ISSUE NO. 5

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

NOTICE SECTION

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of new Rules I through IX regarding definitions, education provider requirements, table funding, license transfers and renewals, letters of credit and surety bonds, revocation, suspension or surrender of licenses, and the complaint process, proposed for adoption under the Montana Mortgage Broker and Loan Originator Licensing Act	))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On March 31, 2004, at 10:00 a.m., a public hearing will be held in Room 342 of the Park Avenue Building, 301 S. Park, Helena, Montana, to consider the adoption of new Rules I through IX.

2. The Department of Administration, Division of Banking and Financial Institutions, will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Division of Banking and Financial Institutions no later than 5:00 p.m. on March 24, 2004, to advise us of the nature of the accommodation that you need. Please contact Susan Pendergast, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2928; TDD (406) 444-1421; facsimile (406) 841-2930; e-mail to spendergast@state.mt.us.

3. The proposed new rules provide as follows:

RULE I DEFINITIONS For purposes of the Montana Mortgage Broker and Loan Originator Licensing Act and this subchapter, the following definitions apply:

(1) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or nolo contendere or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(2) "Employed by" means:

(a) an individual performing a service for a mortgage broker liable for withholding taxes pursuant to Title 26 of the United States Code; or

(b) any individual acting as an independent contractor for a mortgage broker if that individual is under exclusive written agreement to broker loans only through their employing mortgage broker or if the employing mortgage broker undertakes

accountability for the regulated mortgage loan activities of the independent contractor.

(3) "Fraudulent or dishonest dealings" means financial misconduct prohibited by statutes governing:

(a) mortgage brokers in this and other states; and

(b) other segments of the financial services industry, including but not limited to:

(i) securities brokerages;

(ii) banks and trust companies;

(iii) escrow offices;

(iv) title insurance companies; or

(v) other licensed or chartered financial institutions.

(4) "Initiation of an investigation" means any administrative, civil, or criminal proceeding initiated by a state, municipal or federal governmental entity, the federal home loan mortgage corporation or the federal national mortgage agency.

(5) "Material change" means:

(a) a change in the nature of the business;

(b) a change in the board of directors or the principal officers;

(c) a change in the share ownership of the company that could affect control; or

(d) the acquisition of disposition of another company.

(6) "Table funding" means the closing of a loan naming a mortgage broker or loan originator as the lender on the mortgage loan note, which note is then sold within three business days of closing to another party.

(7) "Work in a related field" means:

(a) for a mortgage broker, three years:

(i) as a mortgage broker, a branch office manager of a mortgage broker business;

(ii) as a mortgage banker, or responsible individual or branch manager of a mortgage banking business;

(iii) as a real estate loan officer;

(iv) as a branch manager of a real estate lender;

(v) as a loan originator; or

(vi) as a mortgage broker licensee in another state where the licensing standards are substantially similar to those in this state, as determined by the department; and

(b) for a loan originator, six months:

(i) as a loan originator in a mortgage broker business;

(ii) as a loan originator in a mortgage banking business;

(iii) as a real estate loan officer;

(iv) as a loan originator licensee in another state where the licensing standards are substantially similar to those in this state, as determined by the department;

(v) as a real estate loan processor or clerk; or

(vi) as an escrow closing agent.

AUTH: 32-9-130, MCA

IMP: 32-9-103, 32-9-109, 32-9-115, 32-9-116, 32-9-117, 32-9-123, MCA

RULE II PROOF OF EXPERIENCE (1) Satisfactory proof of experience may include:

(a) valid copies of W-2 or 1099 tax forms verifying employment;

(b) valid copies of form 1120 corporate tax returns signed by the broker or manager as owner of the business; or

(c) signed letters from a lender on the lender's letterhead verifying that the broker has competently originated loans for the required time period.

AUTH: 32-9-130, MCA
IMP: 32-9-109, MCA

RULE III TRANSFER OF LOAN ORIGINATOR LICENSE (1) To transfer a loan originator license, a loan originator shall obtain a relocation application from the department. The completed relocation application must be accompanied by a processing fee of $50.

(a) If a license is not transferred within six months and has been canceled, a complete new application with all required information must be submitted along with the appropriate new application fees and supporting documentation.

(b) If the lapse in employment occurs over a renewal period, the loan originator license must be renewed as required by 32-9-117, MCA, to qualify for a transfer of the license. The relocation six-month time frame would remain in effect and would be from the date of termination.

(2) If a loan originator is terminated by a mortgage broker, and within six months is re-employed by the same mortgage broker, a request for reinstatement form must be filed with the department. The form will be available from the department. There will be a $10 processing fee for reinstatement. If the break in employment occurs over a renewal period, the loan originator license must be renewed as required by 32-9-117, MCA, to qualify for reinstatement. The six-month time frame would remain in effect and would be from the date of termination.

AUTH: 32-9-130, MCA
IMP: 32-9-116, MCA

RULE IV LICENSE RENEWAL (1) The renewal fees shall be $300 for mortgage brokers and $250 for loan originators. The renewal application forms will be sent by the department to each licensed mortgage broker or loan originator in April. The application must be postmarked or received by May 31.

(2) The continuing education year will be from June 1 to May 31.

(3) The renewal application must be accompanied by evidence that the continuing education requirement has been met and a recent credit report from one of the three recognized credit reporting agencies. They are experian, equifax, and transunion.

(4) Mortgage brokers must include evidence of an irrevocable letter of credit or surety bond.

(5) Mortgage brokers or loan originators shall continuously satisfy all requirements of initial licensure to be eligible for renewal. A renewal application may not be processed or granted until all required information is received.

(6) Failure to renew licenses by May 31 but before July 1 will result in a $250 late fee per license in addition to regular renewal fees.

(7) If the attempt to renew is after June 30, the license is considered expired. Expiration terminates the right to engage in any residential mortgage broker or loan originator activities. The mortgage broker or loan originator must then apply as a new licensee.

AUTH: 32-9-130, MCA
IMP: 32-9-117, 32-9-118, 32-9-123, MCA

RULE V LICENSING EXAMINATION AND CONTINUING EDUCATION PROVIDER REQUIREMENTS (1) A licensee or applicant shall receive credit for participation in a program if it is presented by a provider approved by the department and the department has approved the program pursuant to this rule.

(2) To receive approval of a licensing or continuing education course, the course provider must file an application with the department, which includes, but is not limited to the following items:

(a) a description of the course provider's experience in teaching courses;

(b) a complete list of all instructors for the course, including their qualifications and experience teaching courses similar to the course submitted for approval;

(c) a description of each course; and

(d) all course materials and lesson plans.

(3) Courses and licensing examinations must provide prospective mortgage brokers and loan originators with a basic knowledge of and competency in the following:

(a) basics of home purchase and ownership;

(b) the mortgage industry, generally;

(c) loan evaluation and documentation;

(d) operation of a mortgage brokerage firm;

(e) features of various loan products;

(f) state and federally required disclosures;

(g) the Montana Residential Mortgage Broker and Loan Originator Licensing Act; and

(h) other state and federal laws applicable to the mortgage industry.

(4) Appropriate subjects for licensing examinations include:

(a) the Montana Residential Mortgage Broker and Loan Originator Licensing Act;

(b) state and federal consumer protection acts;

(c) the federal Real Estate Settlement Procedures Act, Truth in Lending Act, Equal Credit Opportunity Act, Fair Credit Reporting Act, Fair Housing Act, Home Mortgage

Disclosure Act, Community Reinvestment Act, and the regulations promulgated pursuant to these acts;

(d) trust account and recordkeeping requirements of the Montana Residential Mortgage Broker and Loan Originator Licensing Act;

(e) real estate and appraisal law;

(f) arithmetical computation common to mortgage lending, including but not limited to:

(i) the computation of an annual percentage rate;

(ii) finance charges;

(iii) amount financed;

(iv) payment and amortization;

(v) credit evaluation; and

(vi) calculating debt-to-income; and

(g) ethics in the mortgage industry.

(5) The provider shall file an application with the department which includes a copy of any examinations to be used in determining satisfactory comprehension of the contents of the course and the grading scale to be used. Any new or revised courses, examinations or grading scales to be used shall be submitted to the department for approval at least 30 days prior to use. Course materials may be submitted in electronic format.

(6) The department shall review applications filed and determine whether to approve or deny the proposed provider. If the department approves the course or provider, the department shall issue a certificate of approval that will be effective for two years from the date of issuance.

(7) The department shall provide a list of approved providers. The list shall indicate whether a provider is approved to present licensing examination and/or continuing education programs.

(8) A course provider that desires to renew the certificate of approval must apply to the department and file the items required in (2) no later than 60 days before the certificate expires.

(9) The department may audit an approved course or examination at any time. If the course provider or examination administrator has not complied with the requirements of this rule, the department may suspend or terminate the approval and require the surrender of the certificate of approval.

(10) The department may revoke, suspend or terminate approval of any provider or individual course upon a finding that:

(a) any provider officer or employee who has obtained or used, or has attempted to obtain or use, in any manner or form, the examination questions for any purpose other than instruction;

(b) during any six-month period, fewer than 50% of the provider's program students taking the examination for the first time achieve a passing score; or

(c) the provider has not conducted at least one continuing education program during the preceding 12-month period.

(11) A provider shall designate one person as its contact person who shall be available to the department during ordinary business hours and shall be knowledgeable and have authority to act with regard to all administrative matters concerning instructors, scheduling, advertising, recordkeeping, and supervising all programs offered by the provider.

(12) Providers shall not use any words, symbols or other means to indicate that either the provider or a program has received the department's approval unless such approval has been issued and remains in effect.

(13) A licensee may not repeat a continuing education course with the same education provider within a three-year period.

(14) The fee for an initial and biennial renewal education provider application is $350. All fees are nonrefundable and must be submitted with the application.

(15) An education course relative to commercial lending or brokering may not be used to satisfy continuing education requirements under this subchapter.

(16) An education provider shall maintain student records for three years.

AUTH: 32-9-130, MCA
IMP: 32-9-118, MCA

RULE VI IRREVOCABLE LETTER OF CREDIT OR SURETY BOND

(1) If using an irrevocable letter of credit, the letter of credit shall be from a financial institution acceptable to the department. The entity name on the application and on the irrevocable letter of credit must match exactly.

(2) If using a surety bond, the bond shall be issued by a surety authorized to do business in the state of Montana. The bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, shall be placed on file with the department. The entity name on the application and on the surety bond must match exactly. The bond shall be continuous and may be cancelled by the surety upon the surety giving 30 days written notice to the department of its intent to cancel the bond. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond.

(3) The department or any person injured by a violation of this act may bring an action in a court of competent jurisdiction against the surety bond or approved alternative of the licensed mortgage broker who committed the violation or who employed or engaged the loan originator who committed the violation.

(a) An action against an irrevocable letter of credit must be commenced within one year after the expiration date of the relevant letter of credit or one year after the cause of action accrues, whichever occurs later. A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach.

(b) In the event valid claims of borrowers and bona fide third parties against a bond or irrevocable letter of credit exceed the amount of the bond or deposit, each claimant shall only be entitled to a pro rata amount, based on the amount of the claim as it is valid against the bond or irrevocable letter of credit, without regard to the date of filing of any claim or action.

(c) A judgment arising from a violation of the Montana Mortgage Broker and Loan Originator Licensing Act or a rule adopted under that Act shall be entered for actual damages and in no case be less than the amount paid by the borrower to the licensed mortgage broker plus reasonable attorneys' fees and costs. In no event shall the surety bond or approved alternative provide payment for any trebled or punitive damages.

(d) Borrowers and bona fide third parties shall be given priority over the department and other persons in distributions in actions against the surety bond. The remedies provided under this rule are cumulative and nonexclusive and do not affect any other remedy available at law.

AUTH: 32-9-130, MCA
IMP: 32-9-123, MCA

RULE VII REVOCATION, SUSPENSION OR SURRENDER OF LICENSE

(1) A licensee may surrender a license by delivering to the department written notice of surrender, but a surrender does not affect the licensee's civil or criminal liability for acts committed before the surrender.

(2) A revocation, suspension, or surrender of a license does not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a borrower.

(3) In the event of a revoked, suspended, or surrendered mortgage broker or loan originator license, no fees will be refunded by the department.

AUTH: 32-9-130, MCA
IMP: 32-9-126, MCA

RULE VIII PROHIBITION ON TABLE FUNDING (1) Any person not exempted from the Montana Mortgage Broker and Loan Originator Licensing Act under 32-9-104, MCA, who closes a mortgage loan naming themselves as the lender and who, within three days of closing, consummates sale of the mortgage loan note to another party, commonly known as "table funding," must be licensed as a mortgage broker or loan originator.

AUTH: 32-9-130, MCA
IMP: 32-9-103, 32-9-108, MCA

RULE IX CONSUMER COMPLAINT PROCESS (1) A complaint form will be provided by the department. A complaint must be submitted in writing to the department. If the basis of the complaint relates to the Montana Mortgage Broker and Loan Originator Licensing Act, it will be investigated by the department or designated party.

AUTH: 32-9-130, MCA
IMP: 32-9-130, MCA

4. The 2003 Montana Legislature enacted Senate Bill 402, which was an Act creating the Montana Mortgage Broker and Loan Originator Licensing Act. This Act has been codified in Title 32, Chapter 9, part 1, MCA. Section 32-9-130, MCA, requires the Department to adopt rules necessary to carry out the intent and purposes of the Act. New Rules I through IX are being proposed to fulfill this general legislative mandate and to address the specific rulemaking mandates of section 32-9-130(2), MCA. The Department does not know either the cumulative amount of the fees imposed by the rules or the number of persons affected by these fees because it is unknown how many mortgage brokers or loan originators there are in Montana.

5. Concerned persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Peter Funk, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to pfunk@state.mt.us, and must be received no later than April 8, 2004.

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

7. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Such written requests may be mailed or delivered to Susan Pendergast, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; emailed to spendergast@state.mt.us; or may be made by completing a request form at any rules hearing held by the Division of Banking and Financial Institutions.

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

By: /s/ Steve Bender
Steve Bender, Acting Director
Department of Administration

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

Certified to the Secretary of State March 1, 2004.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 2.43.1002, 2.43.1003, and 2.43.1004 pertaining to investment guidelines for the defined contribution retirement plan	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On March 31, 2004, at 9:00 a.m. a public hearing will be held in the board room at 100 North Park, Suite 200 of the Montana Public Employee Retirement building at Helena, Montana, to consider the amendment of ARM 2.43.1002, 2.43.1003, and 2.43.1004 pertaining to investment fund guidelines in the Investment Policy Statement for the Public Employees' Retirement System's defined contribution retirement plan.

