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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

Page Number

TABLE OF CONTENTS

**BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA**

In the matter of the proposed amendment of ARM 42.20.501 and 42.20.515 relating to new construction for class four commercial and residential property	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On January 6, 2003, at 9:00 a.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 amendment of ARM 42.20.501 and 42.20.515, relating to new construction for class four commercial and residential property.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue not later than 5:00 p.m., December 23, 2002, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax (406) 444-3696; or e-mail canderson@state.mt.us.

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

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

(1) "~~1996~~ 2002 tax year value" means the market value of a property which appears on the ~~1996~~ 2002 ~~assessment notice~~ property tax record of that property.

(2) "Annual appraisal trend factor class ~~5~~ five" means a factor used to annually reappraise class ~~5~~ five qualifying air and water pollution control property, new industrial property, gasohol facilities, qualifying research and development firms, and electrolytic reduction facilities real property by trending their cost values up or down based on accepted cost indices.

(3) "CDU rating" means a composite rating of the overall condition, desirability, and usefulness of a structure, used nationally as a simple, direct, and uniform method of estimating accrued depreciation.

~~(3)~~(4) "Comstead exemption" means the percentage of phase-in value of commercial property that is exempt from taxation pursuant to 15-6-201, MCA.

~~(4)~~(5) "Current year phase-in value" is the difference between the ~~value before reappraisal (VBR)~~ reappraisal value and the ~~reappraisal value~~ value before reappraisal (VBR) times the

phase-in percentage, added to the VBR. The current year phase-in value is the amount subject to tax each year, and is determined by the following formula:

Current year phase-in value =
[(Reappraisal (REAP) value - VBR) x phase-in ~~percentage~~%] + VBR

~~(5)~~(6) "Destruction" means the removal or deletion of improvements, buildings, living areas, garages, and out-buildings caused by burning, razing, or natural disaster.

~~(6)~~(7) "Dwelling unit" is defined as a building or portion of a building that contains living facilities with provision for sleeping, eating, cooking, and sanitation for one or more persons.

~~(7)(8) "Effective tax rate" is the total taxable value of a class of property divided by the total reappraisal value of the same class of property.~~ "Full reappraisal to taxable value conversion factor for class four commercial property" is the total taxable value of class four commercial property divided by the total reappraisal value of the same class four commercial property.

(9) "Full reappraisal to taxable value conversion factor for class four residential" is the total taxable value of class four residential property divided by the total reappraisal value of the same class four residential property.

~~(8)~~(10) "Homestead exemption" means the percentage of phase-in value of residential property that is exempt from taxation pursuant to 15-6-201, MCA.

~~(9)~~(11) "Improvement grade change" means a change in the quality of construction of an improvement. Each improvement grade signifies a different level of construction quality. Examples of improvement grades include, but are not limited to, the following:

(a) 1F-1 = cheap construction;
(b) 1F-5 = average construction; and
(c) 1F-9 = superior construction.

~~(10) "Land cap" refers to a limit or "cap" on the land value of residential parcels that qualify under 15-7-111, MCA. The value of the contiguous land (up to five acres) under one ownership cannot exceed 75% of the value of the improvements located on the land; or 75% of the statewide average value of improvements, whichever is greater.~~

~~(11)~~(12) "Land productivity change (grade change)" means a change in the productive capacity or yield of agricultural or forest land. In a land productivity change, the land use does not change~~,~~; rather, the land as currently used simply becomes more or less productive. For example, a productivity change in grazing land may occur when it is discovered that the productivity potential has decreased due to a new saline seep on the land. Because the land continues to be used as grazing land, the department shall continue to classify the land as agricultural grazing land, but the grade of the grazing land may be changed to reflect its lessened productivity.

(12) and (13) remain the same but are renumbered (13) and

(14).

~~(14)~~(15) "Land use change" means the conversion of a current use of land to a different, alternate use. Land splits shall be considered land use changes. Examples of land use changes contained in this definition include, but are not limited to, the following:

(a) agricultural land converted to tract land;

(b) forest land converted to tract land; ~~or~~

(c) forest land converted to agricultural land~~.~~; or

(d) land that is converted to another use due to a subdivision of real property.

(16) "Living area" means any room or group of rooms designed as the living quarters of one family or household, equipped with cooking and toilet facilities, and having an independent entrance from a public hall or from the outside.

~~(15)~~(17) "Neighborhood (NBHD) group percentage" means the percent of change in value from the total ~~1996~~ 2002 tax year value to the total ~~1997~~ 2003 reappraisal value, excluding properties with new construction, for those homogeneous areas within each county or between counties that have been defined as a neighborhood group. The neighborhood group percentage is determined by using the following formula:

$$\text{Neighborhood Group Percentage} = \frac{\text{(Total } \sim\sim 1997 \sim\sim \text{ 2003 NBHD REAP Value - Total } \sim\sim 1996 \sim\sim \text{ 2002 NBHD Tax Year Value)}}{\text{Total } \sim\sim 1996 \sim\sim \text{ 2002 NBHD Tax Year Value}}$$

(a) Individual neighborhood group percentages will be determined for residential land, commercial land, residential improvements, and commercial improvements.

~~(16)~~(18) "New construction" means the construction, addition, or substitution of improvements, buildings, living areas, garages, and outbuildings; or the extensive remodeling of existing improvements, buildings, living areas, garages, outbuildings, land reclassification, and land use changes.

~~(17)~~(19) "New construction trend factor" for industrial property" means a factor used to adjust reappraisal values and VBRs (values before reappraisal) in instances where the property has new construction or destruction. The factor will be derived from nationally accepted cost indices.

~~(18)~~(20) "Phase-in percentage" for tax years ~~1997 and 1998~~ 2003 through 2008 is ~~2%~~ 16.6% per year. The phase-in percentage accumulates annually.

~~(a) The 1997 Phase-in percentage = 2%.~~

~~(b) The 1998 Phase-in percentage = 4%.~~

~~(c) The phase-in percentage for tax years 1999 through 2002 is 25% per year of the difference between the reappraisal value less the 1998 phase-in value.~~

~~(19)~~(21) The "previous year tax revenue" ~~is determined by~~ means the product of multiplying the previous tax year total taxable value for each taxing jurisdiction by the previous year mill levy for that taxing jurisdiction.

~~(20)~~(22) "Reappraisal (REAP) value" means the full ~~1997~~ 2003 value determined for the current reappraisal cycle pursuant

to 15-7-111, MCA, adjusted annually for new construction or destruction. The ~~1997~~ 2003 reappraisal value reflects a market value of the property on January 1, ~~1996~~ 2002. A current year REAP value is the same as the ~~1997~~ 2003 reappraisal value of the property if there is no new construction, destruction, land splits, land use changes, land reclassifications, land productivity changes, improvement grade changes, or other changes made to the property during ~~1997~~ 2003 or subsequent tax years.

(23) "Subdivision of real property" means the first sale of a land parcel that results in the land being taxable as class four as described in 15-6-134, MCA, or nonagricultural land as described in 15-6-133(1)(c), MCA.

~~(21)~~(24) "Taxable market value" means that portion of the total market value subject to taxation after the total market value has been adjusted, if applicable, ~~for the land cap,~~ for the phase-in of value, and the homestead/comstead exemption.

~~(22)~~(25) "Value before reappraisal (VBR)" means the ~~1996~~ 2002 tax year value adjusted for any new construction or destruction that occurred in the prior year. The VBR for the ~~1997~~ 2003 tax year and subsequent years is the same as the ~~1996~~ 2002 tax year value if there is no new construction, destruction, land splits, land use changes, land reclassifications, land productivity changes, improvement grade changes, or other changes made to the property during ~~1996~~ 2002 or subsequent tax years.

AUTH: Sec. 15-1-201 and 15-7-111, MCA
IMP: Sec. 15-6-201, 15-7-111 and 15-10-120, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.501 to incorporate reappraisal adjustments as required by amendments to 15-7-111, MCA, as enacted by the 2000 special session, and changes made to the same statute by SB 501 in the 2001 legislative session. House Bill 124 of the 2001 legislative session also made changes that impact this rule. Additional amendments were made to correct terminology such as changing "assessment notice" to the correct title of "property tax record." New definitions were developed for "CDU rating," "living area," and "subdivision of real property" in order to clarify the use of those terms as they are used within the rules of this sub-chapter. The definition of "land cap" is being deleted because it is no longer applicable.

A definition for "full reappraisal to taxable value conversion factor for class four" is being added for both commercial and residential property. Currently there is no distinction made for residential and commercial property within class four. Only one value of newly taxable property is calculated for class four property. The first step in calculating the taxable value of class four newly taxable property is to determine the full reappraisal value of the newly taxable property. To arrive at the total taxable value of the newly taxable value a full reappraisal to taxable value conversion factor is applied to the total full reappraisal value. The conversion factor emulates the impact of the phase-

up, homestead/comstead exemption, and tax rate. Generally, the rate of phasing-up for residential property will differ from the rate of commercial property. Also, the exemption for residential and commercial property differ. The homestead exemption for residential property is 31% and the comstead exemption rate for commercial property is 13%. Using one conversion factor for class four property requires that conversion factor to be a blend of the residential and commercial rates of phasing-up and homestead and comstead exemption amounts. The proposed changes will allow the calculation of the taxable value of newly taxable property for class four residential property and a value for class four commercial property separately. The conversion factor for residential class four property will emulate the characteristics of residential property only, and the conversion factor for commercial property will emulate the characteristics of commercial property only. This will result in a more accurate measure of the taxable value of newly taxable value.

42.20.515 DETERMINATION OF TOTAL TAXABLE VALUE OF NEWLY TAXABLE PROPERTY (1) For the ~~1999~~ 2001 tax year and subsequent tax years, the department will calculate for each taxing jurisdiction the total taxable value of class ~~4~~ four newly taxable property as follows:

(a) For tax years 2001 and 2002, t~~T~~he department shall determine the reappraisal value of class ~~4~~ four newly taxable property in a taxing jurisdiction. The reappraisal value of newly taxable class ~~4~~ four property is calculated as the difference between the current year total reappraisal value of class ~~4~~ four property and the previous year total reappraisal value of class ~~4~~ four property. Beginning with tax year 2001, class four newly taxable property in a taxing jurisdiction will include the total reappraisal value of class four property for any tax increment financing district which has been dissolved or terminated.

~~(b) The department also shall determine the additional class 4 land value excepted from taxation in a taxing jurisdiction for the current tax year as a result of the land cap provided in 15-7-111, MCA. The additional class 4 land value excepted from taxation is calculated as the difference between the total class 4 land value excepted from taxation under 15-7-111(4), MCA, for the current tax year and the total class 4 land value excepted from taxation under 15-7-111(4), MCA, for the previous tax year.~~ For tax year 2003 and subsequent tax years, the current year total reappraisal value is determined by valuing each current year parcel with the 2003 valuation schedules and models. The previous year total reappraisal value is determined by valuing each previous year parcel with the 2003 valuation schedules and models. The difference between the current year total reappraisal value and the previous year total reappraisal value is the reappraisal value of class four residential newly taxable property and class four commercial newly taxable property.

~~(c) The total market value of class 4 newly taxable~~

~~property for the current tax year is determined by adding the total reappraisal value of class 4 newly taxable property for the current year and the additional class 4 land value excepted from taxation for the current tax year by the land cap provisions.~~

~~(d)~~(c) The total taxable value of newly taxable property for class four residential for the current tax year is determined by multiplying the current year total ~~market~~ class four residential reappraisal value by the current year ~~effective tax rate~~ full reappraisal to taxable value conversion factor for class ~~4~~ four residential property.

(d) The total taxable value of newly taxable property for class four commercial for the current tax year is determined by multiplying the current year total class four commercial reappraisal value by the current year full commercial to taxable value conversion factor for class four commercial property.

(e) For example, applying the steps set forth ~~above~~ in (1)(b), the total ~~market~~ reappraisal value of newly taxable class ~~4~~ four residential property for a taxing jurisdiction~~,~~ would be determined as follows:

Current year total class ~~4~~ four residential reappraisal value	$2,000,000
Previous year total class 4 four residential reappraisal value	-1,800,000
Reappraisal value of new class 4 four residential property	$ 200,000

~~Current year total land value excepted by cap~~	~~$ 20,000~~
~~Previous year total land value excepted by cap~~	~~- 15,000~~
~~Land value excepted by land cap for current year~~	~~$ 5,000~~

~~Reappraisal value of new class 4 property~~	~~$ 200,000~~
~~Current year value of land excepted by land cap~~	~~+ 5,000~~
~~Market value of class 4 newly taxable property~~	~~$ 205,000~~

(f) Using the above example, the total taxable value of newly taxable class ~~4~~ four residential property in the taxing jurisdiction for the ~~1999~~ 2001 tax year would be determined by multiplying the total ~~market~~ reappraisal value of newly taxable class ~~4~~ four residential property by the ~~1999~~ 2001 ~~effective tax rate~~ full reappraisal to taxable value conversion factor for class ~~4~~ four residential property in that jurisdiction as shown below~~.~~:

~~Total market value of new class 4 property~~	~~$ 205,000.00~~
~~1999 effective tax rate for class 4 property~~	~~x 2.66%~~
~~Total taxable value of new class 4 property~~	~~$ 5,453.00~~

Total reappraisal value of new class four residential property	$ 200,000
2001 full reappraisal to taxable value conversion factor for class four residential property	x 2.51%

Total taxable value of newly taxable class four residential property $ 5,020

(g) In addition to the taxable value of residential property shown in (1)(d) and taxable value of commercial property in (1)(e), the newly taxable class four residential and commercial property will be the taxable value of the phased-in reappraisal value of the newly taxable class four residential and commercial property identified in the reappraisal period tax year 2003 to tax year 2008.

