

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 20

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 adoption of new) NOTICE OF PUBLIC
Rules I through VII regarding approved) HEARING ON PROPOSED
investments for Montana banks and the) ADOPTION AND
amendment of ARM 2.59.112 regarding) AMENDMENT
investment policies)

TO: All Concerned Persons

1. On November 15, 2001, at 10:00 a.m., a public hearing will be held in room 160 of the Mitchell Building, 125 Roberts Street, Helena, Montana, to consider the adoption of new Rules I through VII and the amendment of ARM 2.59.112.

2. The Department of Administration, Division of Banking and Financial Institutions, 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 Division of Banking and Financial Institutions no later than 5:00 p.m. on November 8, 2001, to advise us the nature of the accommodation that you need. Please contact Susan Pendergast, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 444-2091; TDD (406) 444-1421; facsimile (406) 444-4186; e-mail to spendergast@state.mt.us.

3. The proposed new rules provide as follows:

RULE I U.S. TREASURY AND U.S. GOVERNMENT AGENCY ISSUES

(1) There is no dollar limit on a bank's investment in the following U.S. treasury securities:

- (a) bonds;
- (b) notes; or
- (c) bills.

(2) There is no dollar limit on a bank's investment in U.S. treasury bonds and notes in the form of separate trading of registered interest and principal of securities (STRIPS). However, investments in U.S. treasury STRIPS shall be limited to those having a maturity of less than seven years.

(3) There is no dollar limit on a bank's investment in the following U.S. government agency debt ordinary issues:

- (a) farm credit system (FCS):
 - (i) consolidated FCS bonds;
 - (ii) federal land bank bonds (FLB);
 - (iii) federal intermediate credit bank bonds (FICB);
 - (iv) banks for cooperatives bonds (BC); and
 - (v) federal agricultural mortgage corporation (FAMC);
- (b) farmers home administration (FmHA);
- (c) federal housing administration (FHA);
- (d) federal home loan banks (FHLB);
- (e) federal home loan mortgage corporation (FHLMC);

- (f) federal national mortgage association (FNMA);
- (g) student loan marketing association (SLMA); and
- (h) United States postal service (USPS).

(4) There is no dollar limit on a bank's investment in the following U.S. government agency mortgage-backed securities (MBS), collateralized mortgage obligations (CMOs) and real estate mortgage investment conduits (REMICs):

- (a) instruments issued by the federal home loan mortgage association (FHLMC);
- (b) instruments issued by the federal national mortgage association (FNMA);
- (c) instruments issued by the government national mortgage association (GNMA);
- (d) instruments issued by the federal agricultural mortgage corporation (FAMC);
- (e) FHLMC MBS pass through securities (PCs);
- (f) GNMA I, single issuer pass through PCs; and
- (g) GNMA II, single and multiple issuer pass through PCs.

AUTH: 32-1-433, MCA

IMP: 32-1-424, 32-1-433, MCA

RULE II OTHER APPROVED QUASI-GOVERNMENT SECURITIES

(1) Certain other securities are approved for bank investment. There is no dollar limit on a bank's investment in:

- (a) general services administration (participation certificates);
- (b) maritime administration (bonds and notes); and
- (c) Washington metropolitan area transit authority (bonds).

(2) A bank's investment is limited to 50% of capital and surplus in:

- (a) Asian development bank (bonds and notes);
- (b) financing corporation (FICO) (bonds);
- (c) Inter-American development bank (bonds);
- (d) resolution funding corporation (REFCORP) (bonds);
- (e) Tennessee valley authority (TVA) (bonds); and
- (f) world bank (bonds and notes).

AUTH: 32-1-433, MCA

IMP: 32-1-424, 32-1-433, MCA

RULE III STATE, COUNTY, AND MUNICIPAL ISSUES (1) Banks may invest, without dollar limitation, in the general obligations of any state which is part of the United States of America.

(a) Such obligations must be fully guaranteed as to the repayment of principal and interest. Evidence of such a full guarantee includes, but is not limited to, the pledge of the full faith and credit of the state responsible for repayment of the general obligation.

(2) Banks may invest, without dollar limitation, in the general obligations of any Montana county, city, school district, or other public body with the power to levy taxes.

(a) Such obligations must be issued pursuant to the Constitution or statutes of the state of Montana or the charter or ordinances of the respective county or city within the state of Montana.

(b) Such obligations must be fully guaranteed as to the repayment of principal and interest. Evidence of such a full guarantee includes, but is not limited to, the pledge of the full faith and credit of the Montana political subdivision responsible for repayment of the general obligation.

(c) The issuing body must not have been in default with respect to the payment of principal or interest on any of its obligations within five years preceding the date of the investment.

(3) Banks may invest up to 40% of their capital and surplus, per issuer, in the general obligations of any out-of-state political subdivision.

(a) Such obligations must be fully guaranteed as to the repayment of principal and interest. Evidence of such a full guarantee includes, but is not limited to, the pledge of the full faith and credit of the out-of-state political subdivision responsible for repayment of the general obligation.

(b) The default requirements of (2)(c) must be met, and the obligations must have been rated in one of the four highest grades by a recognized national investment rating organization. The rating organization must have been regularly and continuously engaged in rating state and municipal obligations for a period of not less than 10 years.

(c) The 40% overall limit pertains only to the bank's capital and surplus, and is silent as to the portion of any one issue a bank may purchase. However, this becomes an important issue to the bank's board of directors as it reviews and operates through its bank's investment policy.

(d) Banks which have branch banks in other states, as that term is defined in 32-1-109(4), MCA, may also invest without limitation in general obligations of the political subdivisions of the states in which the offices are located.

(4) Banks may invest, without limitation, in revenue bonds issued by the state of Montana or its political subdivisions.

(a) Banks which have branch banks in other states, as that term is defined in 32-1-109(4), MCA, may also invest without limitation in revenue bonds issued by those states or their political subdivisions.

(5) Banks may invest up to 40% of their capital and surplus, per issuer, in revenue bonds issued by any other state or its political subdivisions whereby the obligations are payable from pledged fee or tax revenue from designated sources.

(a) The default requirements of (2)(c) must be met, and the obligations must have been rated in one of the four highest grades by a recognized national investment rating organization. The rating organization must have been

regularly and continuously engaged in rating state and municipal obligations for a period of not less than 10 years.

(6) Banks may invest up to 20% of their capital and surplus, per issuer, in industrial development revenue obligations issued by a political subdivision of the state of Montana, when repayment is dependent upon a non-governmental obligor and when such issues are in general accord with the commercial lending policy of the bank.

AUTH: 32-1-433, MCA

IMP: 32-1-424, 32-1-433, MCA

RULE IV CORPORATE BONDS (1) Banks may invest up to 20% of their capital and surplus, per issuer, in corporate bonds.

(2) These bonds must be investment grade, i.e., rated in one of the four highest grades by a recognized national investment rating organization. Other rating services may be used if the gradations are equivalent to those above, and the rating services are identified by the bank's investment policy. Corporate bonds should be reviewed as necessary to assure the bank's board of directors that bond quality has not fallen below investment grade.

AUTH: 32-1-433, MCA

IMP: 32-1-424, 32-1-433, MCA

RULE V MUTUAL FUNDS (1) There is no dollar limit on a bank's investment in mutual funds whose shares represent the fund's sole investments in U.S. government bonds, notes, and bills, and repurchase agreements that exclusively involve the purchase of U.S. government obligations, and are fully collateralized therewith, with no other type of security being held in the fund.

(2) There is no dollar limit on a bank's investment in money market mutual funds that invest solely in U.S. government obligations whose average dollar weighted maturity is no longer than 90 days.

(3) As used in this rule, U.S. government obligations refers to those obligations listed in ARM 2.59.107.

AUTH: 32-1-433, MCA

IMP: 32-1-424, 32-1-433, MCA

RULE VI OTHER APPROVED INVESTMENTS (1) Certain other instruments which may have investment characteristics are approved for state-chartered banks. They are the following:

(a) banks may invest up to 100% of their capital and surplus, per accepting bank, in bankers acceptances;

(b) "CDs" or deposit notes purchased from insured financial institutions are approved to an aggregate of \$100,000 from each insured selling institution. Such accounts include the deposit and any accrued interest thereon;

(c) banks may invest up to 20% of their capital and surplus, per issuer, in commercial paper provided the commercial paper is rated A1 or P1, at the time of purchase, by a recognized national investment rating organization. Equivalent ratings from other established and generally

recognized national rating organizations may be substituted;

(d) banks may invest up to 20% of their capital and surplus, per issue, in privately issued (CMOs) and (REMICs); and

(e) privately issued (CMOs) and (REMICs) will not represent more than 40% of a bank's investment portfolio, or more than 400% of a bank's unimpaired capital and surplus, whichever is the lesser.

AUTH: 32-1-433, MCA

IMP: 32-1-424, 32-1-433, MCA

RULE VII DEBT SECURITIES FOR DEBTS PREVIOUSLY CONTRACTED

(1) Debt securities received by a bank in good faith, in satisfaction of debts previously contracted, are not subject to the limitations of applicable sections of [Rules I through VI], if the book value of such obligations in excess of the limitations of the rule is reduced to the amount allowed within six months after the date the obligations are acquired.

AUTH: 32-1-433, MCA

IMP: 32-1-424, 32-1-433, MCA

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

2.59.112 INVESTMENT SECURITIES INVESTMENT POLICIES

(1) through (2)(c) remain the same.

~~(3) Without regard to any limitation related to unimpaired capital and surplus, banks may invest in:~~

~~(a) obligations of the United States of America, including those of its agencies and instrumentalities, that are fully guaranteed as to principal and interest by the United States of America. Guarantees of the United States of America shall include those that are expressed or implied.~~

~~(b) general obligations of any state of the United States of America;~~

~~(c) obligations of public housing agencies issued pursuant to the United States Housing Act of 1937, as amended;~~

~~(d) and with the approval of the commissioner of banking and financial institutions, newly created investment products issued by the U.S. treasury, federal agencies, and the state of Montana, as well as certain other investment securities, and other investments, may be added to those approved securities and investments listed in Approved Securities Publication, Appendix "A". Approved Securities Publication, Appendix "A" lists all the investment securities and other investments that are approved for investment by banks chartered by the state of Montana. Approved Securities Publication, Appendix "A" includes specific requirements or limitations, if any, related to that scheduled and approved list of investment securities and other investments. Approved Securities Publication, Appendix "A" is maintained by the commissioner of banking and financial institutions, and is updated yearly by the commissioner. Approved Securities Publication, Appendix "A" is henceforth incorporated as part of this rule. A copy~~

~~of the most recent edition of Approved Securities Publication, Appendix "A" can be obtained from the Division of Banking and Financial Institutions, 1520 East 6th Avenue, Lee Metcalf Building, Room 50, P.O. Box 200512, Helena, Montana 59620-0512.~~

~~(4) Certain other types of securities are approved for bank investment. Although the respective issuers provide relatively intangible benefit to the people of Montana, they are deemed suitable from a public policy perspective. Securities issued by these organizations are also generally approved investments by one or more of the federal bank regulatory agencies. The issuers and the types of securities are also listed in Approved Securities Publications, Appendix "A".~~

AUTH: 32-1-433, MCA

IMP: 32-1-424, 32-1-433, MCA

5. Sections 32-1-424 and 32-1-433, MCA, concern permissible investments for Montana state-chartered financial institutions. Both sections address permissible government securities and section 32-1-433, MCA, also addresses other permissible types of securities. Section 32-1-424, MCA, mandates that the department "publish a list of the permissible type of investments in United States obligations..." Section 32-1-433, MCA, allows banks to invest in securities "as provided in rules adopted by the department." This section also includes language mandating that the department adopt such rules. ARM 2.59.112, which has been in effect since 1994, incorporates by reference a department publication known as "Approved Securities Publication, Appendix A". This publication details permissible investments under both sections 32-1-424 and 32-1-433, MCA. The department believes that the regulated Montana financial community would be better served by having the list of permissible investment securities included in a formal administrative rule rather than in a separate publication which is merely adopted by reference in a formal administrative rule. Therefore, the department is proposing to amend ARM 2.59.112, to remove the incorporation by reference of the publication "Approved Securities Publication, Appendix A" and to adopt as new Rules I through VII the substance of that publication. The department is also proposing to remove certain other language in ARM 2.59.112, relating to permissible investments that is already provided for in either statutory language or the proposed new rules.

6. Concerned persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Peter Funk, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana, 59620-0546; faxed to the office at (406) 444-4186, e-mailed to pfunk@state.mt.us, and must be received no later than November 26, 2001.

7. Peter Funk, Legal Counsel, Division of Banking and Financial Institutions, has been designated to preside over and conduct the hearing.

8. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the 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 division rulemaking actions. Such written requests may be mailed or delivered to Susan Pendergast, Division of Banking and Financial Institutions, 846 Front Street, P.O. Box 200546, Helena, MT 59620-0546; faxed to the office at (406) 444-4186, emailed to spendergast@state.mt.us, or may be made by completing a request form at any rules hearing held by the Division of Banking and Financial Institutions.

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

By: /s/ Barbara Ranf
Barbara Ranf, Director
Department of Administration

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

Certified to the Secretary of State October 15, 2001.

BEFORE THE STATE COMPENSATION INSURANCE FUND
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PUBLIC HEARING
adoption of New Rule I,)	ON THE PROPOSED ADOPTION,
pertaining to multiple rating)	AMENDMENT AND REPEAL OF
tiers, amendment of ARM)	RULES
2.55.319, 2.55.320, 2.55.327A)	
pertaining to premium rates,)	
2.55.409 pertaining to premium)	
modifiers and 2.55.501,)	
2.55.502 pertaining to)	
individual loss sensitive)	
dividend distribution plan,)	
and repeal of 2.55.325 and)	
2.55.327 pertaining to premium)	
rates)	

TO: All Concerned Persons

1. On November 14, 2001 the Montana State Fund will hold a public hearing at 1:00 p.m. in Room 301 of the Montana State Fund Building, 5 South Last Chance Gulch, Helena, Montana, to consider adopting new rule I pertaining to multiple rating tiers, the amendments to ARM 2.55.319, 2.55.320, 2.55.327A, 2.55.409, 2.55.501, 2.55.502, pertaining to the State Fund's premium ratemaking, premium modifiers, and individual loss sensitive dividend distribution plan, and the repeal of 2.55.325 and 2.55.327 pertaining to premium rates.

2. The Montana State Fund 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 State Fund no later than 5:00 p.m., November 12, 2001, to advise us of the nature of the accommodation that you need. Please contact the Montana State Fund, attn: Nancy Butler, PO Box 4759, Helena, Montana 59604-4759; telephone (406) 444-7725, TDD (406) 444-5971; fax (406) 444-7796.

3. The rule proposed to be adopted provides as follows:

RULE I MULTIPLE RATING TIERS (1) Multiple rating tiers may be applied to new and renewal policies during each fiscal year, beginning July 1, 2002.

(2) The state fund, upon approval of the board, must establish multiple rating tiers for the following fiscal year, to be applied to all classification rates with assignment of individual policies to a tier based on factors as approved by the board. Factors utilized by the board may include but are not limited to:

- (a) loss experience;
- (b) premium size;

- (c) the policyholder's experience modification factor;
- (d) length of coverage with the state fund;
- (e) number of losses;
- (f) expense;
- (g) management;
- (h) loss experience of a premium segment;
- (i) location of the insured; and
- (j) type of industry.

(3) An analysis shall be conducted upon policy renewal, or upon enrollment for new policies, and will result in placement of insureds into a rating tier for the policy period for policies with new or renewal effective dates in the fiscal year (July 1 through June 30).

(4) Notwithstanding placement in a rating tier under (2), a policyholder may be placed in a higher or lower rated tier based on underwriting criteria including, but not limited to:

- (a) industry type;
- (b) the prior insolvency of the insured or any of the insured's principals;
- (c) determination that the insured is an increased or decreased risk pursuant to a state fund evaluation;
- (d) the work is primarily performed at locations other than the insured's principal job site or place of business and the insured does not have control over the job site or place of business;
- (e) the insured has a history of preventable losses;
- (f) an employer's history and experience with any other insurer; or
- (g) new business without workers' compensation experience history.

(5) This rule is to be effective July 1, 2002.

AUTH: Sec. 39-71-2315 and 39-71-2316 MCA

IMP: Sec. 39-71-2311, 39-71-2316, and 39-71-2330 MCA

RATIONALE: The State Fund is proposing a new rule for fiscal year 2003 and subsequent fiscal years. This rule is reasonably necessary, as under SB 145 in the 2001 legislative session, an amendment was made to 39-71-2330, MCA, which established the authority of the Board to provide for multiple rating tiers, effective July 1, 2002. The amendment was in conjunction with the repeal of 39-71-2341, MCA, which provides for variable pricing. In addition, the state fund, under 39-71-2316, MCA, must place its rate making process in rule form, therefore this rule will implement multiple rating tiers and the prior rule for variable pricing will be repealed. The language in 39-71-2330, MCA, in regards to multiple rating tiers, is more consistent with insurance industry terms than variable pricing, and its application was modified. This proposed new rule to implement multiple rating tiers will operate in conjunction with ARM 2.55.319, concerning calculation of manual rates. The purpose of the multiple rating tier rule is to address the inherent price differentials that exist between residual or involuntary, and

voluntary markets along an account size dimension, experience modification, and loss history. A single manual rate structure does not provide the flexibility to appropriately price different premium segments and recognize individual loss histories. The current program focuses solely on loss ratios, which do not fully allow for predictability of future losses. This will provide balance in pricing by applying different pricing levels to individual policies or segments of policies based on relevant factors such as loss experience, premium size, the policyholder's experience modification factor, length of coverage with the state fund, number of losses, expense, management, loss experience of a premium segment, location of the insured, and type of industry. Each rating tier will have its own multiplier and will be applied to the loss costs established under ARM 2.55.319.

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

2.55.319 CALCULATION OF MANUAL RATES-FY02 (1) The board of directors shall approve a one or more loss-cost multipliers that, when applied to loss-costs as filed by the advisory or rating organization as provided for in (2) or loss-costs as provided for in (3) and (4), results in the state fund's manual rates effective for new and renewal policies as of July 1 of each year or other effective date as determined by the board. In determining the loss-cost multiplier(s), the board shall take into consideration the following factors such as, but not limited to:

- (a) the aggregate adequacy of advisory organization loss-costs;
- (b) state fund loss adjustment expense;
- (c) production and acquisition expense;
- (d) investment yield on underwriting cash flow;
- (e) net credits or debits attributable to underwriting programs; and
- (f) the desired target level of contribution to surplus; and-
- (g) the risk characteristics of policyholders assigned to each applicable rate tier as provided for in [New Rule I]. This subsection is to be effective July 1, 2002.

(2) through (5) remain the same.

AUTH: Sec. 39-71-2315 and 39-71-2316 MCA

IMP: Sec. 39-71-2311, 39-71-2316, and 39-71-2330 MCA

RATIONALE: The amendment to this rule deletes the reference to FY02. It was the first fiscal year that ARM 2.55.319 was utilized in the rate making process. As it was adopted prior to the end of FY01, the distinction was necessary at that time to clarify application of the rule. As the distinction is no longer necessary, this amendment is reasonably necessary to accurately reflect the application of the rule. The second amendments to this rule are necessary due to the proposed adoption of New Rule I. New Rule I provides for multiple

rating tiers. Each tier will need a multiplier in order to effectuate the multiple rating tiers for policyholders. It is reasonably necessary to adopt these amendments at this time, to be used for rate making for FY03, as the legislation authorizing the multiple rating tiers is effective July 1, 2002 (FY03).

2.55.320 METHOD FOR ASSIGNMENT OF CLASSIFICATIONS OF EMPLOYMENTS (1) and (2) remain the same.

(3) The state fund staff shall assign its insureds to classifications contained in the classifications section of the State Compensation Insurance Fund Policy Services Underwriting Manual issued July 1, 1999 2001, and assign new or changed classifications as approved by the board. That section of the manual is hereby incorporated by reference. Copies of the classification section of the manual may be obtained from the Insurance Operations Support Department of the State Fund, 5 South Last Chance Gulch, Helena, Montana 59601.

AUTH: Sec. 39-71-2315 and 39-71-2316 MCA

IMP: Sec. 39-71-2311 and 39-71-2316 MCA

RATIONALE: This amendment is reasonably necessary at this time to reflect the updates to the Underwriting manual that are now available up to July 1, 2001.

2.55.327A CONSTRUCTION INDUSTRY PREMIUM CREDIT PROGRAM

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

(c) The credit percentages for policies with effective dates between each July 1 and June 30, beginning July 1, 2002, will be those filed with the commissioner of insurance by the designated advisory organization as provided for both the state fund and Compensation Plan Number Two under 39-71-2211, MCA, or as approved by the board.

(5) and (6) remain the same.

AUTH: Sec. 39-71-2315 and 39-71-2316 MCA

IMP: Sec. 39-71-2211, 39-71-2311, and 39-71-2330 MCA

RATIONALE: The amendment to this rule will authorize the state fund to utilize the same credit percentages as the private workers' compensation insurance carriers in Montana. This option is provided for in 39-71-2211, MCA and states, "The state compensation insurance fund, plan No. 3, shall adopt the plan filed by the designated advisory organization or adopt a credit scale plan that meets the requirements of this section." The state fund and the designated advisory organization, NCCI, currently utilize the same credit percentages. The amendment is reasonably necessary at this time so that the credit percentages used will reflect the annual change in the state's average weekly wage beginning fiscal year 2003, and to continue the efforts of the state fund to operate consistently with the private workers'

compensation insurance carriers wherever it is feasible, and thereby provide consistency for the employers in Montana, regardless of their choice of insurance carrier. The ability of the board to approve credit percentages in lieu of the advisory organization table provides the board the option of being able to approve a table, in situations such as a delay in the filing of the advisory organization.

2.55.409 POLICY CHARGE EXPENSE CONSTANT - FY03 (1) The state fund may assess an policy charge expense constant on all policies in effect during a fiscal year. The amount of the charge shall be determined annually by the board for the future fiscal year, and may be in addition to any other charge, premium or loss based premium.

(2) The policy charge expense constant is included in the total minimum premium charged if the policy charge expense constant plus premium is less than the total minimum premium established by the board for the fiscal year.

(3) The policy charge expense constant includes, but is not limited to, expense components for issuing, maintaining and servicing policies, which are common to all policies regardless of premium size.

(4) The state fund may cancel the employer's policy for failure to pay an policy charge expense constant.