2. The Public Employees' Retirement Board 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 Public Employees' Retirement Board no later than 5:00 p.m. on March 26, 2004, to advise us of the nature of the accommodation that you need. Please contact Carolyn Miller, Public Employees' Retirement Board, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; telephone (406) 444-7939; TDD (406) 444-1421; FAX (406) 444-5428; e-mail cmiller@state.mt.us

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

2.43.1002 ADOPTION OF INVESTMENT POLICY STATEMENT AND STABLE VALUE FUND INVESTMENT GUIDELINES (1) The board ~~hereby~~ adopts and incorporates by reference the state of Montana 401(a) defined contribution plan investment policy statement approved by the board on February ~~28, 2002~~ 26, 2004.

(2) The board ~~hereby~~ adopts and incorporates by reference the state of Montana 401(a) plan full discretion guidelines for the stable value investment option approved by the board on February 22, 2001.

(3) Copies of the investment policy statement and full discretion guidelines may be obtained from the MPERA, 100 North Park Avenue, Suite ~~220~~ 200, P.O. Box 200131, Helena, MT 59620-0131, phone 1~~-~~(877)~~-~~275-7372, e-mail mpera@state.mt.us.

AUTH: 19-3-2104, MCA
IMP: 19-3-2104, 19-3-2122, MCA

2.43.1003 DEFINED CONTRIBUTION RETIREMENT PLAN INVESTMENT OPTIONS (1) The board will choose, regularly review, and may

discontinue, add, or change investment options offered to participants of the defined contribution retirement plan (DCRP). In doing so, the board will consider recommendations of the statutorily established employee investment advisory council and criteria established in the investment policy statement.

(2) A DCRP participant with assets in a discontinued investment option will be given notice and 90 days to move assets from the investment option being discontinued to an offered investment option. Assets remaining in a discontinued investment option at the end of the 90-day period will be automatically transferred to the ~~default~~ investment option similar in investment category and style selected by the board to replace the discontinued investment option. If the discontinued investment option is not replaced, the board will transfer the fund balance to the default balanced fund.

(3) No notice will be provided if the board replaces or changes the stable value investment option manager. The stable value investment option assets will automatically transfer to the new manager(s).

AUTH: 19-2-403, 19-3-2104, MCA
IMP: 19-3-2104, 19-3-2122, MCA

2.43.1004 DEFINED CONTRIBUTION RETIREMENT PLAN DEFAULT INVESTMENT FUND (1) The board will identify a balanced fund to be the default investment fund.

(2) The following assets will be deposited in the default investment fund:

(a) assets initially transferred from the PERS defined benefit retirement plan (DBRP) pursuant to ARM 2.43.1030 on behalf of defined contribution retirement plan (DCRP) participants;

(b) assets transferred from a discontinued, but not replaced, investment option pursuant to ARM 2.43.1003(2); and

(c) assets received without the DCRP participant having selected investment options.

(3) These assets will remain in the default investment fund until the DCRP participant files valid investment directions and redirects assets from the default investment fund to the selected investment option(s).

AUTH: 19-2-403, 19-3-2104, MCA
IMP: 19-3-2114, 19-3-2115, 19-3-2117, 19-3-2122, MCA

REASON: The Montana Public Employees' Retirement Board (the Board) amended the Investment Policy Statement for the Public Employees' Retirement System's Defined Compensation Retirement Plan (the DC Plan) at its February 26, 2004, meeting. The Investment Policy Statement provides for the evaluation and possible closure of investment fund alternatives within the DC Plan. Participants in the DC Plan with funds in a terminated investment fund are given three months to move their funds to another investment fund alternative. The previous Investment Policy Statement required funds remaining in the terminated

investment alternative to be transferred to the DC Plan's default balanced fund, Vanguard Balanced Index Admiral.

The Board determined at its February 2004 meeting that in order to best meet investment goals of DC Plan participants, funds remaining in a terminated investment alternative should be transferred to the investment alternative similar in investment category and style selected by the Board to replace the terminated investment alternative. However, if the Board chooses no replacement fund, the funds remaining in the terminated investment alternative will be transferred to the DC Plan's default balance fund. The proposed amendments are necessary to conform the Board's rules to the amended Investment Policy Statement.

4. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Mike O'Connor, Executive Director, Public Employees' Retirement Board, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; FAX (406) 444-5428; e-mail moconnor@state.mt.us and must be received no later than April 8, 2004.

5. Carolyn Miller, Montana Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana 59620-0131 has been designated to preside over and conduct the hearing.

6. The Public Employees' Retirement Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the 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 public retirement rulemaking actions. Such written request may be mailed or delivered to Carolyn Miller, Public Employees' Retirement Board, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; faxed to the office at (406) 444-5428; or e-mailed to cmillerstate.mt.us; or may be made by completing a request form at any rules hearing held by the Public Employees' Retirement Board.

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

/s/ Terry Teichrow, President
Terry Teichrow, President
Public Employees' Retirement Board

/s/ Kelly Jenkins
Kelly Jenkins, General Counsel and
Rule Reviewer

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

Certified to the Secretary of State on March 1, 2004.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 2.43.1802 and 2.43.1803 pertaining to investment guidelines for the deferred compensation plan	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On March 31, 2004, at 10:00 a.m. a public hearing will be held in the board room at 100 North Park, Suite 200 of the Montana Public Employee Retirement building at Helena, Montana, to consider the amendment of ARM 2.43.1802 and 2.43.1803 pertaining to investment fund guidelines in the Investment Policy Statement for the state of Montana's deferred compensation (457(b)) plan.

2. The Public Employees' Retirement Board 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 Public Employees' Retirement Board no later than 5:00 p.m. on March 26, 2004, to advise us of the nature of the accommodation that you need. Please contact Carolyn Miller, Public Employees' Retirement Board, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; telephone (406) 444-7939; TDD (406) 444-1421; FAX (406) 444-5428; e-mail cmiller@state.mt.us

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

2.43.1802 ADOPTION OF INVESTMENT POLICY STATEMENT AND STABLE VALUE FUND INVESTMENT GUIDELINES (1) The board ~~hereby~~ adopts and incorporates by reference the state of Montana 457 plan (deferred compensation) investment policy statement approved by the board on February ~~28, 2002~~ 26, 2004.

(2) The board ~~hereby~~ adopts and incorporates by reference the state of Montana 457 plan full discretion guidelines for the stable value investment option approved by the board on February 22, 2001.

(3) Copies of the 457 plan investment policy statement and full discretion guidelines may be obtained from the MPERA, 100 North Park Avenue, Suite ~~220~~ 200, P.O. Box 200131, Helena, MT 59620-0131, phone 1~~-~~(877)~~-~~275-7372, e-mail mpera@state.mt.us.

AUTH: 19-50-102, MCA
IMP: 19-50-102, MCA

2.43.1803 DEFERRED COMPENSATION PLAN INVESTMENT OPTIONS (1) The board will choose, regularly review, and may discontinue, add, or change investment options offered to

participants of the deferred compensation plan. In doing so, the board will consider recommendations of the statutorily established employee investment advisory council and criteria established in the plan's investment policy statement.

(2) A deferred compensation plan participant with assets in a discontinued investment option will be given notice and 90 days to move assets from the investment option being discontinued to an offered investment option. Assets remaining in a discontinued investment option at the end of the 90-day period will be automatically transferred to the investment option similar in investment category and style selected by the board to replace the discontinued investment option. If the discontinued investment option is not replaced, the board will transfer the fund balance to the stable value fund.

(3) No notice will be provided if the board replaces or changes the stable value investment option manager. The stable value investment option assets will automatically transfer to the new manager(s).

AUTH: 19-50-102, MCA
IMP: 19-50-102, MCA

REASON: The Montana Public Employees' Retirement Board (the Board) amended the Investment Policy Statement for the state of Montana's Deferred Compensation 457 Plan (the 457 Plan) at its February 26, 2004, meeting. The Investment Policy Statement provides for the evaluation and possible closure of investment fund alternatives within the 457 Plan. Participants in the 457 Plan with funds in a terminated investment fund are given three months to move their funds to another investment fund alternative. The previous Investment Policy Statement required funds remaining in the terminated investment alternative to be transferred to the 457 Plan's stable value fund.

The Board determined at its February 2004 meeting that in order to best meet investment goals of 457 Plan participants, funds remaining in a terminated investment alternative should be transferred to the investment alternative similar in investment category and style selected by the Board to replace the terminated investment alternative. However, if the Board chooses no replacement fund, the funds remaining in the terminated investment alternative will be transferred to the 457 Plan's stable value fund. The proposed amendments are necessary to conform the Board's rules to the amended Investment Policy Statement.

4. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Mike O'Connor, Executive Director, Public Employees' Retirement Board, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; FAX (406) 444-5428; e-mail moconnor@state.mt.us and must be received no later than April 8, 2004.

5. Carolyn Miller, Montana Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana 59620-0131 has been designated to preside over and conduct the hearing.

6. The Public Employees' Retirement Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the 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 public retirement rulemaking actions. Such written request may be mailed or delivered to Carolyn Miller, Public Employees' Retirement Board, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; faxed to the office at (406) 444-5428; or e-mailed to cmillerstate.mt.us; or may be made by completing a request form at any rules hearing held by the Public Employees' Retirement Board.

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

/s/ Terry Teichrow, President
Terry Teichrow, President
Public Employees' Retirement Board

/s/ Kelly Jenkins
Kelly Jenkins, General Counsel and
Rule Reviewer

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

Certified to the Secretary of State on March 1, 2004.

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

In the matter of the amendment of ARM 12.3.120 pertaining to hunter safety requirements	))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On May 13, 2004, the Fish, Wildlife and Parks Commission (commission) proposes to amend ARM 12.3.120 pertaining to hunter safety requirements.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on March 25, 2004, to advise us of the nature of the accommodation that you need. Please contact Thomas Baumeister, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4046; fax (406) 444-4952; email tbaumeister@state.mt.us.

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

12.3.120 HUNTER SAFETY REQUIREMENTS (1) A person ~~under 18~~ born after January 1, 1985, must ~~possess a Montana hunter safety card~~ provide proof of completion of a hunter safety course as required by 87-2-105, MCA, to apply for a hunting license~~s~~ or special drawing~~s~~. ~~If a course through another state has been completed, a card can be obtained through the hunter safety office in Helena, usually without taking the course again~~.

AUTH: 87-1-301, 87-2-105, MCA
IMP: 87-2-105, MCA

4. The amendment of ARM 12.3.120 pertaining to hunter safety is being proposed because this rule is inconsistent with legislation passed in the 2003 session. As it currently reads, ARM 12.3.120 requires only residents under 18 to provide a Montana hunter safety card as proof of completion of a hunter safety course to be eligible to purchase a hunting license or enter special drawings. The Montana 2003 Legislature passed HB 396 which requires any person who is born after January 1, 1985, to provide a certificate of completion from a hunter safety and education course before the person may be issued a Montana hunting license. Under 87-2-105, MCA, proof of completion under the statute may be established by providing proof of completion of either a Montana hunter safety and education course or a hunter safety course in any other state or province. The proposed rule

amendment corrects these inconsistencies between statutory hunting license requirements and the administrative rule requirements for purchase of a hunting license or entry into a special drawing.

5. Concerned persons may submit their data, views or arguments concerning the proposed amendment in writing to Thomas Baumeister, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4046; email tbaumeister@state.mt.us. Any comments must be received no later than April 8, 2004.

6. If persons who are directly affected by the proposed amendment wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Thomas Baumeister, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701. A written request for hearing must be received no later than April 8, 2004.

7. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 44,339 persons based on the number of conservation licenses sold in 2003.

8. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by this department or commission. Persons who wish to have their name added to the list shall make written request which includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

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

By: /s/ M. Jeff Hagener
M. Jeff Hagener,
Secretary, Fish, Wildlife and Parks Commission

By: /s/ John F. Lynch
John F. Lynch
Rule Reviewer

Certified to the Secretary of State March 1, 2004

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.40.206, 17.40.212 and 17.40.213 pertaining to certification and fees for water and wastewater operators	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (WATER AND WASTEWATER OPERATORS)

TO: All Concerned Persons

1. On April 5, 2004, at 9:30 a.m., the Department of Environmental Quality will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., March 29, 2004, to advise us of the nature of the accommodation that you need. Please contact Jenny Chambers, Operator Certification Program, Public Water Supply and Subdivisions Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2691; fax (406) 444-1374; or email jchambers@state.mt.us.

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

17.40.206 EXAMINATIONS (1) through (6) remain the same.

(7) Examinations will not be returned to examinees, but will be on file for one year at the department. A failing examination will be kept two years. ~~An examinee may review his examination at a department office.~~

(8) and (9) remain the same.

AUTH: 37-42-202, MCA
IMP: 37-42-201, 37-42-301, 37-42-305, 37-42-306, MCA

REASON: The proposed amendment to ARM 17.40.206(7) is necessary to maintain the integrity of the Water and Wastewater Operator Certification Program, and ensure that only competent and qualified applicants are licensed as certified operators. Because the Department has only two forms of each examination available in a year, subsequent review of exams by examinees could jeopardize the integrity of the examination process. The proposed amendment would eliminate the right of examinees to review their examinations. However, candidates can provide comments regarding any exam question(s) they believe contains errors. In addition, a "Mastery Sheet" would be provided to the candidate that summarizes the objectives of the examination and the skills mastered or the areas requiring further work.

Although under state law the public has a right to inspect

and copy public writings of the Department, the Department is authorized to deny public access to certain types of records and materials. Specifically, pursuant to 2-6-102, MCA, the public can be denied access to records and materials that are constitutionally protected from disclosure. Information that is constitutionally protected from disclosure includes matters related to individual or public safety. It is essential that the Department maintain validated, secure, and confidential exams in order to properly test the competency of operators. The proposed amendment will help ensure the integrity of the Department's examination process. This in turn will ensure safe operation and maintenance of public water supply and wastewater systems, protect drinking water supplies and the quality of water, and protect public health and safety.