(2) For tax year ~~1999~~ 2001 and subsequent tax years, the department will calculate for each taxing jurisdiction the total taxable value of newly taxable property that is classified as class ~~5, 6, 8, 9, 12 and 13~~ five, six, seven, eight, nine, twelve, and thirteen property. ~~Except as provided in (3) of this rule, t~~The taxable value of newly taxable property of class ~~5, 6, 8, 9, 12 and 13~~ five, six, seven, eight, nine, twelve, and thirteen property shall be determined as follows:

(a) The department shall determine the total market value of newly taxable property in a taxing jurisdiction. The total market value of newly taxable property is calculated as the difference between the current year total reappraisal value for each class of property and the previous year total reappraisal value of the same class of property.

(b) For each class of property, the total taxable value of newly taxable property for the current tax year is determined by multiplying the current year total market value of newly taxable property by the current year tax rate for that class of property.

~~(3) For the 2000 tax year, the department shall calculate the total taxable value for class 8 property as follows:~~

~~(a) The department shall determine the total reappraisal value of newly taxable class 8 property in a taxing jurisdiction. The total reappraisal value of newly taxable property is calculated as the difference between the current year total reappraisal value of class 8 property and the previous year total reappraisal value of class 8 property.~~

~~(b) The department also shall determine the total value of class 8 property excepted from taxation in a taxing jurisdiction for the 2000 tax year as a result of the exemption provided in 15-6-138(6), MCA.~~

~~(c) The total market value of class 8 newly taxable property for the 2000 tax year is determined by adding the reappraisal value of class 8 newly taxable property for the 2000 tax year and the amount of class 8 property value excepted from taxation for the 2000 tax year by the provisions of 15-6-138(6), MCA.~~

~~(d) The total taxable value of newly taxable class 8 property for the 2000 tax year is determined by multiplying the 2000 tax year total market value of newly taxable class 8 property by the tax rate for class 8 property applicable to the tax year 2000.~~

~~(4)~~(3) The total taxable value of newly taxable class ~~3~~ three and class ~~10~~ ten property shall be determined in the same

manner as set forth in (2), ~~of this rule~~ to the extent that land is transferred into a taxing jurisdiction (e.g., a change from exempt status to taxable status) and identified as newly taxable property. For jurisdictions in which land transfers have not been specifically identified, a value for newly taxable class ~~3~~ three and ~~10~~ ten property will not be calculated.

~~(5)~~(4) The total taxable value of all newly taxable property in a taxing jurisdiction shall be determined by adding together:

(a) the separate taxable values as determined above for class ~~3, 4, 5, 6, 8, 9, 10, 12 and 13~~ three, four, five, six, seven, eight, nine, ten, twelve, and thirteen property for that taxing jurisdiction; and

(b) the total taxable value of eliminated property for the taxing jurisdiction which is calculated by the department at 0.12% of the previous year total taxable value of the taxing jurisdiction.

AUTH: Sec. 15-1-201 and 15-7-111, MCA
IMP: Sec. 15-40-420, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.515 to incorporate reappraisal adjustments as required by amendments to 15-7-111, MCA, as enacted by the 2000 special session, and changes made to the same statute by SB 501 in the 2001 legislative session. Reference to "land cap" is being deleted since it is no longer applicable. As a result of adjustments made to the computer-assisted mass appraisal system (CAMAS), the department is able to more accurately determine newly taxable property for tax year 2003 and subsequent tax years. New language in the rule describes that new methodology. An addition to the current rule specifies that the value associated with a tax increment financing district that has been dissolved or terminated will be considered as newly taxable property, in accordance with current law. Changing the class references from numeric to text is necessary so that the rule conforms to the correct format of these classes as identified in the statutes.

The additional amendments to ARM 42.20.515 are necessary because the value of newly constructed residential and commercial class four property is placed on the tax rolls in the year that the construction becomes taxable. That value is then phased-up, as with all class four property, to eventually reach the full reappraisal. Currently, for a newly constructed residential or commercial property, only the phased-in value of the property when it is first put on the tax rolls is counted as new value. The subsequent incremental phased-in increases in value are not counted as new value. The incremental phased-in values of these newly constructed properties will be counted as new value.

4. 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 January 10, 2003.

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

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

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

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State December 2, 2002

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

In the matter of the adoption of new RULES I through IV pertaining to insurance information and privacy protection	)))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On June 27, 2002, the State Auditor and Commissioner of Insurance published a notice of public hearing on the proposed adoption of new RULES I through IV pertaining to insurance information and privacy protection at page 1686 of the 2002 Montana Administrative Register, Issue No. 12. The hearing was held August 15, 2002.

2. The State Auditor has adopted new RULE I (ARM 6.6.6901), new Rule II (ARM 6.6.6902) and new RULE IV (ARM 6.6.6904) exactly as proposed.

3. The State Auditor has adopted the following rules as proposed with the following changes, stricken matter interlined, new matter underlined:

NEW RULE III (ARM 6.6.6903) NOTICE REQUIREMENTS ~~SAMPLE NOTICE FORM~~ ~~(1) For the purpose of providing notice to applicants pursuant to 33-19-202(4)(a), MCA, insurance producers may use the sample notice form referred to as Appendix A, which is hereby incorporated into this subchapter. Producers must fill in the blanks with the appropriate specific information regarding disclosures and collection of information concerning each individual applicant. If a particular provision in the sample notice is not applicable because the insurance producer or insurance institution does not collect or disclose information in that way, the provision may be deleted from the notice.~~

~~(2) If a notice based on the sample form is used at the time of application, the insurance institution must still provide the individual with that company's complete privacy notice at the time the policy or certificate is issued.~~

~~(3)~~(1) A licensee is not subject to the notice requirements set forth in 33-19-202, MCA, if the licensee is an employee, agent or other representative of ~~another licensee ("principal")~~ an insurance institution and:

(a) the ~~principal~~ insurance institution otherwise complies with, and provides the notices required by the provisions of this rule and 33-19-202, MCA, including notice to applicants; and

(b) the licensee does not collect or disclose personal information except as provided for in the ~~principal's~~ insurance institution's privacy notice and except as required

by his employment or contractual relationship with the ~~principal~~ insurance institution.

~~(4)~~(2) A licensee may not collect or disclose personal information beyond what is required by the licensee's relationship with the ~~principal~~ insurance institution unless the licensee provides another privacy notice to the individual that is specific to the licensee.

AUTH: Sec. 33-19-106, MCA
IMP: Sec. 33-19-202, MCA

~~APPENDIX A: SAMPLE PRIVACY NOTICE~~

~~As an applicant for insurance, your personal information is protected by the Montana Insurance Information and Privacy Protection Act, Title 33, chapter 19, Montana Code Annotated (2001). While processing your insurance application, it may be necessary for your insurance producer or an insurance institution to collect or disclose certain information about you. Those collections and disclosures are briefly described hereinafter. WHEN THE INSURANCE INSTITUTION ISSUES AN INSURANCE POLICY OR CERTIFICATE TO YOU, IT WILL PROVIDE YOU WITH A COMPLETE NOTICE OF ITS PRIVACY PRACTICES.~~

~~In addition to the information that you (applicant) have already provided, it is necessary to collect the following types of information about you from other sources in order to process your application for insurance:~~ _____.

~~That information will be collected from the following sources:~~ _____.

~~Montana law allows insurers and insurance producers to disclose certain information about you in the course of conducting the business of insurance and also for some marketing activities. As a result of this application for insurance, the following disclosures of information will be made about you to the following individuals or organizations [describe disclosures the licensee makes pursuant to disclosure exceptions listed in 33-19-306 and 33-19-307, MCA]:~~ _____.

~~OR~~

~~No disclosures of personal information, even those allowed by law, will be made about you as a result of this application for insurance.~~

~~[If any disclosures are made pursuant to the Fair Credit Reporting Act as a result of this application, describe those here]:~~ _____.

~~Your insurance producer will protect the confidential information that he/she receives from you and from other sources in the following manner [describe security measures taken to protect the confidentiality of consumers' personal information; EXAMPLE: Your information is destroyed and not retained by this agency unless you actually purchase a policy from us]:~~ _____.

~~You have the right to access and correct all personal information collected about you. Contact your insurance producer if you want more information about this right or if you wish to exercise these rights. [Refer to 33-19-301 and 33-19-302, MCA].~~

~~While processing your application, it may be necessary to obtain reports from the following insurance support organizations [for example, Comprehensive Loss Underwriting Exchange and Medical Information Bureau]:~~ _____. ~~The information obtained from a report prepared by an insurance support organization may be retained by the insurance support organization and disclosed to other persons.~~

~~[If the application process requires the licensee to collect medical record information and if subsequent disclosures of that medical record information are made for any reason, the following provision must be included in the privacy notice.] You are entitled to receive, upon written request to the licensee, a record of any subsequent disclosures of medical record information made by the insurance institution or the producer.~~

4. The State Auditor's Office (SAO) has considered all comments received, those comments and SAO's responses follow. Some comments have been combined or grouped together to promote efficiency in the descriptions of comments and in the responses.

COMMENT NO. 1: One commentor suggested that after the words "insurance institution" in Rule II (ARM 6.6.6902), there should be a reference to the statutory definition in the Insurance Information and Privacy Protection Act [IIPPA].

RESPONSE: The definitions in 33-19-104, MCA apply to the terms used in this rule unless specified otherwise. The additional reference is unnecessary.

COMMENT NO. 2: One commentor asked for clarification in Rule II (ARM 6.6.6902) that would indicate that insurance producers are not required to provide their own notice if the insurance institution has already provided one and the producer does not intend to use the information "for other than insurance functions or insurance transactions as defined in statute."

RESPONSE: The comment does not accurately represent the circumstances under which a producer would have to send a separate notice. Those circumstances are described in Rule III (ARM 6.6.6903).

COMMENT NO. 3: One commentor states that section (1) in Rule III (ARM 6.6.6903) references 33-19-202(4)(a), MCA, as the authority for requiring producers to fill in the blanks when using the sample notice, but that statute requires the insurance institutions to provide the notice, not producers. Section (3) of Rule III (ARM 6.6.6903), clarifies that a licensee who is an employee, agent or other representative of another licensee is not subject to the notice requirements of 33-19-202, MCA. The commentor suggests that section (1) be modified to be consistent with the statute and section (3) of Rule III (ARM 6.6.6903).

RESPONSE: A response to this comment is provided in the response to Comment No. 9.

COMMENT NO. 4: One commentor states that Rule III (ARM 6.6.6903) should clarify that producers are not required to provide their own notice in addition to that provided by the insurance institution unless they plan to use the information for purposes other than for insurance transactions and functions as defined by statute.

RESPONSE: Rule III (ARM 6.6.6903) specifically defines the circumstances that trigger a separate notice from the producer.

COMMENT NO. 5: One commentor suggests that Rule III (ARM 6.6.6903) should clarify that the statute allows the use of information for marketing other insurance products by producers.

RESPONSE: The requested clarification is already provided in the statute itself. Section 33-19-307, MCA (2001), describes the circumstance under which producers may disclose to other licensees and to affiliates (without authorization) personal information for the purpose of marketing insurance products. Disclosures for marketing purposes must be described in the Notice of Insurance Information Practices [Notice] provided by the insurance institution or other licensee.

COMMENT NO. 6: Two commentors object to the use of the term "principal" in Rule III (ARM 6.6.6903) because it is not defined in 33-19-104, MCA. The commentors assume that "principal" means "insurance institution" as defined in IIPPA and suggest that the term "principal" be abandoned and the word "insurance institution" be substituted, or that the term "principal" be defined.

RESPONSE: The term "principal" was defined in proposed Rule III(3) (ARM 6.6.6903(3)) as "an employee, agent or other representative of another licensee." However, because at least three of the commentors found this language to be confusing, the term "principal" will be replaced by the term "insurance institution" as defined in 33-19-104, MCA.

COMMENT NO. 7: One commentor states that Rule III(1) (ARM 6.6.6903(1)) references providing notices to applicants pursuant to 33-19-202(4)(a), MCA, which specifically references notices to applicants by insurance institutions, not by insurance producers.