AUTH: Sec. 39-71-2315 and 39-71-2316 MCA

IMP: Sec. 39-71-2311 and 39-71-2316 MCA

RATIONALE: The amendment to this rule is reasonably necessary at this time as SB 145, passed in the last legislative session, substitutes the term "expense constant" for the term "policy charge". The amendment to 39-71-2311, MCA is effective July 1, 2002.

2.55.501 DEFINITIONS The following definitions apply to ARM 2.55.502:

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

(b) incurred losses for the dividend year on a date, or on various dates based on policy period such that eligible policyholder losses are captured at equivalent maturities, as selected by the state fund board of directors.

(4) through (8) remain the same.

AUTH: Sec. 39-71-2315 and 39-71-2323 MCA

IMP: Sec. 39-71-2323 MCA

RATIONALE: This amendment reflects the state fund's more recent practice of accommodating policyholder requests for staggered policy effective dates throughout the fiscal year, versus having all policyholders with an annual effective date of July 1. The use of staggered effective dates requires that in order for losses to be evaluated for purposes of awarding a dividend, it should be done at equivalent maturity dates for individual policyholders. It is reasonably necessary to amend

the rules to provide for this option at this time, as the use of staggered effective dates is prevalent in the dividend year that may be reviewed by the board in FY02 for the potential for declaration of a dividend.

2.55.502 INDIVIDUAL LOSS SENSITIVE DIVIDEND DISTRIBUTION PLAN (1) through (4) remain the same.

(5) To be eligible for a dividend a policyholder must have ~~6~~ six continuous months of coverage with the state fund in the policy period that is new or renewed within the dividend year.

(6) through (9) remain the same.

AUTH: Sec. 39-71-2315 and 39-71-2323 MCA

IMP: Sec. 39-71-2323 MCA

RATIONALE: This amendment (see amendment to ARM 2.55.501) also reflects the state fund's use of staggered policy effective dates and it is reasonably necessary to amend the rule at this time to recognize the impact of staggered effective dates on the determination of dividend payments.

5. The Montana State Fund proposes to repeal, effective June 30, 2002, ARM 2.55.325 (authority sections 39-71-2315 and 39-71-2316, MCA, implementing sections 39-71-2311, 39-71-2316, 39-71-2330, and 39-71-2341, MCA) and 2.55.327 (authority sections 39-71-2315 and 39-71-2316, MCA, implementing sections 39-71-2211, 39-71-2311, 39-71-2316, and 39-71-2330, MCA) located at pages 2-3739 to 2-3745, Administrative Rules of Montana. The reasonable necessity at this time for the proposed repeal of ARM 2.55.325, is that the rule will be inconsistent with and replaced by new Rule I, if the rule is adopted as proposed. The repeal of ARM 2.55.327 is reasonably necessary at this time, as it will no longer be needed. ARM 2.55.327A currently provides for the construction credit program previously provided for in ARM 2.55.327. Repeal was previously delayed to prevent confusion as to which rule applied to a specific fiscal year.

6. Interested persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Montana State Fund attorney, Nancy Butler, General Counsel, Montana State Fund, 5 South Last Chance Gulch, PO Box 4759, Helena, Montana 59604-4759, or by electronic mail address nbutler@montanastatefund.com, and must be received no later than 5:00 p.m., November 26, 2001.

7. The Montana State Fund 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 Montana State Fund administrative rules. Such written request may be mailed or delivered to Nancy Butler, Montana State Fund, PO Box 4759, Helena, MT 59601-4759, telephone (406) 444-7725, faxed to the office at (406) 444-7796, or may be made by completing a request form at any rules hearing held by the State Fund.

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

9. Curtis Larsen, Legal Counsel, has been designated to preside over and conduct the hearing.

/s/ Nancy Butler
Nancy Butler, General Counsel
Rule Reviewer

/s/ Herb Leuprecht
Herb Leuprecht
Chairman of the Board

/s/ Dal Smilie
Dal Smilie, Chief Legal Counsel
Rule Reviewer

Certified to the Secretary of State October 15, 2001.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 17.56.121,) ON PROPOSED AMENDMENT
17.56.308 and 17.56.309)
pertaining to operating) (UNDERGROUND STORAGE TANKS)
permits, operating tags, scope)
of compliance inspections and)
compliance plans)

TO: All Concerned Persons

1. On November 14, 2001, at 10:00 a.m., the Montana Department of Environmental Quality will hold a public hearing in the Lewis Room of the Phoenix Building, 2209 Phoenix Drive, Helena, Montana, to consider the proposed amendment of the above-stated rules pertaining to operating permits, operating tags, scope of compliance inspections and compliance plans.

2. The Department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., November 5, 2001, to advise us of the nature of the accommodation that you need. Please contact Barbara Williams, Remediation Division, Department of Environmental Quality, P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-1420; e-mail bwilliams@state.mt.us, or fax (406) 444-1901.

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

17.56.121 DETERMINATION OF ADMINISTRATIVE PENALTIES

(1) remains the same.

(2) For each violation, the department shall assess the maximum administrative penalty, and allow the time for corrective action, specified in the table in this ~~subsection~~ rule. Pursuant to 75-11-525(4), MCA, the department may suspend a portion of the maximum administrative penalty based on the cooperation and degree of care exercised by the person assessed the penalty, how expeditiously the violation was corrected, and whether significant harm resulted to the public health or the environment from the violation.

VIOLATION	MAXIMUM PENALTY \$	MINIMUM PENALTY \$	VIOLATION CORRECTABLE	TIME ALLOWED FOR CORRECTION
(a) Failure to notify the department of an UST system	300	150	yes	10 days
(b) Failure to register an UST system	100	50	yes	10 days
(c) Failure to report a suspected or confirmed release/spill within 24 hours	500	500	no	na* <u>not applicable</u>
(d) Failure to investigate or respond to a release	500	250	yes	15 days
(e) Failure to temporarily or permanently close an UST system properly	500	250	yes	30 days
(f) Failure to properly install an UST system	500	250	yes	30 days
(g) Failure to install release detection or corrosion protection	500	250	yes	30 days
(h) Failure to provide spill/overflow prevention equipment	500	250	yes	15 days
(i) Failure to provide automatic line leak detection	500	250	yes	15 days
(j) Failure to install properly designed and constructed UST system components	300	150	yes	45 days
(k) Failure to perform release detection	300	150	yes	30 days
(l) Failure to provide financial assurance	300	150	yes	30 days
(m) Failure to maintain release detection or corrosion protection equipment	200	100	yes	30 days
(n) Failure to provide required records within 48 hours of notice	100	100	no	na* <u>not applicable</u>
(o) Failure to maintain required records	100	50	yes	30 days
(p) Failure to obtain a compliance inspection within the statutory time	<u>500</u>	<u>500</u>	<u>no</u>	<u>not applicable</u>

* na = not applicable
(3) and (4) remain the same.

AUTH: 75-11-505, MCA
IMP: 75-11-505, 75-11-525, MCA

17.56.308 OPERATING PERMIT OR COMPLIANCE PLAN REQUIRED

(1) After Between March 31, 2002 and March 31, 2003, a

person may not place a regulated substance in or dispense a regulated substance from an underground storage tank system unless the owner or operator has either:

(a) a current operating permit from the department issued pursuant to ~~(2)~~ (3) or (8) and an operating tag issued pursuant to (7) indicating that the underground storage tank system is in compliance with Title 75, chapter 11, part 5, MCA and the rules adopted thereunder; or

(b) a compliance plan that meets the requirements of ARM 17.56.309.

(2) After March 31, 2003, a person may not place a regulated substance in or dispense a regulated substance from an underground storage tank system unless the owner or operator has a valid operating permit and an operating tag for the system.

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

(4) If a filed inspection report contains substantive errors or inconsistencies, the department may, before determining whether to issue an operating permit, correct the report based on available information, require the inspector to provide additional information or require the owner or operator to obtain a follow-up inspection.

(5) Upon receipt of a department-approved compliance plan, the department shall issue the owner or operator a provisional operating tag. The provisional operating tag must be visibly affixed to each tank's fill pipe or to another visible part of the tank if affixing the tag to the fill pipe is impracticable. All provisional operating tags expire on April 1, 2003.

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

(7) The department shall issue an operating tag for each underground storage tank for which the department has issued an operating permit as described in (3) and (6). The operating tag must be visibly affixed by the owner or operator to each tank's fill pipe or to another visible part of the tank if affixing the tag to the fill pipe is impracticable. If an operating permit expires or is revoked, the owner or operator must remove each operating tag and return it to the department.

~~(4)~~ (8) For an underground storage tank system installed after December 31, 2001, the Department shall issue a conditional operating permit and tag upon the submission of all required documentation related to the installation of that underground storage tank system as required by ARM 17.56.1305. A conditional operating permit and tag expires 90 days after issuance.

~~(5)~~ (9) The department may suspend or revoke an operating permit and tag issued under this rule upon its finding that there is substantial evidence that:

(a) the underground storage tank system for which the permit was issued is no longer in compliance with Title 75, chapter 11, part 5, MCA or the rules adopted thereunder operation and maintenance requirements set out in ARM 17.56.309(1)(a); or

(b) the permittee committed fraud or deceit in applying for the operating permit; or

(c) the operating permit was issued in error.

~~(6)~~ (10) Except as provided in ~~(7)~~ (11), the department shall suspend or revoke an operating permit and tag issued under this rule according to the provisions of 75-11-512, MCA.

~~(7)~~ (11) If the department determines that noncompliance with Title 75, chapter 11, part 5, MCA or the rules adopted thereunder poses an immediate or substantial threat to the public health, safety or environment, it may immediately ~~suspend~~ revoke the operating permit and tag. A permittee whose ~~license~~ operating permit and tag ~~have~~ has been ~~suspended~~ revoked in accordance with this rule may request a hearing before the department. The department shall schedule a hearing within 10 days of the request for hearing.

(12) Owners and operators who have operating permits that were issued after a compliance inspection documenting violations in any of the operation and maintenance categories listed in ARM 17.56.309(1)(a) must, not later than March 31, 2002, have a compliance plan that meets the requirements of ARM 17.56.309.

AUTH: 75-11-505, MCA

IMP: 75-11-509, MCA

17.56.309 REQUIREMENTS FOR COMPLIANCE INSPECTIONS AND COMPLIANCE PLANS (1) The owner or operator of an underground storage tank system shall have all underground storage tank systems at an individual facility inspected by a licensed compliance inspector, certified under this chapter, at least every three years for compliance with the operation and maintenance requirements of Title 75, chapter 11, part 5, MCA and the rules adopted thereunder. The inspection must include examination, assessment, and documentation of release detection equipment, spill and overflow prevention devices, and cathodic corrosion protection equipment and verification of required testing, monitoring and recordkeeping.

(a) The inspection must include examination, assessment and documentation of compliance with all tank operation and maintenance requirements under 75-11-509, MCA and rules adopted thereunder. The aforementioned "operation and maintenance requirements" are those requirements in Title 17, chapter 56, subchapters 2, 3 and 4 that address the following categories:

(i) release prevention and detection;
(ii) spill and overflow prevention;
(iii) corrosion protection; and
(iv) testing, monitoring, and recordkeeping related to (1)(a)(i) through (iii).

(b) Except as provided in ARM 17.56.308(4), the department may not issue an operating permit under ARM 17.56.308 if an inspection indicates a violation in any of the operation and maintenance categories listed in (1)(a). The department may also initiate enforcement action to address such violations.

(c) The inspection may assess compliance with requirements in categories other than those listed in (1)(a). If an inspection indicates a violation in a category other than those listed in (1)(a), the department may pursue enforcement action to address the violation. The existence of violations outside

the scope of (1)(a) does not preclude issuance of an operating permit under ARM 17.56.308.

(d) Underground storage tank systems that, under ARM 17.56.102(3), (4) or (5), are exempt from ARM Title 17, chapter 56, subchapters 2, 3 and 4 are exempt from compliance inspection requirements. Underground storage tank systems exempt from ARM Title 17, chapter 56, subchapters 2, 3 and 4 may obtain an operating permit and tag by making a written request to the department and providing evidence, satisfactory to the department, that the subject UST systems qualify for this exemption.

(2) For the first compliance inspection required by 75-11-509, MCA, a provisional operating tag may be issued, in accordance with ARM 17.56.308(5), where an inspection indicates one or more violations of past testing, monitoring, maintenance, recordkeeping or inspection deadlines that cannot be corrected by March 31, 2002. The owner or operator must sign and submit a compliance plan in accordance with ARM 17.56.309(9) and demonstrate compliance with all applicable testing, monitoring, maintenance and recordkeeping deadlines during the compliance plan period.

(2) through (6) remain the same, but are renumbered (3) through (7).

(8) Owners and operators unable to meet the March 31, 2002 deadline established in ARM 17.56.308(1), must sign and submit a department-approved compliance plan, on a form provided by the department, by March 1, 2002. The compliance plan must:

(a) identify all violations noted on the inspection report that must be corrected;

(b) identify the action necessary to correct the violations;

(c) require that all actions necessary to correct the violations, a follow-up inspection and inspection report be completed and submitted to the department no later than March 1, 2003;

(d) require the owner, operator or person responsible for the daily operation and maintenance of the facility underground storage tank systems to attend a department training session that addresses the requirements for operation and maintenance of underground storage tank systems under Title 75, chapter 11, part 5, MCA, and the rules adopted thereunder. The time and place of the training session is to be determined by the department; and

(e) be signed by the owner or operator.

AUTH: 75-11-505 and 75-11-509(2), MCA

IMP: 75-11-509 and 75-11-525, MCA

REASON: The department proposes to amend ARM 17.56.121 to include a specific administrative penalty for the violation of Section 75-11-509, MCA, which requires each underground storage tank to be inspected by January 1, 2002. The current rules allow for administrative enforcement of the statutory

requirement but do not identify a penalty amount. The amendment is necessary to notify owners and operators of the potential administrative penalty associated with failing to obtain an inspection by the statutory deadline. The proposed amendment also makes clerical changes to make the references to the table in that rule clearer and more easily referenced.

The department proposes to amend ARM 17.56.308 to allow for the issuance of an operating tag. This amendment is necessary to allow fuel distributors to identify USTs that have an operating permit and therefore are entitled to receive and sell petroleum fuels. Many UST facilities have a high employee turnover rate and new employees may not know where an operating permit is located. Using an operating tag on or near the fill pipe will avoid this type of problem. The use of tags on fill pipes has been successful in the past and the department expects few problems implementing such a program now.

The department proposes to amend ARM 17.56.308(1) to allow for the issuance of a compliance plan in lieu of an operating permit. This is necessary to protect the public from fuel shortages that are likely to occur if the rule is not amended. The current rule requires all owners and operators to have an operating permit by March 31, 2002. Currently less than half the facilities in the state have had an inspection necessary to determine compliance. The statute requires that inspections be performed by January 1, 2002. However, many inspections have been delayed until the end of the inspection period. Without the proposed amendment, inspection delays will likely cause a large number of facilities to be unable to meet the current deadline for having an operating permit. This could cause a severe impact on consumers, especially in rural locations.

It is therefore necessary, in order to protect the public and the economy, to allow UST owners and operators to operate for one more year if they file a compliance plan with the department prior to the April 1, 2002, deadline. The allowance for a compliance plan in lieu of an operating permit would, under the proposed rule, end on March 31, 2003, when all UST facilities must have an operating permit in order to receive or dispense fuel. This extension of one year would allow consumers to continue to receive fuel and would require owners and operators to come into compliance within the intervening year. The requirement for a compliance plan also ensures that the public health and the environment are protected. Those facilities without an operating permit by March 31, 2003, would not be able to receive or dispense fuel.

The department proposes a new subsection ARM 17.56.308(4) that allows the department to make corrections to an inspection report. This is necessary because inspectors sometimes make mistakes and they may be in error with regard to the specific regulatory requirements for a given system. Because the third-party inspection program is a new program and private inspectors have never performed this service before, there have been some errors and confusion. It is therefore necessary to provide a procedure for correcting inspection reports when a review of other information, including the department's own inspection

data, identifies errors and inconsistencies. To do otherwise would result in permits being issued to facilities that are not in compliance, or to fail to issue a permit to a facility that is in compliance.

The department proposes to amend ARM 17.56.308 to allow the department to revoke an operating permit if, upon inspection or receipt of additional information, it is found that the permit was issued in error. This is necessary because situations exist and likely will occur in the future where an inspection conducted after an operating permit is issued reveals that the permit was issued in error. Section 75-11-509, MCA, prohibits issuance of permits if the owner or operator is not in compliance with the operation and maintenance requirements set out in the statute and rules. The department must have the ability to revoke permits that are invalid under that statute. It would also be unfair to owners and operators whose facilities are in compliance if the department did not revoke such permits. Before initiating any revocation action, however, the department will attempt to resolve compliance issues, and will offer permittees the compliance plan option available under ARM 17.56.308(1) for the period between March 31, 2002 and March 31, 2003. Additionally, any revocation would be subject to a contested case hearing if requested by the owner or operator.

The Department proposes a new subsection ARM 17.56.308(12), which would require owners and operators who have existing operating permits to submit a compliance plan if their permit was issued after an inspection showed violations of the operation and maintenance requirements as those are now defined in the proposed amendments to ARM 17.56.309(1)(a). This amendment is necessary to place all permittees on the same footing regarding compliance with operation and maintenance requirements. New operating permits cannot be issued if inspections show violations of the operation and maintenance requirements defined in ARM 17.56.309(1)(a). Instead, under the proposed amendments to ARM 17.56.308(1), owners or operators who have documented violations of operation and maintenance requirements can only continue to dispense product if they have a compliance plan that meets the requirements of ARM 17.56.309. The proposed new subsection ARM 17.56.308(12) would require existing permit holders, who have documented violations of operation and maintenance requirements, to obtain a compliance plan in lieu of their permit. This is necessary to ensure that all owners and operators are subject to the same time frames and procedures for correcting violations of operation and maintenance requirements.

The department proposes to amend ARM 17.56.309(1) to clarify that, for purposes of Section 75-11-509(6), MCA, operation and maintenance requirements are those requirements in ARM Title 17, chapter 56, subchapters 2, 3, and 4 that pertain to leak detection, spill and overflow, corrosion protection, and appurtenant testing, monitoring, and recordkeeping requirements. These are the requirements with which compliance is required in order for an operating permit to be issued. This amendment is necessary to tailor the rules to the statutory provision that

requires compliance with operation and maintenance requirements. The proposed amendments also clarify that inspections may include review of requirements in categories other than operation and maintenance. Compliance with such other requirements is not necessary for issuance of an operating permit, but may be addressed as appropriate through compliance and enforcement authorities.

The department proposes to amend ARM 17.56.309(1) to allow underground tanks that are exempt from the requirements of Subchapters 2, 3 and 4 to obtain an operating permit without an inspection under Section 75-11-509, MCA. Such facilities may obtain a permit by making application to the department and providing evidence that their USTs in fact qualify for the exemption. This amendment is necessary because it does not make sense to require an owner or operator to obtain an inspection to certify compliance with Subchapters 2, 3 and 4 for types of USTs that are exempt from those subchapters.

The department proposes a new subsection ARM 17.56.309(2) to allow owners and operators who have past violations of testing, monitoring, maintenance, recordkeeping, or inspection deadlines that cannot be corrected to come back into compliance by conducting such activities prior to March 31, 2002, or to include them as part of a compliance plan. The necessity of this proposed rule is demonstrated by the following example: ARM 17.56.302(2)(a) requires all cathodic protection systems to be tested within 6 months of installation and at least every 3 years thereafter. Additionally, ARM 17.56.302(4) requires the records associated with the above testing to be maintained. If these requirements have not been met they are uncorrectable because the time for performing the requirement has passed. The proposed amendment is necessary to allow those owners and operators to come back into compliance and to obtain an operating permit. Without the amendment, owners and operators who have missed past deadlines would never be able to obtain an operating permit.

The department proposes a new subsection ARM 17.56.309(8) that provides specific requirements for compliance plans. Plans must identify the specific violation and what is required to correct the violation so that the owner or operator can clearly know what must be done to obtain an operating permit. Plans must be completed by March 1, 2003 so that the department has 30 days to issue an operating permit prior to the expiration of the compliance plan and the requirement that all USTs have an operating permit. Plans must also include a requirement for a follow-up inspection. These amendments are necessary to identify for owners and operators the components of compliance plans that fulfill the requirements of these rules.

Plans must also commit owners and operators to receive training in the proper operation and management of UST systems. such training is necessary because the both the department and the U.S. Environmental Protection Agency have identified improper maintenance and operation of USTs as the major cause of releases of regulated substances in the environment. Providing training should decrease the number of violations in the next

round of inspections. Training will also benefit inspectors by having their customers more attuned to the daily operating requirements at a facility.

Finally, plans must be signed by the owner or operator. This is necessary to commit the owner or operator to carrying out the plan and to allow the department to enforce the plan if compliance with it fails.

4. Concerned persons may submit their data, views or arguments concerning the proposed action either orally or in writing at the hearing. Written data, views or arguments may also be submitted to David Scrimm, Remediation Division, Department of Environmental Quality, P.O. Box 200901, Helena, Montana, 59620-0901, or submitted electronically via email addressed to "dscrimm@state.mt.us", no later than 5:00 p.m. November 22, 2001. To be guaranteed consideration, written comments must be postmarked on or before that date.

5. Kirsten Bowers has been designated to preside over and conduct the hearing.

6. The Department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the 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: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA, underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Legal Unit, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, or may be made by completing a request form at any rules hearing held by the Department.

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

MONTANA DEPARTMENT OF
ENVIRONMENTAL QUALITY

By: Jan Sensibaugh
JAN SENSIBAUGH, Director

Reviewed by:

Jim Madden
Jim Madden, Rule Reviewer

Certified to the Secretary of State October 15, 2001.

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

In the matter of the adoption) NOTICE OF PUBLIC HEARING ON
of a new rule relating to) PROPOSED ADOPTION
unemployment insurance)
matters)

TO: All Concerned Persons

1. On November 16, 2001, at 1:00 p.m., a public hearing will be held in the first floor conference room of the Walt Sullivan Building, 1327 Lockey, Helena, Montana, to consider the proposed adoption of a new rule, related to unemployment insurance matters.

