

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 11

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION  
OF THE STATE OF MONTANA

In the matter of the proposed )	NOTICE OF PUBLIC HEARING
amendment of ARM 10.7.101, )	ON PROPOSED AMENDMENT
10.7.109, 10.7.110, 10.7.111, )	
10.7.115, 10.7.118, 10.10.202,) )	
10.10.309, 10.10.316, )	
10.10.320, 10.10.611, )	
10.10.614, 10.15.101, )	
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10.21.102A, 10.21.102B, )	
10.21.102E, 10.22.102, )	
10.23.102, 10.30.102, and )	
10.30.403 relating to school )	
finance and transportation )	

TO: All Concerned Persons

1. On June 30, 2004, at 2:00 p.m. a public hearing will be held at the Office of Public Instruction conference room, 1300 11th Avenue, Helena, Montana, to consider the amendment of the above-stated rules relating to school finance and transportation.

2. The Office of Public Instruction 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 Office of Public Instruction no later than 5:00 p.m. on June 18, 2004, to advise us of the nature of the accommodation that you need. Please contact Joan Anderson, P.O. Box 202501, Helena, MT 59620-2501, telephone: (406)444-1960, TDD number: (406)444-0235, FAX: (406)444-0509, e-mail: janderson@state.mt.us.

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

10.7.101 INTRODUCTION (1) through (2)(f) remain the same.

(g) By October 1 a district must send the county superintendent two copies of the TR-1 for each bus route ~~that carries elementary students only.~~

(h) By October 15 the county superintendent must send the state superintendent of public instruction the TR-1 for each bus route ~~that carries elementary students only.~~

(i) through (k) remain the same.

~~(l) By November 14 or the first pupil instruction day beginning on or after November 14, a district must count the eligible high school riders who ride the bus at least one morning during the 5 day counting period.~~

~~(m) By December 1 a district must send the county superintendent two copies of the TR 1 for each bus route carrying any high school student(s).~~

~~(n) By December 10 the county superintendent must send the superintendent of public instruction the TR 1 for each bus route carrying any high school student(s).~~

(o) through (ab) remain the same but are renumbered (l) through (y).

AUTH: Sec. 20-3-106, 20-10-112, MCA

IMP: Sec. 20-9-134, 20-9-166, 20-10-101, 20-10-124, 20-10-147, 20-10-201, 20-10-202, 20-10-203, 20-10-204, 20-10-205, 20-10-206, 20-10-207, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend this rule to implement pupil transportation changes under SB 424 in the 2003 Legislative Session. SB 424 established a bus mileage reimbursement rate based on the capacity (size) of the school bus. It repealed the November count of high school ridership, which had previously necessitated a second reporting deadline for high school buses. A single deadline is proposed.

10.7.109 BUS TRANSPORTATION REIMBURSEMENT-SCHOOL DISTRICT APPLICATION TR-1 FOR REGISTRATION OF SCHOOL BUSES AND STATE REIMBURSEMENT (1) The form used for this application, designated form TR-1, must be completed by the board of trustees for each approved bus route in the district.

~~(a) For routes carrying only elementary riders, the trustees shall send two copies of a TR-1 for each route to the county superintendent by October 1. No later than October 15, the county superintendent must send one copy of a TR-1 for each route carrying only elementary riders to the state superintendent of public instruction for approval.~~

~~(b) For eligible high school riders to be included in the formula used to calculate bus route reimbursement, they must ride the bus at least one morning during a five day counting period that begins on November 14 or the first school day after November 14 and continues for a total of five consecutive pupil instruction days. A school district may record this count using a form TR 2, pupil list, provided by the office of public instruction, or a checklist of their own design.~~

~~(c) Bus routes that carry only high school riders who did not participate in the five day count will receive the minimum daily reimbursement rate of 85 cents per mile for each route that carries at least one eligible rider if all other requirements are met.~~

~~(d) Bus routes that carry elementary riders and high school riders who did not participate in the five day count will be reimbursed solely on the number of eligible elementary riders.~~

~~(e) The TR 1 forms for bus routes carrying one or more high school riders are due to the county superintendent on~~

~~December 1. No later than December 10, the county superintendent must send one copy of each TR 1 to the state superintendent of public instruction for approval. In addition to any elementary students on the route, TR 1 forms may only include the eligible high school riders who participated in the November count as eligible riders for reimbursement purposes.~~

(2) remains the same.

AUTH: Sec. 20-3-106, 20-10-112, MCA  
IMP: Sec. 20-10-112, 20-10-128, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend this rule for the same reasons as set forth following ARM 10.7.101 above.

10.7.110 STANDARDS FOR SCHOOL BUSES (1) remains the same.

(2) State and county reimbursement for bus transportation will only be paid for routes operated with buses (either district-owned or contractor-owned) that pass the Montana highway patrol's inspection ~~before the beginning of each semester.~~ The Montana highway patrol's inspection will determine if the school bus meets the Minimum Standards for School Buses in Montana as adopted by the board of public education.

(3) through (5) remain the same.

AUTH: Sec. 20-3-106, 20-10-112, MCA  
IMP: Sec. 20-10-101, 20-10-102, 20-10-104, 20-10-111, 20-10-112, 20-10-141, 61-9-502, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend this rule to make (2) consistent with the requirements of (3).

10.7.111 QUALIFICATION OF BUS DRIVERS (1) through (5) remain the same.

(6) The qualifications of all bus drivers are reviewed at the time the state verification of transportation claims is made, as the qualifications of the bus driver are one of the criteria for eligibility for reimbursement. With the exception of (2) and (3), ~~OP~~ the state superintendent will not reimburse for routes driven by drivers without a current certificate on file with the office of public instruction ~~at the time the TR 6 claim for reimbursement is due.~~ If any license, certificate or examination was expired for any period of time, the office of public instruction will withhold transportation reimbursement funding for the number of days the driver was not qualified.

AUTH: Sec. 20-3-106, 20-10-112, MCA  
IMP: Sec. 20-10-103, 20-10-112, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend this rule to implement a change in process made possible by improved technology. Previously, the state's transportation payment system could not track the number of days that a bus driver's certificate was expired, so payments were adjusted only if the driver was not certified at the time claims were submitted in February and May. Improved technology allows state payments for the precise number of days the driver was certified during the semester, in compliance with law.

10.7.115 SCHEDULE FOR BUS TRANSPORTATION (1) ~~Determine the total weighted eligible riders on a route by assigning passenger points as described in 20-10-127, MCA, and by performing the high school passenger count described in 20-10-128, MCA. As long as there is at least one weighted eligible rider, the rate per bus mile traveled shall be determined in accordance with the following schedule when the number of weighted eligible transportees that board a school bus on an approved route is at least one half of its rated capacity:~~

~~(a) 85 cents per bus mile for a school bus with a rated capacity of not more than 45 children; and~~

~~(b) when the rated capacity is more than 45 children, an additional 2.13 cents per bus mile for each additional seating position in the rated capacity in excess of 45 shall be added to a base of 85 cents. A bus route having at least one eligible transportee and meeting other eligibility criteria will be reimbursed for bus mileage according to the rate schedule provided in 20-10-141, MCA. A bus route without at least one eligible transportee is not eligible to receive reimbursement.~~

~~(2) remains the same.~~

~~(3) When the number of eligible transportees boarding a school bus on an approved route is fewer than one half of its rated capacity, the rate per bus mile traveled shall be computed as follows:~~

~~(a) determine the number of eligible transportees that board the school bus on the route;~~

~~(b) weight the riders according to 20-10-127, MCA;~~

~~(c) multiply that number, determined in (b), by two; and~~

~~(d) use the adjusted rated capacity determined in (c) as the rated capacity of the bus to determine the rate per bus mile traveled.~~

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

AUTH: Sec. 20-3-106, 20-10-112, MCA

IMP: Sec. 20-10-127, 20-10-141, 20-10-142, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend this rule for the same reasons as set forth following ARM 10.7.101 above.

10.7.118 SCHOOL TRANSPORTATION FORMS LISTED BY FORM NUMBER (1) and (1)(a) remain the same.

~~(b) Copies of forms mailed to district officials by September 10 of each year;~~

~~(c) Forms completed by district officials, due in county superintendent's office by October 1 for bus routes carrying only elementary students and by December 1 for bus routes carrying any high school students;~~

~~(d) (c) Completed forms transmitted by county superintendent to state superintendent of public instruction by October 15 for bus routes carrying only elementary students and by December 10 for bus routes carrying any high school students;~~

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

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

~~(c) Copies of forms mailed to district officials by September 10 of each year;~~

~~(d) Forms completed by district officials, due in county superintendent's office by October 1 for bus routes carrying only elementary students and by December 1 for bus routes carrying any high school students;~~

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

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

~~(c) Copies of forms mailed to district officials by April 15 of each year;~~

(d) through (g) remain the same but are renumbered (c) through (f).

(4) remains the same.

(a) Forms supplied by the state superintendent of public instruction each semester;

~~(b) Copies of forms mailed to district officials:~~

~~(i) first semester by mid January,~~

~~(ii) second semester by April 30;~~

~~(c) Forms completed by district officials and due in the county superintendent's office:~~

(i) and (ii) remain the same.

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

(i) and (ii) remain the same.

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

(5) remains the same.

(a) Forms supplied by the state superintendent of public instruction each semester;

~~(b) Copies of forms mailed to district officials:~~

~~(i) first semester by mid January,~~

~~(ii) second semester by April 30;~~

~~(c) Forms completed by district officials and due in the county superintendent's office:~~

(i) and (ii) remain the same.

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

(i) and (ii) remain the same.

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

(6) through (9) remain the same.

AUTH: Sec. 20-3-106, 20-10-112, MCA



IMP: Sec. 20-9-166, 20-10-101, 20-10-103, 20-10-111, 20-10-112, 20-10-124, 20-10-128, 20-10-132, 20-10-141, 20-10-142, 20-10-145, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend this rule for the same reasons as set forth following ARM 10.7.101 above. In addition, forms are now posted electronically rather than being mailed.

10.10.202 MONTHLY TRANSFERS TO EQUAL WARRANTS ISSUED PLUS UNREMITTED PAYROLL LIABILITIES (1) Warrants issued from the clearing account and unremitted payroll liabilities must equal the total of the amounts transferred to the clearing accounts. The county treasurer must be notified by letter of the monthly transfers to be made along with a list of warrants written, a list of authorized direct deposits for payroll, or a duplicate of each warrant.

AUTH: Sec. 20-9-102, 20-9-201, 20-9-220, MCA  
IMP: Sec. 20-9-102, 20-9-201, 20-9-220, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend this rule to clarify that if payroll is paid by direct deposit, the transfer letter sent to the County Treasurer must include information pertaining to those transactions. Previous omission of this phrase has caused districts to question the allowability of transfers to cover direct deposit payroll transactions, which have become commonplace since the rule was originally established.

10.10.309 DISTRIBUTION AND REAPPROPRIATION OF COUNTYWIDE FUNDS (1) and (2) remain the same.

(3) The cash balance in the elementary and high school countywide retirement and transportation funds at fiscal year end must be reappropriated in the following fiscal year once distributions to school districts for the current and prior years are 100% of the total net district requirements ~~and the reserve permitted by 20 10 146, MCA, has been provided.~~

AUTH: Sec. 20-9-102, MCA  
IMP: Sec. 20-9-213, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend this rule to remove an incorrect reference.

10.10.316 REPORTING RETIREMENT COSTS DISTRICT RETIREMENT FUND (1) remains the same.

(a) reporting expenditures distributed to all expenditure programs and functions used in payroll; or  
(b) reporting resources transferred to a special education cooperative for non-federal employee benefits and a

single, undistributed ~~expenditure~~ total for the remaining retirement fund expenditures.