RESPONSE: This comment is partially addressed in the response to Comment No. 9 below. The introductory language in 33-19-202, MCA states as follows: "a licensee [which includes producers] shall provide a clear and conspicuous notice of information practices...." Proposed Rule III (ARM 6.6.6903) references that language in 33-19-202, MCA. Furthermore, even though 33-19-202(4)(a), MCA specifically refers to "insurance institution," it is usually the producer, acting as an employee or agent for the insurance institution who gives the notice to the applicant, either when the applicant enters the producer's office or telephones that office.

COMMENT NO. 8: One commentor attempts to distinguish an "insurance shopper" from an "applicant," and then alleges that an insurance shopper would not be entitled to a notice pursuant to 33-19-202(4)(a), MCA.

RESPONSE: "Insurance shopper" is not defined or even mentioned in the privacy act. "Applicant" is defined in 33-19-104(3), MCA as "a person who seeks to contract for insurance coverage..." If an individual contacts an insurance producer in order to obtain insurance coverage, and the producer collects and discloses personal or privileged information about that individual in the process of obtaining prices and policy information, that individual falls within the definition of "applicant," even if that individual does not ultimately purchase coverage. The producer has to provide the insurance institution(s)' notices(s) to that applicant or substitute the producer's own privacy notice for application purposes only. That notice would be replaced by the insurance institution's notice at the time of policy issuance.

COMMENT NO. 9: Two commentors, who represent the Montana Association of Insurance and Financial Advisors and the Independent Insurance Agents of Montana, made numerous comments regarding APPENDIX A: SAMPLE PRIVACY NOTICE. Those comments are summarized as follows: (1) The term "insurance institution" does not include insurance producer. (2) Insurance producers may not be aware of or have control over how personal information is collected, used or disclosed by the insurance institution. (3) Insurance institutions, not

just insurance producers, should be identified as an entity that will protect the confidentiality of information received. (4) Producers cannot destroy personal information collected about an applicant who does not purchase a policy because producers are required to keep records "for Errors and Omissions purposes." (5) Insurance producers may not know from which insurance support organizations insurance institutions have obtained reports.

RESPONSE: The sample notice described in Rule III (ARM 6.6.6903) is not intended to replace a notice from an insurance institution. The insurance institution must still provide its own notice describing how it collects, uses and discloses personal information. The sample notice form was proposed in Rule III (ARM 6.6.6903) because numerous producers had requested such a form. The sample notice form was provided to these organizations in draft form before it was proposed in administrative rule. However, after reviewing the comments on the sample notice form provided by two of Montana's largest producer organizations, SAO has concluded that the sample form (Appendix A) and sections (1) and (2) of proposed Rule III (ARM 6.6.6903) have created confusion. Therefore, sections (1) and (2) of Rule III (ARM 6.6.6903), as well as all of Appendix A are stricken from the final rules. Sections (3) and (4) will remain.

Producers should note that the modifications to these proposed rules in no way change their obligation to provide a privacy notice under certain circumstances. If an individual contacts a producer in person or on the telephone and is "seeking to contract for insurance coverage," that producer must provide a privacy notice to that individual. If the producer discloses personal information about that individual to several different insurance companies, that producer must give that individual a privacy notice from each of those companies, unless the producer substitutes another notice designed for applicants only.

In addition, if the producer is going to use, collect or disclose personal information about an individual in a manner not described in the insurance institution's notice, that producer must supply his or her own notice.

COMMENT NO. 10: Regarding Rule IV (ARM 6.6.6904), Deidentification for Group Policyholder Audits, one commentor suggested that the term "personal information" be substituted for the term "medical record information" because there are other types of communications required between employers and insurers, such as adding and deleting dependents.

RESPONSE: Rule IV (ARM 6.6.6904) relates solely to 33-19-306(14), MCA, which is limited to information disclosed by an insurer to an employer for the purpose of auditing or reporting claims experience. The example provided by this

commentor would fall under an insurance function disclosure, another exception in 33-19-306, MCA. The deidentifiers described in Rule IV (ARM 6.6.6904) clearly relate only to medical record information.

COMMENT NO. 11: One commentor complains that certain federal laws and regulations require disclosures by third party administrators to employers that are prohibited by 33-19-306(14), MCA.

RESPONSE: Administrative rules may not contradict the substantive provisions of a statute. Any problems with the substantive requirements of 33-19-306(14), MCA must be changed in the statute itself.

JOHN MORRISON, State Auditor
and Commissioner of Securities

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

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

Certified to the Secretary of State on December 2, 2002.

**BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA**

In the matter of the amendment of ARM 17.53.111, 17.53.113, 17.53.301 and 17.53.602 pertaining to registration of hazardous waste generators and transporters, and registration fees	NOTICE OF AMENDMENT (HAZARDOUS WASTE)

TO: All Concerned Persons

1. On October 31, 2002, the Department of Environmental Quality published a notice of public hearing on the proposed amendment of the above-stated rules at page 2967, 2002 Montana Administrative Register, issue number 20.

2. The Department has amended ARM 17.53.111, 17.53.113 and 17.53.602 exactly as proposed. The Department has amended ARM 17.53.301 as proposed, but with the following changes, deleted matter interlined, new matter underlined:

17.53.301 DEFINITIONS (1) through (2)(c) remain as proposed.

(d) "Conditionally exempt small quantity generator" or "conditionally exempt generator" means a generator of hazardous waste who generates, in a calendar month, no more than 100 kilograms (220 pounds) of hazardous waste, ~~or~~ no more than one kilogram (2.2 pounds) of acute hazardous waste, or no more than 100 kilograms (220 pounds) of any residue or contaminated soil, waste, or other debris resulting from the clean up of a spill, into or on any land or water, of acute hazardous waste.

(e) through (m) remain as proposed.

3. The following comment was received and appears with the Department's response:

COMMENT NO. 1: ARM 17.53.301(2)(d). The Environmental Protection Agency has suggested adding an additional phrase to the definition of "conditionally exempt small quantity generator."

RESPONSE: The department agrees and has added the suggested phrase as shown above. The additional language conforms the proposed definition to the comparable federal definition in 40 CFR 261.5. The additional language clarifies, but does not change the meaning of the definition.

DEPARTMENT OF ENVIRONMENTAL QUALITY

By: *Jan P. Sensibaugh*
JAN P. SENSIBAUGH, Director

Reviewed by:

David Rusoff
DAVID RUSOFF, Rule Reviewer

Certified to the Secretary of State December 2, 2002.

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

In the matter of the amendment of ARM 8.32.301, 8.32.305, 8.32.306, 8.32.402, 8.32.405, 8.32.412, 8.32.413, 8.32.1501, 8.32.1502, 8.32.1505, 8.32.1506, 8.32.1509, 8.32.1510, the adoption of new rules I (8.32.417), II (8.32.1410), III (8.32.1411), and IV (8.32.1412), related to probationary licenses, standards of practice for advanced practice registered nurses, standards related to the advanced practice of registered nurses, and standards related to nurses as members of the nursing profession, and the repeal of ARM 8.32.1507, method of referral, all pertaining to nursing matters	) NOTICE OF AMENDMENT,) ADOPTION AND REPEAL

TO: All Concerned Persons

1. On July 25, 2002, The Department of Labor and Industry published notice of the proposed amendment, adoption and repeal of the above-stated rules at page 1952 of the 2002 Montana Administrative Register, Issue Number 14.

2. A public hearing was held in Helena on August 23, 2002. Members of the public appeared and commented during the public hearing. Written comments were also received prior to the closing of the comment period.

3. The Board of Nursing (Board) has thoroughly considered all comments made and the Board's responses are as follows:

8.32.301 NURSE PRACTITIONER PRACTICE

Comment 1: Dana Hillyer, Cathleen Simensen, Eve Franklin, Catherine Caniparoli and Teresa Henry stated that they do not believe "interdependent" is appropriate for APRN practice. They believe it connotes physician supervision, and that has never been a part of nurse practitioner practice in Montana.

Response 1: The Board agrees with the commenters and has voted to delete the term, "interdependent" and to adopt language that says independent and/or collaborative.

Comment 2: Pam Peterson stated that assessment should include assessing psychological problems. This must be a part of APRN practice as depression is so common in primary care. Subsection

(1)(b)(ii) should include ordering and interpreting results of diagnostic tests and procedures because APRNs must be able to order tests. There should be a clause that includes treatment with medications if the APRN has prescriptive authority.

Response 2: The Board agrees to add "diagnostic tests" to (1)(b)(i). The Board believes that adding a clause stating that APRNs may administer medication if they have prescriptive authority would be redundant and unnecessary, as this language is in the rules for prescriptive authority.

Comment 3: Practitioner Humphrey objected to replacing the term "independent" in current rules to "interdependent."

Response 3: The Board believes that the APRN practice is independent. The current definition did not have the word "independent" in it. The original proposed change would have added "independent and interdependent." The Board has voted to amend the rule to include the phrase "independent and/or collaborative" and "interdependent" will not be used.

Comment 4: Several commenters [Sami Butler (Montana Nurses Association), Carla Gibson, Winifred Carson (American Nurses Association), Arlys Williams, Casey Blumenthal (Montana Hospital Association), Sharon Androes, and Shawn Shanahan] suggested the following substitutions in language: "collaborative" for "interdependent"; "facilitating" for "providing"; and "referring" for "recognition".

Response 4: The Board agrees with the commenters on the use of "collaborative" and "facilitating." However, the Board believes that because all practitioners must refer clients to other appropriate providers when necessary, "referring" will not be changed to "recognition". The practitioner has a responsibility for recognizing when to refer clients to others.

Comment 5: Casey Blumenthal (Montana Hospital Association) suggested removing the word "compliance" from (1)(b)(iv) since a practitioner can never assure patient compliance.

Response 5: The Board agrees with the comment and will change the language to "promote their understanding of and compliance with therapeutic regimes".

Comment 6: Bart Campbell, staff attorney for the Economic Affairs Interim Committee, asked the Board if this proposed amendment expands the scope of nurse practitioner (NP) practice.

Response 6: The Board does not believe this amendment is an expansion of scope of practice. The practice of NPs will not change in any way as a result of this revision in rule language, which is proposed for clarity, consistency with other APRNs (the independent language has always been in the Certified Nurse Midwife rules), and congruency with current APRN practice.

8.32.305 EDUCATIONAL REQUIREMENTS AND OTHER QUALIFICATIONS APPLICABLE TO ADVANCED PRACTICE REGISTERED NURSING

Comment 7: Commenters (Cathleen Simensen, Dana Hillyer, Eve Franklin, Catherine Caniparoli and Teresa Henry) stated that the CNS role is not well defined in law. They would like the Board to defer making a decision on a change in CNS practice until the Board gathers more information. Commenters stated that the proposed amendments would narrow CNS practice, and limit the individuals available for rural health care.

Response 7: The Board will permit all currently licensed psychiatric clinical nurse specialists to function in the practitioner role. Those currently licensed as psychiatric CNSs will be covered by a grandfather clause. Subsection (3)(a) will read "Those psychiatric mental health CNSs certified in Montana prior to July 1, 2005 will continue to be recognized in Montana." The Board reviewed substantial research and current nursing practice standards in concluding that most CNS education programs do not prepare the nurse to make medical diagnoses or prescribe pharmacotherapeutic interventions. If the individual is educationally prepared, after July 1, 2005, to make medical diagnoses and prescribe pharmacotherapeutic interventions, he/she would be required to take the Nurse Practitioner certifying examination and would then qualify for APRN nurse practitioner status in Montana and practice as such.

The Board is responsible for ensuring that individuals are competent to practice, and educational preparation is a significant mechanism for obtaining competency, in addition to successfully completing the appropriate national certifying examination.

Comment 8: Winifred Carson, from the American Nurses Association, believes that removing the option of prescriptive authority from CNS practice is not in harmony with the statutory mandate from the legislature. Ms. Carson stated that the legislative intent does not allow the Board to limit CNS practice, and that the Board has not provided statistical data in its reasonable necessity statement to warrant this change.

Response 8: The Board acknowledges the comment. However, the Board cannot address the commenter's concerns regarding "legislative intent" because the commenter did not provide any documentary evidence to support her assertions, nor did she provide the citation to the particular legislative bill for the Board to research and respond. Although the Board does use statistical data in many of the reasonable necessity statements, there is no statutory requirement for doing so.

Comment 9: Pam Peterson, Shawn Shanahan and Cathleen Simensen asked for clarification on what constitutes a subspecialty and what types of documentation show competency. The commenters would also like to know if an APRN approves the plans for competency and questioned why narrowing one's scope is a problem

that needs to be approved by the Board.

Response 9: The Board concludes the change is necessary as APRNs who were educated for a generalist role are now choosing to subspecialize. The Board has had several requests from Family Nurse Practitioners who want to subspecialize. The Board has a responsibility to assure public safety. Providing a plan is a way for the Board to assure the public's safety by acknowledging the APRNs' preparation and competency for the subspeciality practice. The APRN committee, which includes an APRN as a member, will review all requests for subspecialization and make recommendations for approval/non-approval to the full Board.

Comment 10: Barbara Warren (for the American Psychiatric Nurses Association) and Eve Franklin stated that the American Psychiatric Nurses Association supports one body of knowledge for PMH CNSs and NPs. They stated that only one exam for certification is needed and only one title is needed.