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 by not later than 5:00 p.m., November 9, 2001, to advise us of the nature of the accommodation that you need. Please contact the Unemployment Insurance Benefits Bureau, Attn: Mr. Roy Mulvaney, P.O. Box 8020, Helena, MT 59604-8020; telephone (406) 444-9036; TTY (406) 444-0532; fax (406) 444-2699; or e-mail rmulvaney@state.mt.us

3. The proposed new rule provides as follows:

NEW RULE I VOLUNTARY LAYOFF (1) A claimant who is laid off from work by an employer is not disqualified from receiving benefits based solely on volunteering to be laid off from the claimant's employment if:

- (a) the employer has a written workforce reduction plan or policy that allows an employee to volunteer to be laid off due to a lack of work;
- (b) the layoff is due to a lack of work; and
- (c) the employer identifies the claimant as an individual subject to the layoff.

AUTH: 39-51-301 and 39-51-302, MCA

IMP: 39-51-2101, 39-51-2104, 39-51-2303 and 39-51-2304, MCA

REASON: There is reasonable necessity to adopt NEW RULE I to prevent individuals from becoming ineligible for unemployment insurance benefits when volunteering for a scheduled layoff provided that the employer identifies that individual as a person being selected for the layoff. Montana has recently seen a number of large layoffs of some, but not all, employees at various employers' establishments. Currently, individuals are deemed ineligible from receiving benefits if they volunteer for a layoff as they are viewed as not being involuntarily unemployed. NEW RULE I allows an employer to request volunteers for a layoff without jeopardizing that individual's eligibility

for unemployment insurance benefits.

4. Interested 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:

Roy Mulvaney
Benefits Bureau
Unemployment Insurance Division
Department of Labor and Industry
P.O. Box 8020
Helena, Montana 59604-8020

and must be received by no later than 5:00 p.m., November 23, 2001. Comments may also be submitted electronically as noted in the following paragraph.

5. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at <http://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., November 23, 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.

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

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

8. The Hearings Bureau of the Centralized Services

Division of the Department has been designated to preside over and conduct the hearing.

/s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

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

Certified to the Secretary of State: October 15, 2001.

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

In the matter of proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 38.5.2202) ON PROPOSED AMENDMENT
and 38.5.2302 pertaining to)
pipeline safety)

TO: All Concerned Persons

1. On November 27, 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 amendment of ARM 38.5.2202 and 38.5.2302.

2. The PSC will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation contact the PSC no later than 5:00 p.m. on November 20, 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 rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

38.5.2202 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS (1) The commission hereby adopts and incorporates by reference the U.S. Department of Transportation (DOT) Pipeline Safety Regulations, Code of Federal Regulations (CFR), Title 49, chapter 1, subchapter D, parts 191, 192, and 193, including all revisions and amendments enacted by DOT on or before ~~October 26, 2000~~ October 26, 2001. A copy of the referenced regulations may be obtained from DOT, Research and Special Programs Administration, Western Region, Pipeline Safety, 12600 W. Colfax Ave., Suite A-250, Lakewood, Colorado 80215-3736, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

AUTH: 69-3-207, MCA
IMP: 69-3-207, MCA

38.5.2302 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS -- DRUG AND ALCOHOL TESTING AND PREVENTION PROGRAMS (1) Except as otherwise provided in this subchapter the commission hereby adopts and incorporates by reference the DOT Pipeline Safety Regulations, Drug and Alcohol Testing, 49 CFR 199, including all revisions and amendments enacted by DOT on or before ~~October 26, 2000~~ October 26, 2001. A copy of the referenced CFR's is available from the DOT, Research and Special Programs Administration, Western Region, Pipeline Safety, 12600

W. Colfax Ave., Suite A-250, Lakewood, Colorado 80215-3736, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

AUTH: 69-3-207, MCA
IMP: 69-3-207, MCA

4. The amendments (annual updates) of the rules are necessary to allow the PSC to properly administer the most current version of federal rules applicable in the PSC's administration of all federal aspects of Montana's pipeline safety programs.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, and must be received no later than November 27, 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 November 27, 2001. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-01.10.5-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 OCTOBER 15, 2001.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
adoption of New Rules I through) ON THE PROPOSED ADOPTION,
III; amendment of ARM 42.26.101,) AMENDMENT, TRANSFER, AND
42.26.201, 42.26.202, 42.26.204,) TRANSFER AND AMENDMENT
42.26.206, 42.26.207, 42.26.209,)
42.26.210, 42.26.211, 42.26.212,)
42.26.228, 42.26.229, 42.26.230,)
42.26.231, 42.26.232, 42.26.235,)
42.26.236, 42.26.241, 42.26.243,)
42.26.244, 42.26.251, 42.26.255,)
42.26.257, 42.26.261, and)
42.26.263; transfer of ARM)
42.26.213, 42.26.218, 42.26.221,)
42.26.266, 42.26.267, 42.26.283,)
42.26.285, and 42.26.290; and)
transfer and amendment of ARM)
42.26.215, 42.26.216, 42.26.217,)
42.26.219, 42.26.222, 42.26.223,)
42.26.224, 42.26.225, 42.26.226,)
42.26.265, 42.26.268, 42.26.269,)
42.26.270, 42.26.271, 42.26.272,)
42.26.273, 42.26.274, 42.26.275,)
42.26.276, 42.26.280, 42.26.282,)
42.26.284, 42.26.286, 42.26.292,)
42.26.293, and 42.26.294 related)
to corporation taxes)

TO: All Concerned Persons

1. On November 15, 2001, at 1:00 p.m., a public hearing will be held in the Fourth Floor Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption of New Rules I through III; amendment of ARM 42.26.101, 42.26.201, 42.26.202, 42.26.204, 42.26.206, 42.26.207, 42.26.209, 42.26.210, 42.26.211, 42.26.212, 42.26.228, 42.26.229, 42.26.230, 42.26.231, 42.26.232, 42.26.235, 42.26.236, 42.26.241, 42.26.243, 42.26.244, 42.26.251, 42.26.255, 42.26.257, 42.26.261, and 42.26.263; transfer of ARM 42.26.213, 42.26.218, 42.26.221, 42.26.266, 42.26.267, 42.26.283, 42.26.285, and 42.26.290; and transfer and amendment of ARM 42.26.215, 42.26.216, 42.26.217, 42.26.219, 42.26.222, 42.26.223, 42.26.224, 42.26.225, 42.26.226, 42.26.265, 42.26.268, 42.26.269, 42.26.270, 42.26.271, 42.26.272, 42.26.273, 42.26.274, 42.26.275, 42.26.276, 42.26.280, 42.26.282, 42.26.284, 42.26.286, 42.26.292, 42.26.293 and 42.26.294 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., November 1, 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 department is creating new sub-chapters in chapter 26 to assist the public in locating rules. These sub-chapters will be identified by industry types and subjects. In some instances, the department proposes to amend rules found in sub-chapter 1 and 2. Other rules will be transferred as currently written to a new sub-chapter. Some will be both transferred and amended.

4. The proposed new rules do not replace or modify any section currently found in the Administrative Rules of Montana. The following proposed new rules will be placed in the new sub-chapters as shown in each reasonable necessity statement and provide as follows:

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

(1) A "car-mile" is a movement of a unit of car equipment a distance of one mile.

(2) A "locomotive-mile" is the movement of a locomotive (a self-propelled unit of equipment designed solely for moving other equipment) a distance of one mile under its own power.

(3) "Rent" does not include the per diem and mileage charges paid by the taxpayer for the temporary use of railroad cars owned or operated by another railroad.

AUTH: Sec. 15-1-201, 15-31-313, and 15-31-501, MCA

IMP: Sec. 15-1-601, 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, and 15-31-312, MCA

REASONABLE NECESSITY: There is reasonable necessity to adopt New Rule I to provide definitions for terms that will be used in other rules found in new sub-chapter 6 pertaining to railroads.

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

(1) "Trucking company" means a motor carrier, a motor contract carrier or an express carrier, which primarily transports tangible personal property of others by motor vehicle for compensation.

AUTH: Sec. 15-1-201, 15-31-313, and 15-31-501, MCA

IMP: Sec. 15-1-601, 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, and 15-31-312, MCA

REASONABLE NECESSITY: There is reasonable necessity to adopt New Rule II to provide definitions for terms that will be used in other rules found in new sub-chapter 7 pertaining to the

trucking industry.

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

(1) "Aircraft ready for flight" means aircraft owned or acquired through rental or lease (but not interchange) which are in the possession of the taxpayer and are available for service on the taxpayer routes.

(2) "Cost of aircraft by type" means the average original cost or value of aircraft by type, which are ready for flight.

(3) "Departures" means for purposes of these rules all takeoffs, whether they are regularly scheduled or charter flights, that occur during revenue service.

(4) "Revenue service" means the use of aircraft ready for flight for the production of revenue.

AUTH: Sec. 15-1-201, 15-31-313, and 15-31-501, MCA

IMP: Sec. 15-1-601, 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, and 15-31-312, MCA

REASONABLE NECESSITY: There is reasonable necessity to adopt New Rule III to provide definitions for terms that will be used in other rules found in new sub-chapter 8.

5. The rules proposed to be amended are as follows:

42.26.101 ALTERNATIVE TAX (1) and (2) remain the same.

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-31-101, 15-31-131, and 15-31-122, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.26.101 to add additional implementing statutory cites.

42.26.201 INTENT (1) and (2) remain the same.

(3) The only exceptions to these allocation and apportionment rules contained in these ~~regulations~~ rules are set forth in ARM 42.26.261 through 42.26.263 pursuant to the authority of 15-31-312, MCA. ~~Special rules and regulations pertaining to certain industries are included in ARM 42.26.264 through ARM 42.26.294 referenced in other sub-chapters of this chapter.~~

(4) remains the same.

AUTH: Sec. 15-1-201, 15-31-313, and 15-31-501, MCA

IMP: Sec. 15-1-601, 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, 15-31-312, 15-31-321, 15-31-322, 15-31-323, 15-31-324, 15-31-325, and 15-31-326, MCA and Title 15, chapter 31, part 3, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.26.201 to delete the reference to specific rules and add a reference to other sub-chapters in this chapter. These changes are considered housekeeping.

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

~~(1) "Aircraft ready for flight" means aircraft owned or acquired through rental or lease (but not interchange) which are in the possession of the taxpayer and are available for service on the taxpayer routes.~~

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

~~(3)(a)(2)~~ "Annual rent" is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property. And

(a) Annual rent includes:

(i) and (ii) remain the same.

(iii) any amount payable for a delay rental as defined by U.S. Treasury regulations Section 1.612-3(e)(1)(1980), which defines delay rental as follows: A delay rental is an amount paid for the privilege of deferring development of the property and which could have been avoided by abandonment of the lease, or by commencement of development operations, or by obtaining production.

(3)(b) remains the same but is renumbered (2)(b).

~~(4)(3)~~ "Annual rental rate" is the amount paid as rental for the property for a 12-month period (i.e., the amount of the annual rent). Where property is rented for less than a 12-month period, the rent paid for the actual period of rental shall constitute the "annual rental rate" for the tax period. However, where a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of less than 12 months (due, for example, to a reorganization or change of accounting period), the rent paid for the short period shall be annualized. If the rental term is for less than 12 months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month-to-month basis.

(5) through (9) remain the same but are renumbered (4) through (8).

~~(10) A "car-mile" is a movement of a unit of car equipment a distance of 1 mile.~~

~~(11)(9)~~ The term "compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services; provided, that such amounts constitute income to the recipient under the federal Internal Revenue Code IRC. In the case of employees not subject to the federal Internal Revenue Code IRC, e.g., those employed in foreign countries, the determination of whether such benefits or services would constitute income to the employees shall be made as though such employees were subject to the federal Internal Revenue Code IRC.

~~(12) "Cost of aircraft by type" means the average original~~

~~cost or value of aircraft by type which are ready for flight.~~

~~(13) "Departures" means for purposes of these regulations all takeoffs, whether they be regularly scheduled or charter flights, that occur during revenue service.~~

~~(14) and (15) remain the same but are renumbered (10) and (11).~~

~~(16) A "locomotive mile" is the movement of a locomotive (a self-propelled unit of equipment designed solely for moving other equipment) a distance of 1 mile under its own power.~~

~~(17)(12) "Mobile property" means all motor vehicles, including trailers, engaged directly in the movement of tangible personal property.~~

~~(18)(13) A "mobile property mile" is the movement of a unit of mobile property a distance of one mile whether loaded or unloaded.~~

~~(19) through (21) remain the same but are renumbered (14) through (16).~~

~~(22)(17) "Partnership" is defined as an enterprise involving undivided joint ownership and includes but is not limited to joint ventures and trusts with joint beneficiaries. a syndicate, group, pool, joint venture, or other unincorporated organization, through which any business, financial operation, or venture is carried on. This definition also includes unincorporated organizations that may have elected to be excluded from the partnership rules for federal purposes including, but not limited to, those used for the following purposes:~~

~~(a) investment motivations, rather than the active conduct of a trade or business;~~

~~(b) joint or undivided production, extraction, or use of property; and~~

~~(c) underwriting, selling, or distributing a specific security issue.~~

~~(23) remains the same but is renumbered (18).~~

~~(19) The term "real and tangible personal property" includes land, buildings, machinery, stocks of goods, equipment, and other real and tangible personal property but does not include coin or currency.~~

~~(24) "Rent" does not include the per diem and mileage charges paid by the taxpayer for the temporary use of railroad cars owned or operated by another railroad.~~

~~(25) "Revenue service" means the use of aircraft ready for flight for the production of revenue.~~

~~(26)(20) "Taxpayer" means any corporation, partnership, firm, association, governmental unit or agency, or person acting as a business entity in more than one state.~~

~~(27) remains the same but is renumbered (21).~~

~~(28) "Trucking company" means a motor carrier, a motor contract carrier or an express carrier which primarily transports tangible personal property of others by motor vehicle for compensation.~~

~~(29)(22) "Unitary relationship" means a relationship between members of a the water's-edge combined group sufficient to satisfy the definition of a "unitary business" pursuant to~~

15-31-301, MCA.

(30) remains the same but is renumbered (23).

~~(31)~~(24) The "value of rented" real and tangible personal property means the product of ~~8~~ eight times the net annual rental rate. (See ARM 42.26.236.)

AUTH: Sec. 15-1-201, 15-31-313, and 15-31-501, MCA

IMP: ~~Sec. 15-1-601, 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, 15-31-312, 15-31-321, 15-31-322, 15-31-323, 15-31-324, 15-31-325, and 15-31-326, MCA and Title 15, chapter 31, part 3, MCA~~

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.26.202 for housekeeping purposes and to broaden the scope of the definition of "partnership" and a "unitary relationship." Definitions being deleted here will appear in specific sub-chapters elsewhere in this chapter.

42.26.204 COMBINED REPORTS (1) If a particular trade or business is carried on by a taxpayer and one or more unitary affiliated corporations owned greater than 50%, ~~nothing in Title 15, chapter 31, part 3, MCA, or in these regulations shall preclude the use of the taxpayer is required to file a "combined report" whereby the entire business income of such trade or business is apportioned in accordance with 15-31-305 through 15-31-311, MCA.~~

AUTH: Sec. 15-1-201, 15-31-313, and 15-31-501, MCA

IMP: ~~Sec. 15-1-601, 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, 15-31-312, 15-31-321, 15-31-322, 15-31-323, 15-31-324, 15-31-325, and 15-31-326, MCA and Title 15, chapter 31, part 3, MCA~~

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.26.204 to clarify ability of taxpayer to file one combined Montana corporation license tax return for all unitary corporations owned greater than 50%, as well as for housekeeping purposes.

42.26.206 BUSINESS AND NON-BUSINESS INCOME DEFINED

(1) Section 15-31-302~~(1)~~, MCA, defines "business income" as income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations. In essence, all income which arises from the conduct of trade or business operations of a taxpayer is business income. For purposes of administration, the income of the taxpayer is business income unless clearly classifiable as non-business income.

(2) and (3) remain the same.

AUTH: Sec. 15-1-201, 15-31-313, and 15-31-501, MCA

IMP: ~~Sec. 15-1-601 and 15-31-302, MCA and Title 15,~~

~~chapter 31, part 3, MCA~~

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.26.206 for housekeeping purposes only.

42.26.207 DETERMINATION OF BUSINESS AND NON-BUSINESS INCOME (1) remains the same.

(2) Gain or loss from the sale, exchange, or other dispositions of real or tangible personal property constitutes business income if the property while owned by the taxpayer was used in the taxpayer's trade or business. However, if such property was utilized for the production of non-business income or otherwise was removed from the property factor before its sale, exchange, or other disposition, the gain or loss will constitute non-business income. See ARM ~~42.26.222~~ 42.26.232.

(3) and (4) remain the same.

AUTH: Sec. 15-1-201, 15-31-313, and 15-31-501, MCA

IMP: Sec. 15-1-601 and 15-31-302, MCA and ~~Title 15, chapter 31, part 3, MCA~~

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.26.207 to correct the cite of the rule.

42.26.209 TAXABILITY (1) The concept of taxability in another state is based upon the premise that every state in which the taxpayer is engaged in business activity may impose an income tax even though every state does not do so. In states which do not, other types of taxes may be imposed as a substitute for an income tax. Therefore, only those taxes enumerated in ~~15-31-303(1)~~, MCA, which may be considered as basically revenue-raising, rather than regulatory, measures shall be considered in determining whether the taxpayer is "subject to" one of the taxes specified in ~~15-31-303(1)~~, MCA, in another state.

AUTH: Sec. 15-1-201, 15-31-313, and 15-31-501, MCA

IMP: Sec. 15-1-601 and 15-31-303, MCA and ~~Title 15, chapter 31, part 3, MCA~~

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.26.209 for housekeeping purposes only.

42.26.210 TAXABLE IN ANOTHER STATE (1) Under ~~15-31-301, MCA, and Article IV.2 of 15-1-601, Article IV (2),~~ MCA, the taxpayer is subject to the allocation and apportionment provisions of Title 15, chapter 31, part 3, MCA, if it has income from business activity that is taxable both within and without this state. A taxpayer's income from business activity is taxable without this state if such taxpayer, by reason of such business activity (i.e., the transactions and activity occurring in the regular course of a particular trade or business), is taxable in another state within the meaning of 15-31-303, MCA.

~~(2) a taxpayer is taxable within another state if it meets either one of two tests:~~

~~(a) If by reason of business activity in another state, the taxpayer is subject to one of the types of taxes specified in 15-1-303(1), MCA, namely: a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax.~~

~~(b) If by reason of such business activity, another state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether or not the state imposes such a tax on the taxpayer.~~

~~(3) A taxpayer is not taxable in another state with respect to a particular trade or business merely because the taxpayer conducts activities in such other state pertaining to the production of non-business income or business activities relating to a separate trade or business.~~

~~AUTH: Sec. 15-1-201, 15-31-313, and 15-31-501, MCA~~

~~IMP: Sec. 15-1-601 and 15-31-303, MCA and Title 15, chapter 31, part 3, MCA~~

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.26.210 for housekeeping purposes and to delete language contained in 15-31-303, MCA.

42.26.211 CONCEPT OF "SUBJECT TO" A TAX (1) A taxpayer is "subject to" one of the taxes specified in 15-31-303(1), MCA, if it carries on business activities in such state and such that state imposes such a tax thereon. Any taxpayer which asserts that it is subject to one of the taxes specified in 15-31-303(1), MCA, in another state shall furnish to the department, upon its request, evidence to support such assertion. The department may request that such evidence include proof that the taxpayer has filed the requisite tax return in such the other state and has paid any taxes imposed under the law of such the other state. The taxpayer's failure to produce such proof may be taken into account in determining whether the taxpayer in fact is subject to one of the taxes specified in 15-31-303(1), MCA, in such the other state.

(2) If the taxpayer voluntarily files and pays one or more of such taxes when not required to do so by the laws of that state or pays a minimal fee for qualification, for organization, or for the privilege of doing business in that state, but does not actually engage in business activity in that state or does actually engage in business activity, not sufficient for nexus, and the minimum tax bears no relation to the taxpayer's business activity within such that state, the taxpayer is not "subject to" one of the taxes specified within the meaning of 15-31-303(1), MCA.

~~AUTH: Sec. 15-1-201, 13-31-313, and 15-31-501, MCA~~

~~IMP: Sec. 15-1-601 and 15-31-303, MCA and Title 15, chapter 31, part 3, MCA~~

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.26.211 for housekeeping purposes only.

42.26.212 STATE TAXING JURISDICTION (1) The second test,

that of 15-31-303(2), MCA, applies if the taxpayer's business activity is sufficient to give the state jurisdiction authority to impose a net income tax by reason of such business activity under the Constitution and statutes of the United States. Jurisdiction to tax is not present where the state is prohibited from imposing the tax by reason of the provisions of Public Law 86-272, 15 U.S.C. Sections 381-385.

(2) In the case of any "state" as defined in 15-31-302(6), MCA, other than a state of the United States or political subdivision of such a state, the determination of whether such "state" has jurisdiction to subject the taxpayer to a net income tax shall be made as though the jurisdictional standards applicable to a state of the United States applied in that "state." If jurisdiction is otherwise present, such "state" is not considered as without jurisdiction by reason of the provisions of a treaty between that state and the United States.

AUTH: Sec. 15-1-201, 15-31-313, and 15-31-501, MCA

IMP: Sec. 15-1-601 and 15-31-303, MCA and ~~Title 15, chapter 31, part 3, MCA~~

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.26.212 for housekeeping purposes only.

42.26.228 TREATMENT OF PARTNERSHIPS IN THE APPORTIONMENT FORMULA (1) remains the same.

(2) The definition of unitary will be the same as the definition of a unitary business as outlined in 15-31-301(2), MCA. However, the corporate partner need not own in excess of 50% of the partnership for the partnership to be unitary.

AUTH: Sec. 15-31-313 and 15-31-501, MCA

IMP: Sec. 15-31-305, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.26.228 for housekeeping purposes only.

42.26.229 PARTNERSHIPS - NON-BUSINESS INCOME (1) remains the same.

(a) The corporate partner's share of partnership income will not be included in business income to be apportioned, but allocated to the states where the partnership operates based upon the apportionment formula outlined in 15-31-305, MCA.

(2) remains the same.

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-31-304 and 15-31-305, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.26.229 for housekeeping purposes only.

42.26.230 APPORTIONMENT FORMULA - EXCLUSIONS (1) If a taxpayer has property, payroll or sales assignable under 15-31-305 through 15-31-311, MCA, and attendant regulations to a location where it is not taxable under 15-31-303, MCA, the property, payroll or sales assigned to that location shall be excluded from the apportionment formula.