(2) remains the same.

(3) A district that paid retirement benefits for federally funded employees in excess of the limit imposed by 20-9-501, MCA, must reimburse the district retirement fund in the fiscal year the error is detected using current year grant funds or, if the grant project has closed, using non-federal funds. A reimbursement made after the year in which the charges exceeded the limit must be recorded as a prior period expenditure in the fund making the reimbursement.

AUTH: Sec. 20-9-102, 20-9-201, MCA

IMP: Sec. 20-9-103, 20-9-502, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend this rule to implement new requirements passed in SB 424, 2003 Session Laws. The law limits a district's use of retirement fund money for employees paid using federal funds. For FY04, retirement fund expenditures for federally funded employees are limited to the amount of retirement fund benefits paid for federally funded employees during FY03. For FY05, districts are prohibited from using the retirement fund for benefits for federally funded employees. This rule change adjusts the reporting requirements to allow districts who receive county retirement funding and pass it to a special education cooperative to pay retirement benefits to properly report those transfers. The rule also requires a district to repay the retirement fund if the fund was used to pay benefits for federally funded employees in excess of the legal limit. Repayment of the retirement fund is necessary to correct the amount overcharged to the county taxpayer and any overpayment of state guaranteed tax base aid paid to the county retirement fund.

10.10.320 CASH AND BUDGET TRANSFERS BETWEEN SCHOOL DISTRICT FUNDS (1) through (2)(e) remain the same.

(f) closure of district funds to establish a non-operating fund under 20-9-505, MCA; ~~and~~

(g) transfers of any portion of the balance of a bus depreciation fund approved by the voters as provided in ~~(4)~~ (5); ~~and~~

(h) transfers of unused tuition receipts from the miscellaneous programs fund to the general fund as provided in ARM 10.10.310.

(3) remains the same.

(4) Pursuant to 20-9-208, MCA, trustees shall not transfer cash into or out of the general fund except as otherwise specifically provided by law. Trustees shall not transfer cash from the compensated absences fund, which is funded using general fund transfers authorized by law, to any fund other than the general fund.

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

~~(6)~~ (7) Except for the general fund, retirement fund, debt service fund, and bus depreciation fund, trustees may transfer:

(a) any portion of the cash balance in a budgeted fund to another budgeted fund for any purpose allowed by law, provided the money being transferred is comprised of revenue from sources other than tax receipts; and. ~~Trustees may transfer~~

(b) tax revenues from one budgeted fund to another budgeted fund, provided the money is subsequently expended for purposes the same as, or directly related to, the purposes for which the taxes were levied. When tax receipts are transferred, the trustees' resolution shall state the purpose for which the taxes were levied and the purposes for which the funds will be used.

(8) Pursuant to 20-10-145 and 20-10-146, MCA, state and county transportation aid is a reimbursement for expenditures paid from the district transportation fund and, as such, is not available for transfer to any other fund of the district.

(7) through (11) remain the same but are renumbered (9) through (13).

AUTH: Sec. 20-9-102, 20-10-112, MCA

IMP: Sec. 20-9-208, 20-9-439, 20-9-443, 20-9-512, 20-9-515, 20-9-703, 20-10-147, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend this rule to: 1) add an item that was inadvertently omitted from the list of specifically allowed transfers; 2) prohibit general fund money that has been accumulated in the Compensated Absences Fund from being subsequently transferred to another fund; and 3) clarifying that state and county transportation reimbursement must be used for pupil transportation and cannot be transferred to another fund.

10.10.611 ESTABLISHMENT OF INVESTMENT ACCOUNTS

(1) remains the same.

~~(2) The district must establish a separate school district investment account for each district fund. Elementary and high school accounts must be maintained separately.~~ Trustees may deposit money from elementary and high school funds of districts operating as a unified school system as provided in 20-6-312, MCA, into a combined investment account or accounts, provided the financial activity of each fund and district is separately identified in the district's financial records and provided that income on investments is allocated to the district fund which generated the income.

(3) and (4) remain the same.

AUTH: Sec. 20-9-102, 20-9-235, MCA

IMP: Sec. 20-9-235, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend this rule to implement new requirements passed in SB 307, 2003 Session Laws. The law eliminates the requirement that districts establish separate investment accounts for each fund and allows the district and county treasurer to negotiate the length of time that an investment agreement is binding. The law allows all district revenue, other than debt service revenue, to be sent to an investment account.

10.10.614 PAYMENTS INTO AN INVESTMENT ACCOUNT (1) The school district may apply in writing to the ~~office~~ state superintendent of public instruction to distribute the district's ~~BASE aid payments, including the direct state aid, state special education funding, and general fund CTB payments,~~ by direct electronic transfer of funds into an investment account as provided by 20-9-235 and 20-9-346(3), MCA.

(2) To qualify for the electronic transfer, the trustees shall submit a written request to ~~OPI~~ the state superintendent, including a copy of the trustees' written agreement under ARM 10.10.613 for ~~the district's general~~ each affected fund and a copy of the direct deposit signup form (OMB standard form 1199A), signed by the district and the investment firm, indicating the routing numbers for the electronic deposit into the school investment account ~~for the general fund.~~

(3) The ~~office~~ state superintendent of public instruction shall approve the request if:

(a) the district is currently in compliance with financial accounting and reporting requirements of the ~~office~~ state superintendent of public instruction;

(b) and (c) remain the same.

(4) The ~~office~~ state superintendent of public instruction shall process an eligible district's request for direct depositing beginning with the next scheduled ~~BASE aid~~ payment if the district's completed request is received by the 10th of a month, barring unforeseen delays.

(5) Federal grant payments may only be made to an investment account that does not earn interest or other income.

(6) The state superintendent of public instruction may rescind the approval of a district's request to receive electronic transfers to investment accounts if the criteria of (3) and internal control provisions of ARM 10.10.615 are not met. Upon receipt of written notice, the trustees may request a hearing to be held within 30 days. If, after hearing, the conclusion is that the criteria of (3) are not being met, the state superintendent of public instruction may discontinue transfers to the district's investment account after a waiting period of 60 days.

AUTH: Sec. 20-9-102, 20-9-235, MCA

IMP: Sec. 20-9-235, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend this rule for the same reasons as set forth following ARM 10.10.611 above. In addition, the State Superintendent proposes to clarify that the agency will not transfer federal money, which the State Superintendent pays on an advance basis for grants, to an account where it will earn income. Federal law prohibits subgrantees' use of federal money to pursue interest income. The State Superintendent also proposes to rescind the agreement to electronically transfer payments to a district investment account following due process if a district fails to comply with criteria originally used to approve the transfers.

10.15.101 DEFINITIONS The following definitions apply to ARM Title 10, chapters 16, 20, 21, 22, and 23:

(1) through (2) remain the same.

(3) "Average daily attendance" or "ADA" is the average number of students present on the dates used to report fall and spring disaggregated enrollment and attendance data. The total number of students present in grades 1-12, as reported on the ~~October and February~~ fall and spring disaggregated enrollment counts and used to determine average number belonging, and attendance data reports, will be added together and divided by two to determine the average daily attendance for that school year. The number of pre-kindergarten and kindergarten students present, as reported on the ~~October and February enrollment counts~~ those data collections, will be added together and divided by four to determine average daily attendance for that school year.

(4) through (23) remain the same.

(24) "Enrolled student" means:

(a) a high school student assigned to receive organized instruction in an education program described in ARM 10.55.904 that is offered by a public school and can be applied towards the graduation requirements of ARM 10.55.905-~~i~~

(b) a high school student who is a resident of the district and is receiving educational or vocational services in a Montana job corps program under an interlocal agreement with the district as provided in 20-9-707, MCA;

(c) ~~or~~ an elementary student assigned to receive organized instruction in an education program described in ARM 10.55.901 through 10.55.903 and 10.55.902-~~i~~ or

(d) an elementary or high school student in a course of instruction agreed to in an individualized education program (IEP).

(25) and (26) remain the same.

(27) "Facility guaranteed mill value per ANB" means the CY 20XX-1 statewide mill value multiplied by 1.40, then divided by the statewide FY 20XX high school or elementary ANB.

(27) through (45) remain the same but are renumbered (28) through (46).

~~(46)~~(47) "School block grant" means the block grants paid by the state to a school district's budgeted funds as provided in ~~section 244, chapter 574, laws of 2001~~ 20-9-630, MCA.

(47) through (57) remain the same but are renumbered (48) through (58).

AUTH: Sec. 20-9-102, MCA  
IMP: Title 20, ch. 9, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend this rule to: 1) implement SB 394, 2001 Session Laws, which allowed enrollment of resident students attending school in a Montana Job Corps Program; 2) correct an incorrect legal reference; 3) implement SB 424 changes affecting the state's subsidy for the district debt service mill levy; 4) update the reference to an uncodified section of law regarding school block grants that was continued in SB 424, 2003 Session Laws; and 5) implement a change in the collection of average daily attendance data that is necessary for compliance with the Federal No Child Left Behind Act.

10.20.102 CALCULATION OF AVERAGE NUMBER BELONGING (ANB)

(1) remains the same.

(2) The state superintendent of public instruction shall determine the appropriate budget units for the ANB calculation and the BASE funding program for the district. The ANB enrollment generated by a budget unit that is subsequently closed, shall be added to the ANB enrollment of another budget unit of the district for the first year after the closing of a budget unit if students are enrolled in the other budget unit.

(3) through (5) remain the same.

(6) For calculation of average daily attendance (ADA), a school district will report the number of enrolled students ~~counted under (4)~~ who are present and the number of enrolled students who are absent on the official count fall and spring disaggregated enrollment and attendance data collection days.

(7) through (10) remain the same.

(11) Trustees may apply for increased ANB for early graduates who are enrolled as of the first Monday of October as a senior in high school, the seventh semester of secondary school, and complete the graduation requirements prior to the February 1 enrollment count in accordance with 20-9-313, MCA, by filing a request with the office state superintendent of public instruction stating the names of pupils which were not included in the February 1 enrollment count because they graduated early and the date of graduation. The application must be submitted by May 10 of the year the deadline in ARM 10.20.103 preceding the year for which ANB is being calculated.

(12) through (15) remain the same.

AUTH: Sec. 20-9-102, 20-9-346, 20-9-369, MCA  
IMP: Sec. 20-1-301, 20-1-302, 20-1-304, 20-7-117, 20-9-311, 20-9-313, 20-9-314, 20-9-805, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend this rule to: 1) correct a reference to ANB that should refer to enrollment; and 2) implement an attendance data collection process that is necessary for compliance with the Federal No Child Left Behind Act.

10.20.106 STUDENTS PLACED IN EDUCATION PROGRAMS

(1) ~~The office state superintendent~~ of public instruction recognizes that a Montana state agency or court may place a Montana student in a facility located within a school district that is not the student's district of residence. ~~The office state superintendent~~ of public instruction also recognizes that a district may contract with a private or public entity for the provision of a Montana resident student's education. If a district contracts and pays for the provision of a Montana student's education, the district may include that student in the district's enrollment count for purposes of calculating ANB, provided:

(a) through (c)(i) remain the same.

(ii) the student's education program is under the direction and supervision of the district and is provided by district staff or is provided pursuant to a special education individualized education program implemented by the district, except that the trustees' placement of a resident student in a private, nonsectarian day treatment program and the state's placement of a student in a county or regional detention center are subject to (5). ~~This provision will be applied retroactively to July 1, 2002; and~~

(d) the contractor is a facility, center, home or other program licensed by and located within the state of Montana, excluding licensed day care centers; and

(e) the student is a resident of the district or meets the attendance with mandatory approval provisions of 20-5-321(1)(d) or (1)(e), MCA.