17.40.212 FEES (1) through (2) remain the same.

(3) A certified operator applying for renewal of a certificate shall pay to the department by June 30 of every year:

(a) remains the same.

(b) for a certificate in any classification level of wastewater treatment, a renewal fee of ~~$30~~ 40.

(4) and (5) remain the same.

AUTH: 37-42-202, MCA
IMP: 37-42-304, 37-42-308, MCA

REASON: The proposed amendment to ARM 17.40.212(3)(b) is necessary to provide sufficient funding for administration of the Wastewater Operator Certification Program. The Water and Wastewater Operator Certification Program is funded by two sources, operator certification fees and federal funds. The federal funds received are from a Drinking Water State Revolving Fund grant that was established by the Safe Drinking Water Amendments of 1996. The federal funds are not used for administration of the Wastewater Operator Certification Program. In order to maintain a sufficient wastewater certification management-funding program, an increase in wastewater annual renewal fees is required. Currently, there are a total of 625 wastewater operators that will be affected by this proposed amendment. The additional amount of annual revenue from such fee increase will be approximately $6,250.

17.40.213 CONTINUING EDUCATION REQUIREMENTS (1) through (1)(e) remain the same.

(2) A credit consists of 10 contact hours, and 1/2 credit consists of five contact hours. A contact hour is defined as a 60-minute participation in an approved course.

(a) remains the same.

~~(b) Each three-hour instruction period must have a 15-minute mid-point break, which may not be included in the total contact hours.~~

(3) through (11) remain the same.

(12) Vendor shows approved by the department under this

rule qualify for credit. A maximum amount of 0.05 credits per vendor show will be allowed for participation in a department-approved vendor show. The certified operator will be required to provide evidence of attendance at the approved vendor show to validate participation for credit.

(12) through (17) remain the same, but are renumbered (13) through (18).

AUTH: 37-42-202, MCA
IMP: 37-42-304, 37-42-305, 37-42-306, 37-42-307, 37-42-308, MCA

REASON: The proposed deletion of ARM 17.40.213(2)(b) provides certified operators full credit for participation in continuing education courses, even when required breaks are taken during the courses. The Department has determined that, due to interaction outside the classroom, the operators continue to gain valuable knowledge. Breaks taken during the classes will facilitate interaction among peers and speakers; therefore, the amendment proposes that the operators earn the full amount of CECs during these times.

The proposed addition of ARM 17.40.213(12) is necessary to allow certified operators to receive continuing education credits for participation in Department-approved vendor shows. Vendor shows can provide valuable resource opportunities for operators through interaction with other operators around the state. These networking relationships provide a framework of technical support to Montana operators, and by attending the vendor shows, this will help ensure that the operators will provide good quality drinking water and that wastewater is properly collected and treated. Operators that attend the Department-approved vendor shows and would like to receive credit for doing so must provide evidence of attendance by validating their participation on a sign-in sheet that will be provided to the participants at each show. The Department will then use the sign-in sheet to ensure proper credits are given to the operators who participated. The maximum credit amount allowed will be 0.05 CECs, which equals 0.50 contact hours.

The proposed amendments to ARM 17.42.213(12) through (17) are necessary for renumbering purposes.

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 Jenny Chambers, Operator Certification Program, Public Water Supply and Subdivisions Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2691; fax (406) 444-1374; or email jchambers@state.mt.us, no later than April 8, 2004. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Jolyn Eggart, Department attorney, has been designated to preside over and conduct the hearing.

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

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

Reviewed by: DEPARTMENT OF ENVIRONMENTAL QUALITY

James M. Madden BY: *Jan P. Sensibaugh*
JAMES M. MADDEN JAN P. SENSIBAUGH, Director
Rule Reviewer

Certified to the Secretary of State, March 1, 2004.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 20.9.103 and 20.9.134 pertaining to the Youth Placement Committee	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On April 6, 2004, at 10:00 a.m. a public hearing will be held in the first floor conference room of the Department of Corrections, 1539 11th Ave., Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Corrections 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 Corrections no later than 5:00 p.m. on March 26, 2004, to advise us of the nature of the accommodation that you need. Please contact Sherri Townsend, Department of Corrections, 1539 11th Ave., PO Box 201301, Helena, Montana 59620-1301; telephone (406) 444-3910; fax (406) 444-4920; e-mail stownsend@state.mt.us.

3. The changes in these rules are necessary to correct mistakes that were made in the adoption of the initial rules. The changes will make the rules comply with statutory and case law, which prohibit unconstitutional delegations of responsibility to other entities. The one change made by these rules makes the Department of Corrections responsible for approving the expenditure of state funds, rather than a committee of individuals.

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

20.9.103 DUTIES OF THE YOUTH PLACEMENT COMMITTEE CHAIR

(1) through (4) remain the same.

(5) ~~The department of corrections shall recommend the department member, and the youth court judge shall appoint the remaining committee members who shall serve a term of two years.~~ The youth court judge shall appoint all members of the youth placement committee except the juvenile parole officer. The director of the department shall appoint the juvenile parole officer and shall, when making the appointment, take into consideration:

(a) the juvenile parole officer's qualifications;

(b) the costs involved in the juvenile parole officer's attendance at youth placement committee meetings; and

(c) the location of the juvenile parole officer's home in relation to the location of the youth placement committee.

(6) A member may be reappointed to additional terms.

(6) remains the same, but is renumbered (7).

AUTH: 41-5-2006, 53-1-203, MCA
IMP: 41-5-121, 41-5-122, 41-5-123, 41-5-124, 41-5-125, 41-5-130, 41-5-131 and 41-5-132, MCA

20.9.134 DISTRIBUTION OF FUNDS TO PARTICIPATING DISTRICT AT THE END OF A FISCAL YEAR (1) Each participating district shall be entitled to retain all surplus funds in their account at the end of each fiscal year if the participating district submits a plan by April 1 of the current fiscal year and the plan is approved by the ~~cost containment review panel~~ department of corrections with input from the cost containment review panel. Surplus funds retained by the participating district must be used by the participating district during the following two fiscal years to fund intervention programs and services for youth in the participating district.

(2) and (3) remain the same.

AUTH: 41-5-2006, MCA
IMP: 41-5-130, 41-5-131, 41-5-132 and 41-5-2003, MCA

5. Concerned persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the address listed in 2, and must be received no later than April 14, 2004.

6. Joan Hunter, Hearings Examiner, will preside over and conduct the hearing.

7. The Department of Corrections 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 community corrections, juvenile corrections, board of pardons and parole, private correctional facilities or general departmental rulemakings. Such written request may be mailed or delivered to Sherri Townsend, Department of Corrections, 1539 11th Ave., PO Box 201301, Helena, Montana 59620-1301, fax to (406) 444-4920, e-mail stownsend@state.mt.us or may be made by completing a request form at any rules hearing held by the Department of Corrections.

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

DEPARTMENT OF CORRECTIONS

/s/ Bill Slaughter
Bill Slaughter, Director

/s/ Colleen A. White
Colleen A. White, Rule Reviewer

Certified to the Secretary of State March 1, 2004

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

In the matter of the adoption of Rules I and II and the amendment of ARM 37.47.301 pertaining to the centralized intake system for reporting child abuse and neglect	))))))	NOTICE OF EXTENSION OF COMMENT PERIOD

TO: All Interested Persons

1. On February 12, 2004, the Department published MAR Notice No. 37-316 at page 253 of the 2004 Montana Administrative Register, issue number 3 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules. The Department is extending the time period to submit comments on these proposed changes at the request of interested parties.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you need to request an accommodation, contact the department no later than 5:00 p.m. on March 18, 2004, 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. Written data, views or arguments may be submitted to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on March 24, 2004. Data, views or arguments may also be submitted by facsimile to (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

Russ Cater
Rule Reviewer

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

Certified to the Secretary of State March 1, 2004.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of New Rule I and amendment of ARM 42.15.601, 42.15.602, 42.15.603, and 42.15.604 relating to medical savings accounts for personal income taxes	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On April 1, 2004, 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 adoption of New Rule I and amendment of ARM 42.15.601, 42.15.602, 42.15.603, and 42.15.604 relating to medical savings accounts for personal income taxes.

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., March 23, 2004, 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 1712, Helena, Montana 59604-1712; telephone (406) 459-2646; fax (406) 444-3696; or e-mail canderson@state.mt.us.

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

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

(1) "Account administrator" means, in addition to the definition found in 15-61-102, MCA, any person, partnership, limited liability company, limited liability partnership, or corporation that acts as a third party fiduciary to administer a medical savings account and is either a bank, savings and loan, credit union, or trust company, a health care insurer, a certified public accountant, or an employer who is self-insured under ERISA.

(2) "Household" shall mean a family living together.

(3) "Last business day" means the last day of the account administrator's business year.

(4) "Long-term care" means a period of not less than 12 consecutive months in which a necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative,

maintenance, or personal care service is provided in a setting other than an acute care unit of a hospital.

(5) "Recovery" means the return or recoupment of amounts that were previously deducted in Montana taxable income or credited against Montana tax in any prior taxable year.

(6) "Self-administered" refers to accounts that are administered by the account holder for their own benefit.

AUTH: Sec. 15-30-305, MCA
IMP: Sec. 15-30-112, 15-61-102, and 15-61-201, MCA

REASONABLE NECESSITY: The department is proposing New Rule I to define the terms used in Chapter 15, sub-chapter 6, relating to medical savings accounts. This text was previously found in ARM 42.15.401, but with the reorganization of the credit, exemptions, and incentives into various sub-chapters in Chapter 4, this text better fits into new sub-chapter 6, which deals with the medical savings accounts.

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

42.15.601 MEDICAL SAVINGS ACCOUNT ADMINISTRATOR REGISTRATION (1) Every account administrator except a self-administered account holder~~s~~ is required to register on a form provided by the department.

(2) through (6) remain the same.

AUTH: Sec. 15-30-305, MCA
IMP: Sec. ~~15-61-201~~ 15-61-204, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.601 for housekeeping purposes only and correct the implementing cite.

42.15.602 MEDICAL SAVINGS ACCOUNT ADMINISTRATOR REPORTING AND PAYMENTS (1) Every ~~self-administered~~ account holder or account administrator is required to annually submit the following information regarding each medical savings account:

(a) through (f) remain the same.

(g) interest or other income earned on the ~~proceeds~~ principal of the medical savings account; and

(h) remains the same.

(2) The ~~self-administered~~ account holder must also include the name and address ~~of~~ where the account is established and the account number.

(3) Both the contributions and any interest or other income earned on the account of a medical savings account are to be segregated by the ~~self-administered~~ account holder or account administrator from all other accounts.

(4) Each ~~self-administered~~ individual account holder must:

(a) establish a separate medical savings account with a financial or other approved institution; and

(b) ~~be~~ segregate~~d by~~ the account ~~holder~~ from all other

accounts.

(5) Jointly held accounts do not qualify, although each spouse may be an account holder, regardless of income tax filing status~~, may each be an account holder~~. ~~They then~~ Each spouse would be allowed, within certain limitations, to ~~each~~ reduce the federal adjusted gross income by the maximum allowable reduction ~~allowed~~ of $3,000.

~~(5)~~(6) ~~Any y~~Year-end ~~reporting of~~ interest ~~earned~~ reports provided to the taxing authorities and ~~to~~ the account holder ~~of interest earned~~ must be ~~done~~ provided in such a manner ~~so~~ that ~~any~~ the interest earned on that account can be separately identified.

(7) For the purpose of determining the amount of interest or other income earned on the principal which is excluded from Montana adjusted gross income, when interest or other income earned is on principal and excess contributions, the account administrator must:

(a) allocate the total interest or other income earned to that of principal and excess contributions; and

(b) exclude from Montana adjusted gross income only that amount of interest or other income earned on the principal. Interest or other income earned in the taxpayer's taxable year on the excess contributions is taxable and reported in Montana adjusted gross income for the taxable year it is received; and

(c) interest or other income earned is not excluded for Montana adjusted gross income on excess contributions until such time as the excess contribution is reclassified as principal. Excess contributions are reclassified as principal in the year the excess contributions are excluded from Montana adjusted gross income.

~~(6)~~(8) On or before January 31, an account administrator, other than an account holder, must file the information required under (1) on forms provided by or authorized by the department.

~~(7)~~(9) Each ~~self-administered~~ individual account holder must file the information required in (1) on forms provided by or authorized by the department and be remitted with the individual income tax form for the corresponding tax year.

~~(8)~~(10) ~~Self-administered a~~Account holders or account administrators who withhold penalties on monies used for items other than eligible medical expenses or long-term care expenses must submit the penalties to the department.

~~(a)~~(11) ~~Self-administered a~~Account holders and account administrators must remit the penalties monthly by the 15th day of the following month when the total amount of penalties exceed $500.

~~(b)~~(12) ~~Self-administered a~~Account holders and account administrators whose total penalties withheld during the ~~calender~~ calendar year are less than $500 must remit the penalties on or before January 31 of the following year to the department.

~~(c) Each self-administered individual account holder or account administrator must remit penalties and file the information required under (7)(a) and (b) on forms provided by~~

~~or authorized by the department~~ Self-administered individual account holders must report and remit penalties with the individual income tax form for the corresponding tax year.

~~(9)~~(13) Failure to remit any withheld penalties within the time provided is considered to be an unlawful conversion of trust money. Penalties provided in 15-1-216 and 15-30-321, MCA, apply to any violation of the requirement to collect, truthfully account for, and pay amounts required to be withheld from ineligible withdrawals of the account holder.

AUTH: Sec. 15-30-305, MCA
IMP: Sec. 15-61-202 and 15-61-204, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.602 for housekeeping purposes. The amendments will bring the rules in line with the practice of the department when accounts are self-administered and help clarify what interest is excluded from the adjusted gross income when a medical savings account has both principal and excess contributions.

42.15.603 MEDICAL SAVINGS ACCOUNT - WITHDRAWALS

(1) remains the same.

(2) Requests made by account holders from account administrators for withdrawals to pay for eligible medical expenses must be supported by an itemized statement of expenses that were either paid or charged by the account holder and the signature of the account holder attesting that these expenses are "eligible medical expenses." ~~.~~ An eligible medical expense means any medical expense that is deductible for purposes of section 213(d) of the ~~Internal Revenue Code~~ IRC.

(3) through (6) remain the same.