Response 10: The Board disagrees and concludes that because two exams are available, there is a difference demonstrated by that fact alone – two examinations for two different purposes. The Board has also reviewed transcripts and program descriptions from several CNS programs that do not include practitioner training, such as pharmacotherapeutics and differential diagnoses necessary for independent practitioner practice.

Comment 11: Commenters Sharon Androes and Shawn Shanahan stated opposition to the "grandfather" language, and requested more specific language stating that current psychiatric CNSs will not lose their status after 2005.

Response 11: The Board agrees to clarify the language and will add specific grandfather language to the rule.

Comment 12: Dana Hillyer stated that the rationale for removing the PMH CNS ability to prescribe is flawed. ANCC has no plans to stop administering the PMH CNS exam and there is no move to eliminate PMH CNS programs. Ms. Hillyer stated that the Board overlooked the historical precedents of the PMH CNS role, and has neglected the current national trends. She believes Montana will be a state of restricted practice.

Response 12: The Board disagrees and concludes that because two exams are available, there is a difference. The Board has also reviewed transcripts from several CNS programs that do not include practitioner preparation.

Comment 13: Sami Butler (Montana Nurses Association) and Carla Gibson suggested inserting "medical" in ARM 8.32.305(3) to make it consistent with (4).

Response 13: The Board agrees to change the rule to read

"utilize medical diagnosis and treatment, proof of education related to medical diagnosing, treating and managing of psychiatric patients."

Comment 14: Susan Bodurtha stated that the American Nurses Credentialing Center will continue to administer the psychiatric CNS exam. She also suggested adopting rule language similar to that in Oregon, where the board evaluates each CNS application for licensure, and makes a decision on individual qualifications.

Response 14: The Board reviewed the Oregon rule language and found it more restrictive than that of Montana. Oregon requires protocols and does not support independent practice.

Comment 15: R. M. Scott Purol stated that he and his colleagues have studied neuropharmacology, psychopharmacology, neuropsychopharmacology, and psychoneuropharmacophysiology. He stated that the roles of the psychiatric NP and CNS are the same. He stated that Psychiatric CNSs have additional training in marriage and group therapy.

Response 15: The Board appreciates the commenter’s input. The Board disagrees that PMH NP and CNS roles are interchangeable, since the educational preparation differs, as do the certifying examinations. Also, both components are necessary for the Board to establish basic, essential competence for an APRN specialty.

Comment 16: Shawn Shanahan asked how the Board defines "medical treatments" aside from prescribing.

Response 16: There are a number of medical treatments that the APRN could perform, depending on the patient's diagnosis and socio-medical history. Those treatments include psychotherapy, counseling, bio-feedback, and/or anger management, to name four examples. The appropriateness of any given treatment modality must be evaluated by the APRN at each visit with the patient.

8.32.306 APPLICATION FOR RECOGNITION, 8.32.402 LICENSURE BY EXAMINATION, and 8.32.405 LICENSURE BY ENDORSEMENT

Comment 17: The Montana Nurses Association supports the proposed amendments.

Response 17: The Board appreciates the support of the proposed amendments.

8.32.412 INACTIVE STATUS

No comments were received on this proposed amendment.

8.32.413 CONDUCT OF NURSES

Comment 18: Casey Blumenthal, Montana Hospital Association,

stated that notifying the Board office of an address change within 10 days is an unreasonable expectation during such a chaotic time.

Response 18: All Montana professional and occupational licensing boards have this statement on the licenses they issue. The Board will not penalize a nurse for submitting an address change prior to a move, or within 15 days of the move, however notifying the appropriate licensing board is a professional responsibility. The Board suggests pre-move notification in order to avoid the problem cited by the commenter.

8.32.1501 PRESCRIPTIVE AUTHORITY FOR ADVANCED PRACTICE REGISTERED NURSES NURSE PRACTITIONERS, CERTIFIED REGISTERED NURSE ANESTHETISTS AND CERTIFIED NURSE MIDWIVES

Comment 19: Shawn Shanahan strongly supported the proposed changes in (3). She stated that the changes would enable APRNs to better serve clients and particularly indigent clients.

Response 19: The Board appreciates the commenter's support.

Comment 20: Cathleen Simensen stated that the title should not be changed since CNSs are APRNs.

Response 20: The Board agrees that the catchphrase may be misleading, and therefore the catchphrase will be changed to "PRESCRIPTIVE AUTHORITY FOR ELIGIBLE APRNs". The change in (2)(b) will reflect the fact that current PMH CNSs may have prescriptive authority.

Comment 21: Shawn Shanahan suggested that grandfather language be included for existing CNSs.

Response 21: The Board agrees and will add grandfather language.

Comment 22: Casey Blumenthal, of the Montana Hospital Association, opposed excluding the CNS from obtaining prescriptive authority. The commenter suggested providing another forum whereby CNSs could have an interactive dialogue with the Board on this issue. The commenter feels that prohibiting CNSs from obtaining prescriptive authority limits their practice unnecessarily.

Response 22: The Board does not believe that the non-psychiatric mental health CNS role is one of a practitioner. Non-psychiatric mental health CNSs have never sought prescriptive authority in Montana and their educational preparation would not support it.

Comment 23: Sami Butler, of the Montana Nurses Association, asked the Board to delay action on ARM 8.32.305, and to seek more input from CNSs. If the Board chooses not to delay, the

commenter asks the Board to allow CNSs to obtain prescriptive authority after additional education and competency evaulation.

Response 23: The Board ensured notice for all subcommittee meetings, and provided telephone conference lines for those who could not attend. The information was also available on-line and in the Board newsletters. Notices for the specific rule changes were also mailed to every APRN, which significantly exceeded the notice requirements of the Montana Administrative Procedure Act.

If a CNS obtains additional education and competencies, the individual should then be able to take the appropriate practitioner examination required for independent practice and prescriptive authority.

Comment 24: Dana Hillyer stated that PMH CNSs have the needed pharmacokinetic and differential diagnosis training that the Board believes is necessary.

Response 24: The American Nurses Credentialing Center certification catalog outlines the requirements for PMH CNS certification. A master's in the area of PMH CNS is not required. Thus, there is no guarantee of specific master's level course in the field of specialty which addresses the pharmacokinetics and differential diagnosis required for independent prescribing and diagnosing of psychiatric disorders. This rule pertains to individuals who obtain certification after July 1, 2005, and not to currently licensed psychiatric CNSs.

Comment 25: Winifred Carson, American Nurses Association, suggested that there is no legislative intent to limit CNS practice by denying prescriptive authority. A suggestion was made to require proof of a course in pharmacology instead.

Response 25: The Board concludes that because there are two distinct exams, there are two distinct practices. Requiring a course in pharmacology would not guarantee that the individual was tested by the credentialing body on that information.

Comment 26: The American Psychiatric Nurses Association, Barbara Warren, and Eve Franklin stated that there is one body of knowledge and one scope of practice for all APRNs who treat psychiatric clients.

Response 26: The Board disagrees as outlined in previous responses.

Comment 27: Shawn Shanahan asked the Board to investigate the impact of this change on clients.

Response 27: The Board believes there will be no impact on clients because there will be no change in the health care delivery system. Those PMH CNSs with prescriptive authority, who were recognized in Montana before July 1, 2005, will be

covered by a grandfather clause.

Comment 28: Merton Johnson, Barbara Lundemo, Richard Kirschke and Ronald Freund opposed requiring CRNAs to have prescriptive authority. They believe it is not a national requirement, and that the practice of administering anesthesia and ordering pre-operative medications is not prescribing. Having prescriptive authority will not improve their practice. The commenters stated that the DEA defines the practice of nurse anesthesia as the administration of controlled substances and not prescribing. They do not believe they dispense medications or administer prescription drugs to prevent illness.

Response 28: The Board agrees with the commenters and has changed its position after review of substantial data. The Board will strike the requirement for prescriptive authority, except when the CRNA is prescribing medications to be filled outside the facility, clinic or office and to be taken while not under the direct care of the CRNA.

Comment 29: Ronald Freund and Thomas Schultz (Montana Society for Nurse Anesthetists) stated that the Board based its decision on a comment from the Executive Director and the counsel of the Board of Pharmacy, and the Executive Director has since retracted her opinion and stated she was acting on her own when rendering this opinion. The American Association of Nurse Anesthetists does not believe prescriptive authority is required for anesthesia practice. The DEA defines the practice of anesthesia as administering and not prescribing.

Response 29: The Board agrees and will strike the requirement for prescriptive authority.

Comment 30: Becky Deschamps, Executive Director for the Board of Pharmacy, stated that her opinion on whether CRNAs need prescriptive authority was simply her personal opinion at the time. The Board of Pharmacy never discussed it. Since her original statement, she has changed her opinion on whether CRNAs are prescribing when they give anesthesia.

Response 30: The Board appreciates the comment and has voted to change the proposed language. This opinion is consistent with that of the Drug Enforcement Administration.

Comment 31: Merton Johnson and Barbara Lundemo stated that there is not a problem with physicians signing orders for CNRAs. They wondered where did all this start and what is the reason for proposing this rule now.

Response 31: The Board will not require prescriptive authority for those CRNAs working in a hospital or facility setting when a separate prescription is written for the patient to take home.

Because the practice is independent, the CRNA with prescriptive authority should not have a physician sign

prescriptions that will be filled outside the facility. The rule is being proposed now as a result of general rule review. The Board currently has no requirement that a physician signs off any orders or prescriptions for an APRN, though some facilities require this as a condition of privileging and credentialing.

Comment 32: Richard Kirschke stated that requiring CRNAs to have prescriptive authority would limit the number of CRNAs who will come to Montana for locum tenens coverage.

Response 32: The Board does not believe that this change would have limited locum tenens employment relationships, but has voted to strike the requirement for prescriptive authority.

Comment 33: Merton Johnson and Barbara Lundemo asked whether RNs and LPNs in a facility need prescriptive authority to receive prescription samples.

Response 33: Only APRNs may have prescriptive authority. RNs and LPNs cannot sign for or dispense prescription samples. If this is occurring, it should be reported to the Board office.

Comment 34: Thomas Schultz (Montana Society for Nurse Anesthetists) stated that if CRNA practice is tied to licensure, and a CRNA loses prescriptive authority, that CRNA would be unable to practice. The commenter believes that the rule as proposed would be inconsistent with other parts of the laws and rules for nursing, but did not state in which way.

Response 34: The Board agrees with the commenter and will strike the requirement for prescriptive authority.

Comment 35: Sami Butler (Montana Nurses Association) and Thomas Schultz (Montana Society for Nurse Anesthetists) asked the Board to reexamine the issue of mandatory prescriptive authority for CRNAs since the language is inconsistent with a national movement.

Response 35: The Board agrees with the commenters and will strike the requirement for prescriptive authority.

8.32.1502 DEFINITIONS

Comment 36: Arlys Williams asked why the peer reviewer must have prescriptive authority. If a person has independent practice but does not have prescriptive authority, that practitioner should also be aware of treatment modalities. Will sending charts out to other APRNs raise new concerns with the Health Insurance Portability and Accountability Act of 1996? Will the travel encountered by prohibitive?

Response 36: All practitioners should be aware of treatment modalities within their scopes of practice. However, if a

licensee has not been approved for prescriptive authority, that licensee may not function as a peer reviewer for an APRN with prescriptive authority. The concept of a peer reviewer is a person who has a similar practice. Records may or may not be sent out for review. That decision remains with the licensee. There are no HIPPA regulations that prohibit this. Names and identifiers may be redacted before records are sent out. The Board does not have control over travel required for peer review, but it believes that peer review is necessary given the independent nature and scope of APRN practice.

8.32.1505 PRESCRIBING PRACTICES

Comment 37: Shawn Shanahan strongly supported the proposed changes in (2)(a) through (g), stating that they will streamline provision of care and improve efficiency. Cathleen Simensen supports the changes in (2)(a) through (h).

Response 37: The Board appreciates the support for these proposed amendments.

Comment 38: Cathleen Simensen argued that the line regarding local anesthetics should be retained.

Response 38: Administration of local anesthetics is in the RN rules, and is redundant and unnecessary in the APRN rules.

8.32.1506 SPECIAL LIMITATIONS RELATED TO THE PRESCRIBING OF CONTROLLED SUBSTANCES

Comment 39: Pam Peterson believes that having to send a written authorization for a refill of a controlled substance is already addressed and allowed by state law in some cases. She would like the requirement to be dropped.

Response 39: Faxed prescriptions are acceptable. This was not a proposed change, so it cannot be addressed in this notice.

8.32.1509 TERMINATION OF PRESCRIPTIVE AUTHORITY

No comments were received regarding the proposed amendment.

8.32.1510 RENEWAL OF PRESCRIPTIVE AUTHORITY

Comment 40: Richard Krischke, Catherine Caniparoli, and Cathleen Simensen believe that 10 hours of continuing education (CE) is burdensome. They state the current requirement of 6 hours for two years is sufficient, and they believe that it will be a hardship for APRNs to find an additional 2 hours of CE per year.