(2) Payments made to contractors described in (1) are not considered tuition for purposes of applying the provisions in Title 20, chapter 5, part 3, MCA. When a district contracts for a Montana student's education, the cost for such services shall be paid from the district's general fund or from federal funds, provided the cost is an allowable use of the federal funds. Except as provided in (5), ~~D~~districts shall not use the tuition fund for payments to private education programs.

(3) and (4) remain the same.

(5) The district may not include for purposes of calculating ANB:

(a) a student who is placed in a private, nonsectarian day treatment program. Districts may use the district tuition

fund to pay for educational services and may claim an ANB reimbursement payment under provisions of 20-5-324, MCA, and ARM 10.10.106 for a student placed under an IEP in a day treatment program at a private, nonsectarian school located in or outside the child's district of residence; and

(b) a student who has been placed in a county or regional detention facility, which is required under 41-5-1807, MCA, to provide educational programs for youth at county expense. Pursuant to 20-9-130, MCA, districts may use the district tuition fund to pay for detention center educational services charged pursuant to 41-5-1807, MCA.

AUTH: Sec. 20-7-419, MCA

IMP: Sec. 20-5-321, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend this rule to implement HB 135, 2003 Session Laws, which allows an ANB funding reimbursement for students placed in private, nonsectarian (i.e., non-church related) day treatment programs. This amendment also clarifies that students placed in county or regional youth detention centers under 41-5-1807, MCA, are not counted as enrolled for purposes of ANB funding.

10.21.101B CALCULATION OF STATEWIDE RATIOS GTBA

(1) remains the same.

(2) The statewide elementary or high school mill value per ANB for purposes of calculating FY 20XX+1 retirement fund GTBA is:  $[(\text{calendar year } 20\text{XX}-1 \text{ statewide taxable value valuation} \times 1.21) / 1,000] / 20\text{XX} \text{ statewide elementary or high school ANB certified for the adopted budget. OPI may instead use final data in cases where significant changes in ANB and taxable valuation made after the adoption of the district's budget would significantly affect the statewide ratios.}$

(3) Facility guaranteed mill value per ANB for purposes of calculating FY 20XX+1 school facility entitlement guaranteed tax base is:  $[(\text{calendar year } 20\text{XX}-1 \text{ statewide taxable valuation} \times 1.40) / 1000] / \text{FY } 20\text{XX} \text{ statewide elementary or high school ANB certified for the adopted budget.}$

(4) The state superintendent of public instruction may instead use final data in cases where significant changes in ANB and taxable valuation made after the adoption of the district's budget would significantly affect the statewide ratios or mill values per ANB.

AUTH: Sec. 20-9-102, 20-9-369, MCA

IMP: Sec. 20-9-366, 20-9-367, 20-9-368, 20-9-369, 20-9-370, 20-9-371, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes the changes to this rule to implement SB 424, 2003 Session Laws, which expanded districts' eligibility to receive school facility acquisition (aka "debt



service guaranteed tax base") payments for general obligation bonds sold before July 1, 1991.

10.21.101C CALCULATION NOTIFICATION OF MILL VALUES PER ANB AND GTB RATIOS (1) By March 1 ~~OPI~~ the state superintendent of public instruction will calculate preliminary state, county, and district mill values per ANB, facility guaranteed mill values per ANB, and preliminary state and district GTB ratios.

(2) By March 1 ~~OPI~~ the state superintendent of public instruction will send:

- (a) and (a)(i) remain the same.
- (ii) the district's ~~debt service~~ mill values per ANB<sub>T</sub>;
- (iii) the county's mill values per ANB<sub>T</sub>;
- (iv) the statewide mill values per ANB<sub>T</sub>; ~~and~~
- (v) facility guaranteed mill values per ANB; ~~and~~
- (vi) the statewide GTB ratios;

(b) remains the same.

- (i) the county's mill values per ANB<sub>T</sub>; and
- (ii) the statewide mill values per ANB.

(3) and (3)(a) remain the same.

(b) ~~The~~ ANB used to calculate the mill value per ANB and per-ANB entitlement.

(4) remains the same.

(5) ~~Between March 1 and April 15~~ By May 1, school districts and counties must review the preliminary figures. If a school or county official believes there is an error, the procedure to follow is:

(a) If the alleged error involves ANB data, GTB mill values, or GTB ratios, ~~OPI~~ the state superintendent of public instruction must receive ~~written notification, and documentation~~ establishing the error, ~~and all information necessary to make corrections by April 15.~~ ~~OPI~~ The state superintendent of public instruction will review ~~its~~ the calculation and make necessary corrections to final district and county mill values per ANB and final district ratios. For statewide ratios and mill values per ANB, notification of error must be received prior to May 1 and will only be taken into consideration in cases of significant impact. ~~Any notification of error received after April 15 will not be taken into account in establishing the final statewide, district, and county mill values per ANB and the final district and statewide ratios;~~

(b) If the alleged error involves taxable valuation, ~~the official must notify the appropriate county assessor in writing by April 1.~~ The notification must include details of the error and request correction. ~~Copies of the letter to the county assessor must be mailed to OPI and the Property Assessment Division, Department of Revenue, PO Box 202701, Helena, MT 59620-2701.~~ the district must request a correction from the department of revenue (DOR). DOR will make any necessary change correction and notify ~~OPI~~ the state superintendent of public instruction of the ~~change, in writing, prior to April 15~~ correction. The state

superintendent of public instruction will review the calculation and make necessary corrections to final district and county mill values per ANB and final district ratios. For statewide ratios and mill values per ANB, notification of error must be received prior to May 1 and will only be taken into consideration in cases of significant statewide impact. Any changes received after April 15 will not be taken into account in establishing the final statewide, district, and county mill values per ANB and the final district and statewide ratios.

(6) By April 25 ~~OP~~ the state superintendent of public instruction must be notified if two or more districts intend to consolidate or annex in the ensuing fiscal year. ~~OP~~ The state superintendent of public instruction will combine the districts' ANB, GTBA budget area, and taxable values to calculate the combined district's final debt service GTB mill value per ANB and weighted GTB subsidy per mill(s) in the BASE budget levy.

(7) If material differences in statewide ratios are documented or legislative changes occur regarding the calculation, ~~OP~~ the state superintendent of public instruction will recalculate and notify all districts and counties by May 1 of the final state, county, and district mill values per ANB, final facility guaranteed mill values, final district general fund weighted GTB subsidy per mill(s) in the BASE budget levy, and final state GTB ratios.

AUTH: Sec. 20-9-369, MCA

IMP: Sec. 20-9-366, 20-9-367, 20-9-368, 20-9-369, 20-9-370, 20-9-371, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes the changes to this rule to implement SB 424, 2003 Session Laws, for the same reasons as listed under ARM 10.21.101B above.

10.21.101F CALCULATION OF GENERAL FUND GTBA TO QUALIFYING DISTRICTS (1) After receiving the certified BASE budget levies, ~~OP~~ the state superintendent of public instruction will determine the amount of general fund GTBA a qualifying district will receive in FY ~~199X+1~~ 20XX+1 using the following calculations:

(a) ~~199X+1~~ 20XX+1 state elementary or high school GTB ratio \* district's ~~199X~~ 20XX GTBA budget area = "A"

(b) remains the same.

(c) "B"/1000 = dollar amount of ~~199X+1~~ 20XX+1 GTBA per mill levied. The result will be rounded to the nearest whole dollar to determine the amount of the subsidy payment.

(2) remains the same.

AUTH: Sec. 20-9-102, 20-9-369, MCA

IMP: Sec. 20-9-366, 20-9-367, 20-9-368, 20-9-369, 20-9-370, 20-9-371, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes the changes to this rule for clarification and to update year references.

10.21.101I SCHOOL FACILITY ADVANCES AND REIMBURSEMENTS

(1) A school facility reimbursement will be provided to an eligible district to meet the district's debt service obligation for general obligation bonds ~~sold after July 1, 1991~~ for school facility construction or renovation. A district may not receive a school facility reimbursement to meet its obligation for a special improvement district ~~or for debt service for refunding bonds sold for projects that began construction prior to July 1, 1991~~. Eligible districts are provided advances for school facilities in the first school fiscal year in which a debt service payment is ~~due~~ budgeted.

(2) A district is eligible to receive a school facility reimbursement for debt service obligations on bonds described in (1) if the district mill value per ANB is less than the statewide facility guaranteed mill value per ANB. For a K-12 district, the eligibility of the elementary and high school programs for a school facility reimbursement is determined separately for each program.

(3) Pursuant to 20-9-422, MCA, regarding additional requirements for trustees' resolution calling a bond election, the ~~office~~ state superintendent of public instruction shall calculate an estimate of the amount of advance for which the district will be eligible. "Current year" information used to estimate this payment will be the current year information originally submitted on the final budget from the district and the prior year percentage used to prorate the state share of reimbursement for school facilities until the payment is made in May. After the May payment, "current year" information used to estimate the advance payment will be the ensuing year's information for ANB and district and statewide facility guaranteed mill values and the most current percentage used to prorate the state share of reimbursement for school facilities.

(4) A school district must report its annual debt service obligation for each bond issued by the district on the final budget form provided by the office of public instruction. The ~~office~~ state superintendent of public instruction will calculate the school facility reimbursement for a district using the amounts reported for debt service obligations on the budget form.

(5) The maximum reimbursement a district may receive is calculated on the lesser of the district's school facility entitlement or its current year debt service obligation for the bonds that qualify under (1).

(6) A district qualifies for a school facility reimbursement in the amount of the maximum reimbursement for the district multiplied by  $[1 - (\text{district mill value per ANB} / \text{statewide facility guaranteed mill value per ANB})]$ .

(7) If the legislative appropriation for the state reimbursement for school facilities is less than the amount

for which districts qualify in (6), the office state superintendent of public instruction will calculate the percentage that the appropriation represents of the total amount for which districts qualify. To determine the school facility reimbursement for each district, the office state superintendent of public instruction will apply that percentage to the amount calculated in (6).

(8) On or before May 31, the office state superintendent of public instruction shall distribute the state advance for school facilities and the state reimbursement for school facilities to qualifying districts for deposit in the district's debt service fund.

(9) After the payment is made in May pursuant to 20-9-371, MCA, actual state advance amounts for the ensuing fiscal year will be calculated using ANB and district and ~~statewide~~ facility guaranteed mill values for the year in which the advance applies and the most current percentage of state share which will be considered "prior year's" percentage in the year in which the payment is made. The office state superintendent of public instruction will notify the districts of the amount to estimate as revenue in their debt service funds by the final budget meeting.

(10) through (12) remain the same.

(13) If a district refunds more than one bond ~~and at least one of these original bonds is eligible for facilities reimbursement~~, the underwriter must provide schedule amounts representing ~~the eligible proportion of~~ the total of each of the refunded bonds.

AUTH: Sec. 20-9-102, 20-9-369, MCA

IMP: Sec. 20-9-366, 20-9-367, 20-9-368, 20-9-369, 20-9-370, 20-9-371, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes the changes to this rule to implement SB 424, 2003 Session Laws, for the same reasons as listed under ARM 10.21.101B above.

10.21.102A GTBA ON GENERAL FUND AND RETIREMENT MILLS AND SCHOOL FACILITY ~~AID~~ ADVANCE AND REIMBURSEMENT

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

(c) school facility advance and reimbursement to qualifying districts.

(2) ~~A district qualifies for GTBA if its taxable value relative to its funding obligation that must be met by local effort is less than the corresponding statewide mill value. A county qualifies for retirement fund GTBA and a district qualifies for school facility reimbursement if its mill value per ANB is less than the corresponding statewide mill value.~~

~~(3)~~ General fund GTBA is paid to qualifying districts on the mills levied to support their general fund GTBA budget area. A district qualifies for general fund GTBA if its GTBA ratio as calculated in ARM 10.21.101D is less than the statewide GTBA ratio as calculated in ARM 10.21.101B(1).