(7) Except as provided in (8), all payments made from a medical account must be made payable to the account holder, to the eligible medical provider, or to the~~ir~~ estate or to the~~ir~~ legal guardian.

(8) If an agreement exists between the account holder, account administrator, and the payee, withdrawals for eligible medical expenses can be done electronically.

(9) All medical records and expenses are to be kept confidential by the account administrator unless the account holder gives authorization ~~is given by the account holder~~.

AUTH: Sec. 15-30-305, MCA
IMP: Sec. 15-61-203, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.603 for housekeeping purposes only.

42.15.604 INDIVIDUAL LIABILITY (1) If a corporate account administrator, limited liability company, or a limited partnership fails to withhold or fails to remit any penalties withheld to the department as required, the officers and owners are individually responsible for the penalties. A financial institution is not responsible for analyzing the eligibility of the expenses if the account holder attests that the withdrawals

~~made~~ are for eligible medical expenses.

(2) Each ~~self-administered~~ account holder is individually responsible for ~~the~~ withholding and remitting ~~of~~ penalties.

(3) In the case of a bankruptcy by an account administrator, the liability for ~~the~~ penalties remains unaffected, and the individual or owner~~s~~ remains liable for the amount of penalties withheld but ~~unpaid~~ not paid.

AUTH: Sec. 15-30-305, MCA
IMP: Sec. 15-61-203, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.604 for housekeeping purposes only.

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

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 1712
Helena, Montana 59604-1712

and must be received no later than April 9, 2004.

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

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

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules

hearing held by the Department of Revenue.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State March 1, 2004

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of New Rule I and amendment of ARM 42.20.625 relating to property taxes	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On March 31, 2004, at 1:00 p.m., a public hearing will be held in the Fourth Floor Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption of New Rule I and amendment of ARM 42.20.625, relating to property taxes.

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., March 23, 2004, 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 1712, Helena, Montana 59604-1712; telephone (406) 459-2646; fax (406) 444-3696; or e-mail canderson@state.mt.us.

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

NEW RULE I LAND CLASSIFICATION DETERMINATION DATE FOR CLASS THREE, FOUR, AND TEN PROPERTY (1) On January 1 of each year, the department shall ascertain the correct land classification for each parcel of land subject to taxation.

(2) Land classifications are:

(a) class four land that is valued at market;

(b) class three patented nonproductive mining claims;

(c) class three nonqualified agricultural land;

(d) class three agricultural land; and

(e) class ten forest land.

(3) The appropriate land classification will be determined for the purpose of tax assessment based on the land's use as of January 1 of the current year. The following examples are intended to demonstrate how the correct land classifications are established for the current year:

(a) Example 1 - A taxpayer with a contiguous ownership less than 160 acres in size files an application for agricultural land classification on May 1. The department's decision is based on the property's agricultural income for the preceding year and the property's ability to meet the

agricultural eligibility rules pursuant to ARM 42.20.620 or ARM 42.20.625;

(b) Example 2 - A taxpayer files an application for forest land classification on May 1. The department's decision is based on the property's use on January 1 of the current year and the property's ability to meet the forest land eligibility rules pursuant to ARM 42.20.705, 42.20.710, and 42.20.735;

(c) Example 3 - A taxpayer owns a 10-acre parcel on January 1 of the current year that is valued at market and placed in class four property. The taxpayer has purchased a contiguous 10-acre parcel on May 1 of the current year, which is also appraised at market and placed in class four property. Both parcels were in different ownerships on January 1 and the department considers the land to be class four property for the current year and appraised at market value. If the land is not residential, commercial, or industrial land, the parcels are considered a 20-acre contiguous ownership by the department and appraised as either class three or class ten land for the following year;

(d) Example 4 - A taxpayer purchases a parcel of land on May 1 of the current year. The parcel was classified as forest land on January 1 of the current year. The taxpayer files an AB-26 within 30 days of receipt of the assessment notice requesting that the department review the forest land productivity grade for the property. If the department determines that a change in productivity grading is appropriate, the change is effective for the current year because the basis for the property's productivity existed on January 1 of the current year; and

(e) Example 5 - A taxpayer purchases a property on December 31 of the previous year. The property was classified as agricultural land under the previous owner. The new taxpayer files a timely application for agricultural land classification with the local department office. The new taxpayer states that the property will continue to be managed as an agricultural operation for the current year. The property met the agricultural eligibility requirements on January 1 of the current year for the previous owner. The property is classified and assessed as agricultural land by the department for the current year, even though the current taxpayer has not owned the property long enough to market agricultural products or consume agricultural products produced by the property. The department may ask the new taxpayer to file another application for agricultural land classification the following year to demonstrate that the property continues to meet the agricultural land eligibility requirements pursuant to ARM 42.20.620 or 42.20.625.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-6-133, 15-7-103, 15-7-201, 15-7-202, 15-7-203, 15-7-206, 15-7-207, 15-7-208, 15-7-209, 15-7-210, and 15-7-212, MCA

REASONABLE NECESSITY: The department is proposing to adopt

New Rule I to clarify the appropriate date that will be used to determine land classification for class three, four, and ten property. Since the general assessment statute was amended, there has been some confusion with regard to when the classification for tax purposes actually changes. The department believes that this rule will help clarify land classification decisions for class three, four, and ten property.

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

42.20.625 CRITERIA FOR AGRICULTURAL LAND VALUATION FOR LAND TOTALING 20 TO 160 ACRES IN SIZE (1) through (9) remain the same.

(10) If agricultural products are marketed from land in the application, the applicant must provide proof that the parcel(s) indicated in the application produced at least $1,500 of gross agricultural income each year. The income must be from agricultural products marketed by, or from annual rental or lease payments received by, the owners, owner's family members, or the owner's agent, employee, or lessee. Family members may include grandparents, parents, spouses, ~~and~~ children, and siblings. Acceptable proof of income shall include:

(a) through (17) remain the same.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-6-133, 15-6-134, 15-7-201, and 15-7-202, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.625 to add the reference of brothers and sisters which was inadvertently ommitted with the original adoption of this rule.

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

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 1712
Helena, Montana 59604-1712

and must be received no later than April 9, 2004.

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

7. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at http://www.discoveringmontana.com/revenue, under "for your reference;" "DOR administrative rules;" and "upcoming events and proposed rule changes." The Department strives to

make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State March 1, 2004

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.43.421 pertaining to USSERA and the receipt of service when called to perform duty in the uniformed service	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On November 13, 2003, the Public Employees' Retirement Board published MAR Notice No. 2-2-340 regarding a public hearing on the amendment of ARM 2.43.421 at page 2480 of the 2003 Montana Administrative Register, Issue Number 21.

2. The Board has amended ARM 2.43.421 as proposed but with the following changes, stricken matter interlined, new matter underlined:

2.43.421 ~~ABSENCE WHILE IN MILITARY SERVICE~~ CREDIT FOR SERVICE IN THE UNIFORMED SERVICES (1) If an actively employed member of the public employees', judges', highway patrol, sheriffs', game wardens' and peace officers', municipal police, or firefighters' unified retirement systems is called to ~~perform~~ duty for a period or periods of service in the uniformed services, the member may receive service credit and membership service within the member's retirement system for that time, provided the member:

(a) remains a member of the retirement system during the period of ~~duty~~ service in the uniformed services by leaving his or her accumulated contributions on deposit;

(b) and (c) remain as proposed.

(2) The member must make up the member's contributions for the uniformed services ~~duty time~~ related absence within three times the period of the member's uniformed service starting upon return to employment, but not to exceed five years.

(3) through (6) remain as proposed.

(7) A member who is making additional contributions under a service purchase contract at the time he or she is called to ~~duty~~ service in the uniformed services may suspend payments under the contract until return to employment as required under USERRA.

(8) For purposes of this rule, ~~duty~~ service in the uniformed services is any service covered by USERRA, including:

(a) through (e) remain as proposed.

AUTH: 19-2-403, MCA
IMP: 19-2-707, MCA

3. A public hearing was held on December 3, 2003. No comments or testimony were received. The following written

comments were received from Montana's State Personnel Division and appear with the Board's responses:

COMMENT 1: A comment was received from Montana's State Personnel Division suggesting that the catchphrase be changed to "Credit for Service in the Uniformed Services" because the establishment of criteria for obtaining service credit and membership service in one of the retirement systems is the main purpose of this rule.

RESPONSE: The Board agrees. The catchphrase has been amended.

COMMENT 2: A comment was received from Montana's State Personnel Division suggesting that the term "period of service in the uniformed services" be used in place of the term "duty in the uniformed services" because that term is consistent with the language found in USERRA.

RESPONSE: The Board notes that USERRA uses both the term "duty in the uniformed services" and the term "period of service in the uniformed services." The language in the rule has been amended to include the suggested language because the Board believes the suggested language better describes the time being credited to the member's retirement system account.

COMMENT 3: A comment was received suggesting that subsection (1)(b) of ARM 2.43.421 include a citation to USERRA's reference to retirement systems, Title 38 USC Section 4318.

RESPONSE: The Board disagrees. The Board prefers to omit citations to federal law that are subject to change without the Board's immediate knowledge.

/s/ Terry Teichrow
Terry Teichrow, President
Public Employees' Retirement Board

/s/ Kelly Jenkins
Kelly Jenkins, General Counsel and
Rule Reviewer

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

Certified to the Secretary of State March 1, 2004.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.43.437; and the repeal of ARM 2.43.436 pertaining to purchasing active and reserve military service	)))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On November 13, 2003, the Public Employees' Retirement Board published MAR Notice No. 2-2-341 regarding a public hearing on the amendment and repeal of the above-stated rules at page 2484 of the 2003 Montana Administrative Register, Issue Number 21.

2. The Board has amended ARM 2.43.437 as proposed but with the following changes, stricken matter interlined, new matter underlined:

2.43.437 MILITARY SERVICE (1) and (2) remain as proposed.

(3) The following requirements pertain to the purchase of membership service and service credit for the member's reserve military service in the armed forces, including the army national guard and the air national guard:

(a) through (d) remain as proposed.

AUTH: 19-2-403, MCA
IMP: 19-3-503, 19-5-410, 19-6-801, 19-7-803, 19-8-901, 19-9-403, 19-13-403, MCA

3. The Board has repealed ARM 2.43.436 exactly as proposed.

4. A hearing was held on December 3, 2003. No comments or testimony were received. The following written comments were received from Montana's State Personnel Division and appear with the Board's responses:

COMMENT 1: A comment was received questioning whether Montana statutes and rules permit the purchase of inactive duty military time in National Guard and reserves.

RESPONSE: The statute provides for the purchase of "reserve military service." See 19-3-503(2), MCA, for example. Since the statute does not limit the purchase to active reserve military service, the Board will not impose such a limitation in its rules. Thus a retirement system member can purchase "inactive" reserve military service provided all other conditions are met, including proper documentation of that service. However, that purchase is

limited in that the member can never earn and purchase more than a total of one year of service in a calendar year.

COMMENT 2: A comment was received questioning whether military time spent in annual training can be purchased.

RESPONSE: Military time spent in annual training can be purchased as service credit and membership service in the member's retirement system provided the member has not already been credited with that time, and all other conditions are met.

COMMENT 3: A comment was received questioning whether the term "national guard" means both the air national guard and the army national guard.

RESPONSE: The term "national guard" was meant to include both the air national guard and the army national guard. The rule has been amended to reflect this intent.

/s/ Terry Teichrow
Terry Teichrow, President
Public Employees' Retirement Board

/s/ Kelly Jenkins
Kelly Jenkins, General Counsel and
Rule Reviewer

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

Certified to the Secretary of State March 1, 2004.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 4.4.301, 4.4.305, 4.4.309, 4.4.310, 4.4.311, 4.4.313, 4.4.315, 4.4.316, and 4.4.319 relating to hail insurance	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On January 29, 2004, the Department of Agriculture published MAR Notice No. 4-14-148 regarding the proposed amendment of the above-stated rules relating to hail insurance at page 152 of the 2004 Montana Administrative Register, Issue Number 2.

2. The agency has amended ARM 4.4.301, 4.4.305, 4.4.309, 4.4.310, 4.4.311, 4.4.313, 4.4.315, 4.4.316, and 4.4.319 exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF AGRICULTURE

/s/ W. Ralph Peck
Ralph Peck
Director

/s/ Tim Meloy
Tim Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State, March 1, 2004.

BEFORE THE DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of ARM 8.99.401 relating to the definitions concerning microbusiness development corporations, and the repeal of ARM 8.99.403, 8.99.601, 8.99.602, 8.99.603, 8.99.604, 8.99.605, 8.99.606, 8.99.607, 8.99.608, 8.99.609, 8.99.610, 8.99.611, 8.99.612, 8.99.613, 8.99.701, 8.99.702, 8.99.703, 8.99.704, 8.99.705, 8.122.102, 8.122.204, 8.122.205, 8.122.206, 8.122.601, 8.122.602, 8.122.603, 8.122.604, 8.122.605, 8.122.606, 8.122.607, 8.122.608, 8.122.609, 8.122.610, 8.122.611, 8.122.612, 8.122.613, 8.122.614, 8.122.615, 8.122.616, 8.122.701, 8.122.702, 8.122.703, 8.122.704, 8.122.801, 8.122.802, 8.122.803, 8.122.804, and 8.122.805, relating to the Job Investment Act, and science and technology development	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On December 24, 2003, the department published MAR Notice No. 8-99-41 regarding the proposed amendment and repeal of the above-stated rules at page 2792 of the 2003 Montana Administrative Register, Issue No. 24.

2. No comments or testimony were received.

3. The department has amended and repealed the rules as proposed.

DEPARTMENT OF COMMERCE

By: /s/ MARK A. SIMONICH
MARK A. SIMONICH, DIRECTOR
DEPARTMENT OF COMMERCE

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

Certified to the Secretary of State, March 1, 2004.

BEFORE THE BOARD OF RESPIRATORY CARE PRACTITIONERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.213.301 and 24.213.401, and the adoption of NEW RULES I, II, and III, pertaining to definitions, the fee schedule, guidelines for conscious sedation, the abatement of fees, and qualifications to perform certain procedures	))))))))	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On November 13, 2003, the Department of Labor and Industry published MAR Notice No. 24-213-13 regarding the public hearing on the proposed amendment and adoption of the above-stated rules relating to definitions, fee schedule, guidelines for conscious sedation, abatement of fees, and qualifications to perform certain procedures at page 2492 of the 2003 Montana Administrative Register, issue no. 21.

