory opinions" under the following procedure:

(a) A person desiring an interpretation to determine the applicability of a rule or statute administered by the commissioner to the person's activity or proposed activity may request an advisory opinion. All requests for an advisory opinion shall be in writing and shall contain:

(i) The identity, address, and signature of the person requesting the opinion.

(ii) A complete statement of the facts and circumstances upon which the commissioner is to base an opinion.

(iii) The rule or statute for which the person seeks an opinion.

(iv) The specific question presented for decision by the commissioner.

(b) Within a reasonable time after the receipt of a request for an advisory opinion, the commissioner shall consider the request and, based upon the facts presented in the request, prepare an opinion in writing, except as provided in (b)(i) of this subsection. ~~Prior to rendering an advisory opinion, the commissioner shall give notice of a call for a meeting to consider the opinion. The commissioner shall give the notice in a manner which will provide wide public dissemination. The commissioner may seek public comment prior to issuing an advisory opinion, depending on the particular question presented for an opinion.~~

(i) The commissioner will not issue an advisory opinion, but will notify the inquirer of the determination, when:

(A) The issue is the subject of pending litigation.

(B) A prior opinion has been rendered that addresses the fact and question presented in a subsequent request.

(C) The facts are inadequate for a determination.

~~(c) The meeting to consider an advisory opinion will be informal and open to the public. An interested person may present his or her viewpoint or advice.~~

~~(d) (c)~~ An advisory opinion will be rendered upon the facts submitted in the request and over the signature of the commissioner. A copy of the opinion will be mailed to the inquirer and published in a manner which will provide wide public dissemination. The commissioner will maintain an index of all opinions and will make an opinion available without charge and upon request.

~~(e) (d)~~ An advisory opinion rendered in accordance with this rule is binding between the commissioner and the inquirer on the state of facts alleged in the written request. An advisory opinion is not subject to judicial review. A person desiring judicial review of an advisory opinion shall file a formal petition for declaratory ruling, ~~in order to create the necessary prerequisite for a contested case hearing.~~ pursuant to 2-4-501, MCA, and (1) of this rule.

~~(f) (e)~~ A later advisory opinion or declaratory ruling overrules an earlier advisory opinion or declaratory ruling with which it is necessarily in conflict.

(f) A request for a declaratory ruling or an advisory opinion shall have no effect on the commissioner's investigation of and disposition of a formal complaint filed pursuant to ARM 44.10.307.

AUTH: 13-37-114, MCA

IMP: 2-4-201, MCA

#### 44.10.303 LIBERAL CONSTRUCTION OF REGULATIONS

(1) These rules shall be ~~liberally construed~~ interpreted and applied to permit the commissioner to discharge the statutory functions of the office and to secure a just and speedy determination of all matters before him the commissioner.



AUTH: 13-37-114, MCA  
IMP: Sec. 1, Ch. 480, Laws of 1975

44.10.305 PRACTICE WHERE REGULATIONS DO NOT GOVERN

(1) In any matter not governed by these regulations, the commissioner shall exercise his discretion so as to execute the purposes of the act, without exceeding the statutory authority of the act.

AUTH: 13-37-114, MCA  
IMP: Sec. 1, Ch. 480, Laws of 1975

44.10.307 COMPLAINTS OF VIOLATIONS (1) A person who believes a violation of a provision of Title 13, chapters 35, ~~36, and or~~ 37, MCA, or a rule or regulation implementing one or more of those statutory provisions has occurred may file a written complaint in person or by certified mail with the commissioner. When a complaint is received, it shall be marked to show the date of receipt. Unless the complaint is determined to be insufficient pursuant to (3)(a) of this rule, ~~W~~within five (5) days after receipt of a complaint, the commissioner shall, by certified mail, acknowledge its receipt and transmit a copy to the alleged violator. Saturdays, Sundays, and holidays shall be excluded in the calculation of the five-day period.

(2) ~~There is no prescribed form for a complaint, but a~~ A complaint shall be typewritten or legibly handwritten in ink. The complete name and mailing address of the person filing the complaint shall be typewritten or legibly hand printed on the complaint; and the complaint shall be signed and verified by the oath of affirmation of such person, taken before any officer authorized to administer oaths. A complaint shall name the alleged violator, and should include the complete mailing address of the alleged violator, if known or readily discoverable. The complaint shall describe in detail the alleged violation, and cite each statute and/or rule that is alleged to have been violated. ~~and it~~ The complaint shall be filed together with any evidentiary material. A complaint may be filed on a form available on request from the commissioner's office.

(3) Upon receipt of a complaint, the commissioner shall investigate, except as provided in (3)(a) of this rule, the alleged violation. The commissioner, upon completion of the investigation, shall prepare a written ~~statement of findings and a summary of facts~~ summary of facts and statement of findings, which he shall ~~send~~ be sent to the complainant and the alleged violator. Following the issuance of a ~~statement of findings and a summary of facts~~ summary of facts and statement of findings, the commissioner may take other appropriate action.

(a) No investigation shall be required if a complaint is frivolous on its face, illegible, too indefinite, does not identify the alleged violator, is unsigned, or is not verified

by the oath of affirmation of such person, taken before any officer authorized to administer oaths. In addition, no investigation shall be required if the complaint does not contain sufficient allegations to enable the commissioner to determine that it states a potential violation of a statute or rule within the commissioner's jurisdiction.

(4) A filed complaint and the ~~statement of findings and summary of facts~~ summary of facts and statement of findings shall be public record.

AUTH: 13-37-114, MCA  
IMP: 13-37-111(2), MCA

44.10.309 COPYING OF PUBLIC RECORDS (1) The commissioner shall charge a fee of ten cents (~~\$.10~~) an amount authorized by law per page of copy for providing copies of public records. This charge is the amount necessary to reimburse the office for its actual costs incident to such copying.

AUTH: 13-37-114, MCA  
IMP: 13-37-119(1), MCA

44.10.321 CONTRIBUTION-DEFINITION (1) For the purposes of Title 13, chapters 35 and 37, MCA, and these rules, the term "contribution" as defined in 13-1-101, MCA, includes, but is not limited to:

- (a) Each contribution as listed in 13-37-229, MCA;
- (b) The purchase of tickets or admissions to, or advertisements in journals or programs for testimonial or fund raising events, including, but not limited to dinners, luncheons, cocktail parties, and rallies held to support or oppose a candidate, issue, or political committee;
- (c) A candidate's own money used on behalf of his or her candidacy, except as provided in 13-1-101(6)(b)(iv) and (10)(b)(ii), MCA; and
- (d) An in-kind contribution, as defined in (2) of this rule.

(2) The term "in-kind contribution" means the furnishing of services, property, or rights without charge or at a charge which is less than fair market value to a candidate or political committee for the purpose of supporting or opposing any candidate, ballot issue or political committee, except as provided in 13-1-101(6)(a)(iii) and (6)(b)(i), MCA.

- (a) An "in-kind contribution", includes, but is not limited to:
- (i) Forgiveness of any loan to or debt of a candidate or political committee;
  - (ii) Payment of a loan or other debt by a third person;
  - (iii) An expenditure made at the behest of a candidate or political committee as specified in ARM 44.10.517;
  - (iv) A "coordinated expenditure" as defined in ARM 44.10.323(4); and

(v) The cost of distributing, republishing or reproducing campaign material (print or broadcast) produced or prepared by a candidate or political committee unless the distribution, republication or reproduction costs are a communication by a membership organization or corporation under 13-1-101(6)(b)(iii) or (10)(b)(iv), MCA.

(3) The fact that the public office being sought by the individual is not known by the contributor or has not yet been determined by the potential candidate at the time that the contribution is made or the fact that a candidate and/or issue being supported or opposed by a political committee is not known by the contributor or has not yet been determined by a political committee at the time that the contribution is made has no effect on the determination or reporting of that contribution.

AUTH: 13-37-114, MCA  
IMP: 13-1-101(~~3~~), MCA

44.10.325 POLITICAL COMMITTEE - DEFINITION

(1) "Political committee" is defined in 13-1-101(~~12~~ 18), MCA.

(2) A candidate and his or her campaign treasurer do not constitute a political committee. The campaign treasurer, while performing the statutory duties of a campaign treasurer, is the agent of the candidate.

(3) If a political committee has subdivisions within the state, such as county committees, which have authority to receive contributions and make expenditures independent of the parent political committee, each subdivision is considered a separate political committee for purposes of Title 13, chapters ~~35, 36,~~ and 37, MCA, and these rules.

AUTH: 13-37-114, MCA  
IMP: 13-1-101(~~12~~), MCA

44.10.327 POLITICAL COMMITTEE, TYPES (1) For purposes of Title 13, chapters 35 and 37, MCA, and these rules, political committees shall be of three types:

- (a) principal campaign committee;
- (b) independent committee; and
- (c) incidental committee.

(2) These types of political committees are defined as follows:

(a) A principal campaign committee is a political committee that is specifically organized to support or oppose a particular candidate or issue. There are three types of principal campaign committees:

(i) A ballot issue committee is specifically organized to support or oppose a ballot issue, as defined in 13-31-101, MCA.

(ii) A particular candidate committee is specifically organized to support or oppose a particular candidate. A particular candidate committee is not the same as a

candidate's own campaign organization which, according to ARM 44.10.325(2) is not a political committee.

(iii) A leadership political committee is defined in ARM 44.10.332(1).

(b) An independent committee is a political committee that is not specifically organized to support or oppose any particular candidate or issue but one that is organized for the primary purpose of supporting or opposing various candidates and/or issues. There are two types of independent committees:

(i) A political action committee ("PAC") is a committee composed of individuals who voluntarily contribute their money for the purpose of supporting or opposing candidates or issues that the members of the committee agree upon. PACs are typically formed by employees, shareholders, or members of a common employer, or members of a particular profession or trade.

(ii) A political party committee is a committee formed by a political party organization, as that term is defined in 13-37-216, MCA. Examples of political party committees are listed in ARM 44.10.333(1).

(c) An incidental committee is a political committee that is not specifically organized or maintained for the primary purpose of influencing elections but that may incidentally become a political committee by making a contribution or expenditure to support or oppose a candidate and/or issue.

(3) "Primary purpose" shall be determined based upon such criteria as allocation of budget, staff or members' activity, and the statement of purpose or goals of the individuals or person.

AUTH: 13-37-114, MCA  
IMP: 13-1-101(~~12~~), MCA

44.10.329 POLITICAL COMMITTEE, CLASSIFICATION (1) The commissioner shall classify a political committee upon the basis of information provided on the statement of organization which is set forth in ARM 44.10.405 and which is required to be filed by a political committee pursuant to section 13-37-201, MCA. The commissioner shall notify, in writing, a political committee of its classification.

(2) The political committee shall be classified as one of the types of political committee specified in ARM 44.10.327.

(3) The commissioner may, in writing, reclassify a political committee if the status of that committee should change pursuant to ARM 44.10.403(2), or pursuant to (5) of this rule.

(4) If the commissioner, based upon the information provided on the statement of organization, is unable to classify a political committee, additional information may be requested by the commissioner. If additional information is requested, a political committee shall provide the requested

information within ~~ten~~(10) days after its receipt of the request. Saturdays, Sundays, and holidays shall be excluded in the calculation of the 10-day period.

(5) A political committee, after it has received notice of its classification, may ~~wish~~to supply additional information and request to be reclassified.

AUTH: 13-37-114, MCA

IMP: 13-1-101, MCA

44.10.330 DESIGNATION OF CONTRIBUTIONS FOR PRIMARY AND GENERAL ELECTIONS

(1) Aggregate contributions for each election in a campaign are limited according to 13-37-216, MCA. An "election" in a campaign, for the purposes of 13-37-216, MCA, is defined as either a primary election or a general election.

(2) For purposes of applying aggregate contribution limits per election the following apply:

(a) Aggregate contribution limits for each election, as set forth in 13-37-216, MCA, apply to a primary election and to a general election as defined in ARM 44.10.334;

(b) Time periods for filing reports of contributions and expenditures are set forth in 13-37-226 and 13-37-228, MCA. As a general rule, contributions received by a candidate prior to and on the day of a primary election are designated for the primary election and are subject to the aggregate contribution limits for the primary election; however, a candidate in a contested primary may receive contributions designated for the general election during the primary election period (except for in-kind contributions) subject to the contribution limits for the general election;

(c) General election contributions received prior to the primary election must be maintained in a separate account and shall not be used until after the primary election;

(d) All contributions received by a candidate after the day of the primary election are designated as general election contributions and are subject to the aggregate contribution limit for the general election, except that a candidate may continue to receive contributions designated for the primary election subject to the limits after that election only for the purpose of paying primary election debts. General election contributions shall not be used to pay primary election debt-;

(e) Leftover funds that were designated for the primary election may be used for general election purposes if all primary debt has been paid.