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

AUTH: Sec. 20-9-369, MCA  
IMP: Sec. 20-9-366, 20-9-367, 20-9-368, 20-9-369, 20-9-370, 20-9-371, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes the changes to this rule to implement SB 424, 2003 Session Laws, for the same reasons as listed under ARM 10.21.101B above.

10.21.102B CALCULATION OF COUNTY MILL VALUES PER ANB

(1) remains the same.

(2) The county elementary or high school GTB mill value per ANB for purposes of calculating FY ~~199X+1~~ 20XX+1 retirement fund GTBA is: (calendar year ~~199X+1~~ 20XX-1 county taxable value/1,000) / ~~199X~~ 20XX county elementary or high school ANB.

AUTH: Sec. 20-9-102, 20-9-369, MCA  
IMP: Sec. 20-9-366, 20-9-367, 20-9-368, 20-9-369, 20-9-370, 20-9-371, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes the changes to this rule to update year references.

10.21.102E CALCULATION OF GTBA TO QUALIFYING COUNTIES

(1) After receiving the certified county retirement levies, ~~OPF~~ the state superintendent of public instruction will determine the amount of retirement fund GTBA a qualifying county will receive in FY ~~199X+1~~ 20XX+1 using the following calculations:

(a) remains the same.

(b) "A" \* county elementary or high school ~~199X+1~~ 20XX+1  
ANB = "B"

(c) "B" \* certified elementary or high school FY ~~199X+1~~ 20XX+1 county retirement fund mills levied = dollar amount of ~~199X+1~~ 20XX+1 GTBA a county will receive in support of the elementary or high school county retirement fund.

AUTH: Sec. 20-9-102, 20-9-369, MCA  
IMP: Sec. 20-9-366, 20-9-367, 20-9-368, 20-9-369, 20-9-370, 20-9-371, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes the changes to this rule for clarification and to update year references.

10.22.102 GENERAL FUND SPENDING LIMITS (1) through (6) remain the same.

(a) For a non-operating district that reopens a school under 20-6-502, MCA, the applicability of school isolation

provisions in 20-9-302, MCA, will be determined by the ANB in the last operating year and the ANB in the year the school reopens.

(7) For purposes of determining the spending limit for a school district participating in a full service cooperative for special education programs, the BASE budget amount and maximum general fund budget may include a portion of the payments received by the full service cooperative in support of special education programs. ~~OPI~~ The state superintendent of public instruction will notify each school district participating in a cooperative of its payments for use in setting its BASE budget and maximum general fund budget for the ensuing school fiscal year.

(8) remains the same.

(9) ~~OPI~~ The state superintendent of public instruction shall monitor the general fund budgets of each school district to ensure compliance with the spending limits established in 20-9-308, MCA. The state superintendent of public instruction may request a revised budget from any district whose general fund budget is not within the limits using the guidelines established in ARM 10.10.503.

AUTH: Sec. 20-9-102, MCA

IMP: Sec. 20-9-308, 20-9-315, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend this rule to address OPI policy isolation status under 20-9-302, MCA, for a non-operating school that reopens. Schools must apply for isolation status after having fewer than 10 ANB for one year. A non-operating school that reopens has no prior year ANB, so the last operating year's ANB is used for this determination.

10.23.102 FUNDING THE BASE BUDGET LEVY (1) through (2)(a)(iii) remain the same.

(iv) Revenue from one-time funding sources, including prior year protested taxes, tax audit receipts, penalties and interest on taxes, ~~distributions of prior year county equalization revenues,~~ and federal payments in lieu of tax, may be estimated in the ensuing year's budget in an amount that is based on the most current information available to the district.

(v) School block grant funding as provided in ~~section 244, chapter 574, laws of 2001~~ 20-9-630, MCA.

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

AUTH: Sec. 20-9-102, MCA

IMP: Sec. 20-5-321, 20-5-322, 20-5-323, 20-5-324, 20-9-141, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend this rule to remove an obsolete reference. County obligations no longer exist for county equalization.

10.30.102 APPROVAL CRITERIA (1) Trustees must submit the application for isolation status as required by 20-9-302, MCA, to the county superintendent by May 1 of the second consecutive year in which the average adjusted enrollment as calculated in ARM 10.20.102(15) results in ANB of less than 10 elementary or 25 high school students for the ensuing fiscal year.

(2) In considering a request for approval of an application to have a school classified as an isolated school, the state superintendent of public instruction shall utilize the following criteria:

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

(e) extenuating circumstances which support a variance from the requirements of ~~(1) through (4)~~ (2)(a) through (d), must be documented for consideration by the state superintendent of public instruction.

AUTH: Sec. 20-3-106, MCA

IMP: Sec. 20-6-502, 20-9-302, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend this rule to clarify the timing of a district application to the State Superintendent for isolation status. The rule also corrects an internal reference and updates references to the years of data used in calculations.

10.30.403 TRANSITION TO K-12 DISTRICTS (1) through (1)(b) remain the same.

(c) The county treasurer, in accordance with procedures established by the department of commerce and the ~~office~~ state superintendent of public instruction, shall transfer all elementary district fund balances to the high school district's funds effective July 1 of the year of the attachment. The K-12 school district will assume the cash and liabilities of the attached elementary district, and will maintain a single budgeted or nonbudgeted fund for each of the authorized funds of the K-12 district for the costs of operating all grades and programs of the district, pursuant to accounting and reporting procedures prescribed by the office of public instruction.

(2) and (3) remain the same.

(4) The elementary and high school district officials shall prepare a single budget per fund for the K-12 district for the effective year of formation of the K-12 district, and for each year thereafter, using the forms and procedures established by the ~~office~~ state superintendent of public instruction.

(a) and (a)(i) remain the same.

(ii) In order to determine equalized status of a transition K-12 school district for the ensuing fiscal year, the district shall make the following calculation:

Current FY <del>199X</del> <u>20XX</u> Elementary BASE Budget Limit	1a
Current FY <del>199X</del> <u>20XX</u> High School BASE Budget Limit	1b
Combined BASE Budget Limit (1a+1b)	1c
Current FY <del>199X</del> <u>20XX</u> Elementary Maximum General Fund Budget Limit	2a
Current FY <del>199X</del> <u>20XX</u> High School Maximum General Fund Budget Limit	2b
Combined Maximum General Fund Budget Limit (2a+2b)	2c
FY <del>199X</del> <u>20XX</u> Elementary Adopted General Fund Budget	3a
FY <del>199X</del> <u>20XX</u> High School Adopted General Fund Budget	3b
FY <del>199X</del> <u>20XX</u> Combined Adopted General Fund Budget (3a+3b)	3c

If 3c is less than or equal to the Maximum General Fund Budget (line 2c), the K-12 district will be considered "equalized" in the ensuing school year (FY ~~199X+1~~ 20XX+1). If not, then the K-12 district will be considered "not equalized" for the ensuing school year.

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

(E) ~~up to~~ 40% of Special Education Allowable Costs & Related Services Payment to Co-op [40 times (C)+(D)]

(F) through (c) remain the same.

(5) For the initial year of the K-12 district, eligibility for program funding, established by the ~~office~~ state superintendent of public instruction in the year prior to the formation of the K-12 districts, will be transferred to the K-12 district. Characteristics of the districts (i.e., enrollment, expenditures, low-income data, needs assessment) may be calculated based on the combined districts' characteristics if the funding would be adversely affected when calculated separately, and if allowed by program requirements. Following the initial year of the K-12 district, funding eligibility will be determined for K-12 programs as a single district, or per specific program requirements.

(6) remains the same.

AUTH: Sec. 20-3-106, MCA

IMP: Sec. 20-6-702, 20-6-703, 20-6-711, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend ARM 10.30.403 to include 40%, rather than "up to 40%" of the state special education allowable cost funding in calculating the guaranteed tax base (GTB) area of a K-12 district's general fund budget. Using less than 40% in this calculation, while legally permissible, lowers the amount of state guaranteed tax base funding for a district. The provision poses a funding disadvantage for districts and consequently is not used.



Removing the unused capability to budget less than 40% greatly simplifies the electronic budget program and streamlines the State Superintendent's technical assistance for the budget process.

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 by mail to the State Superintendent of Public Instruction, Distribution to Schools Division, P.O. Box 202501, Helena, Montana 59620-2501, or by e-mail to [opirules@state.mt.us](mailto:opirules@state.mt.us) and must be received no later than 5:00 p.m. on July 1, 2004.

5. Catherine K. Warhank, OPI Chief Legal Counsel, has been designated to preside over and conduct the hearing.

6. The State Superintendent of Public Instruction maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the State Superintendent. 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 rulemaking actions by the State Superintendent of Public Instruction or other school related rulemaking actions. Such written request may be mailed or delivered to Legal Division, Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501, faxed to the office at (406) 444-2893, or may be made by completing a request form at any rules hearing held by the State Superintendent of Public Instruction.

7. The bill sponsor requirements of 2-4-302, MCA, apply and have been fulfilled. The requirements of 20-1-501, MCA, have been fulfilled. Copies of these rules have been sent to all tribal governments in Montana.

/s/ Linda McCulloch  
Linda McCulloch  
State Superintendent of Public  
Instruction

/s/ Catherine K. Warhank  
Catherine K. Warhank  
Rule Reviewer  
Office of Public Instruction

Certified to the Secretary of State on May 24, 2004.

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

In the matter of the proposed ) NOTICE OF PUBLIC  
amendment of ARM 8.32.405, ) HEARING ON PROPOSED  
licensure by endorsement, ) AMENDMENT AND ADOPTION  
ARM 8.32.406, licensure for )  
foreign nurses, ARM 8.32.412, )  
inactive status, ARM 8.32.425, )  
fees, ARM 8.32.501, grounds for )  
denial of license, ARM 8.32.502, )  
license probation or reprimand of )  
a licensee, ARM 8.32.1401, )  
definitions, and NEW RULES I - IV )  
regarding licensure of medication )  
aides )

TO: All Concerned Persons

1. On July 1, 2004, at 10:00 a.m., a public hearing will be held in room 438, of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Nursing (Board) no later than 5:00 p.m., June 24, 2004, to advise us of the nature of the accommodation that you need. Please contact Liz Carney, Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2340; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail [dlibsdnur@state.mt.us](mailto:dlibsdnur@state.mt.us).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: In the 2003 Legislative Session, the legislature determined that a new category of licensure was necessary to ensure public safety. The 2003 Legislature enacted Chapter 448, Laws of 2003 (House Bill 681), an act providing for the licensure of medication aides in assisted living facilities. The bill was signed by the Governor on April 21, 2003 and became effective on October 1, 2003.

This general statement of reasonable necessity applies to rules 8.32.425, 8.32.1401 and NEW RULES I through IV, which will define the requirements for licensure, the standards, responsibilities and limits of the medication aides' practice, and the training and fees associated with licensure. This new level of licensure will allow assisted living facilities to safely serve their clients in a residential, less restrictive setting without having a nurse present 24 hours a day.