Response 40: The Board concludes that pharmacotherapeutics change so rapidly that the independent practitioner needs to obtain considerable continuing education to be a safe

practitioner. Online courses are plentiful and this is a minimal requirement when compared to other states and the level of independence afforded Montana's APRNs.

Comment 41: Dana Hillyer stated that CE requirements are confusing and that the Board should clearly define how many units will be required.

Response 41: Forty hours will be required to renew APRN status every two years. An additional 10 hours in pharmacology will be required if the licensee is also renewing prescriptive authority. The new language may be clearer when the new rules are in regular format.

NEW RULE I (8.32.417) PROBATIONARY LICENSES AND NEW RULE II (8.32.1410) PURPOSE OF STANDARDS OF PRACTICE FOR THE ADVANCED PRACTICE REGISTERED NURSE

No comments were received on these proposed new rules.

NEW RULE III (8.32.1411) STANDARDS RELATED TO THE ADVANCED PRACTICE REGISTERED NURSE'S RESPONSIBILITY TO APPLY THE NURSING PROCESS

Comment 42: Arlys Williams suggested adding "the APRNs" before nursing practice so that medical research may also be used. Will the APRN need to document the priorities of care for each visit? Will each encounter's dictation need to specify how treatment will be evaluated? She suggested that (1)(d) needs to be reworded since documenting all aspects of health status is not done at every visit. How does one check to know if her peer has an unencumbered license?

Response 42: The Board concludes that the ability to use medical research in practice is covered in (1). The APRN needs to document care according to standards of practice. Uniform national language may be used to address health status. Anyone can check the status of a licensee by calling the Board office or using the web site.

Comment 43: Sharon Androes opposes "across the board protocols and documentation." She sees this as increased and unnecessary paperwork that will reduce the time available for patients.

Response 43: The Board made changes based on current national APRN standards of practice and a thorough understanding of APRN roles and practice.

Comment 44: Sami Butler (Montana Nurses' Association) and Carla Gibson suggested adding "families, communities and populations." The commenters also suggested adding "other disciplines" to the science based evidence clause in (1)(a)(ii) and deleting "all" from (1)(d) and inserting "identified."

Response 44: The Board agrees and has deleted "nursing" in (1)(a)(ii), and has deleted "all" and inserted "identified" in (1)(d). The Board will address the other comment in a future rule change by defining "client" to include individuals, families, groups and populations, as this is the Board's intent. This intent is consistent with current nursing literature, research and textbooks.

NEW RULE IV (8.32.1412) STANDARDS RELATED TO THE ADVANCED PRACTICE REGISTERED NURSE'S RESPONSIBILITY

Comment 45: Dana Hillyer objected to the peer and physician reviewers having to sign a notarized statement attesting to the fact that they had reviewed the APRN's records. She stated that all requirements for renewal should be in a list so that there are no hidden requirements.

Response 45: The Board concludes that the notarized statement is not a hardship. Requirements will be in a list sent to all APRNs. The Board concludes that peer review is important in that it demonstrates a desire to substantiate one's practice patterns, offers opportunity for improvement, and is consistent with independent practice responsibilities.

Comment 46: Janet Winne stated that the referral process language is unclear. Will the APRN be required to maintain a list? She also would like all requirements for renewal be spelled out in New Rule IV.

Response 46: Referral information is obtained at the time of application. It is updated when the APRN files a change in practice. Requirements will be in a list sent to all APRNs.

Additional Comments on Rulemaking Process:

Comment 47: Eve Franklin, RN, commented about the Board's process of conducting hearings and gathering information. Ms. Franklin stated that Board members have a duty to listen to their constituency. Office staff advised a licensee against contacting individual Board members directly, as it would violate the open meeting law. Ms. Franklin believes that this is not a violation of the open meeting law, and believes the Board should communicate with anyone who wants to express an opinion.

Ms. Franklin also stated that the hearing process the Board uses is dubious, and although the practice has been consistent for a number of years, she believes it is flawed. Board members should attend every rulemaking hearing. She believes that the Board members do not receive all of the testimony, and that staff filters and editorializes what is given to Board members.

Ms. Franklin also believes that these proposed rules and previous proposed rules were developed by staff, and that staff presented only part of the available information on CNS licensure, education and preparation to the Board.

Response 47: The Board acknowledges Ms. Franklin's comments. The incident in question involved a licensee who wished to discuss testimony with Board members after the close of the comment period. The Board may not accept any further verbal or written testimony once the comment period is closed. On another note, the Board does not have a constituency. The Board serves to protect the public. Licensees are not constituents.

The Board concludes that it is not feasible for all Board members to attend every hearing. Board members are required to be employed in the field of nursing, and to have them attend every hearing would be financially prohibitive for the individual Board members and the Board as a whole. Costs associated with travel, hotels and meals for several rules hearings a year would dramatically increase the Board's budget.

The Board hires a court reporter to accurately document testimony and discussion at every hearing. Board staff does not edit these documents in any way. Furthermore, Board staff meticulously copies all written testimony and other documents received. A copy of all testimony and the transcript from the hearing is mailed to each Board member at least two weeks before they deliberate in an open meeting. Board members believe they have the ability to review written documentation in an objective and thorough manner prior to deliberating at a meeting. They do not believe that it would make a difference to be present at the hearings, and that it could actually cause oral testimony to carry more weight than written testimony. This is unacceptable to the Board, as all testimony, in whatever form, is equally important in the rulemaking process.

A subcommittee initiated work on the rules and considered many sources of information, including the documents cited in testimony from the hearing. The subcommittee then referred the proposed changes to the full Board for consideration and the subsequent filing of the notice. The document produced was not a Board staff document, but rather a document that had the criticism of a Committee, including two NPs, a CNS, two MSNs, an RN, an LPN, and other APRNs who had periodic involvement in the process. Each member researched topics, brought independent information to the table and reviewed each draft.

Comment 48: Dana Hillyer, Dale Mayer, John Honsky, Linda Morrow Torma, Nadine Parker, Rachel Rockafellow, Laurie Glover and Shawn Shanahan asked the Board to delay action until more nurses could submit testimony and stated that the Board did not seek opinions from interested parties and licensees.

Response 48: The Board publicized its meetings in newsletters and on its web site for almost a year. Every APRN also received a copy of the notice of proposed amendment. MAPA was followed, and a sufficient comment period was provided. The Board could not afford to send invitations to each APRN, however Montana Nurses Association representatives were present at every meeting.

4. After consideration of the comments, the Board has

amended ARM 8.32.306, 8.32.402, 8.32.405, 8.32.412, 8.32.1502, 8.32.1505, 8.32.1506, 8.32.1509 and adopted new rules I (8.32.417) and II (8.32.1410), exactly as proposed. The Board has repealed 8.32.1507 exactly as proposed.

5. After consideration of the comments, the Board has amended and adopted the following rules as proposed, with the following changes, stricken matter interlined, new matter underlined:

8.32.301 NURSE PRACTITIONER PRACTICE (1) Nurse practitioner practice means the independent and/or ~~interdependent~~ collaborative management of primary and/or acute health care of individuals, families and communities including:

(a) remains as proposed.

(b) instituting and ~~providing~~ facilitating continuity of health care to clients, including:

(i) ordering durable medical equipment, treatments and modalities, and diagnostic tests;

(ii) and (iii) remain as proposed.

(iv) working with clients to ~~insure~~ promote their understanding of and compliance with therapeutic regimes;

(c) through (f) remain as proposed.

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

8.32.305 EDUCATIONAL REQUIREMENTS AND OTHER QUALIFICATIONS APPLICABLE TO ADVANCED PRACTICE REGISTERED NURSING (1) and (2) remain as proposed.

(3) Applicants for recognition as a psychiatric CNS shall possess a master's degree in nursing from an accredited nursing education program which prepares the nurse for a psychiatric CNS practice. If the psychiatric CNS plans to ~~diagnose and treat~~ utilize medical diagnosis and treatment, proof of education related to medical diagnosing, treating and managing psychiatric clients shall be provided. This education must integrate pharmacology and clinical practice.

(a) After July 1, 2005, the board will not recognize newly certified psychiatric CNSs who provide medical diagnoses and treatments. Individuals intending to practice in this manner will be required to be certified as psychiatric nurse practitioners. Those psychiatric mental health CNSs certified in Montana prior to July 1, 2005 will continue to be recognized in Montana.

(b) Psychiatric CNSs certified in a state other than Montana prior to July 1, 2005, may be recognized in Montana.

(4) For approval in a subspecialty practice setting, the licensee shall submit documentation of, or a plan for, achievement of competency in the subspecialty area.

(5) remains as proposed.

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

8.32.413 CONDUCT OF NURSES (1) through (2)(t) remain as

proposed.
AUTH: ~~37-1-316,~~ 37-1-319, 37-8-202, MCA
IMP: 37-1-316, 37-1-319, 37-8-202, MCA

Reason: Following final review of the proposed rule changes, the Board has determined that it is necessary to remove 37-1-316, MCA, from the authority cites to accurately reflect the source of the Board's rulemaking authority.

8.32.1501 PRESCRIPTIVE AUTHORITY FOR ~~NURSE PRACTITIONERS, CERTIFIED REGISTERED NURSE ANESTHESTISTS AND CERTIFIED NURSE MIDWIVES~~ ELIGIBLE APRNS (1) remains as proposed.

(2) An APRN granted prescriptive authority by the board of nursing may prescribe and dispense drugs pursuant to applicable state and federal laws.

(a) ~~Only~~ NPs, CRNAs, and CNMs with unencumbered licenses may hold prescriptive authority.

(b) ~~All CRNAs are required to have~~ Psychiatric CNSs with unencumbered licenses who are certified prior to July 1, 2005, may hold prescriptive authority.

(3) and (4) remain as proposed.
AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

NEW RULE III (8.32.1411) STANDARDS RELATED TO THE ADVANCED PRACTICE REGISTERED NURSE'S RESPONSIBILITY TO APPLY THE NURSING PROCESS (1) through (1)(a)(i) remain as proposed.

(ii) utilizing evidence-based research data in ~~nursing~~ practice;

(b) and (c) remain as proposed.

(d) manage and document ~~all~~ identified aspects of the client's health status within the APRN's competencies, scope and practice; and

(e) remains as proposed.
AUTH: ~~37-1-301, 37-8-102,~~ 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-202, MCA

Reason: Following final review of the proposed rule changes, the Board has determined that it is necessary to amend the authority cites to accurately reflect the source of the Board's rulemaking authority.

NEW RULE IV (8.32.1412) STANDARDS RELATED TO THE ADVANCED PRACTICE REGISTERED NURSE'S RESPONSIBILITIES AS A MEMBER OF THE NURSING PROFESSION (1) remains as proposed.
AUTH: ~~37-1-301, 37-8-102,~~ 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-202, MCA

Reason: Following final review of the proposed rule changes, the Board has determined that it is necessary to amend the authority cites to accurately reflect the source of the Board's rulemaking authority.

BOARD OF NURSING
KIM POWELL, RN, MSN, APRN, Chair

/s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

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

Certified to the Secretary of State: December 2, 2002.

BEFORE THE BOARD OF PUBLIC ACCOUNTANTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 8.54.410, pertaining to fees	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 17, 2002, the Department of Labor and Industry published a notice of proposed amendment of the above-stated rule at page 2820, 2002 Montana Administrative Register, Issue Number 19.

2. A public hearing on the proposed amendment was held on November 15, 2002. No public comments were made on the proposed amendment during the comment period.

3. The Board of Public Accountants met telephonically on November 21, 2002, to take final action on the proposed amendment. The Board has amended the rule exactly as proposed.

BOARD OF PUBLIC ACCOUNTANTS
BERYL ARGALL STOVER, CPA,
CHAIR

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

/s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

Certified to the Secretary of State December 2, 2002

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

In the matter of the amendment of Montana's prevailing wage rates, pursuant to ARM 24.17.127	))))	NOTICE OF AMENDMENT OF PREVAILING WAGE RATES - HIGHWAY CONSTRUCTION ONLY

TO: All Concerned Persons

1. On October 17, 2002, the Department of Labor and Industry published a notice of proposed amendment of the above-stated rule at page 2824, 2002 Montana Administrative Register, Issue Number 19.

2. A public hearing on the proposed amendment was held on November 15, 2002, and members of the public appeared and made comments. No written comments were received during the comment period.

3. The Department has amended the rule exactly as proposed.

4. The Department has thoroughly considered the comments received. A summary of the comments and the Department's responses are as follows:

Comment 1: Glenn Gregor, on behalf of the Laborer's Union, and David Warner, on behalf of the Carpenter's Union, spoke in favor of the proposed changes.

Response 1: The Department acknowledges the comments made in support of the proposed changes.

/s/ KEVIN BRAUN	/s/ WENDY J. KEATING
Kevin Braun	Wendy J. Keating, Commissioner
Rule Reviewer	DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: December 2, 2002.