(2) For purposes of determining whether a taxpayer is taxable in a location, ARM 42.26.209 through 42.26.212 and ~~ARM 42.23.118 through 42.23.120~~ will apply.

AUTH: Sec. 15-31-313 and 15-31-501, MCA

IMP: Sec. 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, and 15-31-311, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.26.230 to delete cites that do not apply to this rule.

42.26.231 PROPERTY FACTOR IN GENERAL (1) The property factor of the apportionment formula for each trade or business of the taxpayer shall include all real and tangible personal property owned or rented and used during the tax period in the regular course of such trade or business. ~~The term "real and tangible personal property" includes land, buildings, machinery, stocks of goods, equipment, and other real and tangible personal property but does not include coin or currency.~~

(2) and (3) remain the same.

(4) The property factor shall reflect the average value of property includable in the factor. ~~See ARM 42.26.237. as set forth in ARM 42.26.237.~~

AUTH: Sec. 15-1-201, 15-31-313, and 15-31-501, MCA

IMP: Sec. 15-1-601, 15-31-305, 15-31-306, and 15-31-307, MCA and Title 15, chapter 31, part 3, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.26.231 to strike an internal definition that will appear elsewhere in the chapter and correct the reference to a rule cite.

42.26.232 PROPERTY USED FOR THE PRODUCTION OF BUSINESS INCOME (1) and (2) remain the same.

(3) Property used in the regular course of the trade or business of the taxpayer shall remain in the property factor until its permanent withdrawal is established by an identifiable event such as its conversion to the production of non-business income, its sale, or the lapse of an extended period of time (normally 5 five years) during which the property is held for sale.

AUTH: Sec. 15-1-201, 15-31-313, and 15-31-501, MCA

IMP: Sec. 15-1-601, 15-31-305, 15-31-306, and 15-31-307, MCA and Title 15, chapter 31, part 3, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.26.232 for housekeeping purposes only.

42.26.235 VALUATION OF OWNED PROPERTY (1) through (4) remain the same.

AUTH: Sec. 15-1-201, 15-31-313, and 15-31-501, MCA

IMP: Sec. 15-1-601, 15-31-305, 15-31-306, and 15-31-307, MCA and Title 15, chapter 31, part 3, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM

42.26.235 for housekeeping purposes only.

42.26.236 VALUATION OF RENTED PROPERTY (1)(a) Property rented by the taxpayer is valued at ~~8~~ eight times its net annual rental rate.

(a) The net annual rental rate for any item of rented property is the annual rental rate paid by the taxpayer for such property, with the exception of (1)(b), less the aggregate annual sub-rental rates paid by subtenants of the taxpayer. (See ARM 42.26.262 ~~for~~ addresses special rules where the use of such net annual rental rate produces a negative or clearly inaccurate value or where property is used by the taxpayer at no charge or rented at a nominal rental rate).

(b) Sub-rents are not deducted when the sub-rents constitute business income because the property ~~which~~ that produces the sub-rents is used in the regular course of a trade or business of the taxpayer when it is producing such income. Accordingly, there is no reduction in its value.

(2) See ARM 42.26.202 ~~for~~ provides the definitions which ~~that~~ apply to valuing rental property.

(3) remains the same.

AUTH: Sec. 15-1-201, 15-31-313, and 15-31-501, MCA

IMP: Sec. 15-1-601, 15-31-305, 15-31-306, and 15-31-307, ~~and Title 15, chapter 31, part 3, MCA~~

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.26.236 for housekeeping purposes only.

42.26.241 PAYROLL FACTOR IN GENERAL (1) through (3) remain the same.

(4) See ARM 42.26.202 ~~for~~ provides the definitions which ~~apply to valuing rental property applicable to this rule.~~

AUTH: Sec. 15-1-201, 15-31-313, and 15-31-501, MCA

IMP: Sec. 15-1-601, 15-31-305, 15-31-308, and 15-31-309, ~~MCA and Title 15, chapter 31, part 3, MCA~~

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.26.241 for housekeeping purposes only.

42.26.243 DENOMINATOR OF PAYROLL FACTOR (1) The denominator of the payroll factor is the total compensation paid everywhere during the tax period. Accordingly, the compensation paid to employees whose services are performed entirely in State C where the taxpayer is immune from taxation ~~by~~ for example, by Public Law 86-272, are included in the denominator of the payroll factor.

AUTH: Sec. 15-1-201, 15-31-313, and 15-31-501, MCA

IMP: Sec. 15-1-601, 15-31-305, 15-31-308, and 15-31-309, ~~MCA and Title 15, chapter 31, part 3, MCA~~

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.26.243 for housekeeping purposes only.

42.26.244 NUMERATOR OF PAYROLL FACTOR (1) remains the

same.

~~(2) Compensation is paid in this state if any one of the following tests is met:~~

~~(a) The employee's service is performed entirely within the state.~~

~~(b) The employee's service is performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The word "incidental" means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction.~~

~~(c) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:~~

~~(i) if the employee's base of operations is in this state;~~

~~(ii) if there is no base of operations in any state in which some part of the service is performed, but the place from which the service is directed or controlled is in this state; or~~

~~(iii) if the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the employee's residence is in this state.~~

~~(3)(2) See Refer to ARM 42.26.202 for definitions which apply to valuing rental property applicable to this rule.~~

~~AUTH: Sec. 15-1-201, 15-31-313, and 15-31-501, MCA~~

~~IMP: Sec. 15-1-601, 15-31-305, 15-31-308, and 15-31-309, MCA and Title 15, chapter 31, part 3, MCA~~

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.26.244 to delete wording contained in 15-31-309, MCA, and to correctly place the definitions in ARM 42.26.202, which is the definition rule for this sub-chapter.

42.26.251 SALES FACTOR IN GENERAL (1) remains the same.

(2) The following are rules procedures for determining "sales" in various situations:

(a) through (e) remain the same.

(3) In some cases, certain gross receipts should be disregarded in determining the sales factor in order that the apportionment formula will operate fairly to apportion to this state the income of the taxpayer's trade or business.—See as further set forth in ARM 42.26.263.

(4) remains the same.

AUTH: Sec. 15-1-201, 15-31-313, and 15-31-501, MCA

IMP: Sec. 15-1-601, 15-31-305, 15-31-310, and 15-31-311, MCA and Title 15, chapter 31, part 3, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.26.251 for housekeeping purposes only. The amendment clarifies where to refer for further explanation to the requirements of this rule.

42.26.255 SALES OF TANGIBLE PERSONAL PROPERTY (1) Gross receipts from the sales of tangible personal property (except

sales to the United States Government; see as outlined in ARM 42.26.256) are in this state:

(a) through (7)(b) remain the same.

AUTH: Sec. 15-1-201, 15-31-313, and 15-31-501, MCA

IMP: Sec. 15-1-601, 15-31-305, 15-31-310, and 15-31-311, MCA and Title 15, chapter 31, part 3, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.26.255 for housekeeping purposes only.

42.26.257 SALES OTHER THAN SALES OF TANGIBLE PERSONAL PROPERTY (1) Section 15-31-311(2), MCA, provides for the inclusion in the numerator of the sales factor of gross receipts from transactions other than sales of tangible personal property (including transactions with the United States Government). Under this section, gross receipts are attributed to this state if the income-producing activity, which gave rise to the receipts, is performed wholly within this state. Also, gross receipts are attributed to this state if, with respect to a particular item of income, the income-producing activity is performed within and without this state but the greater proportion of the income-producing activity is performed in this state, based on costs of performance.

~~(2) The term "income producing activity" applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gains or profit. Such activity does not include transactions and activities performed on behalf of a taxpayer, such as those conducted on its behalf, by an independent contractor. Accordingly, income producing activity includes but is not limited to the following:~~

~~(a) the rendering of personal services by employees or the utilization of tangible and intangible property by the taxpayer in performing a service;~~

~~(b) the sale, rental, leasing, licensing, or other use of real property;~~

~~(c) the rental, leasing, licensing, or other use of tangible personal property;~~

~~(d) the sale, licensing, or other use of intangible personal property.~~

~~(3)(2) The mere holding of intangible personal property is not, of itself, an income-producing activity.~~

~~(4) The term "costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.~~

~~(5)(3) Receipts (other than from sales of tangible personal property) in respect to a particular income-producing activity are in this state if:~~

~~(a) the income-producing activity is performed wholly within this state; or~~

~~(b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-~~

producing activity is performed in this state than in any other state, based on costs of performance.

~~(6)(4)~~ The following are special rules procedures for determining when receipts from the income-producing activities described below are in this state:

(a) and (b) remain the same.

(c) Gross receipts for the performance of personal services are attributable to this state to the extent such services are performed in this state. If services relating to a single item of income are performed partly within and partly without this state, the gross receipts for the performance of such services shall be attributable to this state only if a greater portion of the services were performed in this state, based on costs of performance. Usually, where services are performed partly within and partly without this state, the services performed in each state will constitute a separate income-producing activity. In such case, the gross receipts for the performance of services attributable to this state shall be measured by the ratio which the time spent in performing such services in this state bears to the total time spent in performing such services everywhere. Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation which ~~that~~ gives rise to such gross receipts. Personal service not directly connected with the performance of the contract or other obligation, as for example, time expended in negotiating the contract, is excluded from the computations.

AUTH: Sec. 15-1-201, 15-31-313, and 15-31-501, MCA

IMP: Sec. 15-1-601, 15-31-305, 15-31-310, and 15-31-311, MCA and Title 15, chapter 31, part 3, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.26.257 for to delete a definition that will appear elsewhere in this chapter in a definition rule. The other amendments are housekeeping only.

42.26.261 SPECIAL APPORTIONMENT AND ALLOCATION COMPUTATIONS (1) ~~Section 15-31-312, MCA, provides that if the allocation and apportionment provisions of 15-31-302 through 15-31-311, MCA, do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:~~

~~(a) separate accounting;~~

~~(b) the exclusion of any one or more of the factors;~~

~~(c) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or~~

~~(d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.~~

(2) Section 15-31-312, MCA, permits a departure from the allocation and apportionment provisions of 15-31-302 through 15-31-311, MCA, only in limited and specific cases. Section 15-31-312, MCA, may be invoked only in specific cases where unusual

fact situations (which ordinarily will be unique and nonrecurring) produce incongruous results under the apportionment and allocation provisions contained in 15-31-302 through 15-31-311, MCA.

~~(3)~~(2) In the case of certain industries such as air transportation, rail transportation, ship transportation, trucking, television, radio, motion pictures, various types of professional athletics, and so forth, as the department deems necessary, the foregoing rules in respect to the apportionment formula do not set appropriate procedures for determining the apportionment factors. Nothing in 15-31-312, MCA, or in ARM 42.26.261 through 42.26.263 shall preclude the department from establishing appropriate procedures under 15-31-306 through 15-31-311, MCA, for determining the apportionment factors for each such industry, but such procedures shall be applied uniformly.

AUTH: Sec. 15-1-201, 15-31-313, and 15-31-501, MCA

IMP: Sec. 15-1-601, 15-31-305, and 15-31-312, MCA and Title 15, chapter 31, part 3, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.26.261 to delete language contained in 15-31-312, MCA, and for general housekeeping.

42.26.263 SPECIAL COMPUTATIONS RELATED TO SALES FACTOR

(1) The following special rules criteria are established in respect to the sales factor of the apportionment formula:

~~(a) Where substantial amounts of gross receipts arise from an incidental or occasional sale of a fixed asset used in the regular course of the taxpayer's trade or business, such gross receipts shall be excluded from the sales factor. For example, gross receipts from the sale of a factory or plant will be excluded.~~

~~(b) In substantial Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless such exclusion would materially affect the amount of income apportioned to this state. For example, the taxpayer ordinarily may include or exclude from the sales factor gross receipts from such transactions as the sale of office furniture, business automobiles, etc.~~

~~(c) remains the same but is re-earmarked (b).~~

(2) Where business income from intangible property cannot readily be attributed to any particular income-producing activity of the taxpayer, such income cannot be assigned to the numerator of the sales factor for any state and shall be excluded from the denominator of the sales factor. For example, where business income in the form of dividends received on stock, royalties received on patents or copyrights, or interest received on bonds, debentures, or government securities results from the mere holding of the intangible personal property by the taxpayer, such dividends and interest shall be excluded from the denominator of the sales factor.

(3) Section 631 of the Internal Revenue Code IRC (gains) which are attributable to internal transactions must be

eliminated from the sales factor. The ultimate sale to outsiders will be included in line 1 sales. IRC §section 631(A) (log sales) and section 631(B) (gains) should be included in the factor at the gross sales price used to calculate the gain. IRC §section 631(C) (gains) should be included to the extent of gross royalties received prior to the capital gains offset and prior to the netting of long-term capital gains and losses.

AUTH: Sec. 15-1-201, 15-31-313, and 15-31-501, MCA

IMP: Sec. 15-1-601, 15-31-305, 15-31-310, and 15-31-311, and 15-31-312, MCA and Title 15, chapter 31, part 3, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.26.263 to harmonize this rule with ARM 42.26.257. Gains from the sale of assets are includable at net gain, not gross. Other items changed are general housekeeping amendments.

6. The following rules are transferred to new sub-chapter 3 titled "Water's-edge."

42.26.213 (42.26.301) WATER'S-EDGE ELECTION (1) remains the same.

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-31-322, MCA

REASONABLE NECESSITY: There is reasonable necessity to transfer ARM 42.26.213 for housekeeping purposes. This transfer will assist the public in locating the rules applicable to water's-edge elections.

42.26.218 (42.26.305) TAX RATES (1) remains the same.

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-31-121, MCA

REASONABLE NECESSITY: There is reasonable necessity to transfer ARM 42.26.218 for housekeeping purposes. This transfer will assist the public in locating the rules applicable to water's-edge elections.

42.26.221 (42.26.307) APPORTIONMENT AND ALLOCATION GENERALLY (1) remains the same.

AUTH: Sec. 15-1-201, 15-31-313, and 15-31-501, MCA

IMP: Sec. 15-1-601, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, and 15-31-311, MCA and Title 15, chapter 31, part 3, MCA

REASONABLE NECESSITY: There is reasonable necessity to transfer ARM 42.26.221 for housekeeping purposes. This transfer will assist the public in locating the rules applicable to water's-edge elections.

7. The following rules are amended and transferred to new sub-chapter 3 titled "Water's-edge."

42.26.215 (42.26.302) PROCEDURE (1) remains the same.

(2) Each election is binding for a 3 three-year renewable period and may only be revoked upon express written permission of the department.

(3) As stated in (2) above, the water's-edge election is binding for a three-year renewable period. If a taxpayer wishes to continue to file on a water's-edge basis, a written election must again be filed with the department within the first 90 days of the tax year for which the election is to become effective.

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-31-324, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend and transfer ARM 42.26.215 for housekeeping purposes and to clarify the procedures necessary for the continuance of the water's-edge election.

42.26.216 (42.26.303) REVOCATION OR NON-RENEWAL OF WATER'S-EDGE ELECTIONS (1) If a taxpayer wishes to change its election prior to the end of the 3 three-year period, permission must first be received from the department. The department shall impose reasonable conditions necessary to insure that the requested change will not result in an avoidance of tax and that income for the period prior to the change has been properly reported. In the year of the change, the department may, for the purposes provided for in law, require the inclusion of gross income or the exclusion of deductions either of which occurred because of a water's-edge filing for that period.

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-31-324, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend and transfer ARM 42.26.216 for housekeeping purposes.

42.26.217 (42.26.304) DOMESTIC DISCLOSURE SPREADSHEET (1) Electing corporations may be required to file the domestic disclosure spreadsheet within 6 six months of filing the federal income tax return. The disclosure spreadsheet filing must be accomplished on forms prescribed by the department.

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-31-326, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend and transfer ARM 42.26.217 for housekeeping purposes.

42.26.219 (42.26.306) APPLICABILITY (1) Water's-edge combinations, as provided for in 15-31-322, MCA, are available to qualifying corporations for years beginning on or after January 1, 1988.

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-31-322, MCA Ch. 616, sec. 11, L. 1987

REASONABLE NECESSITY: There is reasonable necessity to amend and transfer ARM 42.26.219 for housekeeping purposes.

42.26.222 (42.26.308) APPORTIONMENT FORMULA (1) All business income of each trade or business of the taxpayer shall be apportioned to this state by use of the apportionment formula set forth in 15-31-305, MCA. The elements of the apportionment formula are the property factor (see ARM 42.26.231), the payroll factor (see ARM 42.26.241), and the sales factor (see ARM 42.26.251) of the trade or business of the taxpayer.

AUTH: Sec. 15-1-201, 15-31-313, and 15-31-501, MCA

IMP: Sec. 15-1-601 and 15-31-305, MCA Title 15, chapter 31, part 3, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend and transfer ARM 42.26.222 for housekeeping purposes.

42.26.223 (42.26.309) APPORTIONMENT FACTORS (1) remains the same.

(2) The apportionment provisions of Title 15, chapter 31, part 3, MCA, and related regulations regarding the inclusion, valuation, and attribution of apportionment factors by location shall apply to the computation of Montana tax liability under a water's-edge election. Only property, payroll, and sales of corporations actually included in the water's-edge combined group shall be considered.

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-31-323, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend and transfer ARM 42.26.223 for housekeeping purposes.

42.26.224 (42.26.310) DISREGARDING OR MODIFYING A WATER'S-EDGE ELECTION (1) remains the same.

(2) The corporations includible in a water's-edge election may be modified by the department for the inclusion of additional unitary corporations as described in 15-31-322, MCA, or the exclusion of non-unitary corporations. The modification cannot require the inclusion of any corporations not described in 15-31-322, MCA.

(3) and (4) remain the same.

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-31-301, 15-31-322, 15-31-326, and 15-31-505, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend and transfer ARM 42.26.224 for housekeeping purposes.

42.26.225 (42.26.311) CERTAIN CORPORATIONS INCLUDABLE IN A WATER'S-EDGE COMBINED RETURN (1) Domestic ~~I~~nternational ~~S~~ales ~~C~~orporations (DISCs), as defined in sections 991 through 994 of the ~~I~~nternal ~~R~~evenue ~~C~~ode ~~I~~RC, and ~~F~~oreign ~~S~~ales ~~C~~orporations, as defined in sections 921 through 927 of the ~~I~~nternal ~~R~~evenue ~~C~~ode ~~I~~RC, are included in a water's-edge return. DISC^s are specifically taxable notwithstanding the general exemptive language of 15-31-102, MCA.

(2) Foreign corporations, if over 50% of the voting stock is owned directly or indirectly by a member of the includable group and if more than 20% of the average of its payroll and property is assignable to a location inside the United States, are included in a water's-edge return. For purposes of computing this average, the payroll factor provided for by 15-31-308, MCA, and the property factor as provided for by 15-31-306, MCA, shall be added together and divided by two, or by one if the denominator of either the property or payroll factor is zero.

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-31-322, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend and transfer ARM 42.26.225 for housekeeping purposes.

42.26.226 (42.26.312) TREATMENT OF DIVIDENDS FOR PURPOSES OF A WATER'S-EDGE COMBINED RETURN (1) Eighty percent of the dividends apportionable under this section rule are to be excluded from income subject to apportionment where:

(a) remains the same.

(b) amounts included in income under sections 951 through 962 and 964 of the ~~Internal Revenue Code~~ IRC are considered taxable foreign dividends;

(c) the after-tax net income of United States corporations excluded from eligibility as affiliated corporations under ARM 42.26.225 [42.26.311] and possession corporations defined in sections 931 through 934 and 936 of the ~~Internal Revenue Code~~ IRC, is considered to be a dividend for purposes of this section rule;

(i) and (ii) remain the same.

(d) remains the same.

(e) deemed dividend distributions pursuant to section 78 of the ~~Internal Revenue Code~~ IRC are excluded from the calculation of apportionable income; and

(f) ~~the~~ limited inclusion of dividend income specified in this section rule is in lieu of attempts to allocate expenses attributable to the generation of such dividend income. For apportionment factor purposes only the dividend income considered to be business income shall be included in the receipts factor numerator or denominator as appropriate.

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-31-325, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend and transfer ARM 42.26.226 for housekeeping purposes only.

8. The following rules are being amended and transferred to new sub-chapter 4 titled "Special Rules Related to Installment Sales."

42.26.275 (42.26.401) SPECIAL RULES RELATED TO INSTALLMENT SALES (1) The amount of the gain or loss from the sale of assets used in the regular course of business which is

apportioned to this state shall be calculated separately if the taxpayer elects to report the gain on the installment method. The separate calculation shall be made:

(a) for installment sales of Montana assets which generate net gains in excess of \$2,500,000; or

(b) installment sales of major assets located outside the state of Montana which generate net gains in excess of \$10,000,000.

(2) The separate calculation shall be made as follows:

(a) for purposes of the sales factor the total net gains from the sale shall be included in the sales factor in the year of the sale unless specifically excluded from the sales factor under another part of ARM 42.26.263(1)(a);

(b) and (c) remain the same.

AUTH: Sec. 15-31-313 and 15-31-501, MCA

IMP: Sec. 15-31-305, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend and transfer ARM 42.26.275 for housekeeping purposes only. The new sub-chapter will assist the public with locating the rules that pertain to installment sales.

42.26.276 (42.26.402) UNREPORTED INCOME ON INSTALLMENT OBLIGATION IN YEAR OF DISSOLUTION (1) Where a taxpayer elects to report income arising from the sale or other disposition of property as provided under this regulation rule and the entire income therefrom has not been reported prior to the year that the taxpayer ceases to be subject to tax under 15-31-301, MCA, the unreported income shall be included in the measure of the tax for the last year in which the taxpayer is subject to tax under 15-31-301, MCA.

AUTH: Sec. 15-31-313 and 15-31-501, MCA

IMP: Sec. 15-31-305, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend and transfer ARM 42.26.276 for housekeeping purposes only. The transfer will assist the public when referring to this subject.

9. The following rules are transferred to new sub-chapter 6 titled "Railroads."

42.26.266 (42.26.603) THE PROPERTY FACTOR (1) and (2) remain the same.

AUTH: Sec. 15-1-201, 15-31-313, and 15-31-501, MCA

IMP: Sec. 15-1-601, 15-31-305, 15-31-306, 15-31-307, and 15-31-312, MCA and Title 15, chapter 31, part 3, MCA

REASONABLE NECESSITY: There is reasonable necessity to transfer ARM 42.26.266 to assist the public in locating the rules that pertain to railroads.