(3) If a candidate receives contributions designated for the general election prior to the primary, and does not proceed to the general election, the candidate must return the contributions to the donors. These funds are not "surplus campaign funds."

AUTH: 13-37-114, MCA

IMP: 13-37-216, MCA

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

(a) a candidate for the state house of representatives may receive no more than ~~\$1200~~ 1300;

(b) a candidate for the state senate may receive no more than ~~\$2000~~ 2150.

(2) These limits apply to total combined receipts for the entire election cycle of ~~2000~~ 2002.

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

AUTH: 13-37-114, MCA

IMP: 13-37-216, MCA

44.10.332 LEADERSHIP POLITICAL COMMITTEES (1) The term "leadership political committee maintained by a political officeholder", as used in 13-37-216(2)(b), MCA, means a "political committee" as defined in 13-1-101(~~12~~ 18), MCA, managed or controlled by an elected official or someone designated by the elected official. The term "elected official" is defined in 5-7-102(4), MCA.

(2) A leadership political committee managed by an elected official who is also a candidate is considered to be organized on the candidate's behalf, and contributions to the committee are subject to the aggregate contribution limits established in 13-37-216(1), MCA.

(3) A leadership political committee that makes contributions to another candidate, a candidate's committee, or any political committee organized on a candidate's behalf is subject to the aggregate contribution limits established in 13-37-216(1), MCA.

(4) A committee established and managed or controlled by an elected official or someone designated by the elected official, which is not a "political committee" as that term is defined in 13-1-101(~~12~~ 18), MCA, is not a "leadership political committee maintained by a political officeholder." Such a committee may raise money for research, educational, and other purposes, so long as the fund raising and expenditures do not constitute "contributions" or "expenditures" pursuant to the definitions in 13-1-101, MCA. If the fund raising and expenditures result in contributions or expenditures according to the definitions in 13-1-101, MCA, and the committee is a "political committee" as defined in 13-1-101(~~12~~ 18), MCA, the committee is a "leadership political committee maintained by a political officeholder."

(5) Leadership political committees maintained by a political officeholder are subject to the reporting requirements of Title 13, chapter 37, MCA.

(6) The commissioner shall classify leadership political committees maintained by a political officeholder pursuant to

ARM 44.10.327 and 44.10.329 based on the information provided on the statement of organization.

AUTH: 13-37-114, MCA  
IMP: 13-37-216, MCA

44.10.333 LIMITATIONS ON CONTRIBUTIONS FROM POLITICAL PARTY COMMITTEES (1) Political committees formed by "political party organizations", as that term is defined in 13-37-216, MCA, are subject to the aggregate contribution limits established in 13-37-216(3), MCA. Such committees are "political party committees", and include all county central committees, city central committees, women's clubs, and other committees, that fit within the definition of "political committee" in 13-1-101(~~12~~ 18), MCA, and were formed by a political party organization.

(2) Candidates will be responsible for monitoring contributions from political party committees to ensure that the contribution limits are not exceeded.

AUTH: 13-37-114, MCA  
IMP: 13-37-216, MCA

44.10.335 DISPOSAL OF SURPLUS CAMPAIGN FUNDS

(1) Candidates shall dispose of surplus campaign funds within 120 days of filing the closing campaign report required by 13-37-228, MCA.

(a) The candidate's closing report shall be filed whenever all debts and obligations are extinguished and no further contributions or expenditures will be received or made which relate to the campaign.

(b) No closing report needs to be filed following a primary election campaign if the candidate will advance to the general election.

(2) "Surplus campaign funds" are those campaign funds remaining when all debts and other obligations of the campaign have been paid or settled, no further campaign contributions will be received, and no further campaign expenditures will be made.

(3) Surplus campaign funds will be considered to have been "disposed of" on the date payment is made by the candidate or the candidate's committee to a permissible person, entity, or account.

(4) The candidate shall be responsible for obtaining a receipt containing the requisite information from all recipients of any surplus campaign funds. Payment of surplus campaign funds shall be evidenced by a receipt from the recipient containing the following information:

- (a) The full name and mailing address of the recipient;
- (b) The date the funds were received;
- (c) The full name of the candidate from whose campaign the funds were received, and;
- (d) The exact amount of funds received.

~~The candidate shall be responsible for obtaining a receipt containing the requisite information from all recipients of any surplus campaign funds.~~

(5) Those candidates with surplus campaign funds shall file a supplement to the closing campaign report, on a form prescribed by the commissioner, showing the disposition of surplus campaign funds. The report shall be accompanied by copies of all receipts required by subsection (4) of this rule. The supplement shall be filed within 135 days after the closing report is filed.

(6) A candidate shall abide by the prohibitions on the use of surplus campaign funds specified in 13-37-240, MCA.

(a) For purposes of the restrictions on the disposal of surplus campaign funds set forth in 13-37-240, MCA, "personal benefit" is defined in 13-37-240(2), MCA. For purposes of this definition, a candidate's "immediate family" includes the candidate's spouse and minor children only, ~~pursuant to the definition of this term in 5-7-213, MCA.~~

(b) For purposes of the restrictions on the disposal of surplus campaign funds set forth in 13-37-240, MCA, "campaign" means any organized effort to secure or prevent the nomination or election of a candidate for public office, or secure or prevent passage of a ballot issue.

(c) The following are examples of permissible uses of surplus campaign funds:

(i) Return of the funds to the contributor, so long as the funds will not result in personal benefit or a contribution to a campaign;

(ii) Donation of the funds to any organization or entity, so long as the use of the funds will not result in personal benefit or a contribution to a campaign;

(iii) Upon election, use of the funds to establish an account to serve a public purpose related to the officeholder's public duties, so long as the funds will not result in personal benefit or a contribution to a campaign.

(7) A candidate shall not contribute surplus campaign funds to a political committee, including a leadership political committee maintained by a political officeholder. However, nothing in this subsection shall be construed as prohibiting contribution of surplus campaign funds to a political party or a political party committee, so long as the funds are not earmarked for a specific campaign.

(8) Upon a determination that a candidate made a prohibited disposal of surplus campaign funds, the commissioner may employ any enforcement measures within his or her jurisdiction.

AUTH: 13-37-114, MCA

IMP: 13-37-240, MCA

44.10.401 STATEMENTS AND REPORTS, FILING (1) Each statement and report required by Title 13, chapters 35 and 37, MCA, and these rules shall be filed on forms prescribed by the commissioner, except as provided in ARM 44.10.413. The forms



may be obtained without cost and upon request from the Commissioner of Political Practices, 1205 Eighth Avenue, PO Box 202401, Helena, Montana 59620-2401, telephone (406) 444-2942. The forms may also be downloaded from the office's website at <http://www.state.mt.us/cpp/>.

(2) All statements and reports required by Title 13, chapters 35 and 37, MCA, and these rules are filed with the commissioner and with the appropriate county clerk ~~and recorder~~ election administrator, as specified in section 13-37-225(1), MCA, and ~~sub-section~~ (2)(a) of this rule.

(a) Statements and reports filed by a candidate for district court judge are filed with the commissioner and with the ~~county clerk and recorder~~ election administrator of the county in which the election is held. If the election is held in more than one county, reports are filed with the ~~county clerk and recorder~~ election administrator at the county seat with the greatest population based upon the latest direct enumeration of the inhabitants thereof taken under the direction of the Congress of the United States or made by the state or municipality.

(b) Each statement and report filed shall be a legible copy bearing an original signature of the individual filing the statement or report.

(c) A statement or report is filed if it is delivered or faxed to the commissioner and the appropriate county clerk ~~and recorder~~ election administrator before 5:00 p.m. on the prescribed filing date or if it is deposited in an established U.S. Post Office, postage prepaid, no later than 5:00 p.m. ~~three (3) days before the prescribed filing date.~~ A faxed report is timely filed if the original of the report is filed within five days after the fax transmission. Saturdays, Sundays, and holidays shall be excluded in the calculation of the five-day period.

(i) A delivered statement or report shall be acknowledged by a dated receipt.

AUTH: 13-37-114, MCA

IMP: 13-37-117~~(1)~~, 13-37-225~~(1)~~, 13-37-231~~(1)~~, MCA

44.10.405 STATEMENT OF ORGANIZATION - POLITICAL COMMITTEE, INFORMATION REQUIRED (1) A Statement of Organization required to be filed pursuant to ~~sections~~ 13-37-201 and 13-37-205, MCA, shall include, but not be limited to:

(a) The complete name and address of a political committee.

(b) The complete names and address of all related or affiliated political committees, and the nature of the relationship or affiliation.

~~(c) The geographic area, purpose and jurisdiction of a committee.~~

~~(d) (c)~~ (c) The complete name and address of its campaign treasurer and campaign depository, and the complete name and address of its deputy campaign treasurer and secondary campaign depository, if any.

(e) (d) The complete names, addresses, and titles of its officers, if any.

(f) (e) A statement of whether a committee is incorporated.

~~(g) A statement of whether a committee is a continuing one or the expected period of existence of a committee.~~

(h) (f) The name, office sought, and party affiliation (if any) of each candidate whom a committee is supporting or opposing; if a committee is supporting the entire ticket of any party, the name of the party.

(i) (g) Ballot issue or issues concerned, if any, and whether a committee is in favor of or opposition to such issue or issues.

AUTH: 13-37-114, MCA

IMP: 13-37-117~~(1)~~, 13-37-201, 13-37-202~~(1)~~, 13-37-205, MCA

44.10.409 CLOSING REPORT - INDEPENDENT COMMITTEES

(1) Except as provided in subsection (2) below, independent political committees which are not incidental committees shall file a year-end closing report pursuant to ~~section 13-37-226(4)~~ (5)(c), MCA. The closing date of books for the report is December 31 and the report shall be filed with the appropriate filing officers no later than January 31.

(a) The report shall cover all contributions received and expenditures made since the closing date of books for the most recently filed report.

(b) The closing date of books for the report shall mark the cutoff date for the purpose of computing aggregate contributions and expenditures, and future reports shall use that date as a beginning point for the purpose of aggregation.

(2) No committee shall be required to file the report required by ~~subsection (1)~~ if the committee was required to file a post-election report pursuant to 13-37-226~~(4)~~ (5)(b), MCA, during the second half of a calendar year and no further expenditures to support or oppose a candidate or ballot issue have been made by it between the closing date of books for the post-election report and December 31. The post-election report shall be considered as its closing report and the closing date of books for that report shall be used as the cutoff date for the purpose of aggregating contributions and expenditures for future reports.

(3) An independent committee which will not participate in future elections and which wishes to end its status as a reporting committee may file a statement of termination with its closing report. Any further activity by a terminated committee will require a new Statement of Organization.

AUTH: 13-37-114, MCA

IMP: 13-37-226~~(4)~~(e), MCA

44.10.413 NONRESIDENT AND FEDERALLY-FILING COMMITTEES, REPORTS (1) As used in this rule, "federally-filing

committee" means a state party central committee, a qualified multi-candidate committee under 2 U.S.C. Sec. 441(a)(4), or any other committee which files reports with the Federal Election Commission on a monthly or quarterly basis pursuant to the Federal Election Campaign Act of 1971, as amended.

(a) If a federally-filing committee's reports filed with the Federal Election Commission fully disclose the source and disposition of all funds used to influence elections in Montana, the commissioner shall accept copies of such reports in lieu of the periodic reports prescribed by the Campaign Finances and Practices Act. Such reports need be filed with the commissioner only for periods in which a federally-filing committee receives contributions from Montana sources or expends funds to influence elections in Montana. A copy of a statement of organization (FEC Form 1) shall accompany the first report, and copies of any amendments thereto shall be filed with the commissioner.

(b) This regulation rule does not affect the duty of any such committee under 2 U.S.C. Sec. 439 to file copies of reports with the Montana secretary of state.

(2) Committees headquartered outside the state of Montana which are not federally-filing committees and which expend funds to influence elections in Montana may satisfy the requirements of the Montana Campaign Practices Act in one of two ways:

(a) If the committee files reports with a state officer in its home state, the commissioner may accept copies of such reports in satisfaction of the requirements of the Montana Campaign Finances and Practices Act if those reports fully disclose the source and disposition of all funds used to influence elections in Montana. Such reports need be filed only for periods in which the committee expends funds to influence elections in Montana. A copy of a statement of organization or equivalent statement shall accompany the first such report, and copies of any amendments thereto shall be filed with the commissioner as they occur.