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

8.32.405 LICENSURE BY ENDORSEMENT (1) and (1)(a) remain the same.

~~(b) an official nursing transcript from a board approved program which prepares for the level of licensure being sought. The transcript shall identify the date of graduation and the credential conferred;~~

~~(c) evidence of meeting the standards for nursing education in this state at the time of original licensure;~~

~~(d) evidence of completion of a four year high school course of study or its equivalent;~~

~~(e) (c) verification of initial licensure by examination with evidence of completion of a board approved program;~~

~~(f) (d) verification and documentation of licensure status from jurisdictions of all jurisdictions of licensure employment for preceding two years; and~~

~~(g) (e) professional nurse applicants shall present evidence of having passed a licensure examination as follows:~~

~~(i) a passing score on a state-constructed licensure examination prior to the use of the state board test pool examination in the original state of licensure; or~~

~~(ii) 350 on each part of the state board test pool examination for registered nurses; or~~

~~(iii) a minimum scaled score of 1600 on a NCLEX-RN (national council licensure examination for registered nurses) examination taken prior to September, 1988; or~~

~~(iv) a passing score on a NCLEX-RN examination taken after September, 1988;~~

~~(h) (f) practical nurse applicants shall present evidence of having passed a licensure examination as follows:~~

~~(i) 350 on the state board test pool examination for practical nurses; or~~

~~(ii) a minimum scaled score of 350 on a NCLEX-PN (national council licensure examination for practical nurses) examination taken prior to September, 1988; or~~

~~(iii) a passing score on a NCLEX-PN examination taken after September, 1988; and~~

~~(i) (g) the required fees for licensure by endorsement as specified in subchapter 11; and~~

(h) if the applicant's education was obtained in a foreign country, the applicant must also meet the conditions of ARM 8.32.406.

(2) through (4) remain the same.

AUTH: 31-1-131, 37-8-202, MCA

IMP: 37-1-304, MCA

REASON: The Board finds it necessary to amend this rule at this time because requiring a transcript from a nursing program is not necessary if the applicant is already licensed elsewhere, and the requirement that the other state's license

verification include evidence of completion of a Board approved program is sufficient. Requiring submission of a high school diploma is not necessary because high school graduation or equivalency would be necessary to enter the nursing program. The Board needs verification of licensure status from jurisdictions of licensure instead of jurisdictions of employment because a nurse may have discipline on a license in a jurisdiction, but not be employed in that jurisdiction. Not all state boards of nursing require persons who received their nursing education in a foreign country to complete the Commission on Graduates of Foreign Nursing Schools (CGFNS) process as a condition of licensure, but the Board adopted such a requirement in ARM 8.32.406 to protect the public health, safety and welfare of Montanans. The Board deems it necessary to clarify and affirm that the CGFNS process not only predicts NCLEX success, but it also has a foreign transcript review component and an English proficiency component which are deemed necessary by the Board for the protection of the health, safety and welfare of the public. Several people who had passed NCLEX and were licensed in another state or U.S. jurisdiction were denied licensure in Montana by endorsement because they received their nursing education in a foreign country and had not completed the CGFNS process, i.e., did not meet the criteria for licensure under ARM 8.32.406. This amendment would clarify and affirm that ARM 8.32.406 applies to both exam and endorsement candidates. The authority citations have been amended to more completely reflect the sources of the Board's rulemaking authority.

8.32.406 LICENSURE FOR FOREIGN NURSES (1) remains the same.

(2) Candidates for licensure as registered nurses will be required to show evidence of having passed the commission on graduates of foreign nursing schools (CGFNS) screening examination prior to writing the Montana licensing examination, except:

(a) Canadian educated nurses who graduated after 1966 from a school approved by a Canadian province; and who have also passed the Canadian nurses association testing service CNATS (CNATS) in the English language; or

(b) those applicants who have passed the NCLEX or the state board test pool examination and who have graduated from a college, university or professional training school located in Australia, Ireland, New Zealand, Canada (except Quebec) or the United Kingdom.

(3) remains the same.

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-8-101, 37-8-406, 37-8-416, MCA

REASON: The Board believes obtaining a nursing education in one of the named English-speaking countries and passing NCLEX or the state board test pool examination, are sufficient indicia of an endorsement applicant's qualifications and

English proficiency to warrant an exception to the CGFNS requirement in (2) of this rule. It is reasonably necessary to clarify the CNATS acronym used in the existing rules, to add the commonly used and widely accepted acronym for the Commission on Graduates of Foreign Nursing Schools (CFGNS), and to supplement the citations to the Board's rulemaking authority and the statutes implemented by this rule as amended. The amendment will have no fiscal impact.

8.32.412 INACTIVE STATUS (1) remains the same.

(2) An individual may not remain licensed on inactive status for longer than ~~three~~ two years without re-establishing qualifications for licensure, including but not limited to, passage of the licensing examination.

(3) An individual licensed on inactive status may convert his or her license to active status by submission of an appropriate application and payment of the renewal fee for the ~~year in question~~ current renewal period.

(4) through (6) remain the same.

AUTH: 37-1-131, 37-1-319, 37-8-202, MCA  
IMP: 37-8-431, MCA

REASON: It is reasonable and necessary to amend this rule because in 2002, ARM 8.32.411 was amended to provide for two-year license renewal cycles. Amending this rule as proposed would make it consistent with ARM 8.32.411 and ensure that all nursing licenses are renewable at the same time. Having nurses' licenses expire at different times would require more staff or staff time as well as more administrative costs including programming changes to the Department's Oracle database. Increased costs could in turn necessitate a fee increase. The proposed amendment will have no fiscal impact on the Department or on licensees. The Board did consider increasing the allowable inactive status licensure period from three years to four years as an alternative to the proposed amendment. However, the Board determined that, for public safety reasons, four years is too long to remain licensed on inactive status due to the dynamics and continual evolution of nursing practice. The authority citations have been amended to more completely reflect the sources of the Board's rulemaking authority.

8.32.425 FEES (1) through (18) remain the same.

(19) The fee for medication aide initial licensure is \$25.

(20) The fee for medication aide licensure renewal is \$20 per year.

AUTH: 37-1-319, 37-8-202, MCA  
IMP: 37-1-134, 37-8-202, 37-8-431, MCA

REASON: The Board finds it necessary to amend the fee schedule to include medication aides since this is a new

category of licensure. 37-1-134, MCA, requires the board to set fees commensurate with costs.

The Board anticipates 500 licensees in this new category. The Board estimates the approximate cumulative financial impact to be \$45,000 over a two-year period.

8.32.501 GROUNDS FOR DENIAL OF A LICENSE (1) A license may be denied for:

- (a) failure to meet requirements or standards established by law or by rules adopted by the board~~7i~~
- (b) failure to pass the licensing examination~~7i~~
- (c) fraud or misrepresentation in association with the examination application, licensure application or licensure examination~~7i~~
- (d) conduct which would be grounds for discipline under ~~section 37-8-441~~ 37-1-316, MCA~~7i~~ or
- (e) remains the same.

AUTH: ~~37-1-136~~, 37-8-202, MCA

IMP: 37-1-136, 37-1-137, 37-1-316, ~~37-8-441~~, MCA

8.32.502 LICENSE PROBATION OR REPRIMAND OF A LICENSEE

(1) A licensee may be placed on probation or reprimanded based on grounds specified in ~~37-8-441~~ 37-1-316, MCA, or ARM 8.32.413(2).

AUTH: ~~37-1-136~~, 37-8-202, MCA

IMP: 37-1-136, 37-1-137, 37-1-316, MCA

REASON: The Board finds it necessary to amend ARM 8.32.501 and 8.32.502 to delete the references to 37-8-441, MCA, and replace them with reference to 37-1-316, MCA. Section 37-8-441, MCA, was repealed in 1995 when the legislature enacted uniform statutes governing occupational and professional licensing boards. The uniform laws were enacted to reduce inconsistencies among the individual boards' rules and to reduce the need for each board to promulgate its own rules on matters of mutual concern and applicability. The authority and implementation citations are amended to more completely reflect the sources of the Board's rulemaking authority and the statutes implemented by this rule as amended.

8.32.1401 DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) "Allowable routes" means oral, sublingual, topical, ophthalmic, otic, nasal, and inhalant methods of administration, except as otherwise provided by rule.

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

(4) "General supervision", with respect to a medication aide, means at least quarterly on-site review, by a supervising nurse, of a medication aide's medication administration skills and the guidance of a supervising nurse

to include a written plan addressing questions and situations that may arise when the supervising nurse is not available. Such a plan must include access to a health care professional.

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

(6) "Medication aide" means an employee of an assisted living facility who, under the general supervision of a Montana licensed nurse, administers PRN and routine medication as defined herein, to residents of the assisted living facility, and who:

(a) is 18 years of age or older;

(b) has a high school diploma; and

(c) has successfully passed a board approved medication aide training program and examination.

(4) through (6) remain the same but are renumbered (7) through (9).

(10) "PRN medication" ("pro re nata", Latin for "according as circumstances may require") means medication taken as necessary for the specific reason stated in the medication order, together with specific instructions for its use.

(11) "Routine medication" means medication taken regularly at the same time each day using the same route, or on the same days of the week, at the same time, using the same route.

(7) and (8) remain the same but are renumbered (12) and (13).

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-131, 37-8-101, 37-8-102, 37-8-202, 37-8-422, MCA

REASON: It is reasonable and necessary to amend the implementation citations to accurately reflect the statutes implemented by this rule as amended.

5. The proposed new rules provide as follows:

NEW RULE I PURPOSE OF STANDARDS OF PRACTICE FOR THE LICENSED MEDICATION AIDE (1) The purpose of the standard is to:

(a) establish minimal acceptable levels of safe and effective practice for the medication aide; and

(b) serve as a reference for the board to evaluate safe and effective medication aide practice.

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-8-101, MCA

NEW RULE II STANDARDS RELATED TO THE MEDICATION AIDE'S RESPONSIBILITIES AS A MEMBER OF HEALTH TEAM (1) The medication aide shall:

(a) practice under the general supervision of a nurse with an unencumbered Montana license;

(b) practice only in an assisted living facility as defined by 50-5-101, MCA;

- (c) administer only medications that are in:
  - (i) a unit dose package; or
  - (ii) a pre-filled medication holder;
- (d) administer only PRN and routine medications as defined in ARM 8.32.1401;
- (e) administer medications only by allowable routes as defined in ARM 8.32.1401, except:
  - (i) insulin may be subcutaneously injected from a pre-filled, labeled, unit dose syringe; and
  - (f) notify the supervising nurse if:
    - (i) the patient has a change in medication, and the medication is not available as described in (1)(c); or
    - (ii) the medication aide has observed a change in the patient's physical or mental condition.

AUTH: 37-1-131, 37-8-202, MCA  
IMP: 37-8-202, 37-8-422, MCA

NEW RULE III GENERAL REQUIREMENTS FOR LICENSURE AS MEDICATION AIDE (1) The applicant for licensure may apply to take the Montana medication aide exam if:

(a) the applicant has completed a board approved medication aide training program as outlined in these rules; or

(b) the applicant holds an unencumbered certification or license in another state or U.S. jurisdiction to administer medications.

(2) In order to be licensed as a medication aide in Montana, the applicant shall pass the board approved medication aide exam at 85% proficiency.

(a) The applicant may retake the examination once if not successful the first time. If not successful on the second try, the applicant must retake and pass the medication aide training program before being eligible to take the examination again.

(b) The applicant must pass the exam within six months of satisfactorily completing the medication aide training program, or else the applicant must complete the training program again before being eligible to take the exam.

(3) The application will be kept on file for one year. If the applicant fails to complete the requirements for application within one year, a new application will be required.

(4) Licenses shall be issued for one-year periods, and shall expire on March 31 of each year.

(5) In February of each year, the board office will mail all currently licensed medication aides a renewal application which must be completed and returned to the board before April 1, together with the renewal fee.

(6) Any person practicing as a medication aide without a license or during the time the license is lapsed shall be considered an unlicensed practitioner and may be subject to the penalties provided by law for practicing without a license.