42.26.267 (42.26.604) THE DENOMINATOR AND NUMERATOR OF THE PROPERTY FACTOR (1) remains the same.

AUTH: Sec. 15-1-201, 15-31-313, and 15-31-501, MCA

IMP: Sec. 15-1-601, 15-31-305, 15-31-306, 15-31-307, and 15-31-312, MCA and Title 15, chapter 31, part 3, MCA

REASONABLE NECESSITY: There is reasonable necessity to transfer ARM 42.26.267 to assist the public in locating the rules that pertain to railroads.

10. The following rules are amended and transferred to new sub-chapter 6 titled "Railroads."

42.26.265 (42.26.602) SPECIAL GENERAL RULES FOR RAILROADS

(1) Where a railroad has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this regulation. ~~In such cases, the first step is to determine what portion of the railroad's income constitutes "business" income and which portion constitutes "nonbusiness" income under ARM 42.26.206. Nonbusiness income is directly allocable to specific states pursuant to the provisions of 15-31-304, MCA. Business income is apportioned among the states in which the business is conducted pursuant to the property, payroll and sales apportionment factors set forth in this regulation. The sum of (a) the items of nonbusiness income directly allocated to this state, plus (b) the amount of business income attributable to this state constitutes the amount of the taxpayer's entire net income which is subject to tax by this state Title 15, chapter 31, part 3, MCA, except as modified by regulation.~~

(2) remains the same.

(3) Except as modified in this regulation, the apportionment factors shall be determined as follows:

(a) the property factor shall be determined in accordance with ARM 42.26.231 through 42.26.237, inclusive;

(b) the payroll factor in accordance with ARM 42.26.241 through 42.26.244, inclusive; and

(c) remains the same.

AUTH: Sec. 15-1-201, 15-31-313, and 15-31-501, MCA

IMP: Sec. 15-1-601 and 15-31-312, MCA Title 15, chapter 31, part 3, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend and transfer ARM 42.26.265 to delete text in (1) which is currently located in Title 15, chapter 31, part 3, MCA. The text in (2) and (3) are necessary to clarify other references to ARM provisions that enforce the law. The transfer will assist the public when locating the rules pertaining to railroads.

42.26.268 (42.26.605) THE PAYROLL FACTOR (1) The denominator of the payroll factor is the total compensation paid everywhere by the taxpayer during the income year for the production of business income. ~~(See as provided in ARM 42.26.243.)~~ The numerator of the payroll factor is the total amount paid in this state during the income year by the taxpayer for compensation. With respect to all personnel except enginemen and trainmen performing services on interstate trains,

compensation paid to such employees shall be included in the numerator as provided in ARM 42.26.244. With respect to enginemen and trainmen performing services on interstate trains, compensation paid to such employees shall be included in the numerator of the payroll factor in the ratio which their services performed in this state bear to their services performed everywhere. Compensation for services performed in this state shall be deemed to be the compensation reported or required to be reported by such employees for determination of their income tax liability to this state.

AUTH: Sec. 15-1-201, 15-31-313, and 15-31-501, MCA

IMP: ~~Sec. 15-1-601, 15-31-305, 15-31-308, 15-31-309, and 15-31-312, MCA and Title 15, chapter 31, part 3, MCA~~

REASONABLE NECESSITY: There is reasonable necessity to amend and transfer ARM 42.26.268 to aid in future housekeeping of rules. The transfer will assist the public when locating rules pertaining to railroads.

42.26.269 (42.26.606) THE SALES (REVENUE) FACTOR (1) All revenue derived from transactions and activities in the regular course of the trade or business of the taxpayer which produces business income, except per diem and mileage charges which are collected by the taxpayer, is included in the denominator of the revenue factor.—(See as provided in ARM 42.26.253). The numerator of the revenue factor is the total revenue of the taxpayer in this state during the income year. The total revenue of the taxpayer in this state during the income year, other than revenue from hauling freight, passengers, mail and express, shall be attributable to this state in accordance with ARM 42.26.254 through 42.26.259.

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

AUTH: Sec. 15-1-201, 15-31-313 and 15-31-501, MCA

IMP: ~~Sec. 15-1-601, 15-31-305, 15-31-310, 15-31-311, and 15-31-312, MCA and Title 15, chapter 31, part 3, MCA~~

REASONABLE NECESSITY: There is reasonable necessity to amend and transfer ARM 42.26.269 for housekeeping purposes. The transfer will assist the public when locating rules pertaining to railroads.

11. The following rules are amended and transferred to new sub-chapter 7 titled "Trucking."

42.26.270 (42.26.702) GENERAL RULES FOR TRUCKING COMPANIES

(1) Where a trucking company has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to Title 15, chapter 31, part 3, MCA, except as modified by this rule. See ARM 42.26.202 for provides the definitions that are applicable to the numerator and the denominator of the property factor, as well as other apportionment factor descriptions.

AUTH: Sec. 15-31-313 and 15-31-501, MCA

IMP: Sec. 15-31-301, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend and transfer ARM 42.26.270 to clarify that the statute pertaining to income sources is the governing factor unless modified by this rule. The transfer of this rule is necessary to assist the public when locating rules pertaining to the trucking industry.

42.26.271 (42.26.703) THE PROPERTY FACTOR (1) The denominator of the property factor shall be the average value of all the taxpayer's real and tangible personal property owned or rented and used during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the income year. In the determination of the numerator of the property factor, all property, except mobile property as defined in this ~~regulation~~ rule, shall be included in the numerator of the property factor in accordance with ARM sections 42.26.231 through 42.26.237, inclusive. Mobile property, as defined in ~~this regulation~~ ARM 42.26.202, which is located solely within this state during the income year shall be included in the numerator of the property factor. Mobile property, ~~as defined in this regulation,~~ which is located within and without this state during the income year, shall be included in the numerator of the property factor in the ratio which mobile property miles in the state bear to the total mobile property miles.

AUTH: Sec. 15-31-313 and 15-31-501, MCA

IMP: Sec. 15-31-306 and 15-31-307, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend and transfer ARM 42.26.271 for general housekeeping. The transfer will assist the public when locating rules pertaining to the trucking industry.

42.26.272 (42.26.704) THE PAYROLL FACTOR (1) The denominator of the payroll factor is the compensation paid everywhere by the taxpayer during the income year for the production of business income as ~~(see provided in~~ ARM 42.26.243). The numerator of the payroll factor is the total compensation paid in this state during the income year by the taxpayer. With respect to all personnel, except those performing services within and without this state, compensation paid to such employees shall be included in the numerator as provided in ARM 42.26.244.

(2) remains the same.

AUTH: Sec. 15-31-313 and 15-31-501, MCA

IMP: Sec. 15-31-308 and 15-31-309, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend and transfer ARM 42.26.272 for housekeeping purposes.

42.26.273 (42.26.705) THE SALES (REVENUE) FACTOR (1) In general, all revenues derived from transactions and activities

in the regular course of the taxpayer's trade or business which produces business income shall be included in the denominator of the revenue factor (See as provided in ARM 42.26.253).

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

AUTH: Sec. 15-31-313 and 15-31-501, MCA

IMP: Sec. 15-31-310 and 15-31-311, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend and transfer ARM 42.26.273 for housekeeping purposes only.

42.26.274 (42.26.706) DE MINIMUS NEXUS STANDARD

(1) Notwithstanding any provision contained herein, these ~~regulations~~ rules shall not apply to require the apportionment of income to this state if the trucking company during the course of the income year neither:

(a) owns nor rents any real or personal property in this state, except mobile property; nor

(b) makes any pick-ups or deliveries within this state; nor

(c) travels more than ~~twenty-five thousand~~ 25,000 mobile property miles within this state; provided that the total mobile property miles traveled within this state during the income year does not exceed three percent of the total mobile property miles traveled in all states by the trucking company during that period; nor

(d) ~~M~~akes more than ~~twelve~~ 12 trips into this state.

AUTH: Sec. 15-31-313 and 15-31-501, MCA

IMP: Sec. 15-31-301, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend and transfer ARM 42.26.274 for housekeeping purposes only.

12. The following rules are transferred to new sub-chapter 8 titled "Airlines."

42.26.283 (42.26.804) THE PAYROLL FACTOR (1) remains the same.

AUTH: Sec. 15-1-201, 15-31-313, and 15-31-501, MCA

IMP: Sec. 15-1-601, 15-31-308, 15-31-309, and 15-31-312, MCA

REASONABLE NECESSITY: There is reasonable necessity to transfer ARM 42.26.283 for housekeeping purposes only. This transfer will assist the public in locating the rules.

42.26.285 (42.26.806) RECORDS (1) remains the same.

AUTH: Sec. 15-1-201, 15-31-313, and 15-31-501, MCA

IMP: Sec. 15-1-601, 15-31-301, and 15-31-312, MCA

REASONABLE NECESSITY: There is reasonable necessity to transfer ARM 42.26.285 for housekeeping purposes only.

13. The following rules are amended and transferred to new sub-chapter 8 titled "Airlines."

42.26.280 (42.26.802) GENERAL STATEMENT (1) Where an airline has income ~~for~~ from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to Title 15, chapter 31, part 3, MCA, except as modified by this regulation rule.

AUTH: Sec. 15-1-201, 15-31-313, and 15-31-501, MCA

IMP: Sec. 15-1-601, and 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, and through 15-31-312, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend and transfer ARM 42.26.280 for housekeeping purposes only.

42.26.282 (42.26.803) THE PROPERTY FACTOR (1) ~~Property valuation.~~ Owned aircraft shall be valued at its original cost and rented aircraft shall be valued at eight ~~(8)~~ times the net annual rental rate in accordance with ARM 42.26.235 through 42.26.237. The use of the taxpayer's owned or rented aircraft in an interchange program with another air carrier will not constitute a rental of such aircraft by the airline to the other participating airline. Such aircraft shall be accounted for in the property factor of the owner/rentor. Parts and other expendables, including parts for use in contract overhaul work, will be valued at cost.

(2) remains the same.

(3) In determining the numerator of the property factor, all property except aircraft ready for flight shall be included in the numerator of the property factor in accordance with ARM ~~42.26.234~~ 42.26.231 through 42.26.237. Aircraft ready for flight shall be included in the numerator of the property factor in the ratio calculated as follows:

(a) departures of aircraft from locations in this state weighted as to the cost and value of aircraft by type compared to total departures similarly weighted.

AUTH: Sec. 15-1-201, 15-31-313, and 15-31-501, MCA

IMP: Sec. 15-1-601, 15-31-306, 15-31-307, and 15-31-312, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend and transfer ARM 42.26.282 for housekeeping purposes only.

42.26.284 (42.26.805) THE SALES (TRANSPORTATION REVENUE) FACTOR (1) The transportation revenue derived from transactions and activities in the regular course of the trade or business of the taxpayer and miscellaneous sales of merchandise, etc., are included in the denominator of the revenue factor ~~(See as provided in ARM 42.26.253).~~ ~~Passive income items such as interest, rental income, dividends, etc., will not be included in the denominator nor will the proceeds or net gains or losses from the sale of aircraft be included.~~ The numerator of the revenue factor is the total revenue of the taxpayer in this state during the income year. The total revenue of the taxpayer in this state during the income year is the result of the following calculation:

(a) the ratio of departures of aircraft in this state weighted as to the cost and value of aircraft by type, as compared to total departures similarly weighted multiplied by the total transportation revenue. The product of this calculation is to be added to any non-flight revenues directly attributable to this state.

AUTH: Sec. 15-1-210, 15-31-313, and 15-31-501, MCA

IMP: Sec. 15-1-601, 15-31-310, 15-31-311, and 15-31-312, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend and transfer ARM 42.26.284 to be consistent with the provisions of section 15-31-310, MCA, and ARM 42.26.253. It is necessary to delete text in the rule because it is currently in the law and ARM 42.26.259 states that net gains are included.

42.26.286 (42.26.807) AIRLINE REGULATION EXAMPLES (1) through (1)(d) remain the same.

(e) From its operations, it has total receipts of \$50,000,000, business net income of \$1,000,000 and no non-business income. The total \$50,000,000 is flight revenue; there is no non-flight revenue.

(f) remains the same.

(g) State X has a corporate tax rate of 10%. The airline's tax liability to state X would be determined as follows:

Property Factor:

<u>Numerator</u>		<u>Denominator</u>
43,200,000 (747s)		432,000,000 (747s)
+ 80,000,000 (747s) (727s)	+	400,000,000 (747s) (727s)
+ 10,000,000 (n.t.p.)	+	200,000,000 (n.t.p.)
133,200,000	+ /	1,032,000,000 = 12.91%

Sales Factor:

<u>Numerator</u>		<u>Denominator</u>
43,200,000 (747s)		432,000,000 (747s)
+ 80,000,000 (747s) (727s)	+	400,000,000 (747s) (727s)
123,200,000	+ /	832,000,000 = 14.8%

departure ratio = 14.8%

$$\frac{7,403,846 (14.8\% \times 50,000,000)}{50,000,000} = 14.81\%$$

Payroll Factor:

<u>Numerator</u>		<u>Denominator</u>
6,000,000 (non-flight)		40,000,000 (non-flight)
+ 8,880,000 (14.8% x 60,000,000 flight)	+	60,000,000 (flight)
14,880,000	+	100,000,000 = 14.88%

Average Ratio Equals the sum of the property, sales and payroll factors divided by 3.

$$(12.91\% + 14.81\% + 14.88\%) / 3 = 14.193\% \underline{14.20\%}$$

Taxable Income in state X:

~~.14193~~ .1420 x 1,000,000 = ~~\$141,930~~ \$142,000

Tax Liability to state X:

.10 x ~~\$141,930~~ \$142,000 = ~~\$14,193.00~~ \$14,200

(2) Same facts except that ~~paragraphs (a) and (b) are~~ (1)(f) is changed to read:

(a) It has the following within state Y:

(i) 6% of its 747 flight departures
(.06 x 432,000,000 = \$25,920,000);

(ii) 31% of its 727 flight departures
(.31 x 400,000,000 = \$124,000,000); and

(iii) 3% of its non-flight tangible property
~~(\$6,000,000) (n.t.p.)~~ (.03 x 200,000,000 = \$6,000,000); and

(iv) 7% of its non-flight personnel payroll
(.07 x 40,000,000 = \$2,800,000)

(b) State Y has a corporate tax rate of 6½%. The airline's tax liability to state Y would be determined as follows:

Property Factor:

<u>Numerator</u>		<u>Denominator</u>
25,920,000 (747s)		432,000,000 (747s)
+ 124,000,000 (747s) <u>(727s)</u>	+	400,000,000 (747s) <u>(727s)</u>
+ 6,000,000 (n.t.p.)	+	200,000,000 (n.t.p.)
<u>155,920,000</u>	+ /	<u>1,032,000,000 = 15.1085%</u>

Sales Factor:

<u>Numerator</u>		<u>Denominator</u>
25,920,000 (747s)		432,000,000 (747s)
+ <u>124,000,000</u> (747s) <u>(727s)</u>	+	<u>400,000,000</u> (747s) <u>(727s)</u>
<u>149,920,000</u>	+ /	<u>832,000,000 = 18.0192%</u>

departure ratio = 18.0192%

9,009,600 (18.0192% x 50,000,000) / 50,000,000 = 18.0192%

Payroll Factor:

<u>Numerator</u>		<u>Denominator</u>
2,800,000 (non-flight)		40,000,000 (non-flight)
+10,811,400 (18.019% x 60,000,000 flight)	+	+ 60,000,000 (flight)
<u>+10,811,520 (18.0192% x 60,000,000 flight)</u>	+	<u>+ 60,000,000 (flight)</u>
<u>13,611,520</u>	+ /	<u>100,000,000 = 13.6114%</u>

Average Ratio Equals the sum of the property, sales and payroll factors divided by 3.

(15.1085% + 18.0192% + 13.6114%) / 3 = 15.5797%

Taxable Income in state Y: .155797 x 1,000,000 = \$155,797

Tax Liability to state Y: $.065 \times \$155,797 = \$10,127$

AUTH: Sec. 15-1-201, 15-31-313, and 15-31-501, MCA

IMP: Sec. 15-1-601, 15-31-301 through, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, and 15-31-312, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend and transfer ARM 42.26.286 to correct errors in the apportionment example. The transfer will assist the public in locating the rule.

14. The following rules are transferred to new sub-chapter 9 titled "Special Rules for Construction Contracts."

42.26.290 (42.26.902) LONG-TERM CONSTRUCTION CONTRACTS

(1) remains the same.

AUTH: Sec. 15-31-313 and 15-31-501, MCA

IMP: Sec. 15-31-301 and 15-31-312, MCA

REASONABLE NECESSITY: There is reasonable necessity to transfer ARM 42.26.290 for housekeeping purposes only.

15. The following rules are amended and transferred to new sub-chapter 9 titled "Special Rules for Construction Contracts."

42.26.292 (42.26.903) APPORTIONMENT OF BUSINESS INCOME

(1) ~~In general~~ business income, in general, is apportioned to this state by a three-factor formula consisting of property, payroll and sales regardless of the method of accounting for long-term contracts elected by the taxpayer. The total of the property, payroll and sales percentages is divided by three to determine the apportionment percentage. The apportionment percentage is then applied to business income to determine the amount apportioned to this state.

(2) ~~Percentage of completion method~~ Under the percentage of completion method of accounting for long-term contracts, the amount to be included each year as business income from each contract, is the amount by which the gross contract price which that corresponds to the percentage of the entire contract which that has been completed during the income years exceeds all expenditures made during the income year in connection with the contract. In so doing, the account must be made of the material and supplies on hand at the beginning and end of the income year for use in each such contract.

(3) ~~Completed contract method~~ Under the completed contract method of accounting, business income derived from long-term contracts is reported for the income year in which the contract is finally completed and accepted. Therefore, a special computation is required to compute the amount of business income attributable to this state from each completed contract. Thus, all receipts and expenditures applicable to such contracts, whether complete or incomplete as

of the end of the income year, are excluded from business income derived from other sources, as for For example, short-term contracts, interest, rents, royalties, etc., which ~~is~~ are apportioned by the regular three-factor formula of property, payroll and sales.

(4) ~~Property factor~~—in In general the numerator and denominator of the property factor shall be determined as set forth in ARM 42.26.231 through 42.26.237 and 42.26.262. However, the following special rules are also applicable:

(a) through (c) remain the same.

(5) ~~Payroll factor~~—in In general the numerator and denominator of the payroll factor shall be determined as set forth in ARM 42.26.243 and 42.26.244. However, the following special rules criteria are also applicable:

(a) Compensation paid to employees attributable to a particular construction project is included in the payroll factor even though the costs ~~maybe~~ may be capitalized into the cost of construction.

(b) and (c) remain the same.

(6) ~~Sales factor~~—in In general the numerator and denominator of the sales factor shall be determined as set forth in ARM 42.26.253 and 42.26.254. However, the following special rules criteria are also applicable:

(a) through (c) remain the same.

(d) The sales factor, except as noted above in ~~subparagraphs~~ (6)(b) and (c), is computed in the same manner, regardless of which long-term method of accounting the taxpayer has elected, and is computed for each income year even though under the completed contract method of accounting, business income is computed separately.

(7) ~~Apportionment percentage~~—The The total of the property, payroll and sales percentages is divided by three to determine the apportionment percentage. The apportionment percentage is then applied to business income to establish the amount apportioned to this state.

AUTH: Sec. 15-31-313 and 15-31-501, MCA

IMP: Sec. 15-31-301 and 15-31-312, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend and transfer ARM 42.26.292 for housekeeping purposes only.

42.26.293 (42.26.904) COMPLETED CONTRACT METHOD - SPECIAL COMPUTATION (1) through (2)(a) remain the same.

(b) The income (or loss) determined ~~at~~ in (2)(a) is apportioned to this state by the following method:

(i) A fraction is determined for each year the contract was in progress. The numerator is the amount of construction costs paid or accrued each year the contract was in progress and the denominator is the total of all such construction costs for the project.

(ii) Each percentage determined in (2)(a)(i) is multiplied by the apportionment formula percentage for that particular year as determined in ARM ~~42.26.292(7)~~ 42.26.903.

(iii) remains the same.

AUTH: Sec. 15-31-313 and 15-31-501, MCA
IMP: Sec. 15-31-301 and 15-31-312, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend and transfer ARM 42.26.293 for housekeeping purposes only.

42.26.294 (42.26.905) COMPUTATION FOR YEAR OF WITHDRAWAL, DISSOLUTION OR CESSATION OF BUSINESS - COMPLETED CONTRACT METHOD

(1) remains the same.

(2) The amount of income (or loss) from each such contract to be apportioned to this state by the apportionment method set forth in ARM ~~42.26.293~~ 42.26.904 of this regulation shall be determined as if the percentage of completion method of accounting were used for all such contracts on the date of withdrawal, dissolution or cessation of business. The amount of business income (or loss) for each such contract shall be the amount by which the gross contract price from each such contract which corresponds to the percentage of the entire contract which has been completed from the commencement thereof to the date of withdrawal, dissolution or cessation of business exceeds all expenditures made during such period in connection with each such contract. In so doing account must be taken of the material and supplies on hand at the beginning and end of the income year for use in each such contract.

AUTH: 15-31-313 and 15-31-501, MCA

IMP: 15-31-301 and 15-31-312, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend and transfer ARM 42.26.294 for housekeeping purposes only.

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

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

and must be received no later than November 23, 2001.

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

18. 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 16 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.

19. 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 October 15, 2001

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED
amendment of ARM 42.23.413) AMENDMENT
relating to carryovers of net)
operating losses for corporation) NO PUBLIC HEARING
license taxes) CONTEMPLATED

TO: All Concerned Persons

1. On December 7, 2001, the department proposes to amend ARM 42.23.413 relating to carryovers of net operating losses for corporation license taxes.

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 November 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 rule proposed to be amended provides as follows:

42.23.413 CARRYOVERS OF NET OPERATING LOSSES (1) and (2) remain the same.

(3) ~~For taxable periods beginning after December 31, 1988, a taxpayer may elect to forego the entire carryback period. If the election is made, the loss may be carried forward seven taxable periods. The election must be made on or before the due date of the return, including any extension of time, for the tax year of the net operating loss for which the election is to be in effect. The election is irrevocable for the year made. Montana corporation license tax form CLT-4 provides an area to perfect this election. When form CLT-4 is filed with the department, the election must be clearly marked in the area provided on that form. If no indication is made in the area provided on form CLT-4, the net operating loss will be carried back and applied as provided in (1) above. For state purposes, an election to forego a federal net operating loss carryback provision will not be accepted as a valid election.~~

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-31-114, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.23.413 to better clarify the election procedure that shall be followed in order to forego the Montana corporation net operating loss carryback provisions. Form CLT-4 has been amended to reflect a specific area showing the election.