(b) If a nonresident committee cannot satisfy the requirements set forth in the preceding subsection, it shall file reports on Montana forms for the periods in which the committee expends funds to influence elections in Montana. Such reports shall contain the information required by 13-37-229 and 13-37-230, MCA, and these rules.

(3) A copy of a report or statement filed pursuant to this rule need not be filed with a county clerk and recorder election administrator in Montana.

AUTH: 13-37-114, MCA  
IMP: 13-37-227, MCA

44.10.501 UNIFORM SYSTEM OF ACCOUNTS (1) Each person required to file reports pursuant to Title 13, chapter 37, and these rules, shall maintain a system of accounts as prescribed and published in manual form by the commissioner. The manual may be obtained without cost and upon request from the

Commissioner of Political Practices, 1205 Eighth Avenue, PO Box 202401, Helena, Montana 59620-2401, telephone (406) 444-2942.

~~(a)~~ (2) The uniform system of accounts provides, on a current basis, the detail and summary information necessary for preparing, directly from the accounting records, the reports required by Title 13, chapter 37, MCA, and these rules.

AUTH: 13-37-114, MCA  
IMP: 13-37-117~~(2)~~, MCA

44.10.511 CONTRIBUTIONS, REPORTING (1) A contribution becomes a contribution on the date it is received; or, in the case of an in-kind contribution, on the date the consideration is received by the candidate or political committee.

(2) A contribution received by check drawn on a joint checking account shall be deemed and reported as a contribution from the person signing the check, unless otherwise specified in writing at the time the contribution is received.

(3) In the case of property held jointly by a candidate and another, a contribution therefrom will be presumed to be a contribution from the candidate so long as the property was owned jointly prior to the time that the candidate became a candidate as defined in ~~section 13-1-101(2)~~ (5), MCA.

(4) A contribution shall be reported for the reporting period during which it is received.

(5) For the purposes of ~~section 13-37-226(1)(a)~~ (b), and (2)(a) (d), and (3)(a), MCA, the report required to be filed within 24 or 48 hours shall be filed as follows:

(a) It shall be delivered within 24 or 48 hours, as appropriate, after the receipt thereof, Saturdays, Sundays, and holidays excepted, to the ~~Commissioner's~~ commissioner's office and the ~~appropriate county clerk and recorder~~ election administrator; or

~~(b) It shall be deposited within 24 hours after the receipt thereof, Sundays and holidays excepted, in an established U.S. Post Office, postage pre-paid; and~~

(b) It shall be faxed to the commissioner's office and the appropriate county election administrator, provided the original of the report is received by the commissioner and the appropriate election administrator within five days after the fax transmission. Saturdays, Sundays, and holidays shall be excluded in the calculation of the five-day period.

(c) It shall be reported again on the post-election report.

AUTH: 13-37-114, MCA  
IMP: 13-37-225 and 13-37-226~~(1)(a)~~ and ~~(2)(a)~~, MCA

44.10.521 MASS COLLECTIONS AT FUND-RAISING EVENTS-- ITEMIZED ACCOUNT OF PROCEEDS, REPORTING (1) For the purposes of ~~section 13-37-229(8)~~, MCA:

(a) "Mass collections" made at a fund-raising event include the proceeds received from passing the hat or from the sale of items such as campaign pins, flags, emblems, hats, banners, raffle tickets, auction items, refreshments, baked goods, admission tickets and similar items sold at a dinner, rally, auction, dance, bake sale, rummage sale or similar fund-raising event. Provided that mass collections do not include the proceeds of purchases of ~~\$75 or more in the case of a statewide candidate or political committee, or \$35 or more for any other candidate or political committee, or \$35 or more at a mixed event for both statewide and any other candidates or political committees.~~

(b) "Itemized account of proceeds" means the date and approximate number of individuals in attendance at a fund-raising event, a description of the method utilized to gain the proceeds of a mass collection (i.e.; passing the hat, sale of raffle tickets, auction items, etc.) and the total amount received from each method utilized.

(2) For purposes of preparing the statement of deposit required by ~~section 13-37-207(2), MCA,~~ a record identifying the name of and amount received from each person must be maintained for a purchase of ~~\$75 or more at an event for a statewide candidate or political committee, or \$35 or more at an event for any other candidate or political committee, or \$35 or more at a mixed event for both statewide and any other candidates or political committees.~~ The proceeds of purchases of less than ~~\$75 or \$35, whichever applies,~~ may be recorded and deposited in lump sum without identifying the name of the contributor.

AUTH: 13-37-114, MCA

IMP: 13-37-229(7) ~~and (10)~~, MCA

44.10.525 DEBTS AND OBLIGATIONS OWED TO A CANDIDATE OR POLITICAL COMMITTEE, REPORTING (1) Pursuant to ~~section 13-37-229(6) (7), MCA,~~ each report required by ~~section 13-37-226, MCA,~~ shall disclose all debts and obligations owed to a candidate or political committee. Debts and obligations shall continue to be reported so long as they remain outstanding.

(2) A reporting candidate or political committee shall report the full name and mailing address (occupation and principal place of business, if any) of each person who owes a debt or obligation to the candidate or political committee at the end of a reporting period, including the amount, date contracted, and nature of each debt and obligation owed by each person. If the exact amount of a debt or obligation is not known, the estimated amount owed shall be reported.

AUTH: 13-37-114, MCA

IMP: 13-37-229(6), MCA

44.10.601 OVERLAPPING SALARIES FROM MULTIPLE PUBLIC EMPLOYERS (1) "Public employee" and "public officer" are

defined in 2-2-102, MCA. For purposes of this rule, "public employee" does not include an employee in the federal system.

(2) All state public employees, state public officers, and legislators who receive multiple salaries from multiple public employers for overlapping work hours must file a completed multiple public employment disclosure form with the commissioner of ~~political practices~~ office within 15 business days of the occurrence, contract agreement, or receipt of payment. The multiple public employer disclosure form is available upon request from the commissioner's of political practices, ethics office.

(3) The multiple public employment disclosure form will contain the following information:

(a) name, address, and telephone number of the state public employee, state public officer, or legislator;

(b) name, address, and telephone number of each public employer;

(c) date(s) of multiple employment;

(d) title(s) or description(s) of each overlapping position;

(e) amount(s) paid by each public employer and method(s) of payment.

(4) If multiple employment is ongoing, a multiple public employment disclosure form must be filed with the commissioner annually, prior to December 15 of the current year. If multiple employment is occasional, a multiple public employment disclosure form must be filed on each occasion.

(5) The commissioner of ~~political practices~~ will monitor statutory disclosure requirements and notify any state public employee, state public officer, or legislator who is not in compliance with 2-2-104, MCA, within a reasonable period of time. Noncompliant individuals must correct the infraction and submit supporting documentation to the commissioner of ~~political practices~~ within 15 business days upon after their receipt of notification. Saturdays, Sundays, and holidays shall be excluded in the calculation of the 15-day period.

AUTH: 13-37-114, MCA

IMP: 2-2-104, MCA

44.10.603 DEFINITIONS The following definitions shall apply throughout this chapter:

(1) "Commissioner" means the commissioner of political practices created under 2-15-411 and 13-37-102, MCA.

(2) "Complainant" means any person who files a complaint with the commissioner under Title 2, chapter 2, MCA.

(3) "Ethics code" means the code of ethics, Title 2, chapter 2, part 1, MCA.

~~(4) "Ethics commission" means the ethics commission created under 2-2-138, MCA.~~

~~(5)~~ (4) "Hearing examiner" means a hearing examiner appointed by the commissioner.

~~(6)~~ (5) "Respondent" means any person against whom a complaint is filed with the commissioner.

AUTH: 2-2-136, MCA  
IMP: 2-2-136, MCA

44.10.605 FILING, AMENDING COMPLAINTS (1) ~~Complaints alleging violations of the ethics code shall be filed with the commissioner of political practices by certified mail or personal delivery.~~ Complaints shall be in writing and shall be sworn to before a notary public or other person authorized by law to administer oaths.

(2) A complaint may be amended to cure defects, or omissions, verify the original claim, swear or affirm that the charge is true, clarify allegations, or allege new, but related matters.

(3) The commissioner shall promptly notify all parties in writing of any amendments.

AUTH: 2-2-136, MCA  
IMP: 2-2-136, MCA

44.10.607 COMPLAINT CONTENTS (1) A complaint shall contain the following:

(a) the full name, address, and telephone number, if any, of the person making the complaint (complainant);

(b) the full name, address, and telephone number, if any, of the person against whom the complaint is made (respondent);

(c) a clear and concise statement of the facts(s), including pertinent dates(s) constituting the alleged violation(s) of the ethics code;

(d) the specific provision of the ethics code which is allegedly to have been violated;

(e) the verified signature of the complainant swearing or affirming that the charge is true.

(2) A complaint may be filed on a form available on request from the commissioner's office.

AUTH: 2-2-136, MCA  
IMP: 2-2-136, MCA

44.10.608 WITHDRAWAL OF A COMPLAINT (1) Any person who has filed a complaint with the commissioner may ~~make a request~~ in writing that the complaint be withdrawn. Upon receipt of a written request for withdrawal of the complaint, the commissioner shall dismiss the complaint.

AUTH: 2-2-136, MCA  
IMP: 2-2-136, MCA

44.10.612 CONFIDENTIALITY (1) The commissioner shall maintain the confidentiality of privacy interests entitled to protection by law.

~~(2) No complaint, or factual information pertaining to the complaint obtained in the course of the administrative complaint process, shall be made a matter of public~~

~~information prior to an informal contested case hearing. The commissioner's decision is considered a public record.~~

~~(3) This rule shall not limit the commissioner's disclosures of such information to a party, individual, or agency as may be necessary to carry out the commissioner's obligation under the law or these rules. The commissioner may disclose any record or information with the prior written consent of the individual to whom the record pertains.~~

AUTH: 2-2-136, MCA  
IMP: 2-2-136, MCA

44.10.613 INFORMAL CONTESTED CASE HEARING (1) After the commissioner has asserted jurisdiction over a complaint, a hearing date will be set by the hearing examiner.

(2) The matter shall proceed in accordance with the Administrative Procedure Act, Title 2, chapter 4, part 6, MCA.

(3) For purposes of these ethics complaint procedures, the commissioner incorporates by reference the attorney general's model rules for contested case hearings, ARM 1.3.212, 1.3.214 (effective 6/12/92), and 1.3.217 (effective 10/12/79). Copies of these model rules are available from the eCommissioner of Political Practices, 1205 Eighth Avenue, PO Box 202401, Helena, Montana 59620-2401.

AUTH: 2-2-136, MCA  
IMP: 2-2-136, MCA

4. The proposed amendments are necessary to clarify and update some of the language in the existing rules.

5. Concerned persons may present their data, views, or arguments concerning the proposed amendment in writing to Linda Vaughey, Commissioner of Political Practices, 1205 Eighth Avenue, PO Box 202401, Helena MT 59620-2401; telephone 406-444-2942; FAX 406-444-1643; e-mail lvaughey@state.mt.us. Any comments must be received no later than September 21, 2001.

6. If persons who are directly affected by the proposed amendment wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Linda Vaughey, Commissioner of Political Practices, 1205 Eighth Avenue, PO Box 202401, Helena MT 59620-2401. Requests must be received no later than September 21, 2001.

7. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who



will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 164 based on the number of registered candidates and political committees in the 2000 election cycle.

8. The Commissioner of Political Practices maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their 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 campaign finance and practices and ethics. Such written request may be mailed or delivered to Linda Vaughey, Commissioner of Political Practices, 1205 Eighth Avenue, PO Box 202401, Helena MT 59620-2401, or may be made by completing a request form at any rules hearing held by the Commissioner of Political Practices.

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

/s/ Linda Vaughey  
LINDA VAUGHEY  
Commissioner of Political Practices

/s/ James Scheier  
JAMES SCHEIER  
Rule Reviewer

Certified to the Secretary of State on August 13, 2001.

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

In the matter of the )  
adoption of an emergency rule ) NOTICE OF ADOPTION  
regulating the use of ) OF A TEMPORARY  
snowmobiles on open water ) EMERGENCY RULE

TO: All Concerned Persons

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

(a) Individuals have recently begun operating snowmobiles on open waters in the state of Montana. Because this activity is new, regulations to protect the public safety and welfare have not been promulgated.

(b) On July 8, 2001, an individual drowned on Newlan Creek Reservoir while operating a snowmobile on open water when the individual's craft slowed and sank into the reservoir. This individual could not swim and was not wearing a personal flotation device. The Commission believes that the health and safety of other individuals engaging in this activity is in imminent peril and believes that adoption and enforcement of this emergency rule may reduce some of the hazards associated with this activity.