2. On December 19, 2003, a public hearing on the proposed amendment and adoption of the above-stated rules was conducted in Helena. One extensive written comment was received from Sami Butler of the Montana Nurses' Association.

3. The comment and the Board's responses are as follows:

COMMENT 1: Ms. Butler wrote "In [ARM] 24.213.301(4) it states pulse oximetry, pulmonary function testing and spirometry as diagnostic procedures may be performed only by, or under clinical supervision of, a licensed respiratory care practitioner and/or other licensed health care provider who has met the minimum competency standards referred to in NEW RULE III." She stated the proposed amendments are unclear whether this includes the use of oximetry and spirometry as screening tools. Ms. Butler stated that registered nurses have the education, knowledge, skills and ability to use oximetry and spirometry and should not be excluded.

RESPONSE 1: The board was appreciative of Ms. Butler's comment and then addressed it by stating that most nursing schools do not teach much in terms of spirometry and oximetry. In fact, many schools do not even have that in their curriculum. As such, it is necessary for the board to address this rule change in the interests of public safety, health and welfare.

COMMENT 2: Ms. Butler went on to state "MNA has grave concerns regarding proposed language in NEW RULE I. In subsection (2) moderate or deep sedation is not defined. In subsections (2) through (5), the board 'recommends' a variety of

actions." Ms. Butler stated that the function of administrative rules is to provide mandated guidelines for the safety of the public, not recommendations that may or may not be followed.

RESPONSE 2: The Board agrees that the term "moderate or deep sedation" is not defined in proposed NEW RULE I, and agrees that the term should not be used in the rule. In light of the various comments made concerning proposed NEW RULE I, the Board has decided not to adopt NEW RULE I.

The Board disagrees with the comment that the only appropriate use of an administrative rule is to provide mandates. The Board believes that advisory provisions, such as recommendations for use of "best practices" are permitted by the Montana Administrative Procedure Act (Title 2, chapter 4, MCA).

COMMENT 3: Ms. Butler continued "The MNA has a position statement on IV conscious sedation, which includes the statement; 'the registered nurse managing the care of the patient receiving IV conscious sedation shall have no other responsibilities that would leave the patient unattended or compromise continuous monitoring.' In (2)(a), the proposed rules state that at least one qualified individual trained in basic life support skills should be present. Will the respiratory care practitioner (RCP) be administering the sedation and performing airway management simultaneously? Will the RCP role be limited to administering only the sedation, or additional pharmacological agents such as reversal agents or emergency medications? Who is scrutinizing the cardiac monitor?"

RESPONSE 3: As noted in Response 2, the Board has decided not to adopt NEW RULE I. In the event the Board proposes a revised version of NEW RULE I at a future date, the Board will keep the comment in mind when revising the rule.

COMMENT 4: Additionally, Ms. Butler stated "MNA strongly urges ACLS certification for the protection of patients. MCA 37-28-102(3)(a)(i) allows administration of pharmacological agents related to respiratory care procedures. IV conscious sedation however, is a separate procedure from a respiratory care procedure. Significant knowledge and assessment of all body systems and the effects of medications on those systems is required to monitor and safely manage the patient receiving IV conscious sedation. We do not see evidence respiratory care practitioners are tested in the certification process to provide this broad level of care. Since the board has deemed IV conscious sedation is within the scope of respiratory care practitioners, we urge the board to limit this to specific settings for respiratory procedures to ensure quality, safe patient care."

RESPONSE 4: Pursuant to this comment the Board concludes that more thought is necessary on its part. The Board stated

that information that had been researched in the preparation of these proposed new rules indicated that nursing students did not receive training, skills, knowledge or testing in pulmonary function testing in the nursing department of MSU-Bozeman and the Great Falls nursing program does not even teach pulmonary function. The board also commented that 'pulse oximetry' does not need the level of education, skill, training and experience as pulmonary function testing requires. The Board of Medical Examiners has issued a physician's delegation of tasks policy statement and Board of Respiratory Care Practitioners would assume that a physician would not delegate a duty to an individual who was not properly trained and qualified to perform the tasks. As a safety issue, pulmonary function testing should be performed by licensed respiratory care practitioners. The board again stated that it recommends ACLS accreditation. However, since the points raised by Ms. Butler go to the heart of the proposed NEW RULES I AND III the board determined that it would not adopt them at this time. Instead, it decided more thought and input was necessary.

4. The Board amends ARM 24.213.401 and adopts New Rule II (ARM 24.213.403) exactly as proposed.

5. After due consideration of the comments received the board has chosen not to amend ARM 24.213.301 or adopt NEW RULES I and III at this time. These may be noticed at a later date.

BOARD OF RESPIRATORY CARE PRACTITIONERS
GREGORY PAULAUSKIS, PRESIDENT

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

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State March 1, 2004.

DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.301.131, 24.301.138, 24.301.146, 24.301.154, 24.301.201, 24.301.301, 24.301.351, 24.301.501, 24.301.513, 24.301.515, 24.301.521, 24.301.525, 24.301.563, 24.301.601, 24.301.622, 24.301.710, 24.301.901, 24.301.903, and 24.301.904, the adoption of NEW RULES I, II and III and the repeal of ARM 24.301.101 through 24.301.108, 24.301.151, 24.301.158, 24.301.170, 24.301.180, and 24.301.190 pertaining to building codes, boilers and pressure vessels	NOTICE OF AMENDMENT, ADOPTION AND REPEAL

TO: All Concerned Persons

1. On December 11, 2003, the Department of Labor and Industry published MAR Notice No. 24-301-181 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 2695 of the 2003 Montana Administrative Register, issue no. 23.

2. On January 8, 2004, the Department held a public hearing on the proposed amendment, adoption, and repeal in Helena. Several comments were received by the January 15, 2004, deadline.

3. The comments received and the Department's responses are as follows:

COMMENT 1: The Building Codes Bureau received oral comment at the public hearing and several written comments were received before the end of the public comment period regarding ARM 24.301.146(15), which amends the fire sprinkler requirements found in the International Building Code (IBC). The fire protection industry and fire protection community is concerned that lessening the fire sprinkler requirements found in the IBC will result in the loss of life and property. They support the sprinkler requirements found in the 2003 edition of the IBC, without the modification proposed by the Department.

RESPONSE 1: The Department appreciates the fire protection industry and fire protection community's concerns regarding sprinkler requirements in R occupancies. The Department believes the differences in requirements between

the 2000 and the 2003 editions of the IBC are too substantial of a change for a one step move. The Department intends to continue to work with the fire protection industry to educate the public and work with the building industry to gradually work toward the requirements of the 2003 IBC in a more incremental manner. The proposed modification to the IBC was approved unanimously by the Building Codes Council, which included the acting State Fire Marshal. This subject will again be brought to the attention of the Building Codes Council in the future. The Bureau believes that input from all affected parties and further study is required to address items such as the typical lack of adequate water supply for sprinkler systems in rural Montana.

COMMENT 2: Several comments, written and oral, were received regarding NEW RULE III - Incorporation By Reference Of International Fuel Gas Code (IFGC) and the fact that the IFGC allows un-vented space heaters to be utilized in residential buildings. The commenters' concern is that un-vented space heaters exhaust harmful fumes into the structure, specifically carbon monoxide and carbon dioxide, as well as encourage moisture build up in today's airtight constructed homes. The concern is that poor air quality caused by these appliances could have detrimental, if not deadly, effects on the occupants and that the increase in relative humidity levels could cause mold growth and moisture damage to structural components of the home.

RESPONSE 2: The Department appreciates the commenters' position regarding this issue; however, un-vented room heaters are recognized as acceptable by every major model code. The Department is unaware of any nationally recognized code that prohibits their use. It is the Department's understanding that most states allow their use. Un-vented room heaters are prohibited from being used as the primary heat source and limited to minimal BTU input capacities in certain applications and occupancies. Modern un-vented room heaters are required to have an oxygen depletion safety system, which shuts off the gas supply to the unit if the oxygen level in the room decreases to 18%. The Department further notes that examples or possibilities of failure the commenters provided appear to be directly related to improper installation or use.

COMMENT 3: The Department received one written comment regarding the foundation drain requirements found in Section R405 of the 2003 International Residential Code (IRC). The commenter states that this requirement brings about extra expense to install the foundation drains and feels that in many areas the drains are not necessary. The commenter provided suggested language for modifying this section of the IBC, providing an alternative to foundation drains and requiring a foundation drainage system when the area being built upon is known to have a high water table.

RESPONSE 3: Although the Department does not necessarily disagree with the commenter regarding this issue, the Department believes the suggestion should have the review and consideration of the Building Codes Council. The Department will bring the commenter's suggestion to an upcoming meeting of the Building Codes Council.

COMMENT 4: One oral and one written comment were received regarding the commenter's concern that a number of multi-family complexes built in Montana over the last few years are not in compliance with the Federal Fair Housing Act. The commenter believes that "a major reason for this is that state and local building officials do not know or understand the Fair Housing Design and Construction Guidelines (incorporated in IBC) and/or are not inspecting for such issues/violations, and/or are not informing owners, builders and other involved parties of the requirements of the law."

RESPONSE 4: The Department finds that 50-60-212, MCA, addresses that building departments have no authority or responsibility to enforce the Fair Housing Act. The U.S. Department of Housing and Urban Development has determined the 2003 International Building Code (IBC) and 2003 International Residential Code (IRC) are safe harbor documents for compliance with the provisions of the Fair Housing Act. The Department recognizes its role in education of inspectors regarding accessibility issues and will continue to educate inspectors on these issues. In regards to concerns of impracticality, the Department addresses the issues in ARM 24.301.903 and 24.301.904.

COMMENT 5: One commenter spoke in favor of the proposed adoptions and commented further that he is in favor of adopting the 2003 International Plumbing Code (IPC) instead of the Uniform Plumbing Code (UPC). Additionally, he suggested that Appendix L of the IPC be adopted as well for information regarding multiple residents' water pipe sizing.

RESPONSE 5: The Department notes that Montana's plumbing industry generally has adamantly opposed adoption of the IPC since 1995, when a prior edition of the IPC was proposed for adoption. However, the Department will bring the commenter's suggestion to the Building Code Council's attention, and will keep the commenter's suggestion in mind when plumbing-related matters are proposed for amendment at some point in the future.

COMMENT 6: In regards to the proposed adoptions one commenter spoke generally in favor of proposed adoptions. The commenter did have questions regarding NEW RULE III and whether it is in addition to the Mechanical Code and an exemption to the International Residential Code. This commenter also opposed the issue of un-vented room heaters addressed in Comment 2.

RESPONSE 6: The Department acknowledges the commenter's support. NEW RULE III - Incorporation By Reference Of International Fuel Gas Code is in addition to the International Mechanical Code (NEW RULE II). Both of the codes will supercede the parallel provisions of the International Residential Code.

COMMENT 7: Two commenters spoke in support of adopting the Uniform Plumbing Code, 2003 edition and expressed their eagerness to continue to work with the State of Montana on related issues.

RESPONSE 7: The Department acknowledges the commenters and their support of the proposed rules.

COMMENT 8: One commenter requests that ARM 24.301.201 be amended to eliminate reference to "all" obvious violations, and suggests the Department look more closely at public comment.

RESPONSE 8: The Department has removed the word "all" in two places of ARM 24.301.201(1); however, no reference to "all obvious violations" is found in this rule. The Department agrees with the commenter that public comment should be given thorough consideration and responded to appropriately. The Department is committed to continual improvement of its processes, including its rulemaking activities.

COMMENT 9: Commenter suggested clarifying weak and non-specific language, "working knowledge of the specified editions of the adopted model codes" in ARM 24.301.515 to fortify inspector credentials.

RESPONSE 9: The Department believes its inspectors of factory built buildings must have a working knowledge of all building codes adopted by the State of Montana in order to better serve the public. In addition to this "working knowledge," each inspector must also have a thoroughly detailed familiarity with and knowledge of the respective codes they are responsible to enforce. The Department respectfully suggests that quantifying a person's knowledge of a given subject matter is very difficult, and that terms like "particular expertise" or "thorough knowledge" are also not specific, although they may subjectively imply a greater level of subject matter knowledge.

4. After consideration of the comments the Department has amended ARM 24.301.131, 24.301.138, 24.301.146, 24.301.154, 24.301.201, 24.301.301, 24.301.351, 24.301.501, 24.301.513, 24.301.515, 24.301.521, 24.301.525, 24.301.563, 24.301.601, 24.301.622, 24.301.710, 24.301.901, 24.301.903 and 24.301.904, adopted NEW RULE I (24.301.171), NEW RULE II (24.301.172), and NEW RULE III (24.301.173) and repealed ARM

24.301.101 through 24.301.108, 24.301.151, 24.301.158, 24.301.170, 24.301.180, and 24.301.190 exactly as proposed.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State March 1, 2004.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.6.712 as it relates to food safety and inspection service (meat and poultry)	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On January 15, 2004, the department of livestock published MAR Notice No. 32-4-160 regarding the proposed amendment of ARM 32.6.712, as it relates to food safety and inspection service (meat and poultry) at page 35 of the 2004 Montana Administrative Register, Issue Number 1.

2. The department of livestock has amended ARM 32.6.712 exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF LIVESTOCK

By: /s/ Marc Bridges
Marc Bridges, Exec. Officer,
Board of Livestock
Department of Livestock

By: /s/ Carol Grell Morris
Carol Grell Morris,
Rule Reviewer

Certified to the Secretary of State March 1, 2004.

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

In the matter of the adoption of new Rule I and the amendment of ARM 37.5.123 and 37.75.101 pertaining to child and adult care food program (CACFP) administrative review procedures	))))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Interested Persons

1. On December 24, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-314 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules relating to child and adult care food program (CACFP) administrative review procedures, at page 2841 of the 2003 Montana Administrative Register, issue number 24.

2. The Department has adopted the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE I [37.5.124] CHILD AND ADULT CARE FOOD PROGRAM: APPLICABLE ADMINISTRATIVE REVIEW (APPEAL) PROCEDURES FOR DAY CARE HOMES (1) remains as proposed.