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 November 23, 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 November 23, 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 action; 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 more than 25 persons based on the number of corporations that file tax returns with the department.

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, 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 notice regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 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 October 15, 2001

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 1.2.419) ON PROPOSED AMENDMENT
regarding scheduled dates)
for the Montana Administrative)
Register)

TO: All Concerned Persons

1. On November 14, 2001, a public hearing will be held at 8:30 a.m. in the Secretary of State's Office Conference Room at room 260 of the State Capitol, Helena, Montana, to consider the proposed amendment of ARM 1.2.419 regarding the scheduled dates for the Montana Administrative Register.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you request an accommodation, contact the Secretary of State no later than 5:00 p.m. on November 8, 2001, to advise us of the nature of the accommodation that you need. Please contact Kathy Lubke, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-2055; FAX (406) 444-5833.

3. The rule as proposed to be amended provides as follows:

1.2.419 FILING, COMPILING, PRINTER PICKUP AND PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER (1) The scheduled filing dates, time deadlines, compiling dates, printer pickup dates and publication dates for material to be published in the Montana Administrative Register are listed below:

2001-2002 Schedule

<u>Filing</u>	<u>Compiling</u>	<u>Printer Pickup</u>	<u>Publication</u>
January 27	January 38	January 49	January 11-17
January 12-18	January 16-22	January 17-23	January 25-31
January 29	January 30	January 31	February 8
February 12-14	February 13-5	February 14-6	February 22-14
February 26-19	February 27-20	February 28-21	March 8 February 28
March 12-4	March 13-5	March 14-6	March 22-14
March 26-18	March 27-19	March 28-20	April 5 March 28
April 16-1	April 17-2	April 18-3	April 26-11
April 30-15	May 1 April 16	May 2 April 17	May 10 April 25
May 14-6	May 15-7	May 16-8	May 24-16
May 29-20	May 30-21	May 31-22	June 7 May 30
June 11-3	June 12-4	June 13-5	June 21-13
June 25-17	June 26-18	June 27-19	July 5 June 27
July 9-1	July 10-2	July 11-3	July 19-11
July 30-15	July 31-16	August 1 July 17	August 9 July 25

August 135	August 146	August 157	August 2315
August 2719	August 2820	August 2921	September 6
September 10	September 113	September 124	August 29
August 30			September 2012
September 16	September 17	September 18	September 26
October 17	October 28	October 39	October 1117
October 1521	October 1622	October 1723	October 2531
October 29	October 30	October 31	November 8
November 91	November 134	November 146	November 2114
November 2618	November 2719	November 2820	December 6
			November 27
December 102	December 113	December 124	December 2012
December 16	December 17	December 18	December 26

(2) remains the same.

AUTH: Sec. 2-4-312, MCA
IMP: Sec. 2-4-312, MCA

4. The rule is proposed to be amended to set dates pertinent to the publication of the Montana Administrative Register during 2002. The schedule is proposed during the month of October in order that it may be adopted during December. This allows state agencies the opportunity to plan their rulemaking schedule to meet program needs for the upcoming year.

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 Kathy Lubke, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing klubke@state.mt.us, and must be received no later than November 23, 2001.

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

7. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, uniform commercial code or combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Bureau, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-5833, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

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

/s/ Bob Brown
BOB BROWN
Secretary of State

/s/ Janice Doggett
JANICE DOGGETT
Rule Reviewer

Dated this 15th day of October 2001.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 2.21.1803)
and 2.21.1812 in the Exempt)
Compensatory Time Policy)

TO: All Concerned Persons

1. On September 6, 2001, the Department of Administration published notice of the proposed amendment of ARM 2.21.1803 and 2.21.1812 pertaining to exempt compensatory time at page 1699 of the Montana Administrative Register, issue number 17.

2. The department has amended the rules as proposed.

3. The following comment was received.

COMMENT: Some persons excluded from the Exempt Compensatory Time policy have been allowed to accumulate exempt compensatory time, for example, agency heads appointed by the Governor as defined in 2-18-103(7), MCA. The commentator believes the department should clarify that agencies and the appointing authority have the responsibility to adopt policies that apply to persons excluded from the Exempt Compensatory Time policy.

RESPONSE: The department agrees that appointing authorities should be made aware of the need to create policies or other materials that specify the terms and conditions of employment for persons they appoint. The department has and will continue to assist appointing authorities in this endeavor. However, the department will not include any such clarification in administrative rule because it does not have the legal authority to do so. For example, the department does not have the legal authority to adopt rules that direct the Governor to adopt policies dealing with the terms and conditions of employment of department heads or others appointed by the Governor. The department believes appointing authorities have wide latitude in the manner in which they implement such policies.

By: /s/ Barbara Ranf
Barbara Ranf, Director,
Department of Administration

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

Certified to the Secretary of State October 15, 2001

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

In the matter of the) NOTICE OF AMENDMENT
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 New)
Rule I (6.6.4213) pertaining)
to continuing education)
program for insurance)
producers and consultants)

TO: All Concerned Persons

1. On September 6, 2001, the State Auditor and Commissioner of Insurance published an amended notice of public hearing on the proposed amendment and adoption 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 New Rule I (6.6.4213) pertaining to continuing education program for insurance producers and consultants at page 1702 of the 2001 Montana Administrative Register, Issue No. 17.

2. The State Auditor has amended ARM 6.6.4204 as proposed.

3. The State Auditor has amended the following rules as proposed, but with the following changes (new text is underlined; text to be deleted is interlined):

6.6.4202 DEFINITIONS For the purposes of this subchapter, the following terms have the following meanings:

(1) through (4) will remain the same.

(5) "Credit hours" means the value assigned to a course by the commissioner, upon review and approval of course materials and content outline.

(6) "Instructor" means an individual who meets the requirements set forth in ARM 6.6.4204, is identified by a sponsoring organization in a course submission, participates in course presentations, activities and discussions, and who may monitor the attendance and conduct of course participants or administer examinations.

(7) "Licensee" means an individual required to be licensed under Title 33, chapter 17, parts 2, 4 or 5, MCA.

(8) "Proctor" means a person who monitors the attendance and conduct or the examination process for course participants, but who does not participate in course presentations, activities or discussions or complete any required examinations.

(9) "Significant change" means a change in two or more of the following course elements:

(a) course goals or objectives;

(b) major course topic(s);

- (c) course length;
- (d) syllabus or course outline;
- (e) teaching method, or
- (f) examination method.

(10) "Self study" means those independent study methods taught outside the classroom setting through approved text, audiotape materials, videotape materials or another method of information exchange.

(11) "Sponsoring organization" means any group(s) or organization(s) and their agent(s) that submit courses for department review and offer or provide approved courses for continuing education credit to allow licensees to meet the requirements of 33-17-1204, MCA, and are responsible for those course offerings, or any individual Montana insurance producer or consultant who submits a course pursuant to ARM 6.6.4203(14) for department review to allow that licensee to meet the requirements of 33-17-1203 and 33-17-1204, MCA. ~~"Continuing education provider" has the same meaning as sponsoring organization.~~

AUTH: 33-1-313 and 33-17-1206, MCA
IMP: 33-17-1203 and 33-17-1204, MCA

6.6.4203 COURSE SUBMISSIONS (1) Except as provided in (14) below and ARM 6.6.4213, the following standards, by which acceptability of submitted courses should be evaluated, must all be certified by the sponsoring organization continuing education provider:

- (a) the practical and academic experience of each faculty member is sufficient to teach the subject assigned;
- (b) the course enhances the ability of a producer to provide insurance services to the public effectively;
- (c) the subject matter relates to professional ethics, where practicable.

(2) will remain the same.

(a) the name of the sponsoring organization continuing education provider;

(b) through (i) will remain the same.

(j) method of instruction, such as classroom, self study, videotape, audiotape, teleconference, etc;

(k) through (5) will remain the same.

(a) if a course is canceled for any reason, all charges are refundable in full, unless the refund policy is clearly defined in the enrollment application;

(b) in all instances, the charges must be refunded within 45 days of cancellation;

(c) in the event that a continuing education provider postpones a course for any reason, the provider must give the students a choice of attending a course at a later date or having their charges refunded in full. The provider must refund the charges within 45 days of the postponement unless the student notifies the provider that the student has chosen to attend a later course;

(d) a sponsoring organization a continuing education

~~provider~~ may have a refund policy addressing a student's cancellation or failure to complete a course, as long as that policy is made clear to potential students.

(6) ~~A sponsoring organization continuing education provider~~ must provide proof of course completion to each course participant who successfully completes the approved course of study within one month of course completion or prior to the end of the calendar year during which the participant completed the course. The commissioner may grant the ~~continuing education provider~~ sponsoring organization up to 2 ~~two~~ months to provide such proof of course completion, if the sponsoring organization ~~continuing education provider~~ notifies the course participants in writing, in advance of the course.

(7) ~~Sponsoring organizations Continuing education providers~~ who add qualified course instructors after a course is approved must submit the names of those instructors to the commissioner prior to the course offering.

(8) will remain the same.

(9) ~~Sponsoring organizations Continuing education providers~~ must resubmit courses for new review and certification whenever significant changes in course content are made.

(10) The commissioner ~~will only award credits for courses whose subject matter will increase the technical knowledge of insurance principles, coverages, laws or regulations. Technical knowledge includes subject areas described in 33-17-1204, MCA.~~

~~(a) will only award credits for courses whose subject matter will increase the technical knowledge of insurance principles, coverages, laws or regulations;~~

~~(b) will not award credit hours for courses whose subject matter is:~~

~~(i) personal improvement;~~

~~(ii) motivation;~~

~~(iii) time management;~~

~~(iv) supportive office skills; or~~

~~(v) any topics not related to insurance knowledge.~~

(11) If any credits are awarded for sales or marketing, those credits will be separately noted on the course approval document. Credits for sales or marketing may only be awarded in states that are permitted by law or regulation to accept credit for those topics. The commissioner shall award one credit for each 50 minutes of contact instruction. The commissioner will award credit hours for a self-study course based on the hours required to complete that course.

(12) The minimum number of credits that the commissioner may award is one credit.

(13) No course may be advertised as having been approved for credit by the commissioner until the sponsoring organization receives written approval from the commissioner.

(14) through (15) will remain the same.

AUTH: 33-1-313, 33-17-1206, MCA

IMP: 33-17-1204, MCA

6.6.4205 EXAMINATIONS (1) will remain the same.

(2) For each approved course, the sponsoring organization ~~continuing education producer~~ shall maintain a pool of tests sufficient to maintain the integrity of the testing process.

(3) The sponsoring organization ~~continuing education provider~~ shall administer, monitor, grade and record the results of the test.

(4) The sponsoring organization ~~continuing education provider~~ shall retain completed tests for a period of not less than 12 months and the tests must not be returned to any licensee.

(5) will remain the same.

AUTH: 33-1-313 and 33-17-1206, MCA

IMP: 33-17-1204, MCA

6.6.4209 COURSE AUDIT (1) will remain the same.

(2) A ~~continuing education provider~~ sponsoring organization shall provide records at the commissioner's request.

AUTH: 33-1-313, 33-17-1206, MCA

IMP: 33-17-1203, 33-17-1204 and 33-17-1205, MCA

6.6.4210 SANCTIONS AGAINST COURSES AND SPONSORING ORGANIZATION CONTINUING EDUCATION PROVIDER SUSPENSION

(1) will remain the same.

(a) the program teaching method or program content no longer meet the standards of these rules or have been significantly changed without approval of the commissioner; or

(b) the sponsoring organization ~~continuing education provider~~ certifies that an individual has completed a program in accordance with the standards established for certification or completion of the program, when in fact the individual has not done so; or

(c) the sponsoring organization ~~continuing education provider~~ did not certify licensees who satisfactorily completed the program in accordance with the sponsoring organization's ~~provider's~~ standards for certification or completion;

(d) the instructor or sponsoring organization ~~continuing education provider~~ no longer meets the standards of these rules, has had a license revoked or placed under probationary approval, or lacks education or experience in the subject matter of the proposed courses.

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

AUTH: 33-1-313, 33-17-1206, MCA

IMP: 33-17-1204 and 33-17-1205, MCA

6.6.4211 REQUESTS FOR RECONSIDERATION OF CREDIT HOUR ASSIGNMENT (1) A ~~sponsoring organization~~ ~~continuing education provider~~ may request reconsideration of the credit hours assigned to a course. Such requests must:

- (a) be in writing;
- (b) include any additional supporting documentation on

which the request is based to include documentation to show how many blocks of 50 minute instruction are in the course of instruction; and

(c) be submitted to the commissioner within 20 business days of notification to the sponsoring organization ~~continuing education provider~~ of assignment of credit hours to the course.

(2) The advisory council, at its next meeting, shall evaluate any submitted requests for reconsideration, the original course submission and any additional materials provided to support the request for reconsideration.

(3) After evaluating the request for reconsideration, the advisory council may recommend to the commissioner to increase, decrease or maintain the credit hours assigned to the course. The council shall only recommend one credit per 50 minutes of instruction.

(4) and (5) will remain the same.

(6) After the commissioner decreases the credit hours assigned for a course, the commissioner shall notify the ~~continuing education provider~~ sponsoring organization. ~~The provider shall then notify the licensees who have completed the course.~~

AUTH: 33-1-313 and 33-17-1206, MCA
IMP: 33-17-1204, MCA

6.6.4212 REQUESTS FOR RECONSIDERATION OF COURSE

DISAPPROVAL (1) A sponsoring organization ~~continuing education provider~~ may request reconsideration of the commissioner's disapproval of a course. Such requests must:

(a) be in writing;

(b) include any additional supporting documentation on which the request is based; and

(c) be submitted to the commissioner within 20 days of notification to the sponsoring organization ~~continuing education provider~~ of disapproval of the course.

(2) through (5) will remain the same.

AUTH: 33-1-313 and 33-17-1206, MCA
IMP: 33-17-1204, MCA

4. The State Auditor has adopted [New Rule I] ARM 6.6.4213 with the following changes (new text is underlined; text to be deleted is interlined):

RULE I (6.6.4213) CONDITIONS OF NON-RESIDENT CONTINUING EDUCATION PROVIDERS SPONSORING ORGANIZATIONS (1) The following conditions apply to nonresident ~~continuing education providers~~ sponsoring organizations whose state has signed a compact regarding ~~providers~~ sponsoring organizations that includes this state as a signatory:

(a) the commissioner may not require the ~~continuing education provider~~ sponsoring organization to file courses for substantive review that have been awarded credit by the ~~continuing education provider's~~ sponsoring organization's

resident state. However, the provider sponsoring organization shall file a course outline with the commissioner. The provider sponsoring organization shall also file the instructors' names and social security numbers;

(b) once the ~~continuing education provider's~~ sponsoring organization's resident state reviews and approves the instructor's qualifications, the commissioner may not review the instructor's qualifications again;

(c) the commissioner may disapprove instructors or ~~continuing education providers~~ sponsoring organizations who have been the subject of disciplinary proceedings or who have otherwise failed to comply with a state's laws and rules;

(d) the commissioner agrees to notify other states when a ~~continuing education provider~~ sponsoring organization has been the subject of a formal administrative action or other disciplinary action;

(e) the commissioner shall accept the midwest zone standard continuing education form or a substantially similar form provided by a non-resident ~~continuing education provider~~ sponsoring organization;

(f) the commissioner shall award a course the same number of credits and will accept all course topics as approved by the ~~continuing education provider's~~ sponsoring organization's resident state;

(g) a ~~continuing education provider~~ sponsoring organization shall pay the commissioner a \$75 fee for each course submitted as required by 33-17-1204, MCA;

(h) the commissioner is not required to accept any topic, provider or instructor that is not eligible for approval under this state's laws and regulations.

AUTH: 33-1-313 and 33-17-1206, MCA

IMP: 33-17-1204, MCA

5. The Department has thoroughly considered all comments and testimony received. Those comments, and the Department's responses thereto, are as follows:

COMMENT 1: Roger McGlenn of Independent Insurance Agents (IIA) commented about ARM 6.6.4202(11) and elsewhere that "continuing education provider" does not have the same meaning as "sponsoring organization." The example that he gave was that his organization, as a sponsoring organization, buys programs from a continuing education provider in another state. The sponsoring organization then puts on the classes in Montana. For these reasons, the terms must be kept separate. References to continuing education provider should be struck and replaced with sponsoring organization.

RESPONSE: The commissioner agrees with these comments and will delete the last sentence in ARM 6.6.4202(11) that reads: "Continuing education provider" has the same meaning as sponsoring organization." The commissioner will also change the wording throughout the rules changes from "continuing

education provider" or "provider" to "sponsoring organization."

COMMENT 2: IIA, Warren Wilson, and Stuart Doggett of the Montana Land Title Association (MTLA) had concerns about ARM 6.6.4203(10) being too restrictive as to the types of classes that a producer or consultant could receive credit.

RESPONSE: The commissioner agrees and will implement IIA's and MTLA's suggestion of deleting ARM 6.6.4203(10)(b). The commissioner also accepts IIA's proposed language: "Technical knowledge includes subject areas described in 33-17-1204(1), MCA." The commissioner rejects MTLA's wording for changes to (10)(a) as the commissioner is accepting IIA's wording.

COMMENT 3: MTLA requests the following change to ARM 6.6.4203(11), the last sentence: "The commissioner will award credit hours for a self-study course ~~based on the hours in~~ accordance with the estimated time required to complete the course."

RESPONSE: The commissioner disagrees with the proposed change. The course provider determines the length of the course and requests approval for those hours. The proposed language does not add any clarity.

COMMENT 4: MTLA requests that this sentence be added to ARM 6.6.4203(13): "Approval or disapproval will be provided by the department no later than 30 days after the sponsoring organization has submitted the application to conduct a continuing education program."

RESPONSE: The commissioner disagrees with the proposed wording. The current rules are used to define how the sponsoring organizations are to comply, but are not directed to the commissioner on internal procedure. Additionally, there is a concern that if a course is submitted without required information, the department will not be able to meet the 30 day requirement while requesting the additional information. Additionally, MTLA's requested change is outside the scope of the proposed rule revision.

COMMENT 5: MTLA requests that the last sentence in ARM 6.6.4211(6) be deleted in its entirety based upon an issue of fairness in that the commissioner can reduce credit hours after a producer or consultant has taken the test.

RESPONSE: The commissioner agrees with MTLA's comment and will strike the second sentence in ARM 6.6.4211(6).

COMMENT 6: MTLA makes the following comment: "A definition is needed in this section (Rule I(1)(g)) to clarify who is a non-resident sponsoring organization and to clarify that only non-resident sponsoring organizations must pay a \$75 fee for

submitting an education course."

RESPONSE: The commissioner disagrees with MTLA's proposal in that 33-2-708(2)(a), MCA, does not differentiate between resident and non-resident sponsoring organizations. The fee is determined by membership of the organization submitting the course.

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 October 15, 2001.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption of) NOTICE OF ADOPTION AND
a new rule pertaining to maximum) AMENDMENT
allowable weight and amendment of)
ARM 18.8.101, 18.8.422,)
18.8.517, 18.8.801, 18.8.901)

TO: All Concerned Persons

1. On August 23, 2001, the Department of Transportation published notice of the proposed adoption and amendment of the above stated rules, at page 1522, 2001 Montana Administrative Register, issue no. 16.

2. The Department adopts New Rule I (18.8.431) and amends ARM 18.8.101, 18.8.422, 18.8.517, 18.8.801, and 18.8.901 as proposed.

3. A public hearing was held September 24, 2001. No one appeared to testify. No written comments were received.

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 October 15, 2001.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption of)	NOTICE OF ADOPTION,
new rules pertaining to motor fuel)	AMENDMENT, AMENDMENT AND
definitions and late file and pay)	TRANSFER, REPEAL, AND
penalties when filing)	TRANSFER
electronically; the amendment of)	
ARM 18.9.101, 18.9.103, 18.9.104,)	
18.9.108, 18.9.118, 18.9.302,)	
18.9.703, 18.10.121, 18.10.404,)	
18.10.504, 18.10.507, 18.11.102;)	
the amendment and transfer of)	
ARM 18.9.324; the repeal of ARM)	
18.9.110 and 18.9.301; the)	
transfer of ARM 18.9.322 and)	
18.9.323 pertaining to off-highway)	
vehicle/equipment and dyed special)	
fuel allowance)	

TO: All Concerned Persons

1. On August 9, 2001, the Department of Transportation published notice of the proposed adoption, amendment, amendment and transfer, repeal, and transfer of the above-stated rules, at page 1399, 2001 Montana Administrative Register, issue number 15. A public hearing was held August 30, 2001. No one appeared to testify. Mr. Jack A. McDonald, Director of the Excise Tax Division of Conoco, Inc., was the only party to submit written comments, which are summarized as follows, along with the department's responses.

COMMENT NO. 1: Is the New Rule II definition of "bulk storage" related to the proposed amendment of ARM 18.9.101(4)? If they are related, then an exclusion or exception for transfers to another pipeline terminal or refinery should be provided for in both rules.

RESPONSE NO. 1: The definition of "bulk storage" is related to ARM 18.9.101(4). The intent of New Rule II is to have a definition of "bulk storage" so the term is consistent when used in any motor fuel rule and does not have to be redefined every time it is used in a rule. The intent of the amendment to ARM 18.9.101(4) is to make clear that motor fuel withdrawn from a terminal, refinery or pipeline and put into a storage facility in Montana is taxable. The department agrees to clarify the rule by adding language to the definition of "bulk storage" to exclude transfers to another pipeline terminal or refinery. There presently is exclusion for motor fuel placed in storage at refineries or pipeline terminals in ARM 18.9.101(3).

COMMENT NO. 2: Since the electronic (EDI) filing of tax returns is not a requirement by Montana, what is the reasoning for the proposed changes in ARM 18.9.103? Most major licensed distributors attach computer printed detail to the appropriate schedule, which shows the total volume of motor fuel for that schedule. The proposed changes are not clear as to whether this efficient method of reporting will be continued.