(c) Snowmobiles which stall or slow during this activity will sink into the waters of Montana lakes and reservoirs. These machines can leak oil and gas into the water which poses a threat to the public health and welfare.

(d) Operating snowmobiles on open waters involves high rates of speed, and involves machines which were not designed for water use and cannot maneuver effectively in the water. This unrestricted use places the safety of operators, swimmers, boaters, and anglers recreating on Montana waters in imminent peril.

(e) Therefore, as this activity constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied any other way, the Commission intends to adopt the following temporary emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. The rule will be sent to interested parties, and published as a temporary emergency rule in Issue No. 16 of the 2001 Montana Administrative Register.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the

department no later than 5:00 p.m. on August 31, 2001. Please contact Debbie Bingham P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-2452; fax (406) 444-4952.

3. The temporary emergency rule will be effective August 9, 2001, at sunrise.

4. The text of the emergency rule is as follows:

RULE I SNOWMOBILES ON OPEN WATER (1) The following restrictions apply to operators of snowmobiles on open water:

(a) the operator must wear a personal flotation device at all times;

(b) the snowmobile must have a buoy or other flotation device attached with a rope at least as long as the water is deep for easy location should the snowmobile sink;

(c) the snowmobile must start within 10 feet of the edge of the water, but not within 200 feet of any dock, public boat ramp or public boat launching area, designated fishing access site, state park, or public swimming area;

(d) the snowmobile must have a functional lanyard-type cord connected to the operator whenever the engine is running that shuts off the engine if the operator falls off;

(e) the snowmobile must have a sealed gas tank and oil reservoir;

(f) the snowmobile must have biodegradable chain case oil and antifreeze;

(g) the operator shall retrieve a sunken snowmobile as soon as possible, but within 24 hours;

(h) no passengers are allowed on the snowmobiles;

(i) snowmobiles are banned in no wake zones;

(j) snowmobiles may not be operated on open water from sunset to sunrise;

(k) no person under the age of 16 may operate a snowmobile on open water; and

(l) operators of snowmobiles on open water must comply with all other laws and rules governing the use of personal watercraft.

AUTH: 23-1-106, 87-1-303, MCA

IMP: 23-1-106, 87-1-303, MCA

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

6. A standard rulemaking procedure will be undertaken prior to the expiration of this temporary emergency rule.

7. Concerned persons are encouraged to submit their comments during the upcoming standard rulemaking process. If concerned persons wish to be personally notified of that rulemaking process, they should submit their names and mailing addresses to Beate Galda; P.O. Box 200701, Helena, MT 59620-0701 or use the web comment forum at [www.fwp.state.mt.us](http://www.fwp.state.mt.us) after

entering the website, select comments, and then select enforcement in the category section. Comments, requests, and questions can be entered here.

8. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East 6th Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

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

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

BY: /s/ M. Jeff Hagener  
M. Jeff Hagener, Secretary  
Fish, Wildlife and Parks  
Commission

/s/ Rebecca Dockter Engstrom  
Rebecca Dockter Engstrom  
Rule Reviewer

Certified to the Secretary of State August 8, 2001

BEFORE THE ALTERNATIVE HEALTH CARE BOARD  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the transfer ) NOTICE OF TRANSFER  
of ARM 8.4.101 through )  
8.4.511 pertaining to the )  
Alternative Health Care Board )

TO: All Concerned Persons

1. Pursuant to Chapter 483, Laws of Montana 2001, effective July 1, 2001, the Alternative Health Care Board is transferred from the Department of Commerce to the Department of Labor and Industry ARM Title 24, Chapter 111.

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

<u>OLD</u>	<u>NEW</u>	
8.4.101	24.111.101	BOARD ORGANIZATION
8.4.201	24.111.201	PROCEDURAL RULES
8.4.202	24.111.202	PUBLIC PARTICIPATION
8.4.301	24.111.401	FEES
8.4.302	24.111.2101	RENEWAL
8.4.303	24.111.2301	UNPROFESSIONAL CONDUCT
8.4.304	24.111.402	MANAGEMENT OF INFECTIOUS WASTE
8.4.305	24.111.2402	SCREENING PANEL
8.4.306	24.111.2401	COMPLAINT PROCEDURE
8.4.401	24.111.501	MINIMUM NATUROPATHIC MEDICAL EDUCATION STANDARDS
8.4.402	24.111.502	LICENSING BY EXAMINATION
8.4.403	24.111.503	LICENSING OF OUT-OF-STATE APPLICANTS
8.4.404	24.111.510	CERTIFICATION FOR SPECIALTY PRACTICE OF NATUROPATHIC CHILDBIRTH ATTENDANCE
8.4.405	24.111.2102	NATUROPATHIC PHYSICIAN CONTINUING EDUCATION REQUIREMENTS
8.4.406	24.111.511	NATUROPATHIC PHYSICIAN NATURAL SUBSTANCE FORMULARY LIST
8.4.501	24.111.604	LICENSING BY EXAMINATION
8.4.502	24.111.301	DEFINITIONS
8.4.503	24.111.602	DIRECT-ENTRY MIDWIFE APPRENTICESHIP REQUIREMENTS
8.4.504	24.111.601	MINIMUM DIRECT-ENTRY MIDWIFE EDUCATION STANDARDS
8.4.505	24.111.610	HIGH RISK PREGNANCY: CONDITIONS REQUIRING PRIMARY CARE BY A PHYSICIAN
8.4.506	24.111.611	CONDITIONS WHICH REQUIRE PHYSICIAN CONSULTATION OR TRANSFER OF CARE
8.4.507	24.111.613	REQUIRED REPORTS
8.4.508	24.111.2103	MIDWIVES CONTINUING EDUCATION REQUIREMENTS

8.4.509	24.111.612	VAGINAL BIRTH AFTER CESAREAN (VBAC) DELIVERIES
8.4.510	24.111.605	LICENSURE OF OUT-OF-STATE APPLICANTS
8.4.511	24.111.603	DIRECT-ENTRY MIDWIFE PROTOCOL STANDARD LIST REQUIRED

3. 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.

ALTERNATIVE HEALTH CARE BOARD  
DOLLY BROWDER, L.M., CHAIRMAN

By: /s/ MIKE FOSTER  
Mike Foster, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ KEVIN BRAUN  
Kevin Braun  
Rule Reviewer

Certified to the Secretary of State, August 13, 2001.

BEFORE THE ALTERNATIVE HEALTH CARE BOARD  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT  
of ARM 8.4.301, 8.4.405, )  
8.4.508, 8.4.510 and 8.4.511 )  
pertaining to fees, )  
continuing education for )  
naturopathic physicians and )  
midwives, licensure of )  
out-of-state applicants and )  
direct-entry midwife protocol )  
standard list required for )  
application )

TO: All Concerned Persons

1. On May 24, 2001, the Alternative Health Care Board published a notice of proposed amendment of the above-stated rules at page 815, 2001 Montana Administrative Register, issue number 10.

2. The Board has amended ARM 8.4.301, 8.4.405, 8.4.508, 8.4.510 and 8.4.511 exactly as proposed.

3. No comments or testimony were received.

4. In another notice in this issue the above noted rules are being transferred as follows:

ARM 8.4.301 to ARM 24.111.401,  
ARM 8.4.405 to ARM 24.111.2102,  
ARM 8.4.508 to ARM 24.111.2103,  
ARM 8.4.510 to ARM 24.111.605, and  
ARM 8.4.511 to ARM 24.111.603.

ALTERNATIVE HEALTH CARE BOARD  
DOLLY BROWDER, L.M., CHAIRMAN

By: /s/ MIKE FOSTER  
Mike Foster, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ KEVIN BRAUN  
Kevin Braun  
Rule Reviewer

Certified to the Secretary of State, August 13, 2001.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION  
OF THE STATE OF MONTANA

In the matter of the amendment        )       CORRECTED NOTICE OF  
of rules pertaining to fees            )       AMENDMENT

TO: All Concerned Persons

1. On December 21, 2000, the Department of Natural Resources and Conservation published notice of a public hearing on the proposed amendment of the above-stated rule at page 3504 of the 2000 Montana Administrative Register, Issue Number 24, and on April 5, 2001, published notice of the amendment on page 562 of the 2001 Montana Administrative Register, Issue Number 7.

2. This corrected notice is being filed to correct a clerical error in ARM 36.21.415.

3. The rule is corrected as follows:

36.21.415 FEE SCHEDULE

(1) through (8) remain as amended.

AUTH: ~~37-42-202~~ 37-43-202, MCA

IMP: 37-43-302, 37-43-303, 37-43-305 and 37-43-307, MCA

4. The correction in this notice is necessary because it was proposed and amended with an incorrect authorization cite.

5. Replacement pages for the corrected notice of amendment will be submitted to the Secretary of State on September 30, 2001.

/s/ Donald D. MacIntyre  
Donald D. MacIntyre  
Rule Reviewer

/s/ Arthur R. Clinch  
Arthur R. Clinch, Director

Certified to the Secretary of State August 13, 2001



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

In the matter of the adoption ) NOTICE OF ADOPTION  
of Rule I pertaining to child )  
support enforcement )  
reasonable cost of health )  
insurance )

TO: All Interested Persons

1. On June 21, 2001, the Department of Public Health and Human Services published notice of the proposed adoption of the above-stated rule at page 1047 of the 2001 Montana Administrative Register, issue number 12.

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

RULE I (37.62.1909) REASONABLE COST OF HEALTH INSURANCE  
(1) through (2)(b) remain as proposed.

AUTH: Sec. 40-5-806 and 40-5-825, MCA  
IMP: Sec. 40-5-806 and 40-5-825, MCA

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

COMMENT #1: Counsel for the Children, Families, Health and Human Services Interim Committee requested more complete statutory authority be added to the authorization and implementation citations of the rule.

RESPONSE: The Department agrees with the request, and the rule has been changed to reflect this request. The Department has added the general statutory rulemaking authority 40-5-825, MCA to the authority and implementation citations of the rule.

COMMENT #2: One commentor suggested that the rule should provide that insurance is not considered reasonable when it exceeds 25% of a parent's total support obligation, even if the insurance is partially paid by an employer.

RESPONSE: The Department believes that the rule reflects federal law in this regard, found at 45 CFR 303.31(a)(1). The law requires a presumption of reasonableness, when insurance is partially or wholly paid by an employer. The 25% provision in the proposed rule applies only to insurance which is not partially or wholly paid by an employer.

/s/ Dawn Sliva  
Rule Reviewer

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

Certified to the Secretary of State August 13, 2001.

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

In the Matter of the ) NOTICE OF ADOPTION  
Adoption of a Rule Pertaining )  
to Unauthorized Change of a )  
Telecommunications Provider )

TO: All Concerned Persons

1. On May 10, 2001, the Department of Public Service Regulation, Public Service Commission (PSC) published notice of public hearing on the proposed adoption of new Rule I concerning unauthorized changes of a telecommunications provider, at page 775 of the 2001 Montana Administrative Register, issue number 9.

2. The PSC has adopted new Rule I (ARM 38.5.3812) with the following changes, stricken matter interlined, new matter underlined:

RULE I. (ARM 38.5.3812) TRUE AND COMPLETE CARRIER COMMUNICATIONS PERTAINING TO CUSTOMER AUTHORIZATION FOR CHANGE OF CARRIERS

(1) When soliciting, obtaining, or verifying a customer's authorization for a change of telecommunications carriers, neither the carrier, its agent, nor the independent third party verifier may make false, misleading, or deceptive statements or fail to disclose material information.

(2) Authorization obtained under circumstances in which the carrier, its agent, or the third party verifier has made false, misleading, or deceptive statements or has failed to disclose material information is invalid and will not qualify as authorization for purposes of validating a change in carriers.  
~~If complaints regarding changes of telecommunications carriers indicate a carrier or its agent may be using telemarketing sales methods that violate (1), the commission or its staff may, in addition to other remedies available, following notice and an opportunity for hearing, require the carrier to record its sales calls communications, incoming and outgoing, which pertain to change of carriers. When investigating a complaint concerning an unauthorized change of carriers by a carrier required to record its calls, the commission or its staff may require the carrier to submit the recordings, in addition to other information, including the documentation required by ARM 38.5.3803. If the commission or its staff determines, after notice and opportunity for hearing, the carrier has violated (1), or if the carrier fails to provide the requested information, the carrier change will be deemed invalid. A carrier required to record its calls shall continue to do so until notified by the commission or commission staff that recording is no longer necessary.~~

AUTH: 69-3-1304, MCA  
IMP: 69-3-1303, MCA

3. The following comments were received and appear with the PSC's response:

COMMENT 1: Montana Telecommunications Association, Montana Independent Telecommunications Systems, Sprint Communications Company, L.P., AT&T Communications of the Mountain States, Inc., WorldCom, Inc., Qwest Corporation, and the Montana Consumer Counsel commented on the proposed rule. Those commenting in opposition focused on the rule's recording requirement. The reasons for opposition included high cost of implementation, possible conflict with administration of Montana's laws pertaining to consumer protection, creating an inconvenience to customers, invasion of customer privacy, having a chilling effect on sales, the absence of a clear and appropriate triggering mechanism, being overbroad, the absence of definitions, and vagueness in general. All commenting appeared to agree that the rule's prohibition of false, misleading, or deceptive statements and failure to disclose material information is a good idea. Some commented in favor of the recording requirement, with or without qualifications.