AUTH: 37-1-131, 37-8-202, MCA  
IMP: 37-1-131, 37-8-101, 37-8-202, MCA

NEW RULE IV GENERAL REQUIREMENTS FOR MEDICATION AIDE TRAINING PROGRAMS AND INSTRUCTORS (1)

The board shall approve medication aide training programs. The program must include the following components:

- (a) "the six rights of medication administration";
- (b) purposes of medications;
- (c) classes of medications;
- (d) allowable routes of administration of medications;
- (e) care, storage and regulation of controlled substances and medications;
- (f) how to administer medications;
- (g) adverse reactions, side effects and allergies to medications;
- (h) medication log;
- (i) medication error reporting;
- (j) documentation;
- (k) how and when to report to the supervising nurse; and
- (l) completion of the board-approved skills checklist.

(2) The training program shall be no less than 32 hours of didactic classroom presentation, eight hours of simulated practical experience, and 40 hours of direct, supervised clinical experience.

(3) The training program must assure an instructor to student ratio of no less than one instructor to five students in the clinical practice setting and one instructor to 10 students in the clinical laboratory setting. The supervised clinical experience shall be obtained under the direction of a nurse with an unencumbered Montana license, and who need not be the board-approved instructor.

(4) The board-approved examination shall be given at the board office. If travel to the board office presents a hardship, the board office will attempt to make alternate arrangements with the applicant's local job service office.

(5) The board shall approve instructors for medication aide training programs. The training program instructor must:

- (a) be a nurse with an unencumbered Montana license;
- (b) have at least two years of nursing experience in the last five years, one year of which shall be in long term care, home health, hospice, assisted living or other community based setting or be a state certified nursing assistant instructor; and
- (c) have a working knowledge of assisted living facility rules and regulations.

AUTH: 37-1-131, 37-8-202, MCA  
IMP: 37-8-101, 37-8-202, 37-8-422, MCA

6. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of

Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdnur@state.mt.us, and must be received no later than 5:00 p.m., July 9, 2004.

7. An electronic copy of this Notice of Public Hearing is available through the Department's and Board's site on the World Wide Web at <http://www.discoveringmontana.com/dli/nur>. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

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

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

10. Lorraine Schneider, attorney, has been designated to preside over and conduct this hearing.

BOARD OF NURSING  
KIM POWELL, RN, CHAIRMAN

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

/s/ DARCEE L. MOE  
Darcee L. Moe  
Alternate Rule Reviewer

Certified to the Secretary of State May 24, 2004.

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

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment of ARM 24.17.127 ) ON PROPOSED AMENDMENT  
pertaining to prevailing )  
wage rates for public works )  
projects - building )  
construction services and )  
heavy and highway )  
construction services )

TO: All Concerned Persons

1. On June 25, 2004, at 10:00 a.m., the Department of Labor and Industry will hold a public hearing in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the proposed amendment of ARM 24.17.127 establishing the prevailing wage rates for public works projects. The Department proposes to incorporate by reference the 2004 building construction services rates and the federal rates for heavy construction and highway construction services wage rates.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., June 21, 2004, to advise us of the nature of the accommodation that you need. Please contact the Research and Analysis Bureau, Workforce Services Division, Attn: Bob Schleicher, P.O. Box 1728, Helena, MT 59624-1728; telephone (800) 541-3904; TTY (406) 444-0532; fax (406) 444-2638; or via email at bschleicher@state.mt.us.

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

24.17.127 ADOPTION OF STANDARD PREVAILING RATE OF WAGES

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

(e) The current building construction services rates are contained in the ~~2003~~ 2004 version of "The State of Montana Prevailing Wage Rates - Building Construction Services" publication.

(f) remains the same.

(g) The current heavy and highway construction services rates are contained in the ~~2003~~ 2004 version of "The State of Montana Prevailing Wage Rates - Heavy and Highway Construction Services" publication.

(2) and (3) remain the same.

AUTH: 2-4-307, 18-2-409, 18-2-431 and 39-3-202, MCA

IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-406, 18-2-411, 18-2-412, 18-2-422 and 18-2-431, MCA

REASON: There is reasonable necessity to amend ARM 24.17.127 to update the building construction services rates. Pursuant to Chapter 517, Laws of 2001 (House Bill 500), the Department is to conduct an annual survey of contractors in order to set the standard prevailing rate of wages for construction services. Prior to the enactment of Chap. 517, Laws of 2001, the Department conducted biennial surveys to establish the wage rates. There is reasonable necessity to amend the prevailing wages for building construction services, which were last updated in 2003. In addition, there is reasonable necessity to update the prevailing wage rates for heavy and highway construction services to track with recently adopted federal Davis-Bacon Act heavy and highway construction services rates. Use of prevailing wage rates is required in public contracts by 18-2-422, MCA.

4. Interested parties 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:

Bob Schleicher  
Research and Analysis Bureau  
Workforce Services Division  
Department of Labor and Industry  
P.O. Box 1728  
Helena, Montana 59624-1728

and must be received no later than 5:00 p.m., July 2, 2004.

5. An electronic copy of this Notice of Public Hearing is available through the Department's website at <http://dli.state.mt.us/calendar.htm>, under the Calendar of Events, Administrative Rule Hearings section. Interested persons may make comments on the proposed rules via the comment forum, <http://forums.dli.state.mt.us>, linked to the Notice of Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m., July 2, 2004. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the comment forum do not excuse late submission of comments.

6. A copy of the proposed 2004 publications, identified as "preliminary building construction rates" and "preliminary heavy and highway construction rates", are available and can be accessed on-line via the internet at: <http://rad.dli.state.mt.us/pw>.

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

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

9. The Hearings Bureau of the Centralized Services Division of the Department has been designated to preside over and conduct the hearing.

/s/ MARK CADWALLADER  
Mark Cadwallader,  
Alternate Rule Reviewer

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

Certified to the Secretary of State: May 24, 2004

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

In the matter of the proposed ) NOTICE OF PUBLIC HEARING ON  
amendment of ARM 24.21.414 ) PROPOSED AMENDMENT  
pertaining to the adoption of )  
wage rates for certain )  
apprenticeship programs )

TO: All Concerned Persons

1. On June 25, 2004, at 1:30 p.m. or as shortly as possible thereafter, a public hearing will be held in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the proposed amendment of ARM 24.21.414 pertaining to the adoption of wage rates related to certain apprenticeship programs in the building construction industry.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., June 21, 2004, to advise us of the nature of the accommodation that you need. Please contact the Apprenticeship Program, Workforce Services Division, Attn: Mark Maki, 1327 Lockey, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-3556; TTY (406) 444-0532; fax (406) 444-3037; or via e-mail at mmaki@state.mt.us.

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

24.21.414 WAGE RATES TO BE PAID IN BUILDING CONSTRUCTION OCCUPATIONS (1) through (4) remain the same.

(5) The department will publish and incorporate by reference the ~~2002~~ 2004 edition of the publication entitled "State of Montana Base Journey-Level Rates for Apprentice Wages" which sets forth the building construction industry occupations journeyman wage rates in the five regions of Montana, excluding the seven largest counties, in order to set the apprentice wage rates provided by (3) and (4). A copy of the publication is available from Bob Schleicher, Research and Analysis Bureau, Department of Labor and Industry, 1327 Lockey, P.O. Box 1728, Helena, MT 59624-1728.

(6) and (7) remain the same.

AUTH: 39-6-101, MCA  
IMP: 39-6-101 and 39-6-106, MCA

REASON: There is reasonable necessity for amendment of this rule in order to update the base wage rates, as contemplated by this rule. The proposed amendments are being offered as part of

the periodic updating of certain wage rates. In addition, there is reasonable necessity to amend the rates at this time because of the relationship to the proposed changes to prevailing wage rates for building construction. Noticing this hearing in conjunction with the prevailing wage rate hearing is generally more convenient for the interested parties, and allows members of the public who wish to attend both public hearings to only make a single trip to Helena.

4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to:

Mark Maki  
Apprenticeship Program  
Workforce Services Division  
Department of Labor and Industry  
P.O. Box 1728  
Helena, Montana 59624-1728

and must be received by no later than 5:00 p.m., July 2, 2004.

5. ARM 24.21.414 makes reference to the construction services prevailing wage rates adopted in ARM 24.17.127. Persons interested in those prevailing wage rates should take notice that the Department will be conducting a public hearing on the proposed 2004 version of those rates at 10:00 a.m. on June 25, 2004, in the same room as the apprenticeship rate hearing. Persons wishing to obtain a copy of the official Notice of Public Hearing for the prevailing wage rates and/or the proposed 2004 prevailing wage rates may contact Bob Schleicher, Research and Analysis Bureau, Workforce Services Division, Department of Labor and Industry, P.O. Box 1728, Helena, MT 59624-1728; telephone (800) 541-3904; TTY (406) 444-0532; fax (406) 444-2638. A copy of the proposed 2004 publications, identified as "preliminary building construction rates" and "preliminary heavy and highway construction rates" are available and can be accessed on-line via the internet at: <http://rad.dli.state.mt.us/pw>.

6. An electronic copy of this Notice of Public Hearing is available through the Department's website at <http://dli.state.mt.us/calendar.htm>, under the Calendar of Events, Administrative Rule Hearings section. Interested persons may make comments on the proposed rule via the comment forum, <http://forums.dli.state.mt.us>, linked to the Notice of Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m., July 2, 2004. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that

the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the comment forum do not excuse late submission of comments.

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

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

9. The Hearings Bureau of the Centralized Services Division of the Department has been designated to preside over and conduct the hearing.

/s/ MARK CADWALLADER  
Mark Cadwallader,  
Alternate Rule Reviewer

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

Certified to the Secretary of State: May 24, 2004



DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
adoption of NEW RULE I, ) ON PROPOSED ADOPTION  
pertaining to abatement )  
of renewal fees )

TO: All Concerned Persons

1. On June 29, 2004, at 10:00 a.m., a public hearing will be held in room 471, of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed adoption of the above-stated rule.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Business Standards Division no later than 5:00 p.m., on June 24, 2004, to advise us of the nature of the accommodation that you need. Please contact Kris Cavazos, Business Standards Division, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2380; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail kcavazos@state.mt.us.

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

NEW RULE I ABATEMENT OF RENEWAL FEES (1) Pursuant to 17-2-302, MCA, state programs that charge a fee for services are generally not permitted to let their cash balance exceed twice the program's annual appropriation. However, despite the best projections of a program, there may be times when cash balances exceed the amount authorized by statute. This rule is intended to provide a process for a program that needs to reduce its cash balance with a standard methodology to do so, in fair and equitable manner. This rule provides for an abatement of certain fees when the cash balance is excessive.

(2) Except as provided by (3), a program that has an excessive cash balance may abate the renewal fees for the program's licensees or registrants for one or more renewal cycles until the program's cash balance does not exceed the allowable maximum.

(a) The abatement of renewal fees may be the total amount of the renewal fee, or only a specified portion of the renewal fee.

(b) If a program has more than one category of renewals, the abatement must be made on a roughly proportional basis to fairly, equitably, reasonably and economically distribute the abatement among the program's licensees or registrants. The program may, for good cause, completely abate the renewal fee for certain classes of licensees or registrants and not for other classes, if the administrative cost of processing a

reduced renewal fee for all classes is disproportionately high. In such a case, the program must attempt in any future abatements to equitably treat those classes of renewals which have borne a relatively higher proportion of renewal fees.

(c) The fact that the renewal fee is abated for any given renewal cycle does not excuse the licensee or registrant from otherwise fulfilling the renewal requirements, including submission of a renewal application and/or continuing education documentation. A program, to the extent it so provides by rule, may impose a late fee on untimely submissions of renewal applications or other required documentation.