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

In the matter of the adoption of temporary emergency amendments of ARM 37.86.3502, 37.89.103, 37.89.114, 37.89.115 and 37.89.118 pertaining to mental health services plan covered services	)))))))	NOTICE OF ADOPTION OF TEMPORARY EMERGENCY RULES

TO: All Interested Persons

1. The Department of Public Health and Human Services is adopting the following temporary emergency rule amendments of ARM 37.86.3502, 37.89.103, 37.89.114, 37.89.115 and 37.89.118 pertaining to mental health services plan covered services.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on December 31, 2002, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

2. The text of the emergency rules is as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.86.3502 CASE MANAGEMENT SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS, ELIGIBILITY (1) remains the same.

(2) "Severe disabling mental illness" means with respect to a person who is 18 or more years of age that the person meets the requirements of (2)(a), (b) or (c). The person must also meet the requirements of (2)(d). The person:

(a) remains the same.

(b) a DSM-IV diagnosis of:

(i) through (vi) remain the same.

(vii) obsessive ~~complusive~~ compulsive disorder (300.3);

(c) through (d)(iv) remain the same.

AUTH: Sec. 53-2-201, 53-6-113 and 53-21-703, MCA
IMP: Sec. 53-6-101 and 53-21-701, MCA

37.89.103 MENTAL HEALTH SERVICES PLAN, DEFINITIONS As used in this subchapter, unless expressly provided otherwise, the following definitions apply:

(1) through (14)(d)(vi) remain the same.

(15) "Severe disabling mental illness" means with respect to a person who is 18 or more years of age that the person meets

the requirements of (15)(a), (b) or (c). The person must also meet the requirements of (15)(d). The person:

(a) through (18) remain the same.

AUTH: Sec. 41-3-1103, 52-1-103, 53-2-201, 53-6-113, 53-6-131, 53-6-701 and 53-21-703, MCA
IMP: Sec. 41-3-1103, 52-1-103, 53-1-601, 53-1-602, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-117, 53-6-131, 53-6-701, 53-6-705, 53-21-139, 53-21-202 and 53-21-701, MCA

37.89.114 MENTAL HEALTH SERVICES PLAN, COVERED SERVICES

(1) remains the same.

(2) Covered services for youth include:

(a) remains the same.

(b) primary care providers, as defined in ARM 37.86.5001~~(18)~~ (25), for screening and identifying psychiatric conditions and for medication management;

(c) a psychotropic drug formulary, as specified in ~~(6)~~ (7);

(d) remains the same.

(e) psychological assessments, treatment planning, individual, group and family therapy, and consultations performed by licensed psychologists, licensed clinical social workers, and licensed professional counselors for treatment of covered diagnoses in private practice or in mental health centers; and

~~(f) case management services for adults with severe disabling mental illness; and~~

(g) remains the same but is renumbered (f).

(3) Covered services for adults include:

(a) services provided by a licensed mental health center contracted with the department for services to adults enrolled in the plan;

(b) primary care providers, as defined in ARM 37.86.5001(25), for screening and identifying psychiatric conditions and for medication management;

(c) a psychotropic drug formulary, as specified in (7);

(d) medication management, including lab services necessary for management of prescribed medications medically necessary with respect to a covered diagnosis.

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

~~(7)~~ (8) Except as provided in ~~(7)~~ (8)(a), the plan covers medically necessary mental health services for covered diagnoses for members who are residents of nursing facilities, regardless of whether the services are provided in the nursing facility.

(a) through (9)(c) remain the same but are renumbered (8)(a) through (10)(c).

~~(10)~~ (11) A member who is an inmate in or incarcerated in a correctional or detention facility is not entitled to services under the plan, except as specifically provided in these rules.

(a) The plan covers discharge planning services in relation to a covered diagnosis prior to release from a correctional or detention facility for a member who is:

(i) through (iii) remain the same.

(iv) a forensic patient, as specified in ~~(7)~~ (8)(a), admitted to the Montana state hospital; or

(v) through (12)(a)(ii) remain the same but are renumbered (11)(a)(v) through (13)(a)(ii).

AUTH: Sec. 41-3-1103, 52-1-103, 53-2-201, 53-6-113, 53-6-131, 53-6-706 and 53-21-703, MCA
IMP: Sec. 41-3-1103, 52-1-103, 53-1-405, 53-1-601, 53-1-602, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-701, 53-6-705, 53-6-706, 53-21-139, 53-21-202 and 53-21-701, MCA

37.89.115 MENTAL HEALTH SERVICES PLAN, PROVIDER PARTICIPATION (1) through (1)(b) remain the same.

(2) Providers in the following categories may request enrollment in the plan:

(a) and (b) remain the same.

(c) primary care providers, as defined in ARM 37.86.5001~~(18)~~ (25);

(d) through (4)(c) remain the same.

(i) The notice and hearing provisions of ARM 37.85.512 and 37.5.310 apply to a department overpayment determination under (4)(c).

(d) through (d)(ii) remain the same.

(iii) The notice and hearing provisions of ARM 37.85.512 and 37.5.310 apply to a department sanction determination under (4)(d).

(5) through (5)(c) remain the same.

(6) An enrolled provider shall be provided an opportunity for administrative review and fair hearing as provided in ARM ~~Title 37, chapter 2, subchapter 3 and 5~~ 37.5.310 to contest a denial of correct payment by the department to the provider for a service provided to a member if:

(a) through (7) remain the same.

AUTH: Sec. 2-4-201, 41-3-1103, 53-2-201, 53-6-113 and 53-21-703, MCA
IMP: Sec. 2-4-201, 41-3-1103, 53-1-601, 53-2-201, 53-6-113, 53-6-116, 53-6-701, 53-6-705, 53-21-202 and 53-21-701, MCA

37.89.118 MENTAL HEALTH SERVICES PLAN, AUTHORIZATION REQUIREMENTS (1) and (1)(a) remain the same.

(b) Services provided to adult members of the mental health services plan are exempt from the prior authorization provisions of ARM 37.88.101.

AUTH: Sec. 53-2-201 and 53-21-703, MCA
IMP: Sec. 53-2-201, 53-21-202 and 53-21-701, MCA

3. The Department of Public Health and Human Services is adopting these temporary emergency amendments to prevent imminent peril to the public health, safety, and welfare. The Department continues to face imminent and substantial budget shortfalls and it is necessary for the Mental Health Services

Plan (MHSP) to reduce expenditures. Previously adopted cost saving measures have not been sufficient to meet worsening state budget projections. If immediate action is not taken to reduce MHSP expenditures, appropriations for MHSP services will be depleted before the end of State Fiscal Year 2003 (SFY03). 17-8-104, MCA subjects public officials to civil penalties if they fail to keep expenditures, obligations and liabilities within the amount of the legislative appropriation as required by 17-8-103, MCA. 53-7-703(4), MCA requires that any rules adopted by the Department must take into account the availability of appropriated funds, among other things. ARM 37.89.114(11) provides that the Department may limit services under the Mental Health Services Plan based upon factors including, but not limited to, availability of funding. Without these emergency rule amendments, the Department would be required to eliminate or substantially curtail other services that are vital to the mental health of Medicaid recipients and MHSP beneficiaries.

The MHSP is a state-funded program that provides comprehensive mental health services for persons in low income households who are not eligible for Medicaid. MHSP is not subject to Medicaid rules and regulations. The Department is adopting these temporary emergency rule amendments to limit services for adult members of the MHSP. Under these amendments, MHSP services to adults are limited to services provided by licensed mental health centers that have contracted with the Department for services to adults enrolled in the plan; primary care providers for screening and identifying psychiatric conditions and for medication management; a psychotropic drug formulary and medication management including lab services necessary for management of prescribed medications medically necessary with respect to a covered diagnosis. The temporary emergency amendments remove the requirement that prior authorization be obtained for services provided to adult members of the Mental Health Services Plan. Finally, the amendment clarifies the definition of severe disabling mental illness.

ARM 37.89.114

The emergency amendments provide for separate arrays of services for youths and adults under the MHSP. The amendments to this rule limit services for adults enrolled in MHSP to those provided by licensed mental health centers who have a contract with the Department, by primary care providers as defined in ARM 37.86.5001(25) for screening and identifying psychiatric conditions and for medication management, and by laboratories for services necessary to manage prescription drugs medically necessary to treat a covered diagnosis. Youths will have access to psychological assessments, treatment planning, individual, group and family therapy, and consultations performed by licensed psychologists, licensed clinical social workers, and licensed professional counselors for treatment of covered diagnoses in private practice or through mental health centers.

The Department will contract with mental health centers to provide services to adults under the MHSP for an amount that is capped at the level of expenditures for the previous year. This will allow the Department to accurately project costs for the remainder of SFY03. Although some individuals may experience a loss of services, those with the most severe mental illness will continue to have access to services through a mental health center or through their private primary care provider. The Department considered and rejected the alternative of eliminating the program entirely when the allocated funding is depleted. This would have had a far more destructive effect than the emergency amendments.

ARM 37.89.115

The Department is taking this opportunity to correct outdated cross references in this rule for hearing procedures applicable to MHSP providers. References to the hearing procedures were not corrected when the Department transferred, revised and renumbered its hearing rules from Title 46 to Title 37 effective June 30, 2000. The corrections are for administrative purposes only. They are intended to clarify the applicable hearing procedures and are not intended to substantively change MHSP providers' hearing rights.

ARM 37.89.118

The Department is eliminating the requirement for prior authorization of services for adult members of the MHSP. The amendments to ARM 37.89.114 have limited the services to licensed mental health centers and primary care providers. Services previously requiring prior authorization included adult foster and group care, crisis stabilization and outpatient therapy when the number of sessions exceeds 24. Each of these services will now be provided through a licensed mental health center and reimbursement will be capped by contract. The Department will allow the mental health centers to manage the contract resources without oversight from the Department's utilization review contractor. The Department will retain the authority to conduct a retrospective review if it is indicated that services have been reimbursed without documented medical necessity. The Department considered and rejected the alternative of continuing to require prior authorization. The Department determined it was unnecessary to continue to incur the costs of this service.

ARM 37.86.3502 and ARM 37.89.103

The Department is taking this opportunity to amend the rules defining severe disabling mental illness (SDMI) to clarify the criteria for determining whether a person suffers from a SDMI. The amendment provides explanatory language making it clear that an individual must have ongoing functional difficulties because of mental illness and must qualify in one of three other

categories as well. Some providers have interpreted the existing definitions as requiring that an individual must have been hospitalized at least 30 consecutive days because of a mental disorder at Montana State Hospital in order to be determined as having a SDMI. The amended rule makes it clear that hospitalization is not the only way to qualify as suffering a SDMI.

Fiscal impact

The Department expects these emergency rules to reduce state general fund expenditures for the MHSP by $500,000 in SFY03. This is accomplished by limiting projected expansion of the MHSP for the remainder of SFY03.

4. This emergency rulemaking will take effect December 1, 2002.

5. A standard rulemaking procedure will be undertaken by the Department prior to the expiration of the temporary emergency rule changes.

6. Interested persons may submit their data, views or arguments during the standard rulemaking process. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, submit by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us.

Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State November 27, 2002.

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

In the matter of the amendment of ARM 37.88.101, 37.89.106, 37.89.114, 37.89.115 and 37.89.125 pertaining to mental health center services and mental health services plan services	)))))))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On October 17, 2002, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rules at page 2887 of the 2002 Montana Administrative Register, issue number 19.

2. The Department has amended ARM 37.88.101, 37.89.106, 37.89.114, 37.89.115 and 37.89.125 as proposed.

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

COMMENT #1: The proposed amendments provide a shortsighted approach to the budget shortfall within the Medicaid Mental Health Program and the Mental Health Services Plan (MHSP). By eliminating the extended coverage MHSP provides to children who are insured by the Children's Health Insurance Plan (CHIP), the costs for some children will escalate and ultimately result in increased expenditures for the Department.

RESPONSE: The Department understands that the elimination of extended coverage for youth insured by CHIP will limit the access to certain mental health services for this group of children. Some services that were provided by MHSP as an extension of CHIP are not available to other youth who are beneficiaries of MHSP. The Department is unable to continue funding for out-of-home services for youth enrolled in CHIP and MHSP. Without this amendment, the Department would be required to eliminate other services that would result in a greater number of individuals with mental illness without treatment.

Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State December 2, 2002.

**BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA**

In the matter of the amendment of ARM 42.20.502, 42.20.503, 42.20.504, 42.20.505, 42.20.509, 42.20.511, 42.20.512, and 42.20.516; and repeal of ARM 42.20.506 and 42.20.518 relating to property phase-in valuation	))))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On September 12, 2002, the department published notice of proposed amendment and repeal of the above-stated rules relating to property tax phase-in valuation at page 2410 of the 2002 Montana Administrative Register, issue no. 17.

2. A public hearing was held on October 8, 2002, where written and oral comments were received.

3. Oral and written comments received during and subsequent to the hearing are summarized as follows along with the response of the department:

COMMENT NO. 1: Ms. Mary Whittinghill, representing the Montana Taxpayers' Association, provided comments regarding ARM 42.20.501 inquiring about the requirement in 15-1-205, MCA, for the department to include the "statewide average effective tax rate of taxable property in each class of property" as a result of HB 548 from the 2001 session. She stated that they were unable to locate a definition in the current rules. She further stated that they thought a reference to HB 124 should be added to the reasonable necessity language.