RESPONSE: The PSC does not agree with all comments made in opposition to the recording requirement. However, the PSC agrees, at least for the time being, that some of the comments in opposition may have some positive merit and the recording requirement should not be adopted. Therefore the PSC strikes the recording provision from the proposed rule. The PSC determines that the prohibition should be preserved and the abandoned enforcement tool (i.e., the recording requirement) be replaced by merely identifying the consequence of violating the prohibition.

/s/ Gary Feland  
Gary Feland, Chairman

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

CERTIFIED TO THE SECRETARY OF STATE AUGUST 10, 2001.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the adoption )  
of New Rule I through XII; )  
amendment of ARM 42.17.101, )  
42.17.103, 42.17.105, 42.17.113,) )  
42.17.114, 42.17.131, 42.17.134 )  
and 42.17.136; transfer and )  
amendment of ARM 24.11.606, )  
24.11.607, 24.11.608, 24.11.609,) )  
24.11.610, 24.11.708, 24.11.801,) )  
24.11.803, 24.11.804, 24.11.805,) )  
24.11.835, 42.17.112, and )  
42.17.118; and repeal of ARM )  
42.17.121, 42.17.132, 42.17.145,) )  
42.17.147, 42.17.148, 42.17.149,) )  
42.17.401, 42.17.402, and )  
42.17.403 relating to )  
withholding and unemployment )  
insurance tax rules )

TO: All Concerned Persons

1. On June 21, 2001, the department published notice of the proposed adoption of New Rule I (42.17.203); II (42.17.204); III (42.17.205); IV (42.17.206); V (42.17.207); VI (42.17.208); VII (42.17.209); VIII (42.17.210); IX (42.17.218); X (42.17.506); XI (42.17.507); XII (42.17.508), amendment of ARM 42.17.101; 42.17.103; 42.17.105; 42.17.113; 42.17.114; 42.17.131; 42.17.134; and 42.17.136, transfer and amendment of ARM 24.11.606 (42.17.501); 24.11.607 (42.17.502); 24.11.608 (42.17.503); 24.11.609 (42.17.504); 24.11.610 (42.17.505); 24.11.708 (42.17.220); 24.11.801 (42.17.221); 24.11.803 (42.17.538); 24.11.804 (42.17.539); 24.11.805 (42.17.222); 24.11.835 (42.17.223); 42.17.112 (42.17.218); 42.17.118 (42.17.219), and repeal of ARM 42.17.121; 42.17.132; 42.17.145; 42.17.147; 42.17.148; 42.17.149; 42.17.401; 42.17.402; and 42.17.403 relating to withholding and unemployment insurance tax rules at page 1050 of the 2001 Montana Administrative Register, issue no. 12.

2. A public hearing was held on July 16, 2001, to consider the proposed adoption, amendment, transfer and amendment, and repeal of the wage based rules administered by the department. No one appeared to testify. Written comments were received subsequent to the hearing, which are summarized as follows along with the response of the department:

COMMENT NO. 1: Jack Dugan, Certified Public Account with the accounting firm, Holmes and Turner and Barbara Pulley, representing the firm Barbara Pulley & Associates, P.C. submitted comments for the rules. Both Mr. Dugan and Ms. Pulley

commented that the payroll compliance currently is burdensome to employers and the new rules add complexity and more differences to Montana rules and federal law and should not be adopted.

RESPONSE NO. 1: For the most part, most of these "new" rules are copied or transferred from existing UI rules as found in ARM Title 24, Chapter 11. The Unemployment Insurance Division used these rules to administer both their tax and benefits programs. In 1997, the Unemployment Insurance tax functions transferred to the Department of Revenue, and at that time, a number of laws were changed to create more consistency among the state wage-based taxes via HB 561. To permit the Department of Revenue to properly administer the UI tax program, it was necessary to transfer these UI administrative rules. These are not new rules but existing rules that were modified slightly to take into account the 1997 law changes, to improve readability, and to make them applicable to both unemployment insurance and withholding taxes, where appropriate. This proposal of administrative rules is not an offering of NEW rules, but existing rules already approved and in effect for years.

Differences have existed for many years between state and federal laws, and while one statute may provide for a special exception to wages or employment, the other frequently does not. One reason the Department did not propose in HB 561 that state laws follow federal laws is because the federal laws themselves (FICA, FUTA and federal income tax withholding) have many differences in how they define wages, employment and exceptions to each.

UI rules assist in establishing the basis for UI benefit payments. Administrative rules for interpretation of UI laws must be the same for tax application as for benefit application in order to provide an accurate wage record for determining benefit payment. It would be extremely cumbersome and costly to have two different wage amounts reported by employers.

UI benefits are designed to provide reasonable compensation of what is lost to the employee when unemployed through no fault of their own. For example, the value of room and board provided as part of the employment is necessary to be included as wages for benefit purposes, as this can be a substantial portion of the total remuneration received by the employee. When the job is lost, so are the board and room, which then must be paid by the unemployed worker, hence, the need for the board and room to be included as wages in determining benefits. If employers do not report this as wages on their quarterly reports, they will not be available as benefits to the unemployed workers.

COMMENT NO. 2: New Rule I(1)(b)(iii) has no statutory requirement and is burdensome. If it is not wages, the employer does not have to keep records.

RESPONSE NO. 2: As stated earlier, this rule exists in ARM

Title 24, Chapter 11, Sub-Chapter 7, (DOLI). The statutory authority requiring employers to keep records is found in 39-51-603, MCA.

COMMENT NO. 3: New Rule II(3), wages become subject to tax when they are actually or constructively paid. Federal law includes constructive receipt. Montana does not have to expand. If it is constructive receipt and wages under federal law it will be included in Montana wages.

RESPONSE NO. 3: Again, this rule was taken from a rule that exists in ARM Title 24, Chapter 11, Sub-Chapter 8, (DOLI).

COMMENT NO. 4: Mr. Dugan stated that regarding New Rule IV, wages are adequately defined in 39-51-201(20)(a), MCA. Montana should follow federal regulations. If it is not wages for federal it is not wages for Montana.

Section 39-51-201(20)(b)(ii), MCA, states that wages does not include allowances for meals and lodging. Section 15-30-201(7)(b)(ii) states that wages do not include compensation in the form of meals and lodging. New Rule IV(1)(c) states that the cash value of board and room is considered to be wages. This is a contradiction to the statute and invalid. This is also a difference from federal law. The proposed rates are arbitrary, too high and would create a burden on employers.

RESPONSE NO. 4: The Montana statutes are correctly cited in respect to wage definitions. This rule was taken in part from ARM Title 24, Chapter 11, Sub-Chapter 8, (DOLI). We considered removing (1)(a) from the rules, but decided to leave it in, as the law does not address payments in lieu of vacation pay.

The Unemployment Insurance law, with respect to meals and lodging allowances, refers to employee expense reimbursements as set forth in department rules. These rules currently exist in ARM Title 24, Chapter 11, Sub-Chapter 8, (DOLI) and are not new. New Rule IV provides that room and board provided for the convenience of the employer is not subject to withholding tax, thus the rule is not contradictory to the statute nor federal law. The value established for room and board took into account inflation and more recent cost of living information. The value of room and board in the rule, which exists in ARM Title 24, was established over 20 years ago and is outdated.

COMMENT NO. 5: Mr. Dugan stated that definition of wages as shown in New Rule IV(1)(d), (e), and (f) are expanded and do not follow federal or Montana law. He also stated that they are entirely subjective and give the department authority not defined in a statute. This will lead to differences between federal and Montana wages and extensive dispute between employers and the department.

Ms. Pulley also stated that the language contained in New

Rule IV (1)(d) and (f) concerning wages are not the same as federal. The rule to reclassify, as wages, payments distributed to corporate officers or shareholders if designated as dividends or profits, in lieu of reasonable compensation, is quite subjective, depending upon the auditor's outlook that day. Would the auditor determine what is reasonable compensation? How can the wages be different than federal, when the Montana individual's tax return computation begins with federal adjusted gross income?

RESPONSE NO. 5: In respect to New Rule IV(1)(d), the department partially agrees with Mr. Dugan's and Ms. Pulley's comments. Payments distributed to corporate officers or shareholders, if designated as dividends or profits in lieu of reasonable compensation, is contrary to federal income tax law and as such, should not be subject to state withholding tax. However, for purposes of unemployment insurance tax, payments made to corporate officers or shareholders in lieu of reasonable compensation, is justified in that 39-51-201, MCA, defines wages to include all remuneration for personal services and 39-51-203, MCA, defines employment to include service by an officer of a corporation. The intent of the UI rule is to require employers to establish wages for corporate officers commensurate with their level of responsibilities and duties to the business. In most cases, corporate officers are acting in the capacity of managers and the wages reported for UI purposes should be reflective. Again, this rule is not new and has existed in Title 24 for several years.

To reflect this change for withholding tax, (1)(d) is being removed from New Rule IV and is being transferred to New Rule XII, "Other Payments" (only applicable for purposes of unemployment insurance).

New Rule IV(1)(f) (now (e)) is necessary primarily to cover situations where an employee is given an advance but there is nothing on the employer's books that shows the amount was repaid (either by the employer holding money from future paychecks or by the employee making direct payments to the employer). If an employee has received an advance without having to repay the money, then it is wages. Similar situations have come up in the past where the employer contended the amount paid was a loan, but there was no evidence that the employee was advanced any money. Without some documentation, there is no way for an auditor to distinguish a loan from wages.

Additionally, (1)(e) and (f), have existed in Title 24 and procedurally has been handled the same for state income tax withholding, which have been in place for many years and are not contrary to state law.

COMMENT NO. 6: Ms. Pulley indicated some concern regarding rental of capital assets as shown in New Rule V. She stated rental of capital assets should not have any dollar limit, but be considered fair and reasonable based upon all facts and



circumstances. Many factors enter into a rate of equipment rental, such as age, cost, comparable rent rates, inflation, etc. New Rule V(2) assumes the employer's records would have the costs and maintenance expenses of the employee's equipment - not likely.

The department's reasonable necessity states that the amount of \$22.50 has been acceptable to the industry for over 27 years. What about the inflation factor over those years? Prior negotiations between the Department of Labor and the timber industry following a workers compensation court case should not be the basis for locking in this rate for future chain saw and related timber falling expenses. The dollar amount should be deleted.

RESPONSE NO. 6: The timber industry agreed to the language when this rule was adopted and has not suggested that it is out of line with current operating expenses.

COMMENT NO. 7: Mr. Dugan and Ms. Pulley both commented on New Rule VI, indicating that employee expenses included in wages are defined under federal law and no differences are needed for Montana wages. The federal per diem rates are updated and are used by employers and must be used for Montana wages.

RESPONSE NO. 7: As previously stated, federal and state wage definitions and exceptions are not identical. This rule speaks to Montana treatment of employee expenses and is an existing rule under ARM Title 24, Chapter 11, Sub-Chapter 8, (DOLI).

COMMENT NO. 8: New Rule XII, other payments included in wages are adequately defined under federal law.

RESPONSE NO. 8: This rule applies to unemployment insurance tax, which does not default to federal law. Legislation would be required for state unemployment insurance law to follow federal law.

COMMENT NO. 9: Mr. Dugan provided a comment to New Rule VIII stating that the term independent contractor is defined in 39-51-201(15), MCA. No additional definitions are needed. The rule also proposes to give authority to obtain statements from third parties. Rights to privacy prohibit this type of invasion. Absent a documented criminal investigation, third parties should not be contacted. The status of an independent contractor income tax return has no bearing on independent contractor status as the entity hiring the independent contractor has no access to the tax return.