(3) This rule does not apply to programs for which an exception to 17-2-302, MCA, exists and is applicable. As an example, a program with a three-year renewal cycle will have an apparent excess cash balance during the first year of the renewal cycle, based on a collection of three year's worth of fees for operations expenses.

(4) This rule does not relieve a program from the duty to establish fees at a level commensurate with costs.

(5) A licensing board attached to the department for administrative purposes may adopt the procedures specified in this rule by incorporating this rule by reference. Such an adoption of this rule authorizes the department to make such abatements as are appropriate, without further vote or action by the board. Incorporation by reference of this rule does not relieve the board of its obligations to set fees in a manner commensurate with costs. This rule does not relieve a board from its duty to undertake appropriate rulemaking to modify its fee structure when there are recurrent instances of cash balances in excess of the amount allowed by statute.

AUTH: 37-1-101, MCA

IMP: 17-2-302, 17-2-303, 37-1-101, 37-1-134, MCA

REASON: There is reasonable necessity to adopt NEW RULE I to ensure that the Department has a methodology in place for it to promptly eliminate excess cash accumulations in the various licensing programs the Department operates. Excess cash accumulations are generally prohibited by 17-2-302, MCA, and a reduction in fees is required pursuant to 17-2-303, MCA. The Department proposes to abate renewal fees where doing so will bring cash balances to an appropriate level. The Department believes that abatement of renewal fees is the best way to target the licensees and registrants who have paid fees into the program for the temporary relief provided by an abatement.

The Department believes that most excess cash balances arise from circumstances outside the control of the agency, are the result of unexpectedly high licensing or registration levels, or some other non-typical event. Such an event is often a sudden "spike" in the usual trend, and usually is unlikely to be repeated on a regular basis. The Department recognizes that trends that are predictable or regular and generate excess cash balances are best addressed by an overall adjustment to the

program's fee structure, and should be handled in that manner. The Department believes that NEW RULE I is designed to avoid the over-corrections that might otherwise occur if the Department immediately made a permanent fee schedule adjustment for a program with an excess cash balance.

There also is reasonable necessity to adopt NEW RULE I as a "Department of Labor and Industry" rule, in that the Department is the licensing authority, rather than an administratively attached Board, for various programs, such as addiction counselors and construction blasters. The Department anticipates that at least some of the professional and occupational licensing Boards will decide to incorporate by reference the provisions of NEW RULE I into the Board's rules. The Department concludes that there will be greater uniformity of application of the principles contained in NEW RULE I if the various Boards have the option of incorporating the rule by reference.

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 the Business Standards Division, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [liaddington@state.mt.us](mailto:liaddington@state.mt.us), and must be received no later than 5:00 p.m., July 7, 2004.

5. An electronic copy of this Notice of Public Hearing is available through the Department's and Board's site on the World Wide Web at <http://discoveringmontana.com/dli/bsd>. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

6. The Business Standards Division 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 list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Business Standard Division's administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to Mark Cadwallader, P.O. Box 1728, Helena, Montana 59620-1728, faxed to the office at (406) 841-2305, e-mailed to

mcadwallader@state.mt.us, or may be made by completing a request form at any rules hearing held by the agency.

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

8. Darcee Moe, attorney, has been designated to preside over and conduct this hearing.

DEPARTMENT OF LABOR AND INDUSTRY

/s/ WENDY J. KEATING

Wendy J. Keating, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

/s/ MARK CADWALLADER

Mark Cadwallader  
Alternate Rule Reviewer

Certified to the Secretary of State May 24, 2004.

BEFORE THE BOARD OF PROFESSIONAL  
ENGINEERS AND LAND SURVEYORS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC  
amendment of ARM 24.183.702, ) HEARING ON PROPOSED  
pertaining to classification ) AMENDMENT AND  
of experience for professional ) ADOPTION  
engineer applicants, and the )  
proposed adoption of NEW RULE I, )  
pertaining to classification of )  
experience for land surveying )  
applicants, and NEW RULE II, )  
pertaining to branch and project )  
offices )

TO: All Concerned Persons

1. On June 28, 2004, at 9:00 p.m., a public hearing will be held in room 489, Park Avenue Building, 301 South Park, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Professional Engineers and Land Surveyors no later than 5:00 p.m. on June 21, 2004, to advise us of the nature of the accommodation that you need. Please contact Todd Boucher, Board of Professional Engineers and Land Surveyors, 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2368; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdpel@state.mt.us.

3. On February 28, 2002, the Board previously proposed amendments to ARM 24.183.702 (formerly, ARM 8.48.507) and proposed the adoption of a NEW RULE I, pursuant to MAR Notice No. 8-48-24 at page 450, 2002 Montana Administrative Register, issue no. 4. Following the public comment period, the Board decided not to make the proposed amendments to ARM 8.48.507 or to adopt that new rule. In light of the comments made in 2002, the Board has substantially revised its draft of proposed NEW RULE I.

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

24.183.702 CLASSIFICATION OF EXPERIENCE FOR PROFESSIONAL ENGINEER APPLICANTS (1) Engineering experience ~~or land surveying experience shall~~ must be gained under the supervision of a licensed professional engineer or, if not, an

explanation must be made to show why the supervised experience should be considered as acceptable. Engineer experience must include the following:

(a) pre-professional experience pertains to experience gained after graduation and is of progressive experience, all of which is required to have been completed at the time of application. Credible experience may include one or more of the following:

(i) approved sub-professional experience (one year maximum credit given).

~~(a) Sub-professional experience is experience that is gained before graduation. This experience shall be credited to the required pre-professional experience at a maximum of one-half the period of experience. Credible experience may include:~~

~~(i) surveying experience, supervised;~~

~~(ii) engineering experience, supervised;~~

~~(iii) construction experience, supervised.~~

~~(b) Pre professional experience is four years of total progressive experience, all of which is required to be completed at the time of application. Credible experience may include:~~

~~(i) approved sub professional experience;~~

~~(ii) progressive experience on engineering/land surveying projects which indicate the experience is of increasing quality and required greater responsibility;~~

~~(iii) experience not obtained in violation of the licensure act;~~

~~(iv) experience gained under the supervision of a licensed professional engineer/land surveyor or, if not, an explanation of why the experience should be considered acceptable;~~

~~(v) credible teaching experience at an advanced level, post graduate or senior graduate, in a college or university offering an engineering curriculum of four years or more that is approved by the board. Land surveying teaching experience shall also be at an advanced level on a land surveying curriculum approved by the board;~~

~~(vi) experience gained in engineering research and design projects by members of an engineering faculty, in an engineering curriculum approved by the board; or~~

~~(vii) and (2) remain the same.~~

~~(3) Experience should be gained under the supervision of a registered professional engineer or, if not, an explanation should be made showing why the experience should be considered acceptable.~~

~~(4) remains the same but is renumbered (3).~~

~~(5) Land surveying experience must include a substantial portion spent in charge of work related to property conveyance and/or boundary line determination.~~

~~(6) Upon request by the board, land surveyor applicants must demonstrate adequate experience in the field aspects of the profession.~~

~~(a) Land survey experience such as section breakdowns,~~

~~retracing old boundaries, establishing new boundaries, corner search and re-establishment, calculations and preparations of certificates of surveys, deed searches and corner recordation, consists of work done under the supervision of a registered professional land surveyor.~~

~~(b) Other survey experience is survey work which may or may not be done under the supervision of a registered professional land surveyor. It includes such work as construction layout of buildings and miscellaneous structures; surveys necessary to obtain data and location of highways, roads, pipelines, canals, etc.; construction staking for land modification; and construction staking for highways, roads, utilities, etc.~~

AUTH: ~~37-1-131,~~ 37-67-202, MCA  
IMP: 37-67-306, ~~37-67-309,~~ MCA

REASON: The Board has determined that there is reasonable necessity to amend the rule to delete references to land surveyors, and clarifying the scope of the rule. The proposed amendments more clearly identify the classification of the kinds of experience that are counted towards the experience required before an applicant can become licensed as a professional engineer. The Board is proposing to adopt NEW RULE I, Classification of Experience for Land Surveying Applicants. Finally, there is reasonable necessity to update the citations to the appropriate statutes authorizing the rule and being implemented by the rule.

5. The proposed new rules provide as follows:

NEW RULE I CLASSIFICATION OF EXPERIENCE FOR LAND SURVEYING APPLICANTS

(1) Land surveying experience must include pre-professional experience. Qualified pre-professional experience is progressive experience, gained under the supervision of a licensed professional land surveyor, all of which is required to be completed at the time of application. Land surveying experience must include a substantial portion spent in charge of work related to property conveyance and/or boundary line determination. Credible experience may include one or more of the following:

(a) approved sub-professional experience. Sub-professional experience must be credited to the required pre-professional experience at a maximum of one-half the period of experience. Sub-professional experience must be limited to a maximum of four years to be credited as no more than two years of pre-professional experience. Credible sub-professional experience may include one or more of the following:

(i) survey experience done under the supervision of a licensed professional land surveyor, including such work as:

(A) construction layout of buildings and miscellaneous structures;

(B) surveys necessary to obtain data and location of highways, roads, pipelines, canals, etc.;

- (C) construction staking for land modification; and
  - (D) construction staking for highways, roads, utilities, etc;
  - (ii) other construction surveying experience supervised by a licensed professional land surveyor; or
  - (iii) other surveying experience supervised by a licensed professional land surveyor;
  - (b) progressive experience on land surveying projects which indicate the experience is of increasing quality and required greater responsibility;
  - (c) experience not obtained in violation of the licensure act;
  - (d) experience such as:
    - (i) aliquot part subdivision of sections;
    - (ii) retracing existing boundaries;
    - (iii) establishing new boundaries;
    - (iv) corner search and re-establishment;
    - (v) researching existing public records;
    - (vi) survey computations;
    - (vii) preparation of legal descriptions;
    - (viii) certificates of survey;
    - (ix) subdivision plats; and
    - (x) corner recordation forms, exhibits and other documents pertinent to such work; or
  - (e) credible teaching experience at an advanced level, post graduate or senior graduate, in a college or university offering a land surveying curriculum approved by the board, gained under the supervision of a licensed land surveyor.
- (2) Experience must be completed at the time of application. Experience time cannot be counted during periods counted for education.
- (3) Upon request by the board, land surveyor applicants must demonstrate adequate experience in the field aspects of the profession.

AUTH: 37-1-131, 37-67-202, MCA  
IMP: 37-67-309, MCA

REASON: The board has determined there is reasonable necessity to adopt this rule to separate the provisions of ARM 24.183.702 into a rule for professional engineers and one for professional land surveyors, in order to improve clarity and decrease possible confusion by the applicants. These changes were proposed with MAR Notice No. 8-48-24 and substantial comments were received. Although these comments were accepted by the board, a second public notice is being issued.

NEW RULE II BRANCH OFFICES AND PROJECT OFFICES (1) For the purposes of this rule, the following definitions apply:

- (a) "Branch office" means:
  - (i) with respect to an engineering firm offering engineering services, an office established to solicit and/or provide engineering services; or
  - (ii) with respect to a land survey firm offering



surveying services, an office established to solicit and/or provide land surveying services.

(b) "Professional engineer in residence" means a person holding a valid professional engineering license in Montana, and who is in responsible charge of engineering work performed in the branch office.

(c) "Professional land surveyor in residence" means a person holding a valid land surveying license in Montana, and who maintains a branch office as the land surveyor's normal place of business and is in responsible charge of land survey work performed in the branch office.

(d) "Project office" means a land survey office established to provide a workstation for a specific project, the use of which will not extend beyond the scope or duration of the specific project.

(2) Each branch office of an engineering firm must have a professional engineer in residence.

(3) Each branch office of a land surveying firm must have a professional land surveyor in residence.

(4) A professional land surveyor may serve as the professional land surveyor in residence at only one place of business.