RESPONSE NO. 1: The term is not mentioned in the body of any of the rules pertaining to this notice. These rules don't have anything to do with the provisions of 15-1-205, MCA. It would not be appropriate to place a definition of "statewide average effective tax rate of taxable property in each class of property" in these rules. The Department has no problem referencing HB 124 as part of the reasonable necessity for this rule. However, the department has determined additional text defining certain terms will be necessary in ARM 42.20.501 to clarify further amendments regarding ARM 42.20.515. Therefore, the department is not going to adopt the proposed amendments to either ARM 42.20.501 or 42.20.515 at this time. MAR Notice No. 42-2-706, published in this issue of the Register, references those proposed changes and allows for public comment.

COMMENT NO. 2: Ms. Whittinghill further stated that they thought the reference to SB 501 should be deleted in the reasonable necessity for ARM 42.20.502, 42.20.503, 42.20.504,

and 42.20.509.

RESPONSE NO. 2: The department has no problem omitting reference to SB 501 in the reasonable necessity language.

COMMENT NO. 3: Ms. Whittinghill opposed the adoption of the amendments to ARM 42.20.512 because it was their understanding that the reference to "locally assessed telecommunications companies" was an issue currently under appeal and, therefore, should not be added at this time.

RESPONSE NO. 3: See response to comment number 6.

COMMENT NO. 4: Ms. Whittinghill questioned where newly taxable class seven property tax is determined. She referenced ARM 42.20.515(2), even though no amendments were being contemplated to this section.

RESPONSE NO. 4: The department does use class seven property in the determination of newly taxable property. ARM 42.20.515 neglects to reflect the inclusion of class seven property and should be amended to do so. The department will amend the rule to add class seven. (See also response to comment number 1.)

COMMENT NO. 5: Ms. Whittinghill requested the calculations or methodology used by the department for the amendments shown in ARM 42.20.515(4)(b) that resulted in the 0.12% figure.

She further stated that the reasonable necessity should reflect that HB 124 contained many of the changes to this section as well as SB 501. In particular, with reference to subsection (1)(a) which was not included as part of SB 501.

RESPONSE NO. 5: Although the elimination of property within a taxing jurisdiction has always been a part of the calculation of certified mill levies, SB 184 now requires that valuation lost to each taxing jurisdiction due to deletion, demolition, and destruction be accounted for separately. The law grants the department rulemaking authority to clarify the process to be used in determining the amount of valuation loss.

The rules may include the method for calculating the percentage of loss in valuation by levy district. This provision is for the purpose of estimating the amount of property valuation loss realized in a levy district, where actual data is not known. After analyzing thirty-three levy districts in seven counties, the tax policy and research process of the department calculated a rate of minus .12% (-.0012) as a statewide average. The total 1998 taxable value, multiplied by this factor, equals the value deducted from the 1998 taxable value as part of the levy certification process for 1999.

If the department's county office can, by levy district (using: AB-25s - "Application for Property Tax Relief on Real Property or Trailers and Mobile Homes Used as Permanent Dwellings, Destroyed by Natural Disaster"; AB-26s - "Property

Review Form"; etc.), determine and verify the actual value loss of properties due to destruction, demolition, changes in district boundaries, and property (houses and mobile homes) moving out of the district, those actual values should be used in place of the statewide average.

The department has determined that additional amendments are necessary to fully clarify this rule and therefore will not be amending it with this adoption notice. MAR Notice No. 42-2-706, published in this issue of the Register, addresses those amendments and provides the public with an opportunity for comment.

COMMENT NO. 6: The Montana Telecommunications Association (MTA) provided comments in opposition to the proposed amendments to ARM 42.20.512. MTA stated that it believes the effect of the amendment is an expansion of the department's authority to centrally assess locally assessed telephone companies. MTA further stated that the rule does not cite 15-23-101, MCA, which specifically states that the "department shall centrally assess each year . . . property owned by a corporation or other person operating a single and continuous property operated in more than one county or more than one state . . . (15-23-101(2), MCA (2002)).

MTA also stated that the intent of House Bill 128 was to reduce from 12% to 6% the tax rate of the largest telecommunications companies (and other companies taxed then at 12%) in Montana. The legislature intentionally held cooperatives and other telecom companies harmless.

Specifically, the legislature added a new subsection (g) to 15-6-135, MCA. Section 15-6-135(1)(g), MCA, was amended to read: "all property used and owned by persons, firms, corporations, or other organizations that are engaged in the business of furnishing telecommunications services exclusively to rural areas or to rural areas and cities and towns of 1,200 permanent residents or less." A new class thirteen was established for taxation of centrally assessed property. This section specifically exempts class five property from central assessment. MTA further stated that section 35 of HB 128 provides that: "(1) Class thirteen property includes allocations of centrally assessed telecommunications services companies. (2) Class thirteen property does not include: (a) property owned by cooperative rural telephone associations and classified in class five; or (b) property owned by organizations providing telecommunications services and classified in class five."

MTA also stated that the matter of central verses local assessment of class five telecommunications property is currently being disputed by a company that operates solely within a single county and, further, MTA believes the proposed amendment could be used by the department as an administrative justification for central assessment of telecommunications companies in Montana.

RESPONSE NO. 6: The 1997 Legislature passed Senate Bill 195 (SB 195). SB 195 amended 15-7-111, MCA, to require the

department to periodically reappraise property in classes three, four, and ten. All other classes of property were omitted. Therefore, it was determined that the Legislature was requiring the department to appraise all other property on an annual basis. This included property in class five and seven that had up until this point been appraised on a periodic basis. To implement the statute the department adopted ARM 42.20.512 and 42.20.513. The purpose of the rule was to explain that properties included in class five and seven that operate like other similar centrally assessed properties in class five and seven, but do not cross a state or county line, will be valued using the unit valuation methods described in ARM Title 42, chapter 22. The department believed that by using the unit valuation method described in ARM Title 42, chapter 22, it would make it possible to administratively and accurately capture the appropriate market value on an annual basis. At the same time, it would treat all similarly classified property in the same manner by using the same appraisal methodology used to appraise the other property included in these classes.

The 1999 Legislature passed House Bill 128 (HB 128), which moved telecommunications property that was in class seven to class five. The department neglected to address this change. Upon passage of HB 128, ARM 42.20.513 should have been amended to reflect the move of class seven - telecommunication property to class five. The department agrees that HB 128 does not address a valuation question or authorize the department to centrally assess the telecommunication property. The amendment to ARM 42.20.512 is only reflecting the department’s neglect of not accurately reflecting the change in classification of class seven to class five property due to the passage of HB 128 (1999). The valuation methodology of the formerly class seven property, now class five property, remains unchanged as defined and implemented by the department under the provisions of SB 195 (1997).

The department does recognize that there is one taxpayer that has disputed its property tax valuation as it relates to this rule, but the department does not agree that the amendment to the rule should not be made because of the dispute. The department believes that the proposed change in ARM 42.20.512 does not change the 1997 interpretation and implementation of SB 195.

4. The department amends ARM 42.20.502, 42.20.503, 42.20.504, 42.20.505, 42.20.509, 42.20.511, 42.20.512, and 42.20.516, and repeals ARM 42.20.506 and 42.20.518 as proposed.

5. An electronic copy of this Adoption Notice is available through the Department's site on the World Wide Web at http://www.state.mt.us/revenue/rules_home_page.htm, under the Notice of Rulemaking section. The Department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text

of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State December 2, 2002

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I regarding the official version of the Administrative Rules of Montana and amendment of ARM 1.2.419 regarding the scheduled dates for the Montana Administrative Register	)))))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On October 31, 2002, the Secretary of State published a notice of proposed adoption and amendment of the above-stated rules at page 3041 of the Montana Administrative Register, Issue No. 20.

2. The Secretary of State has adopted new Rule I, ARM 1.2.102 with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (1.2.102) OFFICIAL VERSION OF THE ADMINISTRATIVE RULES OF MONTANA (1) The Administrative Rules of Montana, printed and published by the secretary of state, in accordance with ARM Title 1, chapter 2, is the official version of the Administrative Rules of Montana.

AUTH: Sec. 2-4-306, 2-4-311 and 2-15-404 MCA
IMP: Sec. 2-4-306, 2-4-311 MCA

3. The Secretary of State has amended ARM 1.2.419 as proposed.

4. The following comment was received and appears with the Secretary of State's response.

COMMENT 1: The clarity of new Rule I would be enhanced by the addition of "printed and" immediately before the word "published".

RESPONSE 1: The Secretary of State appreciates the comment and has added the language suggested.

/s/ Bob Brown
BOB BROWN
Secretary of State

/s/ Janice Doggett
JANICE DOGGETT
Rule Reviewer

Dated this 2nd day of December 2002.

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 that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2002. This table includes those rules adopted during the period October 1, 2002 through December 31, 2002 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 September 30, 2002, 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 2001 and 2002 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.

I-X Deferred Retirement Option Plan (DROP) for Members of the Municipal Police Officers' Retirement System, p. 1118, 1891, 2652
2.43.404 and other rules - Defined Contribution Retirement Plan for Members of the Public Employees' Retirement System, p. 1126, 1884
2.43.606 Retirement Systems Administered by the Public Employees' Retirement Board, p. 1114, 1890
2.43.615 and other rules - Family Law Orders for Retirement Systems and Plans Administered by the Public Employees' Retirement Board, p. 1603, 2182

(State Compensation Insurance Fund)
2.55.320 and other rule - Classifications of Employment - Construction Industry Premium Credit Program, p. 2710

AGRICULTURE, Department of, Title 4

I & II Adulteration of Fertilizers and Soil Amendments by Heavy Metals, p. 2959
I-III Potato Research and Market Development Program, p. 1682, 2186
4.12.1405 Plant Inspection Certificate/Survey Cost - Fees, p. 3187
4.12.1428 Produce Assessment Fees, p. 2956
4.13.1001A State Grain Laboratory Fees, p. 1008, 1548

STATE AUDITOR, Title 6

I Prohibition of Discretionary Clauses in Insurance Policy Forms, p. 2486
I-IV Insurance Information and Privacy Protection, p. 1686

COMMERCE, Department of, Title 8

(Community Development Division)
I Administration of the 2002 Federal Community Development Block Grant Program, p. 2449, 1656, 1976

(Hard-Rock Mining Impact Board)
8.104.101 and other rules - Organizational Rule - Rules Governing Awarding of Grants, p. 425, 1660

(Board of Housing)
8.111.513 Terms and Conditions of Loans Made from TANF Housing Assistance Funds, p. 1832, 2432

(Montana Promotion Division)
8.119.101 Tourism Advisory Council, p. 1013, 1661

EDUCATION, Title 10

(Office of Public Instruction)
10.7.106A and other rules - Students Placed in Private Education Programs - Tuition, p. 855, 1662
10.7.112 and other rules - Establishment of Investment Accounts - Spending Accounts - Agreement with the County Treasurer - Payments into an Investment Account - Controls and Accounting Records - Closure of a School District Fund - Cash and Budget Transfers Between School District Funds - School Flexibility Payment - Basic Equalization Levy Shortfall, p. 825, 1740

(Board of Public Education)
I Substantial and Material Non-performance of a Contract of Employment, p. 1016, 1549
10.55.602 and other rules - Criminal History Background Check - Substitute Teachers - Teacher License Classification - Definition of "Immoral Conduct" - Investigation - Reporting of the Surrender, Denial, Revocation or Suspension of a License - Accreditation - Teacher Certification - Hearing Procedures, p. 2489, 3309
10.57.211 and other rules - Model Rules - Teacher Certification - Testing for Certification and Minimum Scores, p. 867, 1463
10.64.301 and other rules - Bus Standards, p. 1530, 2187
10.66.104 GED Fees, p. 1534, 2188

(State Library)
10.101.201 and other rules - Montana State Library Commission - Model Rules - Grants - Loans - Circulation Records - Selection of Materials - Lost or Damaged Books - Graduate Scholarship Program, p. 3192

FISH, WILDLIFE, AND PARKS, Department of, Title 12

(Fish, Wildlife, and Parks Commission)
I Authorizing the Director to Extend Deadlines for Purchasing or Applying for a License or Permit, p. 3198
I Creating a No Wake Zone on Hebgen Lake, p. 1156, 2894
12.3.135 and other rule – Allowing Successful Moose, Sheep or Goat Applicants to Annul and Return the License if Military or Emergency Duty Does Not Allow Use of the License – Bonus Point Exemption for Military or Emergency Personnel in Combat or Emergency Situations, p. 1835, 2654
12.3.140 and other rules - Bonus Point Program, p. 3201
12.7.801 and other rules - Fishing Contest Regulations, p. 29, 1073, 1894

(Department of Fish, Wildlife, and Parks and the Fish, Wildlife, and Parks Commission)