Ms. Pulley stated that before obtaining information from third parties, a written permission must be granted from all parties involved, or rules on privacy of information are violated. The issue of independent contractors versus employees

is difficult. She stated that she has clients on both sides. Employees who were intimidated into being independent contractors; employers who do not want the hassle of payroll, the payroll taxes, workmen's compensation and other responsibilities; and then the true subcontractor. Hiring a temporary labor contractor to avoid payroll can add up to 50% to the employee's labor rate and the additional costs discourages this legal option.

RESPONSE NO. 9: This rule exists, in part, in ARM 24.11.820 and has existed since 1988. The only change was to eliminate language that also exists in statute. Sections 39-51-603, and 15-30-303(8)(c), MCA, give the agency authority to inspect records and interview third parties. For clarification, these cites will be added to the implementation statutes for this rule.

COMMENT NO. 10: None of the proposed new rules should be adopted. Additional complexity, burdens on the employers, and creation of differences between federal and Montana wages will be the result. The departments needs to use the existing definitions, follow federal law and make the system less cumbersome.

RESPONSE NO. 10: These rules do not contemplate any additional complexity since these or similar rules or procedures exist at the present time. Rather, it was anticipated that placing these wage-based rules in one location and consolidating rules for the two taxes, when applicable, would help to streamline and simplify wage-based taxes.

3. The department adopts New Rule I (42.17.203); II (42.17.204); III (42.17.205); V (42.17.207); VI (42.17.208); IX (42.17.218); X (42.17.506); XI (42.17.507); amends ARM 42.17.101; 42.17.103; 42.17.105; 42.17.113; 42.17.114; 42.17.131; 42.17.134; and 42.17.136, transfers and amends ARM 24.11.606 (42.17.501); 24.11.607 (42.17.502); 24.11.608 (42.17.503); 24.11.609 (42.17.504); 24.11.610 (42.17.505); 24.11.708 (42.17.220); 24.11.803 (42.17.538); 24.11.804 (42.17.539); 24.11.805 (42.17.222); 24.11.835 (42.17.223); 42.17.112 (42.17.218); 42.17.118 (42.17.219), and repeals ARM 42.17.121; 42.17.132; 42.17.145; 42.17.147; 42.17.148; 42.17.149; 42.17.401; 42.17.402; and 42.17.403 as proposed.

4. The department further amends New Rule IV (ARM 42.17.206), VII (ARM 42.17.209), VIII (42.17.210); XII (42.17.508), and ARM 42.17.221 to correct clerical errors and better clarify the process:

NEW RULE IV (42.17.206) WAGES (1) through (1)(b) remain the same.

(c) The cash value of ~~board~~ and room AND BOARD is

considered to be wages. Room and board provided for the convenience of the employer is not subject to withholding tax as provided in 26 USC 119. The department determines the cash value of room and board, unless the employment contract sets the value at an amount equal to or greater than the amounts established in this rule.

(i) remains the same.

~~(d) Payments distributed to corporate officers or shareholders in lieu of reasonable compensation for services performed are wages, even though designated as profits or dividends.~~

(e) through (g) remain the same but are re-earmarked as (d) through (f).

AUTH: Sec. 15-30-305, 39-51-301, and 39-51-302, MCA

IMP: Sec. 15-30-201 and 39-51-1103, MCA

NEW RULE VII (42.17.209) JUROR FEES, INSURANCE PREMIUMS, ANNUITIES, AND DIRECTOR AND PARTNERSHIP FEES - NOT WAGES (1) through (4) remain the same.

AUTH: Sec. 15-30-305, 39-51-301, 39-51-302, and 39-51-2407, MCA

IMP: Sec. 39-51-201 and 39-51-1103, MCA

NEW RULE VIII (42.17.210) DETERMINATION OF INDEPENDENT CONTRACTOR (1) through (3) remain the same.

AUTH: Sec. 15-30-305, 39-51-301, and 39-51-302, MCA

IMP: Sec. 15-30-201, 15-30-248, 15-30-303, 39-51-201, 39-51-603, and 39-51-1103

NEW RULE XII (42.17.508) OTHER PAYMENTS (1) through (1)(a) remain the same.

(b) PAYMENTS DISTRIBUTED TO CORPORATE OFFICERS OR SHAREHOLDERS IN LIEU OF REASONABLE COMPENSATION FOR SERVICES PERFORMED ARE WAGES, EVEN THOUGH DESIGNATED AS PROFITS OR DIVIDENDS.

(b) remains the same but is re-earmarked (c).

(2) through (2)(b) remains the same.

AUTH: Sec. 15-30-305, 39-51-301, and 39-51-302, MCA

IMP: Sec. 15-30-201 and 39-51-1103, MCA

24.11.801 (42.17.221) DUE DATE AND APPLICATION OF TAXES

(1) Unemployment insurance taxes are due and payable at the same time quarterly reports are due as provided in [New Rule ~~III~~ II ARM 42.17.204]. Withholding taxes are due as provided in 15-30-204, MCA.

(2) and (3) remain the same

AUTH: Sec. 15-30-305, 39-51-301, and 39-51-302, MCA

IMP: Sec. 15-1-216, 15-1-708, 15-30-321, 39-51-1103, and 39-51-1110, MCA

5. Therefore, the department adopts the rules listed above with the amendments as shown.

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

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Jeff Miller for  
KURT G. ALME  
Director of Revenue

Certified to Secretary of State August 13, 2001

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

In the matter of the petition )  
for declaratory ruling on the )  
issue of whether the scope of ) DECLARATORY RULING  
practice of registered nurses )  
includes performing )  
microdermabrasion procedures )  
in an independent setting )

TO: All Concerned Persons

1. On April 26, 2001, the Board of Nursing published a Petition for Declaratory Ruling in the above entitled matter at page 685, 2001 Montana Administrative Register, issue number 8.

2. Hearing on the matter was held May 16, 2001 before F. Lon Mitchell, Hearing Examiner.

3. At its regularly scheduled board meeting on July 18, 2001, the full Board considered all oral testimony from interested individuals. No written comments were received.

ISSUE

Petitioner, Anita Masters, RN requested a ruling on whether it is within the scope of practice of a registered nurse to perform microdermabrasion procedures in an independent setting under the provisions of ARM 8.32.415, 8.32.1401, 8.32.1403, 8.32.1404, and 8.32.1407.

FACTUAL BACKGROUND

1. Anita Masters brought this Petition on her own behalf because an esthetician in Kansas City, who had been performing this procedure in Montana, was aware of nurses performing microdermabrasion procedures in independent settings in other states.

2. Petitioner states that she would like to start a skin care business and perform microdermabrasion procedures.

3. Petitioner states that she feels nurses are uniquely qualified to assess and care for clients while providing referral to other health care professionals, if needed.

SUMMARY OF COMMENTS, TESTIMONY AND QUESTIONS

COMMENT NO. 1: Anita Masters is an RN and brought the petition before the Board. She is in favor of the Board making a determination that performing microdermabrasion

procedures is within the scope of practice of a registered nurse. She believes the procedures to be non-invasive and involve a "sandblasting with suction." It is used for fine wrinkles, acne scars and hyper-pigmentation. It does not draw blood but just takes off the outer layer of skin and is commonly done by people trained in esthetics. When more significant wrinkles are treated, an intensive medical procedure is required and results in a significant recovery period for the patient.

COMMENT NO. 2: Barbara Seabury, RN, who works for a plastic surgeon testified that she believes this is something nurses should be able to do. She believes that nurses, through their education, have better critical thinking skills. The perception of the public is that they may be more relaxed with a nurse than an esthetician. They can ask questions about health history, medications they're on, etc. These are not subjects they can discuss with an esthetician and expect that an esthetician could properly place this information in the treatment evaluation. She also believes it is not really nursing, per se and stated that the chance of an adverse reaction is virtually non-existent.

COMMENT NO. 3: Jeannie Worsech, Administrator for the Board of Cosmetologists testified for informational purposes only. She stated that the Board of Cosmetologists has worked for two and a half years researching information regarding microdermabrasion to allow them to come up with rules and regulations for their licensees who wished to practice microdermabrasion. She stated that they are not only dealing with microdermabrasion, but are also dealing with chemical exfoliation, manual exfoliation and mechanical exfoliation. She stated that there is also a technique called laser resurfacing which is literally peeling off layers of skin. An esthetician cannot use a medical machine. The difference between the two machines is that the medical machine has a booster and is more powerful than the one used by estheticians. It hits harder with the abrasive and with one pass could draw blood. Estheticians are looking at upper level exfoliation only. There are concerns about the abrasives used. Aluminum oxide is the appropriate abrasive material manufactured but some individuals have been reported as using baking soda or salt because its cheaper.

#### ANALYSIS

1. Pursuant to Section 2-4-501, MCA, the Board is authorized to issue declaratory rulings "as to the applicability of any statutory provision."

2. The Notice of Petition for Declaratory Ruling was filed in accordance with Section 2-4-501, MCA, and appeared at page 685 of Issue No. 8, 2001 Montana Administrative Register.

3. Section 37-8-102(5)(b), MCA, defines the scope of practice for professional nurses as "performance...of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences of nursing theory as a basis for the nursing process." This section further states that, "each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered."

4. ARM 8.32.415 defines "Nursing Procedures" as follows: "Nursing procedures means those nursing actions selected and performed in the delivery of safe and effective patient/client care."

5. The Board considered the fact that a "few" nurses were already performing microdermabrasion under the direct order of a physician and also considered the fact that the risk of injury to the patient/client is minimal.

6. No adverse circumstances were cited which would indicate that it was necessary for this type of procedure to be performed under the auspices of a physician - in fact, estheticians licensed by the Board of Cosmetologists are currently performing microdermabrasion without the degree of medical training of nurses or the medical community.

DECLARATORY RULING

The Board has therefore determined that it is within the scope of practice of registered nurses with appropriate training and competencies to perform microdermabrasion procedures in an independent setting.

BOARD OF NURSING  
JACK BURKE, PRESIDENT

By: /s/ MIKE FOSTER  
Mike Foster, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ KEVIN BRAUN  
Kevin Braun  
Rule Reviewer

Certified to the Secretary of State, August 13, 2001.

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;
- ▶ Department of Public Service Regulation; and
- ▶ Office of the State Auditor and Insurance Commissioner.

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.



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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2001. This table includes those rules adopted during the period April 1, 2001 through June 30, 2001 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2001, 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 2000 and 2001 Montana Administrative Registers.

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

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## BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in July 2001, appear. Vacancies scheduled to appear from September 1, 2001, through November 30, 2001, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

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

### IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of August 6, 2001.

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

BOARD AND COUNCIL APPOINTEES FROM JULY, 2001

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Aging Advisory Council (Public Health and Human Services)			
Mr. Bud Clinch	Governor	reappointed	7/30/2001
Libby			7/18/2004
Qualifications (if required):	public member		
Ms. Chuckie Cramer	Governor	Stevenson	7/30/2001
Helena			7/18/2004
Qualifications (if required):	public member		
Mr. Clayton Croff	Governor	Prather	7/30/2001
Billings			7/18/2004
Qualifications (if required):	public member		
Mr. Irvin Hutchison	Governor	reappointed	7/30/2001
Chester			7/18/2004
Qualifications (if required):	public member		
Board of Barbers (Commerce)			
Mr. Edward Dutton	Governor	Eisenzimer	7/1/2001
Kalispell			7/1/2002
Qualifications (if required):	licensed barber		
Ms. Sharon Richie	Governor	DeMars	7/1/2001
Hamilton			7/1/2004
Qualifications (if required):	licensed barber		
Board of Cosmetologists (Commerce)			
Ms. Darlene Battaiola	Governor	reappointed	7/1/2001
Butte			7/1/2005
Qualifications (if required):	licensed cosmetologist		

BOARD AND COUNCIL APPOINTEES FROM JULY, 2001

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Cosmetologists (Commerce) cont.			
Ms. Verna Dupuis Bozeman	Governor	reappointed	7/1/2001 7/1/2005
Qualifications (if required): affiliated with a school of cosmetology			
Ms. Kordelia French Plentywood	Governor	Nelson	7/1/2001 7/1/2005
Qualifications (if required): public member			
Ms. Pam Lemieux Helena	Governor	reappointed	7/1/2001 7/1/2005
Qualifications (if required): licensed cosmetologist			
Ms. Stephanie Stanek-Fischer Billings	Governor	Underwood	7/1/2001 7/1/2005
Qualifications (if required): licensed cosmetologist			
Board of Hearing Aid Dispensers (Commerce)			
Mr. David E. King Billings	Governor	reappointed	7/1/2001 7/1/2004
Qualifications (if required): nationally certified audiologist with a master's level college degree			
Board of Nursing (Commerce)			
Ms. Kim Powell Missoula	Governor	reappointed	7/1/2001 7/1/2005
Qualifications (if required): RN			
Board of Pharmacy (Labor and Industry)			
Mr. William D. Burton Helena	Governor	Poush	7/30/2001 7/1/2006
Qualifications (if required): licensed pharmacist			