(2) An administrative review of an intent to terminate a day care home provider's agreement for cause or a suspension of their participation will be limited to a review of the written ~~information~~ documentation provided to the office of fair hearings, federal policies, 7 CFR 226, state laws and administrative rules, the requirements shown in the sponsor/provider agreement, and policies and procedures governing the child and adult care food program. This review will be performed by allowing the parties to submit written ~~statements~~ documentation to support their claim.

(3) A day care home provider must request an administrative review in writing. The written request must be received by the office of fair hearings at the Department of Public Health and Human Services, Office of Fair Hearings, P.O. Box 202953, Helena, MT 59620-2953 within 15 calendar days of receipt by the day care home provider of the notice of intent to terminate or notice of suspension ~~by the day care home provider~~. The written request for administrative review must include the date the notice of intent to terminate or notice of suspension was received by the day care home provider.

(4) The day care home provider may refute the findings contained in the notice of intent to terminate or notice of suspension by submitting written documentation to the administrative review officials at the office of fair hearings. ~~Copies~~ The sponsor and provider must submit copies of the

documentation ~~submitted~~ in written format to the office of fair hearings ~~by the sponsor or provider must be transmitted in written format to the affected parties and the Montana CACFP at the time of submission~~.

(5) In order for documentation to be considered, the day care home provider ~~and the sponsoring organization~~ must submit written documentation to the administrative review official at the office of fair hearings no later than 30 calendar days after receipt by the day care home provider of the notice of intent to terminate or notice of suspension ~~received by the day care home provider~~. The sponsoring organization must submit written documentation to the administrative review official at the office of fair hearings no later than 15 calendar days after the date the sponsor receives from the office of fair hearings the acknowledgment of the hearing request referred to in (6)(a).

(6) When a request for an administrative review from a day care home provider is received by the office of fair hearings, the office of fair hearings will:

(a) ~~A~~ acknowledge receipt by notifying the department, the sponsor and the day care home provider of the request for administrative review within ~~10~~ five calendar days and include the final date for rendering a decision~~.~~;

(b) ~~The administrative review official will~~ consider only written documentation submitted by the sponsoring organization and the day care home (or ~~its~~ their authorized representatives). Day care home providers and sponsors will not be contacted for additional information. The decision will be based entirely upon the written documentation provided to the office of fair hearings within the time limits cited in (5), and on federal and state laws, 7 CFR 226, rules, regulations, the requirements stated in the sponsor/provider agreement, and policies and procedures governing the program~~.~~; and

(c) ~~The office of fair hearings will~~ render a final decision within 60 calendar days of receipt of the written request for an administrative review from the day care home provider. This time limit is a federal administrative requirement for the department and may not be used as a basis for overturning the department's action if a decision is not made within the specified time limit.

(c)(i) remains as proposed but is renumbered (7).

~~(7)~~ (8) Documentation may be submitted to the office of fair hearings only once. The first submission of documentation is the only written documentation from the provider and sponsor that may be reviewed by the hearing officer. ~~Only information submitted during the initial administrative document review will be considered.~~ No other ~~information~~ submitted written documentation will be considered. ~~No other information can be submitted.~~

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

3. The Department has amended the following rules as proposed with the following changes from the original proposal.

Matter to be added is underlined. Matter to be deleted is interlined.

37.5.123 CHILD AND ADULT CARE FOOD PROGRAM (CACFP): APPLICABLE ADMINISTRATIVE REVIEW (APPEAL) PROCEDURES FOR INSTITUTIONS, RESPONSIBLE PRINCIPALS AND RESPONSIBLE INDIVIDUALS

(1) remains as proposed.

(2) An administrative review of adverse actions will be limited to a review of the written information, federal policies, 7 CFR 226, state laws, and administrative rules, policies and procedures governing the program unless the affected institution or its responsible principals or individuals request a hearing in addition to, or in lieu of, a review of written information.

(3) A notice of action from the department to the institution and responsible principals and individuals ~~shall~~ will be issued as required by 7 CFR 226.6(k). The notice of action required by 7 CFR 226.6(k) must state that in the event the institution or responsible principals and individuals choose~~s~~ an administrative review of an action, a hearing will be held by the review official in addition to, or in lieu of, a review of written information, only if the institution or the responsible ~~principles~~ principals or individuals so requests in the letter requesting an administrative review.

(4) ~~Administrative reviews~~ An administrative review will be conducted in person in Helena, Lewis and Clark County, Montana, at a location designated by the office of fair hearings, unless the parties mutually agree to conduct the administrative review telephonically.

(5) The written request for an administrative review must be received by the office of fair hearings within 15 calendar days of the date of receipt of the notice of action by the institution ~~and~~ or, in the event of a serious deficiency, the date of receipt by the responsible principals and individuals.

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

37.75.101 DEFINITIONS For purposes of this chapter, the following definitions apply:

(1) through (15) remain the same.

(16) "Institution" means a sponsoring organization, child care center, outside-school-hours care center or adult day care center which enters into an agreement with the ~~state agency~~ department to assume final administrative and financial responsibility for CACFP operations.

(17) through (27) remain as proposed.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-704, MCA

4. The Department has made changes in these rules from those proposed in the original rule notice. They are for editorial and clarification purposes and are not substantive in

content.

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

COMMENT #1: In RULE I (ARM 37.5.124), the proposed time frames mean that a sponsor may potentially have only a few days after receiving notice of the hearing request to send documentation of its position into the Office of Fair Hearings. Therefore, the rule should require the provider requesting the hearing to also notify the sponsor of the request within the 15-day time deadline allowed for such a request.

RESPONSE: The department agrees and has amended Rule I(5) (ARM 37.5.124) to increase the amount of time that a sponsor has to submit written documentation to the Office of Fair Hearings.

COMMENT #2: RULE I(4) (ARM 37.5.124) does not provide time or opportunity for a sponsoring organization to respond to the documentation provided by the provider to the Office of Fair Hearings.

RESPONSE: The rule has been amended to allow the sponsoring organization substantially increased notice of a hearing request and increased time to gather and submit all documentation that the sponsor feels is relevant. Therefore, the department did not feel it necessary to add a separate time period within which to rebut what the provider may have submitted and the rule does not allow a response to submitted documentation.

COMMENT #3: RULE I (ARM 37.5.124) does not contain a method to confirm that the required documentation has been sent and/or received by the parties, which is particularly important if a party can respond to the other's testimony. There should be a penalty for failing to do so within the required time limits.

RESPONSE: Because the rule does not provide for a rebuttal to submitted documentation from the provider or the sponsor, the requirement to submit copies of documentation to the affected parties has been removed as unnecessary.

COMMENT #4: RULE I(6)(b) (ARM 37.5.124) appears to allow only "authorized representatives" of the provider to submit documentation. The sponsoring organization should be allowed to do so as well.

RESPONSE: The department agrees and has amended the rule accordingly.

COMMENT #5: The department's CACFP program staff should also be allowed to submit documentation, given their expertise in the area.

RESPONSE: The department does not agree that it was necessary to explicitly allow the CACFP program to submit its own documentation to the Office of Fair Hearings because the department will ordinarily work with the sponsor and offer the sponsor guidance on the appropriate documentation to submit and because the Office of Fair Hearings has copies of all pertinent rules, statutes, policies, and other guidance on which to base its decision.

Dawn Sliva
Rule Reviewer

John Chappuis for
Director, Public Health and Human Services

Certified to the Secretary of State March 1, 2004.

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

In the matter of the amendment of ARM 37.106.313 pertaining to minimum standards for all health care facilities, communicable disease control	)))))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On December 11, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-312 pertaining to the public hearing on the proposed repeal of the above-stated rule relating to the minimum standards for all health care facilities, communicable disease control, at page 2750 of the 2003 Montana Administrative Register, issue number 23.

2. In response to comments received, the Department has decided not to repeal the rule, but is amending it with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

37.106.313 MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES: COMMUNICABLE DISEASE CONTROL ~~(1) Each employee of a health care facility shall provide documentation by a physician that he is free from communicable tuberculosis prior to the time of employment and annually thereafter.~~

~~(2) At time of admission and annually thereafter, a patient admitted to or residing in a long-term care facility shall provide documentation by a physician that he is free from communicable tuberculosis.~~

(1) All health care facilities shall develop and implement an infection prevention and control program. At minimum the facility shall develop, implement, and review, at least annually, written policies and procedures regarding infection prevention and control which must include, but not be limited to, procedures to identify high risk individuals and what methods are used to protect, contain or minimize the risk to patients, residents, staff and visitors.

(2) The administrator, or designee, shall be responsible for the direction, provision, and quality of infection prevention and control services.

AUTH: Sec. 50-5-103 and 50-5-404, MCA
IMP: Sec. 50-5-103, 50-5-204 and 50-5-404, MCA

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

COMMENT #1: Overall, three out of four comments received offered strong support for the repeal of the mandatory TB

testing requirements specified in ARM 37.106.313. Those favorable comments also provided additional suggestions. The main theme raised by the supporting comments was that the department should offer guidance to health care facilities, or simply adopt the current guidelines from the national Centers for Disease Control and Prevention (CDC) to identify the high-risk populations and treatment protocols.

RESPONSE: The department appreciates the support for the repeal of ARM 37.106.313. The department also agrees that each health care facility must provide, develop and implement an effective infection prevention and control program. The department agrees some guidance should be provided to facilities and has amended ARM 37.106.313, as provided in this notice, rather than repealing it. A facility's use of the CDC publication "Prevention and Control of Tuberculosis in Facilities Providing Long-Term Care to the Elderly", MMWR 39 (RR-10) would be one acceptable guide for implementing a TB screening program.

COMMENT #2: Although the repeal of the mandatory TB testing requirements in ARM 37.106.313 is supported, the statement of necessity for the repeal seems to imply that the requirements for screenings in health care facilities are no longer approved by the CDC in the area of TB, and that TB testing in and of itself is no longer required at all. The need for screening certain individuals and under certain circumstances is still appropriate under the CDC guidelines for TB.

RESPONSE: The department agrees the need for continued screening of certain individuals is appropriate and does not mean that TB testing is no longer required at all. The CDC no longer recommends annual testing on everyone, but continues to recommend baseline and targeted testing, based on an evaluation of the risk factors and other national guidelines. Each facility must choose how to provide, develop and implement an effective infection prevention and control program. The amendment to ARM 37.106.313 supports this endeavor.

COMMENT #3: Although the repeal of ARM 37.106.313 is supported, health care facilities should have comprehensive TB programs that will continue to include risk evaluations, education, and screening of employees.

RESPONSE: The department agrees and believes the amendment to ARM 37.106.313 supports the facilities' need for TB programs. Each facility must provide, develop and implement an effective infection prevention and control program. The program should evaluate all factors including, although not limited to, risk evaluations, education, and screening of employees.

COMMENT #4: The repeal of ARM 37.106.313 is supported. The decision to perform regular, repeat testing of some employees should be based on data from within the facility, the risk associated with certain procedures performed, the number of

infectious cases admitted to the facility within the last year, and the number of cases reported in the county.

RESPONSE: The department agrees that all of the criteria mentioned could be appropriate criteria for the development of an effective facility infection prevention program. The amendment to ARM 37.106.313 supports the use of the criteria.

COMMENT #5: With the repeal of ARM 37.106.313, many health care facilities in Montana are going to need assistance in identifying employees who are at risk for becoming infected with Mycobacterium Tuberculosis, and who should continue to receive screening. Referral of these issues should be made to the department's Communicable Disease Unit/TB (Microbiological tuberculosis) Program.

RESPONSE: The department agrees with the suggested referral. The Communicable Disease Unit/TB (Microbiological tuberculosis) Program located within the department would be one appropriate resource to assist with identifying whom, when, and how often someone should be screened in health care facilities. The CDC would also be an appropriate resource for screening criteria in the area of TB.

COMMENT #6: The department should retain ARM 37.106.313. Until TB is completely wiped clean of being a communicable disease which can result in an epidemic, yearly testing should be mandated for all residents and employees of all health care facilities. The cost of an epidemic would outweigh the cost of yearly testing.

RESPONSE: The department disagrees that the TB testing requirements in ARM 37.106.313 should be retained. The CDC no longer recommends the repeated annual testing of employees and residents. Mandating a minimum standard that requires annual testing of all employees and residents/patients/clients results in a tremendous amount of additional cost in unnecessary testing, documentation and labor.

The decision to perform regular repeat testing of some employees or residents should be based on data from within the facility, the risk associated with certain procedures performed, and the number of infectious cases reported within the county and state. The amendment to ARM 37.106.313 assists facilities in these actions. Each facility is required to develop its own facility infection prevention and control program, which should be based on each facility's risk factors. A policy that mandates testing of all residents and employees may be an appropriate component of an effective infection prevention and control program for a particular facility.

Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State March 1, 2004.

VOLUME NO. 50 OPINION NO. 4

ADMINISTRATIVE LAW AND PROCEDURE - Montana Administrative Procedure Act, Central Intake system as "rule;"
PUBLIC HEALTH AND HUMAN SERVICES, DEPARTMENT OF - Creation of Central Intake system within authority granted by the legislature;
STATE GOVERNMENT - Department of Public Health and Human Services, Central Intake Program as "rule;"
STATUTES - Central Intake system not in conflict with Mont. Code Ann. § 41-3-201(1).
MONTANA CODE ANNOTATED - Sections 2-3-102(1), 2-4-102(11), (b), -302, 41-3-201, (1), -202(1), (2001);
REVISED CODES OF MONTANA, 1947 - Sections 10-902, -903, -1315;
OPINIONS OF THE ATTORNEY GENERAL - 35 Op. Att'y Gen. No. 8 (1973).

HELD:

1. The creation of the Central Intake system is well within the authority granted to the Department of Public Health and Human Services by the Legislature in Mont. Code Ann. § 41-3-202(1).

2. The administrative decision by the Department of Public Health and Human Services to establish the Central Intake system implements, interprets or prescribes law or policy. It is a "rule" for the purposes of the Montana Administrative Procedure Act. Thus the notice and hearing requirements of MAPA should have been followed prior to its implementation.

3. There are no "local affiliates" of the Department of Public Health and Human Services. As a result, Mont. Code Ann. § 41-3-201(1) should be read to require the reporting of child abuse or neglect to the Department, a requirement which is clearly satisfied by the reporting of child abuse or neglect to the Centralized Intake Bureau.