RESPONSE NO. 2: It is correct that Montana does not require the electronic filing of motor fuel tax returns. However, Montana has adopted the uniform filing standards of the motor fuels uniformity section of the federation of tax administrators. The machine tabulated schedules received from licensed distributors do not always meet the requirements of the uniform forms. To ensure a proper audit trail and consistency among all licensed distributors, the detail and order of information must be submitted and conform to the motor fuel uniformity standards. Computer generated motor fuel information will be accepted if it is in the same order as the Montana schedules.

COMMENT NO. 3: Proposed changes to ARM 18.9.118 appear to remove the previously intended benefits of prepaying motor fuel taxes. This needs clarification.

RESPONSE NO. 3: ARM 18.9.118 presently allows for the prepayment of motor fuel taxes. In the case that a licensed distributor prepaid their motor fuel taxes and a tax deficiency was found within 30 days of the filing of the tax return, there would be no penalty or interest charged if the overpayment was enough to cover the tax deficiency. The proposed amendment makes everyone equally subject to the same penalty and interest laws no matter whether they prepaid their motor fuel or not. In addition, the proposed amendment is an incentive to correctly report motor fuel activity initially.

COMMENT NO. 4: New Rule III proposes to provide for waiver of penalties in certain cases where no penalties should be assessed. This creates unnecessary administrative costs for the department and the licensed distributors. It is suggested that the following language be added to paragraph (2): "If an electronic payment is initiated by the department of transportation and it arrives late through no fault of the licensed distributor, no penalty or interest shall be assessed."

RESPONSE NO. 4: The department agrees with part of the comment and does not want to create any unnecessary administrative costs for either party. The proposed rule will be changed so that the department will not assess any penalty or interest when the electronic payment is initiated by the department of transportation and it arrives late through no fault of the licensed distributor, and where there were

sufficient funds to cover the licensed distributor's motor fuel tax liability.

COMMENT NO. 5: A provision for waiver of penalties can be included in cases, other than mentioned in Comment 4, where the department of transportation does not initiate the payment. Where there are extenuating circumstances involved that prevent a licensed distributor from making a tax payment on time, there ought to be some discretionary authority for the tax director to waive penalties after a thorough review of the particular facts.

RESPONSE NO. 5: Under ARM 18.9.701, there are provisions for waiver of motor fuel late file and late pay penalties. The department may waive motor fuel penalties if there is "good or reasonable" cause. Reasons that constitute "good or reasonable cause" are listed in that rule. If the department does not waive the motor fuel penalties after review of the facts, the licensed distributor can appeal the department's decision using the procedures set out in the Montana Administrative Procedure Act.

2. The department adopts New Rule I (18.9.704); amends ARM 18.9.101, 18.9.103, 18.9.104, 18.9.108, 18.9.118, 18.9.302, 18.9.703, 18.10.121, 18.10.404, 18.10.504, 18.10.507, 18.11.102; amends and transfers ARM 18.9.324; repeals ARM 18.9.110, 18.9.301; and transfers ARM 18.9.322, 18.9.323 as proposed.

3. The Department further amends New Rules II and III as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

NEW RULE II (18.9.112) DEFINITIONS (1) "Bulk storage" means a container or tank holding any fuels for storage, other than the supply tank of a motor vehicle or any internal ~~combustible combustion engine, or motor fuel placed in storage at refineries or pipeline terminals.~~

AUTH: 15-70-104 and 15-70-522, MCA
IMP: 15-70-201, 15-70-204, 15-70-205, and 15-70-301,
MCA

NEW RULE III (18.9.705) LATE FILE AND PAY PENALTIES WHEN FILING ELECTRONICALLY (1) Remains as proposed.

(2) If an electronic payment is initiated by the department of transportation and it arrives late through no fault of the licensed distributor, ~~there are grounds for waiver of the penalties, and there were sufficient funds to cover the licensed distributor's motor fuel tax liability, no penalty or interest shall be assessed.~~

(3) through (4) remain as proposed.

AUTH: 15-70-104, 15-70-115, MCA
IMP: 15-70-113, 15-70-114, 15-70-115, 15-70-205,
15-70-210, 15-70-330, and 15-70-344, MCA

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 October 15, 2001.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION
of new rules pertaining to the)
collection of motor fuel tax)
for diesel vehicles found to)
have dyed fuel in the supply)
tank)

TO: All Concerned Persons

1. On September 6, 2001, the Department of Transportation published notice of the proposed adoption of the above stated rules, at page 1704, 2001 Montana Administrative Register, issue no. 17.

2. The Department adopts New Rule I (18.10.107) and New Rule II (18.10.108) as proposed.

3. No written comments or testimony were received.

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 October 15, 2001.

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

In the matter of the transfer) NOTICE OF TRANSFER
of ARM 8.8.2501 through)
8.8.4108 pertaining to the)
Board of Athletics)

TO: All Concerned Persons

1. Pursuant to Chapter 483, Laws of Montana 2001, effective July 1, 2001, the Board of Athletics is transferred from the Department of Commerce to the Department of Labor and Industry ARM Title 24, Chapter 117.

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

<u>OLD</u>	<u>NEW</u>	
8.8.2501	24.117.101	Board Organization
8.8.2601	24.117.201	Procedural Rules
8.8.2602	24.117.202	Public Participation Rules
8.8.2801	24.117.401	General Information
8.8.2802	24.117.301	Definitions
8.8.2803	24.117.403	Prohibitions
8.8.2804	24.117.406	<u>General</u> Licensing Requirements
8.8.2805	24.117.404	Contracts and Penalties
8.8.2806	24.117.402	Fees
8.8.2808	24.117.2301	Unprofessional Conduct
8.8.2809	24.117.405	Medical Advisor
8.8.2901	24.117.702	Boxing Contestants
8.8.2902	24.117.703	Female Contestants
8.8.2903	24.117.709	Physical Examination
8.8.2904	24.117.710	Physician Requirements
8.8.2905	24.117.705	Managers
8.8.2906	24.117.706	Elimination-Type Events
8.8.3001	24.117.704	Weights and Classes
8.8.3101	24.117.601	Contest Regulations
8.8.3102	24.117.602	Tickets
8.8.3103	24.117.801	Point System--Scoring
8.8.3104	24.117.802	Number and Duration of Rounds
8.8.3105	24.117.803	Down
8.8.3106	24.117.804	Accidental Butts
8.8.3107	24.117.805	Fouls
8.8.3108	24.117.806	Appeal of Decisions of Officials
8.8.3201	24.117.815	Ring--Equipment
8.8.3202	24.117.810	Handwraps
8.8.3203	24.117.811	Official Boxing Gloves
8.8.3204	24.117.812	Mouthpiece
8.8.3301	24.117.502	Promoter-Matchmaker
8.8.3401	24.117.901	Officials Required
8.8.3402	24.117.902	Referee

8.8.3403	24.117.903	Judges
8.8.3404	24.117.904	Timekeeper
8.8.3405	24.117.907	Announcer
8.8.3406	24.117.905	Seconds
8.8.3407	24.117.906	Inspectors
8.8.3701	24.117.1203	Referee
8.8.3801	24.117.1202	Wrestling Contestants
8.8.3802	24.117.1204	Time Limitations
8.8.3803	24.117.1208	Ring Equipment
8.8.3804	24.117.1205	Holds
8.8.3805	24.117.1206	Falls and Decisions
8.8.3806	24.117.1207	Delays in Contest
8.8.4001	24.117.1301	Australian Tag Team Wrestling
8.8.4101	24.117.1101	General Rules Applicable
8.8.4102	24.117.1102	Conduct of Athletic Events
8.8.4103	24.117.1103	Sweeps
8.8.4104	24.117.1104	Fouls
8.8.4105	24.117.1105	Kicking Requirements
8.8.4106	24.117.1106	Contestant's Equipment
8.8.4107	24.117.1107	Weight Classes
8.8.4108	24.117.1108	Kickboxing Officials

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.

BOARD OF ATHLETICS
GARY LANGLEY, CHAIRMAN

By: /s/ WENDY KEATING
Wendy Keating,
Acting Commissioner
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ KEVIN BRAUN
Kevin Braun
Rules Reviewer

Certified to the Secretary of State: October 15, 2001.

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

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 8.8.2802, 8.8.2804,) AND ADOPTION
8.8.2805, 8.8.2806, 8.8.2901,)
8.8.2903, 8.8.3301, and)
8.8.3407 pertaining to)
definitions, licensing)
requirements, contracts and)
penalties, fees, boxing)
contestants, physical)
examination, promoter-matchmaker)
and inspectors and the)
adoption of new rules)
pertaining to club boxing)

TO: All Concerned Persons

1. On June 21, 2001, the Board of Athletics published a notice of proposed amendment and adoption of the above-stated rules at page 1009, 2001 Montana Administrative Register, issue number 12. The hearing was held on July 20, 2001.

2. The Board has amended ARM 8.8.2802, 8.8.2804, 8.8.2805, 8.8.2806, 8.8.2903, 8.8.3301 and 8.8.3407 exactly as proposed.

3. The Board has amended 8.8.2901 as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

8.8.2901 BOXING CONTESTANTS (1) through (14) will remain as proposed.

(15) The board may at its discretion allow limited professional and semi-professional boxing rounds at a club-boxing event. The professional and semi-professional rounds must conform to the statutes and rules governing professional and semi-professional events.

4. The Board adopted NEW RULE I (ARM 24.117.1001) INTRODUCTION, NEW RULE II (ARM 24.117.1002) CLUB BOXING CONTESTANTS, NEW RULE III (ARM 24.117.1003) CLUB BOXING--FEMALE CONTESTANTS, NEW RULE IV (ARM 24.117.1004) CLUB BOXING--PHYSICIAN REQUIREMENTS, NEW RULE VI (ARM 24.117.1006) CLUB BOXING--WEIGHTS AND CLASSES, and NEW RULE VII (ARM 24.117.1007) CLUB BOXING--REQUIRED EQUIPMENT as proposed.

5. The Board adopted NEW RULE V (ARM 24.117.1005) CLUB BOXING--CONTEST REGULATIONS as proposed with the following change from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

24.117.1005 CLUB BOXING--CONTEST REGULATIONS (1) Remains as proposed.

(2) The promoter must, prior to the event, enter into an agreement with the boxing officials as to the amount of compensation the officials will receive for officiating the event.

6. One written comment was received. The comment received and the Board's response is as follows:

COMMENT: The rules did not address when a professional boxer may appear on a club boxing match.

RESPONSE: The Board concurred that this had been omitted and is amending the rule to allow for professional or semi-professional boxing rounds in conjunction with a club boxing event. The amendment will require that those rounds be conducted in accordance with the statutes and rules for professional and semi-professional bouts.

BOARD OF ATHLETICS
GARY LANGLEY, CHAIRMAN

By: /s/ WENDY KEATING
Wendy Keating,
Acting Commissioner
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ KEVIN BRAUN
Kevin Braun,
Rules Reviewer

Certified to the Secretary of State: October 15, 2001.

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

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 8.32.302, 8.32.425,) AND ADOPTION
8.32.806, 8.32.807, 8.32.1503,)
8.32.1702, and 8.32.1709)
pertaining to nurse-midwifery)
practice, fees, nursing tasks that)
may be delegated and general)
nursing tasks that may not be)
delegated and the adoption of)
a new rule pertaining to executive)
director qualifications)

TO: All Concerned Persons

1. On August 9, 2001, the Board of Nursing published a notice of proposed amendment and adoption of the above-stated rules at page 1414, 2001 Montana Administrative Register, issue number 15. The hearing was held on September 17, 2001.

2. After considering the comments received, the Board has amended ARM 8.32.302, 8.32.425, 8.32.806, 8.32.807, 8.32.1503, 8.32.1702 exactly as proposed.

3. After considering the comments received, the Board has amended 8.32.1709 as proposed with the following changes from the original proposal. Matter added is underlined. Matter deleted is interlined.

8.32.1709 GENERAL NURSING TASKS THAT MAY NOT BE DELEGATED

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

(c) ~~invasive procedures such as inserting tubes in a body cavity or instilling or inserting substances into an indwelling tube except administration of a gastrostomy tube feeding by way of a nonacute, well healed, patent, percutaneous insertion site older than 2 months;~~

(d) instilling or inserting substances into an indwelling tube except administration of a gastrostomy tube feeding in settings other than a licensed facility that provides skilled nursing care as provided in Title 50, chapter 5, MCA;

(d) and (e) remain the same but are renumbered (e) and (f).

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

4. After considering the comments received, the Board adopted NEW RULE I (ARM 8.32.610) EXECUTIVE DIRECTOR--QUALIFICATIONS as proposed with the following change. Matter added is underlined.

NEW RULE I (8.32.610) EXECUTIVE DIRECTOR--QUALIFICATIONS

(1) Remains the same as proposed.

(2) through (2)(c) remain the same as proposed.

(d) a registered professional nurse with at least three years experience in teaching or administration in an approved school of nursing, and three years clinical nursing practice.

(e) Remains the same as proposed.

AUTH: 37-8-204, 37-8-319, MCA

IMP: 37-8-204, MCA

5. Oral and written comments on the proposed rule changed were received from a single commenter. The comments received and the Board's responses are as follows:

COMMENT 1: The commenter suggested that ARM 8.32.1503 state that one of the members of the prescriptive authority committee should be an advanced practice registered nurse (APRN) with prescriptive authority.

RESPONSE 1: The Board believes the suggested change should be implemented through legislation, and that the suggested change is not appropriate for the rule-making powers of the Board.

COMMENT 2: The commenter suggested that ARM 8.32.1709 be further amended by moving the reference to gastrostomy feeding to a new subsection (d), and making reference to feeding done in a location that is not a health care facility licensed pursuant to Title 50, chapter 5, MCA.

RESPONSE 2: The Board agrees with the suggestion and has amended the rule accordingly.

COMMENT 3: The commenter also suggested that an additional requirement of 3 years experience of clinical nursing practice be added to the requirements of NEW RULE I (2)(d).

RESPONSE 3: The Board agrees with the suggestion and has adopted NEW RULE I with the suggested change.

BOARD OF NURSING
JACK BURKE, PRESIDENT

By: /s/ WENDY KEATING
Wendy Keating,
Acting Commissioner
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ KEVIN BRAUN
Kevin Braun,
Rules Reviewer

Certified to the Secretary of State: October 15, 2001.

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

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 8.52.616,)
pertaining to fees)

TO: All Concerned Persons

1. On August 23, 2001, the Department published notice of the proposed amendment of ARM 8.52.616 pertaining to fees at page 1526 of the 2001 Montana Administrative Register, Issue No. 16.

2. On September 19, 2001, a public hearing was held in Helena to consider the proposed amendment. No members of the public attended the hearing.

3. After consideration of the comments received, the Board has amended ARM 8.52.616 exactly as proposed.

4. The Board has received six comments. The Board has thoroughly considered all comments received concerning the proposed renewal fee increase and the responses are as follows:

COMMENT NO. 1: One comment was received suggesting a tiered fee system based on the amount of time spent working in the psychology field or based on income. The commentor stated that she had other professional licenses and the cost of maintaining them and the required continuing education was becoming prohibitive.

RESPONSE: The members responded that the administration of this type of system would require extensive time and would increase costs for documentation and monitoring which fee level a licensee would pay. There might also be a problem determining which fee category one would fall under if income/time allocation changed. The members also felt that the maintenance of multiple professional licenses was an individual choice.

COMMENT NO. 2: Two comments were received that the proposed fee is high compared to other professions and one commentor asked that the fee be compared to what is charged for Social Workers and Counselors.

RESPONSE: The Board recognizes that the fee for Social Workers and Counselors is \$50 but that there are 1127 licensees in the State of Montana. There are only 218 licensed Psychologists in Montana which results in a higher per licensee cost. Even with the fee increase, the revenue generated is less for Psychologists than for the Board of Social Workers and Professional Counselors. A Board member reviewed the psychologist renewal fee for all states and provinces and found

that 17 of them had fees that were higher and that the number of licensees for most states greatly exceeded that of Montana.

COMMENT NO. 3: Two commentors expressed the opinion that the fee increase could be avoided.

RESPONSE: The Board wishes to make it clear that the need for the fee increase is very real and results from unavoidable, one-time expenses such as a new computer system, the state-mandated move, and an inherited legal case originating in 1994 and recently settled. The structure of the 38 licensing boards and programs is that they are housed together sharing space, sharing a common computer system, and common staff. The belief is that the costs for these services are less expensive than if each board had to pay for its own computer system, attorneys, investigators, administrative staff, etc. As a result of this structure, the Board of Psychologists was not allowed to make the choice to retain the old computer system or to remain in the previous location and it cannot shift those burdens back to the State. The Board members also have cut costs by reducing travel, reducing discretionary expenses, and conducting only essential activities such as administering examinations, rule-making, etc.

COMMENT NO. 4: Four comments were received suggesting that other funding sources be obtained such as a special allocation from the legislature, payment of licensing program costs from general tax revenues, or a one-time licensee assessment to raise the necessary cash.

RESPONSE: The Board responded that the law currently mandates that all licensing boards be funded by licensee revenue based on the cost of the program. Any petition to the legislature for changes would have to occur in 2003 which would not be a timely solution to the current problem. The Board had considered a one-time licensee assessment but given potential funding changes on the horizon, decided to proceed with the current proposal. It is hoped that the fee could be decreased if the anticipated funding changes do not materialize.

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

/s/ KEVIN BRAUN
Kevin Braun,
Rule Reviewer

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

Certified to the Secretary of State: October 15, 2001.

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

In the matter of the)	NOTICE OF AMENDMENT
amendment of ARM 37.40.905,)	
37.83.802, 37.83.811,)	
37.83.812, 37.83.825,)	
37.85.406, 37.86.105,)	
37.86.610, 37.86.705,)	
37.86.1406, 37.86.1706,)	
37.86.1806, 37.86.1807,)	
37.86.2005, 37.86.2207,)	
37.86.2605, 37.86.4413,)	
37.88.206, 37.88.306,)	
37.88.606 and 37.88.907)	
pertaining to medicare and)	
medicaid cross-over pricing)	

TO: All Interested Persons

1. On September 6, 2001, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rules at page 1709 of the 2001 Montana Administrative Register, issue number 17.

2. The Department has amended ARM 37.40.905, 37.83.802, 37.83.811, 37.83.825, 37.85.406, 37.86.105, 37.86.610, 37.86.705, 37.86.1406, 37.86.1706, 37.86.1807, 37.86.2005, 37.86.2207, 37.86.2605, 37.88.206, 37.88.306, 37.88.606 and 37.88.907 as proposed.

3. 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.

37.83.812 QUALIFIED MEDICARE BENEFICIARIES, PAYMENT FOR CHIROPRACTIC SERVICES AS MEDICARE SERVICES NOT COVERED BY FULL MEDICAID (1) through (3) remain as proposed.

AUTH: Sec. ~~53-6-101~~ 53-2-201 and 53-6-113 ~~53-6-131~~, MCA
IMP: Sec. 53-6-101 and 53-6-131, MCA

37.86.1806 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, REIMBURSEMENT REQUIREMENTS

(1) Requirements for the purchase or rental of prosthetic devices, durable medical equipment, medical supplies and related maintenance, repair and services are as follows:

- (a) through (b) remain as proposed.
- (c) A prior authorization is required for the following:
 - (i) remains as proposed.
 - (ii) purchase of wheelchairs and wheelchair accessories if the combined charges for the wheelchair and accessories exceed

\$1,500 or if the provisions of ~~(1)(d)(i)~~ (1)(c)(i) apply;
(1)(c)(ii)(A) through (6) remain as proposed.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA

37.86.4413 RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, REIMBURSEMENT FOR OTHER PROVIDER-BASED ENTITIES AND FOR INDEPENDENT ENTITIES (1) through (10)(a) remain as proposed.

(11) For providers that are independent entities or provider-based entities, other than RHCs in rural hospitals with less than 50 beds, the department will establish temporary interim rates per visit for each provider reporting period. The interim rates shall be based for the initial period upon the estimate and related information required under ARM 37.86.4407 and based for subsequent years upon the provider's most recent cost report filed as required under ARM 37.86.4407. Separate interim rates will be established for core services and for each category of other ambulatory services.

(a) remains as proposed.

(b) Subject to the medicare RHC or FQHC tests of reasonableness, including the medicare RHC or FQHC productivity screening guidelines and medicare RHC or FQHC per visit payment caps provided in (6) and (7), the department may, at the request of a provider or on its own initiative, review and increase or decrease any interim rate established under ~~(12)~~ (11) during the reporting period to assure that each interim payment rate approximates the provider's anticipated final average rate per visit for the category of RHC or FQHC services if:

(11)(b)(i) through (12) remain as proposed.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

4. The Department is making corrections to the rule amendments. Incorrect citations to authorizing statutes are being corrected in ARM 37.83.812. Inaccurate internal references are being corrected in ARM 37.86.1806 and 37.86.4413. All the corrections are necessary due to typographical errors in the September 6, 2001 notice of proposed amendment. The corrections are typographical only and the Department does not intend to make any substantive changes to the rules as proposed.

For clarification purposes only, the proposal notice for these amendments indicated that subsections (2) through (7) of ARM 37.86.1806 remain the same. In another notice finalized by the Department on page 986 of issue number 11 of the 2001 Montana Administrative Register, the Department eliminated subsection (6) and renumbered (7) as (6).

5. No comments or testimony were received.

/s/ Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State October 15, 2001.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment)
of rules regarding fees for) CORECTED NOTICE
Administrative Rules of Montana) OF AMENDMENT
and Montana Administrative)
Register)

TO: All Concerned Persons

1. On July 5, 2001 the Secretary of State's Office published notice of the amendment of rules regarding fees for Administrative Rules of Montana and Montana Administrative Register at page 1185 of the Montana Administrative Register, Issue No. 13.

2. The reason for this correction is that typographical errors were made in the notice of proposed amendment that failed to show necessary interlining and underlining in ARM 1.2.421 and 1.2.422. The corrected rule amendments read as follows:

1.2.421 SUBSCRIPTION TO THE ADMINISTRATIVE RULES OF MONTANA AND MONTANA ADMINISTRATIVE REGISTER--COST

(1) and (2) remain as adopted.

(3) The costs for the Administrative Rules of Montana and the Montana Administrative Register ~~beginning with calendar year 1988~~ are as follows:

(a) through (5) remain as adopted.

AUTH: Sec. 2-4-306 and 2-4-313, MCA

IMP: Sec. 2-4-306 and 2-4-313, MCA

1.2.422 MONTANA ADMINISTRATIVE REGISTER

(1) and (2) remain as adopted.