BOARD AND COUNCIL APPOINTEES FROM JULY, 2001

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Physical Therapy Examiners (Labor and Industry) Mr. Bruce Lamb Havre Qualifications (if required): physical therapist	Governor	Stordahl	7/11/2001 7/1/2004
Board of Public Accountants (Labor and Industry) Mr. Wayne Hoffman Billings Qualifications (if required): licensed public accountant	Governor	Wolfe	7/10/2001 7/1/2006
Mr. Gary Kasper Fairfield Qualifications (if required): licensed public accountant	Governor	Hoffman	7/16/2001 7/1/2006
Board of Regents (Education) Mr. Christian Hur Billings Qualifications (if required): student representative	Governor	Kobos	7/1/2001 7/1/2003
Board of Research and Commercialization (Commerce) Mr. Terry Spalinger Helena Qualifications (if required): public member	Governor	Merja	7/9/2001 7/1/2003
Board of Sanitarians (Commerce) Mr. Ted Kylander Billings Qualifications (if required): sanitarian	Governor	reappointed	7/1/2001 7/1/2004
Board of Veterinary Medicine (Commerce) Dr. Jack Newman Great Falls Qualifications (if required): licensed veterinarian	Governor	Brown	7/31/2001 7/31/2006

BOARD AND COUNCIL APPOINTEES FROM JULY, 2001

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Water Well Contractors (Natural Resources and Conservation)			
Mr. Pat Byrne	Governor	reappointed	7/1/2001
Great Falls			7/1/2004
Qualifications (if required): water well contractor			
Burial Preservation Board (Indian Affairs)			
Mr. Melbert Eaglefeathers	Governor	reappointed	7/11/2001
Butte			8/22/2003
Qualifications (if required): public member			
Mr. Carl Fourstar	Governor	reappointed	7/11/2001
Poplar			8/22/2003
Qualifications (if required): representative of the Assiniboine Tribe			
Mr. Tony Incashola	Governor	reappointed	7/11/2001
Pablo			8/22/2003
Qualifications (if required): representative of the Salish and Kootenai Tribes			
Ms. Jennie Parker	Governor	reappointed	7/11/2001
Ashland			8/22/2003
Qualifications (if required): representative of the Northern Cheyenne Tribe			
Mr. Stephen S. K. Platt	Governor	reappointed	7/11/2001
Helena			8/22/2003
Qualifications (if required): representative of the State Historic Preservation Office			
Dr. Randall Skelton	Governor	reappointed	7/11/2001
Missoula			8/22/2003
Qualifications (if required): physical anthropologist			
Mr. Ken Talksabout	Governor	reappointed	7/11/2001
Browning			8/22/2003
Qualifications (if required): representative of the Blackfeet Tribe			

BOARD AND COUNCIL APPOINTEES FROM JULY, 2001

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Chief Water Judge (Supreme Court) Mr. C. Bruce Loble Bozeman Qualifications (if required): none specified	Chief Justice	reappointed	7/1/2001 6/30/2005
District Court Council (Supreme Court) Judge Diana G. Barz Billings Qualifications (if required): none specified	elected	not listed	7/1/2001 6/30/2004
Mr. Mike Hutchin Polson Qualifications (if required): nonvoting member	Supreme Court	not listed	7/1/2001 6/30/2002
Ms. Lori Maloney Butte Qualifications (if required): nonvoting member	Supreme Court	not listed	7/1/2001 6/30/2003
Judge Thomas M. McKittrick Great Falls Qualifications (if required): none specified	elected	not listed	7/1/2001 6/30/2004
Judge Edward P. McLean Missoula Qualifications (if required): none specified	elected	not listed	7/1/2001 6/30/2004
Mr. Tim Smith Helena Qualifications (if required): nonvoting member	Supreme Court	not listed	7/1/2001 6/30/2002
Mr. Glen Welch Helena Qualifications (if required): nonvoting member	Supreme Court	not listed	7/1/2001 6/30/2004

BOARD AND COUNCIL APPOINTEES FROM JULY, 2001

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Family Education Savings Program Oversight Committee (Commissioner of Higher Education) Auditor John Morrison Helena Qualifications (if required): Commissioner of Insurance	Governor	reappointed	7/25/2001 7/1/2005
Mr. Donald Sterhan Billings Qualifications (if required): public member with experience in investment management	Governor	not listed	7/25/2001 7/1/2005
Helena College of Technology of the University of Montana Executive Board (University System) Mr. Rick Hays Helena Qualifications (if required): public member	Governor	not listed	7/9/2001 4/15/2003
Mr. Ronald S. Mercer Helena Qualifications (if required): public member	Governor	not listed	7/9/2001 4/15/2004
Ms. C. Lynn Robson Helena Qualifications (if required): public member	Governor	not listed	7/9/2001 4/15/2002
Independent Living Council (Public Health and Human Services) Ms. Donna M. Scott Billings Qualifications (if required): represents business and consumers	Director	Franks	7/23/2001 7/23/2003

BOARD AND COUNCIL APPOINTEES FROM JULY, 2001

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Information Technology Board (Administration)			
Mr. Kurt Alme	Governor	not listed	7/1/2001
Helena			7/1/2003
Qualifications (if required):	representing a state agency		
Mr. Mike Foster	Governor	not listed	7/1/2001
Townsend			7/1/2003
Qualifications (if required):	representing a state agency		
Ms. Gail Gray	Governor	not listed	7/1/2001
Helena			7/1/2003
Qualifications (if required):	representing a state agency		
Mr. Mike Gustafson	Governor	not listed	7/1/2001
Billings			7/1/2003
Qualifications (if required):	representing the private sector		
Mr. William Kennedy	Governor	not listed	7/1/2001
Billings			7/1/2003
Qualifications (if required):	representing local government		
Mr. Mike McGrath	Governor	not listed	7/1/2001
Helena			7/1/2003
Qualifications (if required):	representing a state agency		
Ms. Jan Sensibaugh	Governor	not listed	7/1/2001
Helena			7/1/2003
Qualifications (if required):	representing a state agency		
Ms. Mary Sexton	Governor	not listed	7/1/2001
Choteau			7/1/2003
Qualifications (if required):	representing local government		

BOARD AND COUNCIL APPOINTEES FROM JULY, 2001

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Information Technology Board (Administration) cont. Mr. Bill Slaughter Helena Qualifications (if required): representing a state agency	Governor	not listed	7/1/2001 7/1/2003
Mr. Richard A. Crofts Helena Qualifications (if required): none specified	Board of Regents	not listed	7/1/2001 0/0/0
Rep. Linda L. Holden Valier Qualifications (if required): none specified	House Speaker	not listed	7/1/2001 0/0/0
Ms. Linda McCulloch Helena Qualifications (if required): none specified	Public Instruction	not listed	7/1/2001 0/0/0
Ms. Lois A. Menzies Helena Qualifications (if required): representing the Legislative Branch	Director	not listed	7/1/2001 0/0/0
Justice Jim Nelson Helena Qualifications (if required): none specified	Chief Justice	not listed	7/1/2001 0/0/0
Rep. Jay Stovall Billings Qualifications (if required): none specified	PSC	not listed	7/1/2001 0/0/0

BOARD AND COUNCIL APPOINTEES FROM JULY, 2001

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Interagency Coordinating Council for State Prevention Program (Public Health and Human Services)			
Ms. Alison Counts Belgrade	Governor	not listed	7/1/2001 7/1/2003
Qualifications (if required): representing prevention programs and services			
Mr. William Snell Billings	Governor	reappointed	7/1/2001 7/1/2003
Qualifications (if required): representing prevention programs and services			
Judicial Standards Commission (Justice)			
Ms. Barbara Evans Missoula	Governor	reappointed	7/1/2001 7/1/2005
Qualifications (if required): public member			
Mr. Victor F. Valgenti Missoula	Supreme Court	reappointed	7/1/2001 6/30/2005
Qualifications (if required): attorney			
Judge John Warner Havre	elected	not listed	7/1/2001 6/30/2005
Qualifications (if required): none specified			
K-12 Public School Funding Study Advisory Council (Governor)			
Mr. Dennis Burr Clancy	Governor	not listed	7/20/2001 0/0/0
Qualifications (if required): none specified			
Mr. Geoff Feiss Helena	Governor	not listed	7/20/2001 0/0/0
Qualifications (if required): none specified			

BOARD AND COUNCIL APPOINTEES FROM JULY, 2001

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
K-12 Public School Funding Study Advisory Council (Governor) cont. Mr. Jeff Hindoien Helena Qualifications (if required): none specified	Governor	not listed	7/20/2001 0/0/0
Mr. John McNeil Savage Qualifications (if required): none specified	Governor	not listed	7/20/2001 0/0/0
Mr. Kirk Miller Helena Qualifications (if required): none specified	Governor	not listed	7/20/2001 0/0/0
Ms. Sandra Murie Box Elder Qualifications (if required): none specified	Governor	not listed	7/20/2001 0/0/0
Ms. Madalyn Quinlan Helena Qualifications (if required): none specified	Governor	not listed	7/20/2001 0/0/0
Ms. Linda Tutvedt Kalispell Qualifications (if required): none specified	Governor	not listed	7/20/2001 0/0/0
Ms. Rachel Villieux Missoula Qualifications (if required): none specified	Governor	not listed	7/20/2001 0/0/0
MSU-Great Falls College of Technology Executive Board (University System) Dr. Clay Gehring Great Falls Qualifications (if required): public member	Governor	not listed	7/9/2001 4/15/2003



BOARD AND COUNCIL APPOINTEES FROM JULY, 2001

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
MSU-Great Falls College of Technology Executive Board (University System) cont.			
Ms. Susan Humble Great Falls	Governor	not listed	7/9/2001 4/15/2004
Qualifications (if required): public member			
Mr. Jack King Great Falls	Governor	not listed	7/9/2001 4/15/2002
Qualifications (if required): public member			
Montana Higher Education Student Assistance Corporation (Education)			
Mr. Rick Bartos Helena	Board of Regents	reappointed	7/16/2001 12/31/2003
Qualifications (if required): at large member			
Montana Historical Society Board of Trustees (Historical Society)			
Ms. Judy Cole Hysham	Governor	Birch	7/16/2001 7/1/2006
Qualifications (if required): public member			
Ms. Shirley Groff Butte	Governor	Fox	7/16/2001 7/1/2005
Qualifications (if required): public member			
Mr. Larry McRae Missoula	Governor	reappointed	7/16/2001 7/1/2006
Qualifications (if required): public member			
Mr. Robert Morgan Clancy	Governor	reappointed	7/16/2001 7/1/2006
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM JULY, 2001

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Mint Committee (Agriculture)			
Mr. David Tutvedt	Governor	Sperry	7/1/2001
Kalispell			7/1/2004
Qualifications (if required):	mint grower		
Montana Power Authority (Natural Resources and Conservation)			
Sen. Gary C. Aklestad	Governor	not listed	7/2/2001
Shelby			7/2/2003
Qualifications (if required):	public member		
Mr. Steve Browning	Governor	not listed	7/2/2001
Helena			7/2/2004
Qualifications (if required):	public member		
Mr. Gary Buchanan	Governor	not listed	7/2/2001
Billings			7/2/2004
Qualifications (if required):	member at large with experience in financial, banking and bonding matters		
Ms. Karen Fagg	Governor	not listed	7/2/2001
Billings			7/2/2005
Qualifications (if required):	member at large with academic or business credentials		
Ms. Kathy Ogren	Governor	not listed	7/2/2001
Missoula			7/2/2004
Qualifications (if required):	representing commercial and industrial enterprise energy consumption		
Lt. Governor Karl Ohs	Governor	not listed	7/2/2001
Harrison			7/2/2005
Qualifications (if required):	representing irrigated agriculture and residential energy consumption		