February 26, 2004

Mr. Mike Grayson
Anaconda-Deer Lodge County Attorney
118 East 7th Street, Suite 1-B
Anaconda, Montana 59711

Dear Mr. Grayson:

You have requested my opinion concerning the following questions:

1. Was the Department of Public Health and Human Services required either to adopt an administrative rule or obtain legislative

authorization to institute a centralized intake system for the reporting of child abuse and neglect?

2. Can the Department of Public Health and Human Services lawfully refuse to receive reports of child abuse or neglect at local Department offices?

Prior to the 2001 Legislative Session, Mont. Code Ann. § 41-3-202(1) provided that:

> Upon receipt of a report that a child is or has been abused or neglected, a social worker, the county attorney, or a peace officer shall promptly conduct a thorough investigation into the circumstances surrounding the allegations of abuse or neglect of the child.

Arguably, this section required the Department of Public Health and Human Services (Department), or a county attorney or peace officer, to investigate each and every report of child abuse or neglect received by the Department.

However, pursuant to Senate Bill 116, enacted by the 2001 Legislature, Mont. Code Ann. § 41-3-202(1) was amended to read as follows:

> Upon receipt of a report that a child is or has been abused or neglected, <u>the department shall promptly assess the information contained in the report and make a determination regarding the level of response required and the timeframe within which action must be initiated. If the department determines that an investigation is required,</u> a social worker, the county attorney, or a peace officer shall promptly conduct a thorough investigation into the circumstances surrounding the allegations of abuse or neglect of the child.

Mont. Code Ann. § 41-3-202(1) (new language emphasized).

Thus, the 2001 Legislature granted to the Department the authority to assess reports of child abuse or neglect in order to determine whether an investigation was necessary, or whether some lesser response to the report was appropriate. Further the Legislature also granted the Department the authority to determine the appropriate period of time for response. However, Mont. Code Ann. § 41-3-202(1) is silent as to the method by which the Department is to implement this legislation. It was therefore necessary for the Department to develop a method by which the requirements of Mont. Code Ann. § 41-3-202(1) would be implemented. The method developed by the Department was to centralize the receipt, assessment, and determination of

response to reports of child abuse or neglect. In furtherance of this method, the Department created its Centralized Intake system. The creation of this system is well within the authority granted to the Department by the Legislature in Mont. Code Ann. § 41-3-202(1).

That brings us to the issue of whether the Department has, by establishing its Central Intake system, adopted administrative rules without satisfying the processes required by the Montana Administrative Procedure Act (MAPA). Pursuant to Mont. Code Ann. § 2-4-302, before the Department may adopt or amend a rule, the Department must first give notice to the public of its intended action and give the public an opportunity to present their views on the intended action.

The controlling question is whether the Central Intake System is a "rule" as defined by MAPA. For the purposes of MAPA, "rule" is defined as ". . . each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule." Mont. Code Ann. § 2-4-102(11) (emphasis supplied).

In describing the Central Intake System on its website, the Department explains that

> [b]eginning January 1, 2002, Child and Family Services will implement a Centralized Intake (CI) system for reporting child abuse and neglect. In the past, all reports have been made to local offices or to individual workers in the community. With Centralized Intake, all reporters will call the statewide toll-free number 1-866-820-KIDS (1-866-820-5437), that can be accessed from anywhere in the nation. This will be a significant change, as reports will no longer be taken locally. However, Centralized Intake will result in increased benefits to Montana's children and families. We have studied similar centralized reporting systems in other states, and after careful evaluation, we feel confident Montana will benefit from this streamlined reporting system.

DPHHS website, New Directions in Reporting Child Abuse and Neglect Centralized Intake in 2002, (March, 2003), at http://www.dphhs.state.mt.us/about_us/divisions/child_family_services/publications/new_direction_in_reporting.htm.

This Central Intake system was designed to implement the new responsibilities acquired by the Department under Mont. Code Ann. § 41-3-202(1) (2001). It is a system that provides the procedures the department intends to utilize to implement the new law. The Central Intake system appears to fall within the plain language definition of "rule" as defined by MAPA.

For purposes of MAPA, the term "rule" does not include "statements concerning only the internal management of an agency or state government and not affecting private rights or procedures available to the public, including rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system; . . . ." Mont. Code Ann. § 2-4-102(11)(b) (in relevant part) (emphasis supplied). So, a state agency is permitted to make policies and decisions regarding internal management without engaging in MAPA rulemaking if the policies do not affect "private rights or procedures available to the public." Additionally, without engaging in the usual notice and comment procedures, a state agency may adopt an administrative rule that informs the public of the agency's organization, operations and methods, including methods by which "the public may obtain information or make submissions or requests." Mont. Code Ann. § 2-4-201(1).

However, the Department itself describes the new Central Intake system as a "significant change." This system dramatically changes how the public reports incidents of child abuse and neglect and how the government intends to respond to such reports. In other words, this substantially changes the reporting and handling of child abuse and neglect procedures available to the public. This does not simply affect employees of the Department as do the examples listed under the exclusion from the definition of "rule" found in Mont. Code Ann. § 2-4-102. Interpreting this exception to allow government agencies to adopt major changes in policies affecting the public without engaging in formal rulemaking and then just announce them in their periodic revisions of the organizational rule would defeat the purpose of MAPA.

Though there are no cases or Attorney General's Opinions precisely on point, Attorney General Robert Woodahl opined that state plans would fall within the definition of "rule" for purposes of MAPA. 35 Mont. Op. Att'y Gen. No. 8. He opined that state plans would contain "agency standards which implement law or policy." 35 Mont. Op. Att'y Gen. No. 8. Further, the Montana Supreme Court determined that the administrative decision of the Department of Revenue to alter the formula by which it taxed airlines implemented, interpreted or prescribed law or policy and thus qualified as a "rule" for purposes of MAPA. Northwest Airlines, Inc. v. State Tax Appeal Bd., 221 Mont. 441, 445 (1986). The Court reasoned that the effects of the change in formula were not inconsequential and limited to employees of Department of Revenue, but the effects had a substantial impact on Northwest Airlines. Id.

In your letter, you advance several arguments about whether the Central Intake system is a good idea. There is no indication in your letter that you were given an opportunity to make these points before the new policy was adopted or that the Department considered them before it concluded that the Central Intake

system was a good idea. It is precisely these kinds of arguments that should be considered in the rulemaking process. Rulemaking is not just a meaningless bureaucratic process; rather, the public is entitled to notice and the chance to comment to make sure that the agency has the full benefit of views from the interested public. These are views that might not percolate to the top within the agency itself.

The administrative decision by the Department to establish the Central Intake system implements, interprets or prescribes law or policy. Further, it does not constitute a statement affecting strictly the internal management of the Department. Rather, the Central Intake system is a dramatic change in the way the State of Montana through the Department handles reports of child abuse and neglect. It had a substantial impact on the public and the procedures it must follow to report child abuse and neglect. It is a "rule" for the purposes of MAPA. Thus the notice and hearing requirements of MAPA should have been followed prior to its implementation.

Your next question is whether the Department can lawfully refuse to receive reports of child abuse or neglect at local Department offices. As discussed above, the creation of the Central Intake system is well within the authority granted to the Department by the Legislature in Mont. Code Ann. § 41-3-202(1).

Mont. Code Ann. § 41-3-201, Montana's mandatory reporting statute, requires certain professionals to make referrals to the Department if they know of, or suspect child abuse or neglect. The statute states that the professionals and officials report abuse and neglect "promptly to the department of public health and human services or <u>its local affiliate</u>." Mont. Code Ann. § 41-3-201 (emphasis supplied). You argue that the Central Intake system is in conflict with this mandatory reporting statute. However, the Department no longer has "local affiliates." This term stems from the days when child protective service responsibilities were shared between counties and the state. The Department is now solely responsible for assessing reports of child abuse or neglect, determining whether an investigation is necessary, or whether some lesser response to the report is appropriate and determining the appropriate period of time in which to respond.

Mont. Code Ann. § 41-3-201 was originally adopted in 1965 as § 10-902, Montana Revised Code Ann. (1947). The original provision required doctors, teachers and social workers to report known or suspected child abuse or neglect to the county attorney, who, pursuant to § 10-903, Montana Revised Code Ann. (1947) (the precursor to Mont. Code Ann. § 41-3-202), was required to investigate the report. In 1973, § 10-902, Montana Revised Code Ann. (1947), was amended to require that mandated reporters report known or suspected child abuse or neglect to "the department of social and rehabilitation services, its local

affiliate, and the county attorney. . . .," and § 10-903 was amended to require a social worker to conduct an investigation.

Also, in 1974, § 10-1315, Montana Revised Code Ann. (1947) was enacted, which provided that "the department of social and rehabilitation services and the county welfare department shall have the primary responsibility to provide the protective services authorized by this act. . . ."

In 1979, § 10-902, Montana Revised Code Ann. (1947) (which had since been renumbered Mont. Code Ann § 41-3-201) was amended to require incidents of child abuse or neglect be reported to "the department of social and rehabilitation services or its local affiliate, which then shall notify the county attorney." Section 10-903, Montana Revised Code Ann. (1947) (which had been renumbered to Mont. Code Ann § 41-3-202) was amended to require that an investigation be conducted by ". . . a social worker or the county attorney or a peace officer . . . ." Section 10-1315, Montana Revised Code Ann. (1947) (which had been renumbered to Mont. Code Ann § 41-3-302) was amended to add the requirement that "the county welfare department shall respond to emergency reports of known or suspected child abuse or neglect 24 hours a day, 7 days a week."

So, from 1965 until 1973, the county attorney was responsible for receiving and investigating reports of child abuse or neglect, and acting on those reports. In 1973 and 1974, however, the system was changed to require that reports be made to the county attorney, to the department of social and rehabilitation services, and to the department's local affiliate. Investigation of the report was to be conducted by a social worker and the responsibility for providing child protective services was shared between the Department of Social and Rehabilitation Services, a state agency, and the county welfare department, a division of the local county government.

In 1979, the system was changed again to the extent that reports were no longer made directly to the county attorney; the authority to conduct an investigation was expanded to include social workers, peace officers, and the county attorney. The county welfare department was specifically designated as the provider of emergency child protective services on a 24-hour-a-day, 7-days-a-week basis.

Finally, in 1987, the county welfare departments (and, by implication, the counties) were completely removed from the child protective services process, with the Department of Family Services being the recipient of reports of child abuse or neglect, the investigator of reports of child abuse or neglect, and the sole agency responsible for providing child protective services 24 hours a day, 7 days a week. The Department of Public Health and Human Services has now assumed those duties.

From 1974 through 1987, the responsibility for providing child protective services was shared between a state agency (SRS or DFS) and a county agency, i.e., the various county welfare departments. Furthermore, from 1979 through 1987, the counties, through their welfare departments, were the provider of emergency child protective services. So, the intent of requiring that child abuse or neglect be reported to the department and to its "local affiliate" was clearly to accommodate this sharing of child protective service responsibilities between a state agency and the county. In other words, the department's "local affiliate" for the purposes of § 10-902, Montana Revised Code Ann. (1947), and Mont. Code Ann. § 41-3-201, was the county welfare department.

Now, however, there is no "local affiliate" of the Department regarding child protective services. The county is no longer involved in the provision of child protective services. The Department social workers located in each county are neither county employees, nor are they part of some local affiliate; rather, they are simply part of the Department. In other words, the term "local affiliate" in Mont. Code Ann § 41-3-201(1) is really nothing more than a leftover term from previous versions of the statute, and has no practical effect under the current child protective services system.

Further, nothing in Mont. Code Ann. § 41-3-201 requires Department personnel in each county to accept reports of child abuse, nor does it prohibit those personnel from referring reporters to the Centralized Intake Bureau. As a result, Mont. Code Ann. § 41-3-201(1), should be read to require the reporting of child abuse or neglect to the Department, a requirement which is clearly satisfied by the reporting of child abuse or neglect to the Centralized Intake Bureau.

However, since the Central Intake system was not adopted in accordance with MAPA, it cannot currently be used to restrict which Department personnel may receive a report. Therefore, until a properly adopted administrative rule is in place, mandatory reporters may fulfill their reporting obligation by reporting known or suspected child abuse to a local child protective services worker or supervisor as has been the procedure in the past or by making reports to the Central Intake system.

THEREFORE, IT IS MY OPINION:

1. The creation of the Central Intake system is well within the authority granted to the Department of Public Health and Human Services by the Legislature in Mont. Code Ann. § 41-3-202(1).

2. The administrative decision by the Department of Public Health and Human Services to establish the Central Intake system implements, interprets or

prescribes law or policy. It is a "rule" for the purposes of the Montana Administrative Procedure Act. Thus the notice and hearing requirements of MAPA should have been followed prior to its implementation.

3. There are no "local affiliates" of the Department of Public Health and Human Services. As a result, Mont. Code Ann. § 41-3-201(1) should be read to require the reporting of child abuse or neglect to the Department, a requirement which is clearly satisfied by the reporting of child abuse or neglect to the Centralized Intake Bureau.

Very truly yours,

/s/ Mike McGrath
MIKE McGRATH
Attorney General

mm/pdb/jym

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

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

Education and Local Government Interim Committee:

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

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

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration, and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2003. This table includes those rules adopted during the period January 1, 2004 through March 31, 2004 and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 2003, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 2003 and 2004 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.