I-V Contractual Public Elk Hunting Access Agreements, p. 1536, 1977

ENVIRONMENTAL QUALITY, Department of, Title 17

17.30.602 and other rules - Water Quality - Standards for Electrical Conductivity and Sodium Adsorption Ratio - Classifications for Constructed Coal Bed Methane Water Holding Ponds - Definitions for Water Quality Standards - Nonsignificance Criteria, p. 2280

17.30.602 and other rules - Water Quality - Standards for Electrical Conductivity and Sodium Adsorption Ratio - Classifications for Constructed Coal Bed Methane Water Holding Ponds - Definitions for Water Quality Standards - Nonsignificance Criteria, p. 2269

17.30.602 and other rule - Water Quality - Standards for Electrical Conductivity and Sodium Adsorption Ratio - Definitions for Water Quality Standards, p. 2262

17.36.101 and other rules - Subdivisions - Definitions - Storm Drainage - Sewage Systems - Water Supply Systems - Non-public Water Supply Systems - Alternate Water Supply Systems - Lot Sizes - Adoption by Reference of DEQ-4, p. 2785

17.36.101 and other rules - Subdivisions - Subdivision Review Under the Sanitation and Subdivisions Act, p. 568, 1465, 1981

17.40.201 and other rules – Wastewater Operators – Wastewater Treatment Operators, p. 1839, 3148

17.40.301 and other rules - Water Pollution Control State Revolving Fund - Purpose - Definitions - Eligible Activities - Types of Financial Assistance - Criteria for Financial Assistance to Municipalities - Criteria for Loans to Private Persons - Application Procedures - Project Priority List - Intended Use Plan--Ranking for Funding Purposes - Public Participation, p. 3125

17.53.105 Incorporation by Reference of Current Federal Regulations into Hazardous Waste Rules, p. 2139, 3044

17.53.111 and other rules - Hazardous Waste - Registration of Hazardous Waste Generators and Transporters - Registration Fees, p. 2967

17.56.105 and other rule - Underground Storage Tanks - Variances - Issuance of Compliance Tags and Certificates, p. 51, 1477

17.56.502 and other rules - Underground Storage Tanks - Release Reporting - Investigation, Confirmation and Corrective Action Requirements for Tanks Containing Petroleum or Hazardous Substances, p. 2792, 3122

17.74.401 Asbestos - Fees for Asbestos Project Permits, p. 3123

(Board of Environmental Review)

I Air Quality - Maintenance of Air Pollution Control Equipment for Existing Aluminum Plants, p. 1033, 2189

I-X Water Quality - Storm Water Discharges, p. 2717

17.8.101 and other rules - Issuance of Montana Air Quality Permits, p. 2076

17.8.101 and other rules - Air Quality - Definitions - Incorporation by Reference of Current Federal Regulations - Additional Conditions of Air Quality Preconstruction Permit, p. 268, 1747

17.8.302 Incorporation by Reference of Hazardous Air Pollutants Emission Standards, p. 2124

17.8.505 and other rules - Air Quality - Air Quality Operation Fees - Annual Review of Air Quality Permit Fees - Open Burning Fees, p. 1692

17.8.601 and other rules - Open Burning, p. 2118

17.8.1101 and other rules - Protection of Visibility in Mandatory Class I Federal Areas, p. 2127

17.8.1201 Air Quality - Definition of Major Source in the Air Quality Operating Permit Rules, p. 1030, 2195

17.24.101 and other rules - Metal Mine Reclamation Act, p. 2059

17.30.502 and other rules - Water Quality - Definitions - Incorporation by Reference - Criteria for Determining Nonsignificant Changes in Water Quality, Standards for Ground Water - Sample Collection, Preservation and Analysis Methods, p. 2713

17.30.602 and other rules - Water Quality - Water Use Classifications and Numeric Nutrient Standards - Definitions - Incorporations by Reference, p. 1019, 2196

17.30.1301 and other rules - Water Quality - Montana Pollutant Discharge Elimination System Permits, p. 2749

17.30.2003 Water Quality - Enforcement Actions for Administrative Penalties, p. 263, 1749

17.36.901 and other rules - Water Quality - Subsurface Wastewater Treatment Systems, p. 2761

17.38.101 and other rule - Public Water Supply - Public Water and Sewage System Requirements, p. 2780

(Petroleum Tank Release Compensation Board)

17.58.311 and other rule - Reimbursable Expenses from the Petroleum Tank Release Compensation Fund, p. 3204

17.58.326 Operation and Management of Petroleum Storage Tanks, p. 2055, 2904

CORRECTIONS, Department of, Title 20

20.9.101 and other rules - Youth Placement Committees, p. 618, 1039, 2433

20.9.301 and other rules - Parole - Agreement Violation, Initial Investigation and Detainer - Scheduling and Notice of Hearing, Hearing Procedures - Appeal -

Waiver of Right to Hearing - Failure to Appear for Hearing, p. 2809

JUSTICE, Department of, Title 23

23.3.127 and other rules - Driver Licensing and Identification Cards, p. 428, 1316, 1896
23.4.201 and other rules - Field Certification of Associated Equipment, p. 871, 1482
23.4.501 and other rules - Definitions - Requirements for Collection and Storage of DNA, p. 1617, 1983
23.15.101 and other rules - Creating the Office of Victims Services and Restorative Justice, p. 1382, 1753
23.16.102 and other rules - Forms Used by the Department in Regulating Gambling - Gambling Applications and Licenses - Loans - Letters of Withdrawal - Machine Specifications - Bill Acceptors - Promotional Games of Chance, p. 1947, 2441
23.17.311 Montana Law Enforcement Academy Student Academic Performance Requirements for the Basic Course, p. 1386, 1754

(Board of Crime Control)
I Authorizing Reimbursement to Counties for Detention of Indian Youth, p. 142, 305, 1484
I & II Authorizing Establishing the Minimum Qualifications for Commercial Vehicle Inspectors - Establishing the Requirements for a Commercial Vehicle Inspector Basic Certificate, p. 2379
23.14.401 and other rule - Membership on the Peace Officers Standards and Training Advisory Council - POST Training Hours Awarded for College Credits, p. 1697, 2314, 3045

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order following the department rules.

I-VIII Building Codes, p. 1631, 2656
I-XVIII Investigating Complaints on Discrimination, p. 1158, 2908
24.11.204 and other rules - Unemployment Insurance Benefits Matters, p. 1044, 1665
24.11.442 Initial Monetary Determination Matters, p. 1863, 2322
24.16.9001 and other rules - Prevailing Wage Matters, p. 1172, 2446
24.16.9003 and other rule - Prevailing Wage Rates, p. 1391, 1985
24.17.127 Prevailing Wage Rates - Highway Construction Only, p. 2824
24.21.411 and other rules - Apprenticeship, p. 1701, 2453

24.21.414 Adoption of Wage Rates for Certain Apprenticeship Programs, p. 1400, 2655
24.29.1504 and other rules - Chiropractic, Occupational Therapy and Physical Therapy Services and Fees in Workers' Compensation Matters, p. 1403, 1758
24.29.2803 and other rules - Uninsured Employers' Fund, p. 1420, 1766
24.30.102 Occupational Safety and Health Standards for Public Sector Employment, p. 887, 1552
24.301.142 and other rules - Building Codes, p. 2833

(Board of Architects)
24.114.501 and other rule - Examination - Licensure of Applicants Who are Registered in Another State, p. 2299, 3046

(Board of Athletics)
24.117.402 and other rules - Board of Athletics - Fees - General Licensing Requirements - Promoter-Matchmaker Seconds - Inspectors, p. 2973

(Board of Clinical Laboratory Science Practitioners)
8.13.101 and other rules - Transfer from the Department of Commerce - Board of Clinical Laboratory Science Practitioners, p. 1485
8.13.301 and other rules - Application - Fees - Minimum Standards for Licensure - Continuing Education - Inactive Status - Reactivation of License - Notification of Denial or Disciplinary Action - Supervision, p. 636, 1486

(Board of Cosmetologists)
8.14.101 and other rules - Transfer from the Department of Commerce - Board of Cosmetologists Rules, p. 2443

(Board of Dentistry)
8.16.402 and other rules - Licensure of Dentists and Dental Hygienists - Application Requirements for Dentists and Dental Hygienists, p. 439, 1488

(State Electrical Board)
8.18.101 and other rules - Transfer from the Department of Commerce - State Electrical Board Rules, p. 1755

(Board of Landscape Architects)
8.24.101 and other rules - Transfer from the Department of Commerce - Board of Landscape Architects Rules, p. 1498
24.153.402 and other rules - Seals - Fee Schedule - Examinations - Renewals, p. 2302, 3151

(Board of Nursing)
8.32.301 and other rules - Probationary Licenses - Standards of Practice for Advanced Practice Registered Nurses

- Standards Related to the Advanced Practice of Registered Nurses - Standards Related to Nurses as Members of the Nursing Profession - Method of Referral, p. 1952

8.32.303 and other rules - Nursing Licensure, p. 1621, 2315, 3320

8.32.801 and other rules - Nursing Education Programs - Approval Requirements, p. 3207

8.32.1408 and other rule - LPN IV Procedures, p. 2294, 3149

(Board of Nursing Home Administrators)

8.34.418 Fees, p. 2817

(Board of Optometry)

8.36.601 Continuing Education, p. 632, 1550

8.36.801 Therapeutic Pharmaceutical Agents, p. 884, 1551

(Board of Pharmacy)

24.174.301 and other rules – Definitions – Foreign Graduates – Preceptor Requirements – Technician Ratio – Pharmacy Security Requirements – Licensing – Personnel – Absence of Pharmacist – Use of Emergency Drug Kits – Drug Distribution – Pharmacist Responsibility – Sterile Products – Return of Medication from Long Term Care Facilities – Pharmacist Meal/Rest Breaks – Health Care Facility Definition – Class I Facility – Class II Facility – Class III Facility, p. 1868, 2159

(Board of Professional Engineers and Land Surveyors)

I Fire Protection System Shop Drawings, p. 1968, 3152

8.48.101 and other rules - Transfer from the Department of Commerce - Board of Professional Engineers and Land Surveyors Rules, p. 1756

(Board of Public Accountants)

8.54.410 Fees, p. 2820

8.54.802 and other rules - Basic Requirements and Credit for Formal Study Programs - Professional Monitoring, p. 2141

(Board of Radiologic Technologists)

8.56.409 and other rules - Fee Schedule - Temporary Permits - Permits - Practice Limitations - Course Requirements for Limited Permit Applicants - Permit Examinations - Permit Fees - Fee Abatements, p. 3140

(Board of Real Estate Appraisers)

24.207.502 and other rules - Real Estate Appraisers, p. 2827

(Board of Realty Regulation)

8.58.301 and other rules - Realty Regulation, p. 2146, 2905

(Board of Sanitarians)
8.60.101 and other rules - Transfer from the Department of Commerce - Board of Sanitarians Rules, p. 1499

(Board of Social Work Examiners and Professional Counselors)
8.61.1201 Licensure Requirements, p. 1388, 2906

(Board of Speech-Language Pathologists and Audiologists)
8.62.413 and other rules - Speech-Language Pathologists and Audiologists Fees, p. 2536, 3325

(Board of Veterinary Medicine)
8.64.509 Licensure of Out-of-State Applicants (Endorsement), p. 1041, 1984

LIVESTOCK, Department of, Title 32

(Board of Horse Racing)
8.22.301 and other rules - Transfer from the Department of Commerce - Board of Horse Racing Rules, p. 642, 1500, 1897

(Board of Livestock)
32.2.301 and other rules - Fees for Environmental Impact Funds, p. 2162
32.2.401 Various Fees Charged by the Department of Livestock for Inspecting Livestock, p. 724, 1510

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36.24.101 and other rules - Water Pollution Control State Revolving Fund Act - Purpose - Definitions and Construction of Rules - Direct Loans - Types of Bonds; Financial and Other Requirements - Other Types of Bonds - Covenants Regarding Facilities Financed by the Loan - Fees - Evaluation of Financial Matters and Commitment Agreements - Requirements for Disbursing of Loan - Terms of Loan and Bond - Financial and Other Requirements for Loans to Private Persons, p. 1708, 2213

(Board of Land Commissioners)
I-L State Forest Land Management, p. 2540

(Board of Land Commissioners and Department of Natural Resources and Conservation)
36.2.1005 Minimum Easement Charge under the Jurisdiction of the State Board of Land Commissioners, p. 1540, 2210

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

I-V Safety Devices in Long Term Care Facilities, p. 2382, 3159

(Board of Review)

I-V One-Stop Licensing Program Administered by the Department of Revenue on Behalf of the Board of Review, p. 1056, 1559

SECRETARY OF STATE, Title 44

1.2.419 and other rule - Scheduled Dates for the Montana Administrative Register - Official Version of the Administrative Rules of Montana, p. 3041

44.3.1101 Schedule of Fees for the Centralized Voter File, p. 896, 1667

44.6.201 and other rule - Uniform Commercial Code Filings (UCC), p. 898, 1668

(Commissioner of Political Practices)

44.12.101 and other rules - Lobbying - Regulation of Lobbying, p. 1440, 2458