BOARD AND COUNCIL APPOINTEES FROM JULY, 2001

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Power Authority (Natural Resources and Conservation) cont. Chief Justice Jean A. Turnage Polson	Governor	not listed	7/2/2001 7/2/2003
Qualifications (if required): public member			
Motorcycle Safety Advisory Committee (Office of Public Instruction) Ms. Michele Hand Missoula	Governor	reappointed	7/1/2001 7/1/2005
Qualifications (if required): representative of a motorcycle group			
Petroleum Tank Release Board (Environmental Quality) Mr. Gary Basso Billings	Governor	reappointed	7/13/2001 6/30/2004
Qualifications (if required): representative of the insurance industry			
Mr. Greg Cross Billings	Governor	Herron	7/13/2001 6/30/2004
Qualifications (if required): representative of independent petroleum markets			
Mr. Daniel Manson Butte	Governor	Bruner	7/13/2001 6/30/2002
Qualifications (if required): attorney			
Mr. Joseph Murphy Great Falls	Governor	French	7/13/2001 6/30/2004
Qualifications (if required): petroleum services industry consultant			
Private Land/Public Wildlife Advisory Council (Fish, Wildlife and Parks) Mr. Paul Roos Ovando	Governor	Blatter	7/31/2001 6/30/2002
Qualifications (if required): outfitter			

BOARD AND COUNCIL APPOINTEES FROM JULY, 2001

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State Banking Board (Administration) Ms. Jamie Doggett White Sulphur Springs Qualifications (if required): public member	Governor	reappointed	7/16/2001 7/1/2004
Mr. Timothy C. Fox Helena Qualifications (if required): officer of a national bank	Governor	Goodwin	7/16/2001 7/1/2004
State Electrical Board (Commerce) Mr. Tony Martel Bozeman Qualifications (if required): public member	Governor	reappointed	7/1/2001 7/1/2006
Tourism Advisory Council (Commerce) Ms. Maureen Averill Bigfork Qualifications (if required): representing Glacier Country	Governor	reappointed	7/30/2001 7/1/2004
Ms. Betsy Baumgart Helena Qualifications (if required): representing Gold West Country	Governor	reappointed	7/30/2001 7/1/2004
Ms. Kathy Brown Helena Qualifications (if required): representing Gold West Country	Governor	reappointed	7/30/2001 7/1/2004
Ms. Debbie Donovan Larslan Qualifications (if required): representing Missouri River Country	Governor	reappointed	7/30/2001 7/1/2004

BOARD AND COUNCIL APPOINTEES FROM JULY, 2001

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Tourism Advisory Council (Commerce) Ms. Sharon Rau Sidney	Governor	Perry	7/30/2001 7/1/2004
Qualifications (if required): representing Missouri River Country			
Upper Missouri River Breaks National Monument Task Force (Governor) Rep. Matt McCann Harlem	Governor	Tester	7/16/2001 1/1/2002
Qualifications (if required): legislator			
Water Court Judge (Supreme Court) Judge Joe L. Hegel Forsyth	elected	not listed	7/2/2001 6/30/2005
Qualifications (if required): none specified			
Judge Ted Mizner Anaconda	elected	not listed	7/2/2001 6/30/2005
Qualifications (if required): none specified			
Judge Roy C. Rodeghiero Roundup	elected	not listed	7/2/2001 6/30/2005
Qualifications (if required): none specified			
Judge Jeffrey Sherlock Helena	elected	not listed	7/2/2001 6/30/2005
Qualifications (if required): none specified			

VACANCIES ON BOARDS AND COUNCILS -- September 1, 2001 through November 30, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Alternative Health Care Board (Commerce) Ms. Dolly Browder, Missoula Qualifications (if required): direct midwife	Governor	9/1/2001
Board of Medical Examiners (Commerce) Dr. Kay E. Dorr, Glasgow Qualifications (if required): public member	Governor	9/1/2001
Dr. Van Kirke Nelson, Kalispell Qualifications (if required): doctor of medicine	Governor	9/1/2001
Ms. Linda Melick, Lewistown Qualifications (if required): licensed nutritionist	Governor	9/1/2001
Mr. Daniel Muniak, Jordan Qualifications (if required): certified licensed physician assistant	Governor	9/1/2001
Ms. Susan McRae, Dillon Qualifications (if required): public member	Governor	9/1/2001
Board of Outfitters (Commerce) Mr. Jack Billingsley, Glasgow Qualifications (if required): hunting and fishing outfitter	Governor	10/1/2001
Board of Psychologists (Commerce) Dr. Michael J. McLaughlin, Great Falls Qualifications (if required): licensed psychologist in public health	Governor	9/1/2001
Dr. Dawn Birk, Miles City Qualifications (if required): psychologist	Governor	9/1/2001

VACANCIES ON BOARDS AND COUNCILS -- September 1, 2001 through November 30, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Flathead Basin Commission (Governor) Ms. Elna Darrow, Bigfork Qualifications (if required): public member	Governor	10/1/2001
Mr. Bruce Tutvedt, Kalispell Qualifications (if required): public member	Governor	10/1/2001
Mr. Arthur Vail, Whitefish Qualifications (if required): public member	Governor	10/1/2001
Governor's Council on Tobacco Use Prevention (Public Health and Human Services) Rep. Verner L. Bertelsen, Helena Qualifications (if required): representing senior citizens	Governor	9/22/2001
Sen. Bea McCarthy, Anaconda Qualifications (if required): representing the Montana Senate	Governor	9/22/2001
Rep. Loren Soft, Billings Qualifications (if required): representing the Montana House of Representatives	Governor	9/22/2001
Ms. Nancy Ellery, Helena Qualifications (if required): representing director of Department of Public Health and Human Services	Governor	9/22/2001
Dr. Robert M. Shepard, Helena Qualifications (if required): representing the American Lung Association	Governor	9/22/2001
Ms. Jeri Domme, Helena Qualifications (if required): representing the American Heart Association	Governor	9/22/2001
Ms. Nancy Davis Walker, Great Falls Qualifications (if required): representing Tobacco Free Montana Coalition	Governor	9/22/2001

VACANCIES ON BOARDS AND COUNCILS -- September 1, 2001 through November 30, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Council on Tobacco Use Prevention (Public Health and Human Services) cont. Rep. Trudi Schmidt, Great Falls Qualifications (if required): representing the Montana House of Representatives	Governor	9/22/2001
Ms. Joan Miles, Helena Qualifications (if required): representing county health officers	Governor	9/22/2001
Sen. Dale E. Berry, Hamilton Qualifications (if required): representing the Montana Senate	Governor	9/22/2001
Ms. Kristianne Wilson, Billings Qualifications (if required): representing the MHA (association of health care providers)	Governor	9/22/2001
Ms. Gail M. Michelotti, Great Falls Qualifications (if required): representing the American Cancer Society	Governor	9/22/2001
Dr. J. Bruce Robertson, Bozeman Qualifications (if required): representing the Montana Medical Association	Governor	9/22/2001
Ms. Linda Lee, Missoula Qualifications (if required): representing the Montana Campaign for Tobacco Free Kids	Governor	9/22/2001
Ms. Laura Gebhart, Kalispell Qualifications (if required): representing the Montana Public Health Association	Governor	9/22/2001
Mr. Todd Thun, Deer Lodge Qualifications (if required): representing the Montana Nurses Association	Governor	9/22/2001
Mr. Tim Solomon, Havre Qualifications (if required): representing Montana Law Enforcement	Governor	9/22/2001



VACANCIES ON BOARDS AND COUNCILS -- September 1, 2001 through November 30, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Council on Tobacco Use Prevention (Public Health and Human Services) cont. Mr. Russell Hill, Helena Qualifications (if required): representing private business	Governor	9/22/2001
Dr. Jon Hauxwell, Billings Qualifications (if required): representing Indian Health Service	Governor	9/22/2001
Commissioner Dale Sheldon, Conrad Qualifications (if required): representing the Montana Association of County Officials	Governor	9/22/2001
Dr. David Johnson, Great Falls Qualifications (if required): representing the Montana Dental Association	Governor	9/22/2001
Ms. Lori Ryan, Helena Qualifications (if required): representing Montana's American Indians	Governor	9/22/2001
Ms. Katie Beltrone, Great Falls Qualifications (if required): representing Montana's youth	Governor	9/22/2001
Mr. Michael McKown, Poplar Qualifications (if required): representing local tobacco coalitions	Governor	9/22/2001
Independent Living Council (Public Health and Human Services) Ms. Cecilia C. Cowie, Helena Qualifications (if required): none specified	Director	11/22/2001
Mr. James Meldrum, Helena Qualifications (if required): none specified	Director	11/22/2001
Ms. Patricia Lockwood, Laurel Qualifications (if required): none specified	Director	11/22/2001

VACANCIES ON BOARDS AND COUNCILS -- September 1, 2001 through November 30, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Lewis and Clark Bicentennial Commission (Montana Historical Society) Colonel Harold Stearns, Missoula Qualifications (if required): public member	Governor	10/1/2001
Mr. Curley Youpee, Poplar Qualifications (if required): member of a Montana Indian tribe	Governor	10/1/2001
Ms. Marilyn J. Ryan, Missoula Qualifications (if required): public member	Governor	10/1/2001
Montana Reserved Water Rights Compact Commission (Justice) Mr. Chris D. Tweeten, Helena Qualifications (if required): none specified	Attorney General	9/13/2001
Montana State Historic Preservation Review Board (Historical Society) Ms. J. Rebecca Kallevig, Sidney Qualifications (if required): public member	Governor	10/1/2001
Noxious Weed Seed Free Forage Advisory Council (Agriculture) Mr. W. Ralph Peck, Helena Qualifications (if required): Director of Department of Agriculture	Director	9/18/2001
Mr. Harry Woll, Kalispell Qualifications (if required): forage producer	Director	9/18/2001
Mr. LaMonte Schnur, Townsend Qualifications (if required): forage producer	Director	9/18/2001
Mr. Kerry Kovanda, Columbus Qualifications (if required): forage producer	Director	9/18/2001
Mr. Don Walker, Glendive Qualifications (if required): forage producer	Director	9/18/2001

VACANCIES ON BOARDS AND COUNCILS -- September 1, 2001 through November 30, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Noxious Weed Seed Free Forage Advisory Council (Agriculture) cont. Mr. Dennis Perry, Choteau Qualifications (if required): feed pellets/cubes products	Director	9/18/2001
Ms. Marjorie Schuler, Carter Qualifications (if required): livestock/agriculture	Director	9/18/2001
Mr. Robert Carlson, Butte Qualifications (if required): weed districts	Director	9/18/2001
Mr. Bob McNeill, Dillon Qualifications (if required): outfitters and guides	Director	9/18/2001
Mr. Dennis Cash, Bozeman Qualifications (if required): extension service	Director	9/18/2001
Mr. Ray Ditterline, Bozeman Qualifications (if required): agricultural experiment station	Director	9/18/2001
Mr. Clay Williams, Livingston Qualifications (if required): weed districts	Director	9/18/2001
SABHRS Executive Council (Administration) Mr. Dennis O. Blackketter, Bozeman Qualifications (if required): Tier 4	Director	10/28/2001
Mr. Curt Nichols, Helena Qualifications (if required): Tier 1	Director	10/28/2001
Mr. Mike Billings, Helena Qualifications (if required): Tier 2	Director	10/28/2001

VACANCIES ON BOARDS AND COUNCILS -- September 1, 2001 through November 30, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
SABHRS Executive Council (Administration) cont. Ms. Karen Munro, Helena Qualifications (if required): Tier 3	Director	10/28/2001
Ms. Cathy Muri, Helena Qualifications (if required): Tier 1	Director	10/28/2001
Ms. Sharon McCabe, Helena Qualifications (if required): Tier 6	Director	10/28/2001
Ms. Kathy Neils, Helena Qualifications (if required): Tier 2	Director	10/28/2001
Ms. Tammy Peterson, Helena Qualifications (if required): Tier 3	Director	10/28/2001
Ms. Ann Bauchman, Helena Qualifications (if required): Tier 4	Director	10/28/2001
Vocational Rehabilitation Advisory Council (Public Health and Human Services) Mr. Ian Elliot, Billings Qualifications (if required): representing people with disabilities	Director	10/1/2001
Mr. Robert P. Shuckahosee, Polson Qualifications (if required): representing people with disabilities	Director	10/1/2001
Mr. Dale Davis, Missoula Qualifications (if required): representing people from business, industry and labor	Director	10/1/2001
Mr. Mike Crater, Glasgow Qualifications (if required): representing people from business, industry and labor	Director	10/20/2001

VACANCIES ON BOARDS AND COUNCILS -- September 1, 2001 through November 30, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Vocational Rehabilitation Advisory Council (Public Health and Human Services) cont. Ms. Jan Duffy, Billings Qualifications (if required): representing the Parent Training Organization	Director	10/1/2001
Water and Wastewater Operators Advisory Council (Environmental Quality) Mr. Steven Ruhd, Conrad Qualifications (if required): water treatment operator	Governor	10/16/2001
Mr. Scott Anderson, Helena Qualifications (if required): ex-officio representative of the Department of Environmental Quality	Governor	10/16/2001