GENERAL PROVISIONS, Title 1

1.2.419 Scheduled Dates for the Montana Administrative Register, p. 2267, 2632

ADMINISTRATION, Department of, Title 2

I & II Do-Not-Call List, p. 2015, 2847
I-VII State of Montana Voluntary Employees' Beneficiary Association Health Benefit Plan, p. 1703
2.4.406 Roster of Independent Auditors Authorized to Conduct Audits of Local Government Entities, p. 1572, 2076
2.12.101 and other rules - Implementation of the Montana Information Technology Act, p. 1821, 2417
2.21.3603 and other rules - Veterans' Employment Preference Policy, p. 1699, 2077
2.59.307 and other rule - Examination Fees for Consumer Loan Businesses - Dollar Amounts to Which Consumer Loan Rates are to be Applied, p. 1147, 1802

(Public Employees' Retirement Board)
2.43.404 and other rules - Membership Options for Officials Elected to Positions Covered by the Public Employees' Retirement System and the Reporting of Those Officials by Their Employers, p. 1420, 1981
2.43.421 Uniformed Services Employment and Reemployment Right Act of 1994 (USERRA) and the Receipt of Service When

Called to Perform Duty in the Uniformed Service, p. 2480

2.43.422 and other rules - Purchase of Federal Volunteer Service by Members of the Public Employees' Retirement System Defined Benefit Retirement Plan, p. 1414, 1707, 1982

2.43.437 and other rule - Purchasing Active and Reserve Military Service, p. 2484

2.43.441 and other rules - Public Employees' Retirement System Defined Contribution Retirement Plan Administered by the Public Employees' Retirement Board, p. 1143, 1800

2.43.1104 and other rule - Municipal Police Officers' Retirement System Deferred Retirement Option Plan Administered by the Public Employees' Retirement Board, p. 1139, 1801

(State Compensation Insurance Fund)

2.55.320 and other rules - Classifications of Employments - Overall Rate Levels - Expense Constants, p. 2321, 176

AGRICULTURE, Department of, Title 4

I-XV Organic Certification, p. 2324, 2848

4.4.301 and other rules - Hail Insurance, p. 152

4.4.303 Insured Crops, p. 1710, 2079

4.5.301 and other rules - Noxious Weeds, p. 2781, 311

4.12.607 and other rule - Reporting of Fertilizer and Fee Schedules, p. 1576, 1985, 2421

4.12.1427 Shipping Point Inspection Fees, p. 2789, 312

STATE AUDITOR, Title 6

6.6.503 and other rules - Medicare Supplements - Medicare Select Full Coverage - Separability - Purpose, p. 2125, 313

6.6.1610 and other rules - Collection in Advance of Fees for a Public Adjuster's License and Examination - Certification Requirements for Licensees and Limit on Credit for Courses Repeated - Extensions of Time for Course Completions, p. 2488, 2849

6.6.2203 Rebates and Inducements, p. 1435, 2752

6.6.3504 Contents of an Annual Audited Financial Report, p. 2578, 73

6.10.140 and other rules - Minimum Financial Requirements for Investment Advisers - Bonding Requirements for Certain Investment Advisers - Custody of Client Funds or Securities by Investment Advisers - Custody of Notice Filings for Offerings of Federal Covered Securities, p. 1427, 2850

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

I-XI Translocation of Prairie Dogs, p. 370

12.9.211 Teton-Spring Creek Bird Preserve, p. 1592, 177

GOVERNOR, Title 14

(Office of Economic Development)

I-VI Grant Review Committee - Primary Sector Business Workforce Training Act, p. 2161, 2855

ENVIRONMENTAL QUALITY, Department of, Title 17

17.36.340 Subdivisions - Minimum Lot Size Requirements for Subdivisions, p. 1257, 1804

17.50.802 and other rules - Septage Cleaning and Disposal - Cesspool, Septic Tank and Privy Cleaners, p. 2350

17.56.101 and other rules - Underground Storage Tanks - Issuance of Compliance Tags and Certificates, p. 2167, 2759

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. 1, 379

17.74.401 and other rules - Asbestos - Fees for Asbestos Project Permits - Accreditation and Renewal of Accreditation in an Asbestos-Related Occupation - Approval of Training Courses Offered for Accreditation - Audits of Training Courses and Refresher Courses - Penalties, p. 1595, 2624

(Board of Environmental Review)

17.8.102 and other rules - Air Quality - Incorporation by Reference of Current Federal Regulations and Other Materials into Air Quality Rules, p. 2801

17.8.501 and other rules - Air Quality - Definitions - Permit Application Fees - Operation Fees - Application/ Operation Fee Assessment Appeal Procedures - Open Burning Fees, p. 1242, 2271

17.8.749 and other rules - Air Quality - Conditions for Issuance or Denial of Permits - Review of Permit Applications - Revocation of Permits - Administrative Amendment to Permits, p. 1252, 2272

17.8.1213 Air Quality - Requirements for Air Quality Operating Permit Content Relating to Compliance, p. 2187, 2856

17.24.201 and other rules - Opencut Mining, p. 2190, 317

17.30.502 and other rules - Water Quality - Water Use Classifications - Department Circular WQB-7, p. 2808

17.30.702 and other rule - Water Quality - Defining Nutrient Reducing Subsurface Wastewater Treatment Systems, p. 387

17.30.716 Water Quality - Categories of Activities that Cause Non-significant Changes in Water Quality, p. 1233, 2274

17.38.602 and other rule - Public Water and Sewage System Requirements - Definitions - Enforcement Procedures, p. 1227, 2291
17.50.401 and other rules - Solid Waste Fees, p. 1720, 2857

CORRECTIONS, Department of, Title 20

I-V Collection of Restitution from Felony Offenders, p. 1737, 2432

(Board of Pardons and Parole)
I Training of Board of Pardons and Parole Board Members, p. 239

JUSTICE, Department of, Title 23

23.5.101 and other rules - Incorporate Amendments to Federal Regulations Pertaining to Motor Vehicle Standards Previously Incorporated by Reference in Current Rules - General Revisions to Clarify Scope of Rules, p. 2816
23.6.101 and other rules - Definitions - Classification of Tow Truck Equipment - Establishment of the Tow Truck Complaint Resolution Committee - Establishment of the Procedures Governing the Committee - Clarification of the Rules Governing the State Rotation System, p. 2019, 2628
23.7.101A and other rules - NFPA 1 Uniform Fire Code, p. 17
23.16.102 and other rules - Multi-Game Video Gambling Machine Approval - Software Specifications for Video Multi-Game Machines - Automated Accounting and Reporting System - Video Gambling Machine Hardware and Software Specifications - Daily Pot Raffles - Definitions - Requirements for Permitting and Fees - Software Specifications for Multi-Game Video Gambling Machines - Fingerprinting Requirements, p. 1601, 1989

LABOR AND INDUSTRY, Department of, Title 24

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

I Interpreting Legislative Changes to Statutes that Regulate Local Building Code Enforcement Programs, p. 1449, 1991
24.16.7506 and other rule - Wage Claims Mediation, p. 1944, 2433, 77
24.17.127 Prevailing Wage Rates - Non-construction Services - Heavy and Highway Construction Services, p. 2371, 2867
24.17.144 and other rule - Obligations of Public Contracting Agencies, Employers, and Contractors, p. 2367, 2869

24.29.902 and other rules - Workers' Compensation Assessments, p. 2681
24.29.1526 Disallowed Medical Procedures for Workers' Compensation Purposes, p. 1617, 2870
24.29.2831 Collection of Payments and Penalties from Uninsured Employers, p. 1838, 2296
24.29.3802 Hourly Attorney Fee Rates, p. 2374, 78
24.29.4301 and other rules - Reporting of Workers' Compensation Data, p. 1768, 2297
24.30.102 and other rule - Recording and Reporting Occupational Injuries and Illness, p. 1445, 1884
24.35.111 and other rules - Independent Contractor Exemptions - Status Determinations, p. 2028, 2550
24.301.131 and other rules - Building Codes - Boilers - Pressure Vessels, p. 2695
24.301.201 and other rules - Building Codes, p. 1783, 2299, 2763

(Board of Alternative Health Care)
24.111.502 and other rules - Licensing by Examination - Direct-Entry Midwife Apprenticeship Requirements - Vaginal Birth After Cesarean (VBAC) Deliveries - Naturopathic Physician Continuing Education Requirements - Midwives Continuing Education Requirements - Scope of Practice for Naturopaths, p. 1620, 2873

(Board of Barbers)
I Rules Applicable to Barbers, Cosmetologists, Electrologists, Manicurists and Estheticians, p. 1776, 2630

(Board of Barbers and Cosmetologists)
I Rules Applicable to Barbers, Cosmetologists, Electrologists, Manicurists and Estheticians, p. 1776, 2630

(Board of Chiropractors)
8.12.101 and other rules - Transfer from the Department of Commerce, p. 2761
24.126.301 and other rules - Definitions - Fee Schedule - Unprofessional Conduct - Display of License - Purpose of the Board, p. 169

(Board of Cosmetologists)
I Rules Applicable to Barbers, Cosmetologists, Electrologists, Manicurists and Estheticians, p. 1776, 2630

(Board of Dentistry)
8.16.401 and other rules - Dentistry - Dental Hygiene - Denturitry, p. 1742, 2435

(State Electrical Board)
I Master Electrician License Qualifications, p. 2377

(Board of Hearing Aid Dispensers)
24.150.501 and other rules - Examination - Continuing Education - Unprofessional Conduct, p. 1779, 328

(Board of Medical Examiners)
I Medical Assistants, p. 2380
24.156.625 and other rules - Unprofessional Conduct - Emergency Medical Technician Licensure, p. 1841, 188

(Board of Nursing)
8.32.302 and other rule - Re-certification of Nurse Midwives - Authorized Signatures on Nurses' Licenses, p. 1835, 2861
8.32.416 and other rules - Licensure - Fees - Prescriptive Authority - Psychiatric-Mental Health Practitioner Practice, p. 1439, 2863
8.32.1118 and other rule - Nursing Education Accrediting Bodies - Nurse's Role in Cosmetic Procedures, p. 2359

(Board of Optometry)
8.36.101 and other rules - Transfer from the Department of Commerce, p. 2083

(Board of Physical Therapy Examiners)
8.42.404 and other rules - Temporary, Out-of-State and Renewal Licenses - Foreign-trained Applicants - Continuing Education, p. 1027, 2292, 2549, 75

(Board of Public Accountants)
8.54.410 and other rules - Fees - Examinations, p. 161

(Board of Radiologic Technologists)
I-IV Radiologist Assistants - Scope of Practice - Supervision - Code of Ethics, p. 2362, 2491
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. 1033, 1882

(Board of Real Estate Appraisers)
24.207.401 and other rules - Trainee and Mentor Requirements, p. 2035, 79
24.207.402 Adoption of USPAP by Reference, p. 2830

(Board of Respiratory Care Practitioners)
24.213.301 and other rules - Definitions - Fee Schedule - Guidelines for Conscious Sedation - Abatement of Fees - Qualifications to Perform Certain Procedures, p. 2492

(Board of Social Work Examiners and Professional Counselors)
I Ethics Code, p. 1613, 2294

(Board of Veterinary Medicine)
8.64.501 and other rule - Application Requirements - Licensure by Endorsement, p. 2825, 327

LIVESTOCK, Department of, Title 32

32.6.712 Food Safety and Inspection Service for Meat and Poultry, p. 35
32.23.301 Fees Charged by the Department on the Volume on All Classes of Milk, p. 1948, 2439

(Board of Horse Racing)
32.28.502 and other rules - Annual License Fees - Racing Secretary - Chart Companies - Duties of the Licensee - Programs - Owner and Breeder Bonuses - Jockey Incentive Award Program, p. 38

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

I Present Value Formula for Determining a Severance Fee in a Petition to Exclude a Tract from Future Services, Assessments, and Liabilities of an Irrigation District, p. 242

(Board of Land Commissioners and the Department of Natural Resources and Conservation)
Establishment of a Negotiated Rulemaking Committee on Land Banking, p. 2041
I-VI Obtaining a Conservation License in Lieu of Timber Sale, p. 1453, 2874

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

I-IV Implementation of the Montana Medicaid Disease Management Program, p. 2406, 2892
37.2.101 and other rules - Department Procedures for Administrative Rules, Recovery and Offset of Debts, Self-sufficiency Trusts, State Facility Reimbursement and Community Services Block Grants, p. 1951, 2440
37.5.123 and other rules - Child and Adult Care Food Program (CACFP) Administrative Review Procedures, p. 2841
37.8.105 and other rules - Records and Statistics, p. 1960, 2441
37.12.301 and other rules - Laboratories, p. 1969, 2442, 2880
37.12.401 Laboratory Fees for the Public Health Laboratory and Environmental Laboratory, p. 2045, 2551
37.14.1002 and other rule - Radiation General Safety Provisions, p. 1863, 2443
37.36.101 and other rules - Montana Telecommunications Access Program (MTAP), p. 2833

Filing Requirements - Advanced Approval Applications - Fees, p. 2228, 2894

REVENUE, Department of, Title 42

I Administrative Fee to Repay the Bond Debt for the New Computer System, p. 1513, 1885
I-VII First-Time Home Buyers, p. 422
42.4.103 and other rules - Personal Income Taxes, Credits, Incentives, and Exemptions, p. 429
42.5.201 and other rules - Electronic Signatures - Filing and Remittance of Tax Information, p. 2411, 2897
42.11.104 and other rules - Liquor Distribution - Liquor Vendors, p. 2059, 2899
42.12.101 and other rules - Processing Fees and Fingerprinting Requirements for Liquor License Applications, p. 1870, 2305
42.15.802 and other rules - Taxation of Family Education Savings Accounts, p. 414
42.19.401 and other rules - Extended Property Tax Assistance Program and Other Property Tax Rules, p. 45, 490
42.19.501 and other rules - Property Taxes, p. 1516, 1886
42.20.302 and other rules - Agricultural and Forest Land Properties, p. 1464, 1888
42.21.113 and other rules - Personal Property - Centrally Assessed Property Tax Trend Tables, p. 2245, 2901
42.24.214 Corporation Taxes and Multi-state Tax Commission, p. 51
42.26.302 and other rules - Water's-Edge Election for Multinational Corporations, p. 70
42.31.131 and other rules - Cigarette and Tobacco Taxes, p. 1527, 1890
42.35.101 and other rules - Inheritance and Estate Taxes, p. 2233, 2765

SECRETARY OF STATE, Title 44

I Requirements for Filing Trademark Applications, Renewals, and Assignments, p. 1183, 1892
1.2.419 Scheduled Dates for the Montana Administrative Register, p. 2267, 2632
44.3.1401 and other rules - Elections - Overseas and Military Electors, p. 2526, 93
44.5.114 and other rules - Corporations - Profit and Nonprofit Fees - Limited Liability Partnership Fees - Assumed Business Name Fees - Miscellaneous Fees Regarding the Reduction or Elimination of Business Document Filing Fees, p. 1179, 2090
44.6.101 and other rules - Uniform Commercial Code Filing Fees - UCC Refiling Fees - Agriculture Filing Fees - Federal Tax Lien Fees - UCC Filing Fees - Title 71 Lien Requirements - UCC Filings - Farm Bill Master List - On-line UCC Lien Filings, p. 1170, 1894

(Commissioner of Political Practices)
44.12.101A and other rules - Lobbying - Regulation of Lobbying, p. 463