(a) The first is the notice section wherein the department or agency has given notice of intended administrative rulemaking action;

(b) The second, the rule section, contains the results of the action wherein a rule has been adopted, amended or repealed;

(c) The third is the interpretation section containing attorney general opinions and agency declaratory rulings;

(d) and (3) remain as adopted.

AUTH: Sec. 2-4-306, MCA

IMP: Sec. 2-4-306, MCA

/s/ Bob Brown
BOB BROWN
Secretary of State

/s/ Janice Doggett
JANICE DOGGETT
Rule Reviewer

Dated this 15th day of October 2001

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption)
of new rules regarding fees for) CORRECTED NOTICE
records management microfilming,) ADOPTION
imaging and storage services)

TO: All Concerned Persons

1. On July 5, 2001 the Secretary of State's Office published notice of the adoption of rules regarding fees for records management microfilming, imaging and storage services at page 1186 of the Montana Administrative Register, Issue No. 13.

2. The reason for this correction is that an error in the earmarking of RULE IX (ARM 44.14.309) was made. The corrected notice of adoption reads as follows:

RULE IX MISCELLANEOUS SUPPLIES (1) through (1)(d) remain as adopted.

(e) each box of splicing tape	15.00
(e) <u>(f)</u> jackets (1 box 16mm/1000)	65.00
(f) <u>(g)</u> fiche envelopes (1 box/1000)	37.50
(g) <u>(h)</u> microfiche reader/printer (records management bureau copies)	0.50
(h) <u>(i)</u> microfiche reader/printer (agency copies)	0.25
(i) <u>(j)</u> postage/freight (cost based on actual fee)	

AUTH: Sec. 2-6-103, MCA

IMP: Sec. 2-6-110, MCA

/s/ Bob Brown
BOB BROWN
Secretary of State

/s/ Janice Doggett
JANICE DOGGETT
Rule Reviewer

Dated this 15th day of October 2001

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment)	
of ARM 44.15.102 and 44.15.103)	
regarding filing fees for notary)	
public licensure, bonding)	NOTICE OF AMENDMENT
requirements and adoption of new)	AND ADOPTION
rule for notarial acts under)	
federal authority and foreign)	
notarial acts)	

TO: All Concerned Persons

1. On September 6, 2001, the Secretary of State published notice of the proposed amendment of ARM 44.15.102 and 44.15.103 regarding filing fees for Notary Public licensure, bonding requirements and adoption of new rule for notarial acts under federal authority and foreign notarial acts at page 1720 of the 2001 Montana Administrative Register, issue number 17.

2. The Secretary of State has amended ARM 44.15.102 and 44.15.103 and adopted new rule I (44.15.105) as proposed.

3. No comments or testimony were received.

4. These rules will be effective October 26, 2001 and will be applied retroactively to October 1, 2001.

/s/ Bob Brown
BOB BROWN
Secretary of State

/s/ Janice Doggett
JANICE DOGGETT
Rule Reviewer

Dated this 15th day of October 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
Subject | 1. Consult ARM topical index.
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute
Number and
Department | 2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2001. This table includes those rules adopted during the period July 1, 2001 through September 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 June 30, 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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8.80.101 and other rules - Transfer from the Department of Commerce - Banking and Financial Institutions, p. 1178

(State Banking Board)

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6.6.8301 Updating References to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance 1996 ed. - Adoption of New Classifications, p. 812, 1175
6.6.8301 Updating References to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance 1996 ed. - Adoption of New and Amended Classifications, p. 132, 842

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8.94.3806 Submission and Review of Applications Under the
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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 September 2001, appear. Vacancies scheduled to appear from November 1, 2001, through January 31, 2002, 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 October 5, 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 SEPTEMBER, 2001

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Medical Examiners (Labor and Industry) Dr. Kay E. Dorr Nashua Qualifications (if required): public member	Governor	reappointed	9/1/2001 9/1/2005
Ms. Jennifer Krueger Missoula Qualifications (if required): certified physician assistant	Governor	Muniak	9/1/2001 9/1/2005
Ms. Susan McRae Dillon Qualifications (if required): public member	Governor	reappointed	9/1/2001 9/1/2005
Ms. Linda Melick Lewistown Qualifications (if required): nutritionist	Governor	reappointed	9/1/2001 9/1/2005
Dr. Van Kirke Nelson Kalispell Qualifications (if required): doctor of medicine	Governor	reappointed	9/1/2001 9/1/2005
Board of Psychologists (Labor and Industry) Dr. Jay Palmatier Missoula Qualifications (if required): psychologist licensed in public health	Governor	McLaughlin	9/17/2001 9/1/2006
Board of Real Estate Appraisers (Labor and Industry) Mr. Donald Andrews Ronan Qualifications (if required): real estate appraiser	Governor	not listed	9/11/2001 5/1/2002

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 2001

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Real Estate Appraisers (Labor and Industry) cont. Mr. Keith O'Reilly Bozeman Qualifications (if required): real estate appraiser	Governor	not listed	9/11/2001 5/1/2004
Family Support Services Advisory Council (Governor) Mr. Brian Lenhardt Havre Qualifications (if required): parent representative from Region II	Governor	Brown	9/26/2001 9/27/2002
Ms. Renee Lenhardt Havre Qualifications (if required): parent representative from Region II	Governor	not listed	9/26/2001 9/27/2002
Fish, Wildlife, and Parks Commission (Fish, Wildlife, and Parks) Mr. Mike Murphy Helena Qualifications (if required): representative from District 1	Governor	Lane	9/14/2001 1/1/2005
Interstate Commission for Adult Offender State Council (Corrections) Ms. Constance Perrin Helena Qualifications (if required): knowledgeable concerning the interstate supervision of offenders	Governor	not listed	9/18/2001 0/0/0
Mr. Mike Ferriter Helena Qualifications (if required): knowledgeable concerning the interstate supervision of offenders	Governor	not listed	9/11/2001 0/0/0

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 2001

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Consensus Council (Governor)			
Ms. Elaine Forest Libby	Governor	not listed	9/12/2001 6/30/2003
Qualifications (if required):	public member and Native American		
Ms. Anne Hedges Helena	Governor	not listed	9/12/2001 6/30/2003
Qualifications (if required):	public member		
Ms. Jane Jelinski Bozeman	Governor	not listed	9/12/2001 6/30/2003
Qualifications (if required):	public member		
Sen. Bob Keenan Bigfork	Governor	not listed	9/12/2001 6/30/2003
Qualifications (if required):	public member		
Rep. Monica J. Lindeen Huntley	Governor	not listed	9/12/2001 6/30/2003
Qualifications (if required):	public member		
Mr. Mat Millenbach Billings	Governor	not listed	9/12/2001 6/30/2003
Qualifications (if required):	public member		
Lt. Governor Karl Ohs Harrison	Governor	not listed	9/12/2001 6/30/2003
Qualifications (if required):	ex-officio member		
Mr. Alan Rollo Great Falls	Governor	not listed	9/12/2001 6/30/2003
Qualifications (if required):	public member		

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 2001

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Consensus Council (Governor) cont. Mr. Jon Sesso Butte Qualifications (if required): public member	Governor	not listed	9/12/2001 6/30/2003
Ms. Peggy Trenk Helena Qualifications (if required): public member	Governor	not listed	9/12/2001 6/30/2003
Ms. Sarah Van de Wetering Missoula Qualifications (if required): public member	Governor	not listed	9/12/2001 6/30/2003
Dr. Nelson Wert Townsend Qualifications (if required): public member	Governor	not listed	9/12/2001 6/30/2003
Ms. Mary Whittinghill Helena Qualifications (if required): public member	Governor	not listed	9/12/2001 6/30/2003
Montana Economic Development Action Group (Governor) Mr. Turner Askew Whitefish Qualifications (if required): none specified	Governor	not listed	9/24/2001 7/1/2003
Mr. Dave Bayless Bozeman Qualifications (if required): none specified	Governor	not listed	9/24/2001 7/1/2003
Ms. Diane Brandt Glasgow Qualifications (if required): none specified	Governor	not listed	9/24/2001 7/1/2003

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 2001

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Economic Development Action Group (Governor) cont. Mr. Ian Davidson Great Falls Qualifications (if required): none specified	Governor	not listed	9/24/2001 7/1/2003
Mr. Gene Fenderson Helena Qualifications (if required): none specified	Governor	not listed	9/24/2001 7/1/2003
Mr. David Gibson Helena Qualifications (if required): none specified	Governor	not listed	9/24/2001 7/1/2003
Mr. Charlie Grenier Columbia Falls Qualifications (if required): none specified	Governor	not listed	9/24/2001 7/1/2003
Ms. Susan Humble Great Falls Qualifications (if required): none specified	Governor	not listed	9/24/2001 7/1/2003
Rep. Carol C. Juneau Browning Qualifications (if required): none specified	Governor	not listed	9/24/2001 7/1/2003
Mr. Jon Marchi Polson Qualifications (if required): none specified	Governor	not listed	9/24/2001 7/1/2003
Mr. John Olson Sidney Qualifications (if required): none specified	Governor	not listed	9/24/2001 7/1/2003

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 2001

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Economic Development Action Group (Governor) cont. Mr. Don Peoples Butte Qualifications (if required): none specified	Governor	not listed	9/24/2001 7/1/2003
Mr. Roger Peterson Billings Qualifications (if required): none specified	Governor	not listed	9/24/2001 7/1/2003
Mr. Steve Roth Big Sandy Qualifications (if required): none specified	Governor	not listed	9/24/2001 7/1/2003
Ms. Dee Russell Bozeman Qualifications (if required): none specified	Governor	not listed	9/24/2001 7/1/2003
Mr. Tom Scott Billings Qualifications (if required): none specified	Governor	not listed	9/24/2001 7/1/2003
Ms. Rosalie Sheehy Cates Missoula Qualifications (if required): none specified	Governor	not listed	9/24/2001 7/1/2003
Mr. Mark A. Simonich Helena Qualifications (if required): none specified	Governor	not listed	9/24/2001 7/1/2003
Ms. Virginia Sloan Kalispell Qualifications (if required): none specified	Governor	not listed	9/24/2001 7/1/2003

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 2001

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Economic Development Action Group (Governor) cont. Mr. Bruce Whittenberg Billings Qualifications (if required): none specified	Governor	not listed	9/24/2001 7/1/2003
Motor Fuel Tax Collection Enforcement and Refund Advisory Council (Transportation) Rep. Ron Devlin Terry Qualifications (if required): legislator	Governor	Somerville	9/25/2001 12/31/2002
State Tax Appeal Board (Administration) Mr. Michael J. Mulrone Helena Qualifications (if required): public member	Governor	Brown	9/12/2001 1/1/2007
State-Tribal Economic Development Commission (Governor) Mr. Blaine Bull Tail Crow Agency Qualifications (if required): representing the Crow Tribe	Governor	Iron	9/24/2001 6/30/2003
Mr. John Healy Harlem Qualifications (if required): representing the Fort Belknap Tribe	Governor	Speakthunder	9/24/2001 6/30/2003
Mr. Lloyd Irvine Pablo Qualifications (if required): representing the Salish and Kootenai Tribes	Governor	reappointed	9/24/2001 6/30/2002
Mr. Bruce Meyers Helena Qualifications (if required): State Coordinator of Indian Affairs	Governor	McDonald	9/24/2001 6/30/2004

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 2001

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State-Tribal Economic Development Commission (Governor) cont.			
Mr. Jake Parker	Governor	Windy Boy	9/24/2001
Box Elder			6/30/2002
Qualifications (if required): representing the Rocky Boy Tribe			
Ms. Marilyn Parsons	Governor	Bird	9/24/2001
Browning			6/30/2004
Qualifications (if required): representing the Blackfeet Tribe			
Mr. Andy Poole	Governor	Simonich	9/24/2001
Helena			6/30/2004
Qualifications (if required): representing the Department of Commerce			
Mr. Mark Sansover	Governor	Buckles	9/24/2001
Poplar			6/30/2004
Qualifications (if required): representing the Fort Peck Tribe			
Mr. John Woodenlegs	Governor	Coyote	9/24/2001
Lame Deer			6/30/2002
Qualifications (if required): representing the Northern Cheyenne Tribe			
Mr. Tim Zimmerman	Governor	not listed	9/24/2001
Billings			6/30/2003
Qualifications (if required): representing the Little Shell Tribe			
Vocational Rehabilitation Council (Public Health and Human Services)			
Mr. Kenneth D. Luraas	Director	Duffy	9/10/2001
Clancy			9/10/2003
Qualifications (if required): parent organization position			

VACANCIES ON BOARDS AND COUNCILS -- November 1, 2001 through January 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Alternative Livestock Advisory Council (Fish, Wildlife, and Parks) Dr. Duane Douglas, Sidney Qualifications (if required): veterinarian	Governor	1/1/2002
Ms. Elaine Allestad, Big Timber Qualifications (if required): representative of sportspeople	Governor	1/1/2002
Mr. Chuck Taylor, Moore Qualifications (if required): representative of the alternative livestock industry	Governor	1/1/2002
Appellate Defender Commission (Administration) Ms. Randi Hood, Helena Qualifications (if required): public defender and an attorney	Governor	1/1/2002
Mr. Daniel Donovan, Great Falls Qualifications (if required): public defender and an attorney	Governor	1/1/2002
Board of Chiropractors (Commerce) Dr. Patrick Montgomery, Missoula Qualifications (if required): practicing chiropractor	Governor	1/1/2002
Board of Environmental Review (Environmental Quality) Ms. Susan Kirby Brooke, Bozeman Qualifications (if required): public member	Governor	12/31/2001
Mr. Joseph Russell, Kalispell Qualifications (if required): county health officer	Governor	12/31/2001
Board of Horse Racing (Commerce) Dr. Sheldon John "Skip" Score, Helena Qualifications (if required): representative of District 4	Governor	1/20/2002

VACANCIES ON BOARDS AND COUNCILS -- November 1, 2001 through January 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Occupational Therapy Practice (Commerce) Ms. Alice O'Donnell, Anaconda Qualifications (if required): public member	Governor	12/31/2001
Board of Pardons (Corrections) Ms. Maureen Neihart, Billings Qualifications (if required): public member	Governor	1/1/2002
Board of Speech-Language Pathologists and Audiologists (Commerce) Mr. Jeffrey Griffin, Great Falls Qualifications (if required): licensed audiologist	Governor	12/31/2001
Ms. Shiela Skinner, Belgrade Qualifications (if required): licensed speech-language pathologist	Governor	12/31/2001
Ms. Teri Bean, Helena Qualifications (if required): public member who is a consumer	Governor	12/31/2001
Developmental Disabilities Planning Advisory Council (Public Health and Human Services) Ms. Marlene Disburg, Helena Qualifications (if required): representing Vocational Rehabilitation	Governor	1/1/2002
Dr. Allen Hartman, Billings Qualifications (if required): physician	Governor	1/1/2002
Sen. Bea McCarthy, Anaconda Qualifications (if required): legislator	Governor	1/1/2002
Mr. Dan McCarthy, Helena Qualifications (if required): Office of Public Instruction representative	Governor	1/1/2002
Mr. Charlie Rehbein, Helena Qualifications (if required): representative of the Older Americans Act	Governor	1/1/2002

VACANCIES ON BOARDS AND COUNCILS -- November 1, 2001 through January 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Developmental Disabilities Planning Advisory Council (Public Health and Human Services) cont. Rep. Bob Lawson, Whitefish Qualifications (if required): legislator	Governor	1/1/2002
Ms. Jannis Conselyea, Helena Qualifications (if required): Department of Public Health and Human Services representative	Governor	1/1/2002
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
Judicial Nomination Commission (Justice) Judge Diana G. Barz, Billings Qualifications (if required): none specified	Chief Justice	1/1/2002
Ms. Pam Rein, Big Timber Qualifications (if required): public member	Governor	1/1/2002
Local Government Records Committee (Secretary of State) Ms. Bonnie Ramey, Boulder Qualifications (if required): none specified	Secretary of State	12/31/2001
Ms. Kay Johnson, Chinook Qualifications (if required): none specified	Secretary of State	12/31/2001

VACANCIES ON BOARDS AND COUNCILS -- November 1, 2001 through January 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Local Government Records Committee (Secretary of State) cont. Ms. Marcia Porter, Missoula Qualifications (if required): none specified	Director	12/31/2001
Ms. Peggy Bourne, Great Falls Qualifications (if required): none specified	Director	12/31/2001
Montana Alfalfa Seed Committee (Agriculture) Mr. John Markegard, Laurel Qualifications (if required): alfalfa seed grower and representing alfalfa leaf-cutting beekeepers	Governor	12/21/2001
Mr. Ernest Johnson, Chinook Qualifications (if required): alfalfa seed grower	Governor	12/21/2001
Montana Geographic Information Council (Administration) Ms. Barbara Ranf, Helena Qualifications (if required): Director of the Department of Administration	Governor	1/12/2002
Mr. Jeff Miller, Helena Qualifications (if required): state representative	Governor	1/12/2002
Mr. Ken Jenkins, Missoula Qualifications (if required): President of MARLS	Governor	12/31/2001
Mr. Bill McGill, Billings Qualifications (if required): local government representative	Governor	12/31/2001
Mr. Martin Prather, Missoula Qualifications (if required): federal representative	Governor	12/31/2001
Ms. Mary Bryson, Helena Qualifications (if required): director of a state agency	Governor	1/12/2002

VACANCIES ON BOARDS AND COUNCILS -- November 1, 2001 through January 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Geographical Information Council (Administration) cont. Ms. Karen Strege, Helena Qualifications (if required): State Librarian	Governor	1/12/2002
Mr. Jon Sesso, Butte Qualifications (if required): representative of local government	Governor	1/12/2002
Mr. Harold Blattie, Columbus Qualifications (if required): representative of local government	Governor	1/12/2002
Mr. Steve Hellenthal, Billings Qualifications (if required): representative of local government	Governor	1/12/2002
Mr. Lance Clampitt, Denver, CO Qualifications (if required): federal representative	Governor	1/12/2002
Mr. Daniel T. Mates, Billings Qualifications (if required): federal representative	Governor	1/12/2002
Mr. Stuart Blundell, Helena Qualifications (if required): representative of private business active in land information systems	Governor	1/12/2002
Mr. Richard Aspinall, Bozeman Qualifications (if required): representative of the University System	Governor	1/12/2002
Mr. Chris Smith, Helena Qualifications (if required): designee of a director of a state agency	Governor	1/12/2002
Ms. Pam Case, Missoula Qualifications (if required): federal representative	Governor	1/12/2002

VACANCIES ON BOARDS AND COUNCILS -- November 1, 2001 through January 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Geographical Information Council (Administration) cont. Mr. Steve Shannon, Butte Qualifications (if required): representative of public utilities	Governor	1/12/2002
Ms. CloAnn Villegas, Pablo Qualifications (if required): representative of Native American Tribes	Governor	1/12/2002
Mr. Steven Henry, Lewistown Qualifications (if required): chair of the Montana GIS Interagency Technical Working Group	Governor	1/12/2002
Mr. Rick Breckenridge, Kalispell Qualifications (if required): chair of the Montana Local Government GIS Coalition	Governor	1/12/2002
Montana Grass Conservation Commission (Natural Resources and Conservation) Mr. Gary Unruh, Chinook Qualifications (if required): grazing district director	Governor	1/1/2002
Mr. Bill Loehding, Ekalaka Qualifications (if required): grazing district preference holder	Governor	1/1/2002
Mr. Phil Hill, Mosby Qualifications (if required): grazing district director	Governor	1/1/2002
Montana High School Association Board (Education) Rep. Jeanette S. McKee, Hamilton Qualifications (if required): public member	Governor	1/1/2002
State Employee Group Benefits Advisory Council (Administration) Mr. William Salisbury, Helena Qualifications (if required): none specified	Director	1/1/2002

VACANCIES ON BOARDS AND COUNCILS -- November 1, 2001 through January 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Employee Group Benefits Advisory Council (Administration) cont. Mr. Thomas Schneider, Helena Qualifications (if required): none specified	Director	1/1/2002
Mr. Dale Taliafero, Helena Qualifications (if required): none specified	Director	1/1/2002
Ms. Nancy Ellery, Helena Qualifications (if required): none specified	Director	1/1/2002
Mr. Curt Nichols, Helena Qualifications (if required): none specified	Director	1/1/2002
Ms. Cathy Kendall, Helena Qualifications (if required): none specified	Director	1/1/2002
Sen. Duane Grimes, Clancy Qualifications (if required): none specified	Director	1/1/2002
Mr. John W. Northey, Helena Qualifications (if required): none specified	Director	1/1/2002
Ms. Angela McDannel, Helena Qualifications (if required): none specified	Director	1/1/2002
Mr. Todd Lovshin, Helena Qualifications (if required): none specified	Director	1/1/2002
Mr. Richard Cooley, Helena Qualifications (if required): none specified	Director	1/1/2002

VACANCIES ON BOARDS AND COUNCILS -- November 1, 2001 through January 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Lottery Commission (Commerce) Mr. Thomas M. Keegan, Helena Qualifications (if required): attorney	Governor	1/1/2002
Ms. Carol Thomas, Great Falls Qualifications (if required): public member	Governor	1/1/2002
Upper Missouri River Breaks National Monument Task Force (Governor) Rep. Bill Thomas, Hobson Qualifications (if required): legislator	Governor	1/1/2002
Ms. Carol Kienenberger, Dodson Qualifications (if required): representative of Phillips County	Governor	1/1/2002
Rep. Matt McCann, Harlem Qualifications (if required): legislator	Governor	1/1/2002
Sen. Jon Tester, Big Sandy Qualifications (if required): legislator	Governor	1/1/2002
Mr. Joe McConnell, Harlem Qualifications (if required): tribal representative	Governor	1/1/2002
Mr. Arthur Kleinjan, Chinook Qualifications (if required): representative of Blaine County	Governor	1/1/2002
Mr. Harvey Worrall, Loma Qualifications (if required): representative of Chouteau County	Governor	1/1/2002
Mr. Carl Seilstad, Roy Qualifications (if required): representative of Fergus County	Governor	1/1/2002

VACANCIES ON BOARDS AND COUNCILS -- November 1, 2001 through January 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Vocational Rehabilitation Advisory Council (Public Health and Human Services) Mr. Don Judge, Helena Qualifications (if required): representing the State Workforce Investment Board	Director	1/5/2002
Yellowstone River Task Force (Fish, Wildlife, and Parks) Mr. Jim Woodhull, Livingston Qualifications (if required): City of Livingston representative	Governor	1/1/2002