(5) A project office is not required to have a professional land surveyor in residence, who is in responsible charge of the work performed at the project office. If a licensed professional land surveyor in residence is not in charge of a project office:

(a) no land surveying work other than the project work may be performed; and

(b) no new work may be solicited by a firm's unlicensed representative located at the project office.

AUTH: 37-1-131, 37-67-202, MCA

IMP: 37-67-320, MCA

REASON: The Board has determined that there is reasonable necessity to adopt this rule to clarify the requirements when operating branch and project offices by engineering and land surveyors. Furthermore, this rule is to make certain all acts, which constitute the practice of engineering or land surveying, are adequately supervised and effectively managed by licensed individuals.

6. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Professional Engineers and Land Surveyors, 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to [dlibsdpel@state.mt.us](mailto:dlibsdpel@state.mt.us) and must be received no later than 5:00 p.m., July 9, 2004.

7. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at <http://discoveringmontana.com/dli/bsd> under the Board

of Professional Engineers and Land Surveyors rule notice section. The department strives to make the electronic copy of this notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version, only the official printed text will be considered. In addition, although the department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the comment forum do not excuse late submission of comments.

8. The Board of Professional Engineers and Land Surveyors maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the board. Persons who wish to have their name included on 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 all Board of Professional Engineers and Land Surveyors administrative rulemaking proceedings. Such written request may be mailed or delivered to the Board of Professional Engineers and Land Surveyors, 301 S. Park, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2309, e-mailed to [dlibsdpel@state.mt.us](mailto:dlibsdpel@state.mt.us) or may be made by completing a request form at any rules hearing held by the agency.

9. The Board of Professional Engineers and Land Surveyors will meet on August 19, 2004, at its regularly scheduled meeting, to consider comments made by the public, the proposed responses to those comments and to take final action on the proposed amendment and new rules. Members of the public are welcome to attend the meeting and listen to the board's deliberations.

10. The bill sponsor requirements at 2-4-302, MCA, do not apply.

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

BOARD OF PROFESSIONAL ENGINEERS  
AND LAND SURVEYORS  
JANET MARKLE, PRESIDING OFFICER

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

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

Certified to the Secretary of State May 24, 2004

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment of ARM 42.12.104; ) ON PROPOSED AMENDMENT  
42.12.106; 42.12.117; 42.12.133;)  
42.12.205; 42.12.206; 42.12.209;)  
42.12.211; 42.12.323; 42.12.324;)  
42.13.105; 42.13.106; 42.13.107;)  
42.13.111; and 42.13.221 )  
relating to liquor licensing )

TO: All Concerned Persons

1. On June 25, 2004, at 10:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rules relating to liquor licensing.

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., June 14, 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 7701, Helena, Montana 59604-7701; telephone (406) 459-2646; fax (406) 444-3696; or e-mail canderson@state.mt.us.

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

42.12.104 ACTION TAKEN WITH CENSUS UPDATE (1) through (3) remain the same.

(4) If more lottery applications are received than licenses available within a quota area, the procedure in ARM ~~42.12.131~~412 is followed.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-4-105, 16-4-106, 16-4-201, 16-4-203, and 16-4-502, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.104 to add the word "lottery" to clarify when a lottery will be held and the internal reference to ARM 42.12.131 is changed to 42.12.412 because ARM 42.12.131 is the rule that applies to general applications and the reference should be to the rule that deals with lottery applications.

42.12.106 DEFINITIONS The following definitions apply

to this sub-chapter:

(1) through (4) remain the same.

(5) "Catering" means the act of providing, pursuant to a written contract between a licensee with a valid catering endorsement and an unlicensed individual or entity, alcoholic beverages at an event hosted by the unlicensed individual or entity.

(5) through (21) remain the same but are renumbered (6) through (22).

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-1-106, 16-3-311, 16-4-105, 16-4-205, 16-4-207, 16-4-301, 16-4-402, 16-4-404, 16-4-413, 16-4-420, and 16-4-423, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.106 to include the definition of catering because there has been some confusion about what type of events will be considered a catered event.

42.12.117 SUBSTANTIALLY DIFFERENT USE (1) If an applicant has been denied a license under 16-4-405, MCA, a new application cannot be considered for five years unless the department determines there has been a change great enough to be easily recognizable. The department will consider applications where the proposed use is noticeably and substantially different from the use that was previously rejected.

(a) The following examples constitute a substantially different use but are not all inclusive of the types of changes the department would consider:

(i) A situation where the new business operation has changed significantly enough to change the primary source of revenue generated by the business or the operation previously planned to be operated on the premises. Such a change would be where a business changed from primarily a casino/bar operation to a restaurant operation with all the necessary facilities to accommodate a restaurant setting, and at least 65% of the gross revenue is from the sale of food ~~An example would be where the primary source of income results from the restaurant operation rather than the previous casino/bar operation;~~ or

(ii) The zoning designation of the proposed location has changed by local government action.

(b) The following examples do not constitute substantially different use:

(i) a change in business hours;

(ii) a change in the type of alcoholic beverages offered for on-premises consumption; or

(iii) a newly constructed or remodeled building, which will be used for the same primary purpose as the proposed use that was rejected.

(2) An applicant who has applied for substantially different use, and is approved under this rule, may not change

the applicant's manner of operation for five years as described in 16-4-413, MCA.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-4-405 and 16-4-413, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.117 to further clarify what constitutes substantially different use and to ensure the intent of 16-4-405, MCA, is followed.

42.12.133 CONCESSION AGREEMENTS (1) All new concession agreements must be submitted to the department for review and approval prior to their execution and/or effective date, and must set forth the following:

(a) through (h) remain the same.

(2) The department, upon receipt of the concession agreement and any supporting documentation, will advise the licensee within seven working days of approval or denial of the agreement. Upon approval of the agreement, the license will reflect language that the licensee is also serving alcoholic beverages in the establishment.

(3) A licensee must submit any modification or assumption of an existing concession agreement for review and approval by the department. The concessionaire may continue to operate the business pending approval by the department.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-3-305, 16-3-311, 16-4-401 and 16-4-402, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.133 because the use of Concession Agreements is increasing in frequency, and therefore it is important to set clearer procedures for processing these applications. The amendments as shown will make it necessary for licensees to submit Concession Agreements for review and approval prior to the execution and performance of the agreements.

42.12.205 REQUIREMENTS WHEN LICENSE SUBJECT TO LIEN

(1) All-beverages and on-premises beer licenses may be subject to a mortgage, security interest, and other valid lien. Upon written request to the department, accompanied by a copy of the note or mortgage, security agreement, or other loan document (in which the license or licenses to be affected are described with common certainty such as inclusion of license number), together with a fee of \$10, the department will add the name of the mortgagee, secured party, or other lien holder, which must be endorsed upon the license. All such requests shall be upon forms prescribed by the department and signed in each case by the licensee and the mortgagee, secured party, or other lien holder. ~~The licensee must be the debtor. A loan guarantee by a licensee does not establish a valid lien by the lender under this rule.~~

(2) and (3) remain the same.

(4) Alcoholic beverage licenses may be subject to security interests as defined in 30-1-201, MCA, and other valid

liens. The perfection of a security interest or other lien in an alcoholic beverages license does not depend upon filing with the department, but rather by the statutory requirements, which apply to the particular security interest or lien. If a secured party or a lien creditor, as defined in 30-9A-102, MCA, desires to give additional public notice, he may do so by filing a claim of security interest or other lien with the department. The department acts only as an additional source of public notice for voluntarily filed claims of security interest and other liens. The licensee must be the debtor. A loan guarantee by a licensee does not establish a valid security interest or lien by the lender under this rule.

(5) through (10) remain the same.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-4-204, 16-4-404, 16-4-801, 30-1-201, and 30-9A-102, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.205 to move the text to the paragraph where it is more applicable.

42.12.206 PROHIBITION AND EXCEPTION REGARDING LEASING OF LICENSE (1) A license issued under the provisions of Title 16, chapter 4, parts 1 through 5, MCA, is a privilege personal to the licensee, and in no case shall the licensee lease the license to any other person.

(2) Publicly owned ~~g~~ Golf course beer and wine licenses owned by the state, a unit of the university system, or a local government, and airport all-beverages licenses are ~~excepted~~ exempt from this rule.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-4-109, 16-4-208 and 16-4-404, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.206 to bring the rule into compliance with the changes made by the 2003 legislature to 16-4-109, MCA.

42.12.209 TRANSFER OF A LICENSE TO ANOTHER PERSON

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

(2) A potential buyer of a liquor license or a potential buyer of 10% or more of stock in a business operated under the license is required to submit an application for transfer of a liquor license or transfer of shares of stock pursuant to ARM 42.12.101. The applicant for ownership of either the business or its stock must be notified in writing by the department that either temporary operating authority or conditional approval has been granted or such a transfer of the license is approved by the department before the buyer may pay to or in any way transfer any money or other valuable consideration to the seller in payment for the business operated under the license or stock. If money is paid to the seller on the granting of temporary operating authority or conditional approval and the application is later not approved, the money, with the exception of a reasonable amount considered earnest

money, must be returned.

(3) The seller and the buyer may exchange any portion of the purchase price so long as the amount is placed in escrow if temporary authority or conditional approval has not been issued.

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

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-4-401, 16-4-402, and 16-4-404, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.209 to clarify that the exchange of funds is allowed when a conditional approval has been granted.

42.12.211 TRANSFER OF A LICENSE DUE TO FORECLOSURE

(1) remains the same.

(2) A transfer of a license resulting from a foreclosure on a security interest requires the filing of documents evidencing the foreclosure if the secured party does not intend to operate or does not meet the requirements to hold the license pursuant to 16-4-401 and 16-4-801, MCA. The documents must include either the defaulting party's written acknowledgment of default, evidence that a nonjudicial sale by the secured party has been made pursuant to the Uniform Commercial Code, or a court order foreclosing the defaulting party's interests in the license. Based on the foreclosure documents, the transfer may be approved pursuant to ARM 42.12.205. A foreclosing secured party may retain ownership of the transferred license in nonuse status for a period of no more than 180 days, and may, upon showing of good cause, receive one extension of 180 days. If the license has not transferred to a qualified purchaser within ~~180 days~~ the time allowed, the license will be revoked.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-4-401, 16-4-402, 16-4-404, and 16-4-801, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.211 to reflect the changes made by the 2003 legislature to 16-4-801, MCA.

42.12.323 PERMISSIBLE AND PROHIBITED SPECIAL PERMIT ACTIVITIES (1) and (2) remain the same.

(3) Beer wholesalers and table wine distributors shall not:

(a) allow their employees to assist a special permittee or catering permittee in the sale of beer and/or table wine, except for setting up equipment for sale and service of beer or table wine; or

(b) sell beer and/or table wine to a special permittee or catering permittee on a consignment basis.

(4) remains the same.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-3-103, 16-3-241, and 16-4-301, MCA



REASONABLE NECESSITY: The department proposes to amend ARM 42.12.323 to clarify current practice and policy.

42.12.324 SPECIAL PERMITS (1) and (2) remain the same.

~~(3) A corporation in good standing with the secretary of state or an association can apply for a special permit, except those who have~~ An applicant for a special permit cannot have an ownership interest in a manufacturer, importer, bottler or distributor of alcoholic beverages or ownership in an agency liquor store.

(4) Any on-premises consumption retail licensee entitled to a catering endorsement will not be issued a special permit, except for veteran and fraternal licensees as provided for in 16-4-301, MCA.

~~(5) The applicant for the special permit must be conducting an event or be a member of a group conducting an event.~~

~~(6) Continued requests for permits at a specific location may be denied as a special permit cannot be used as a substitute for a retail on premises consumption alcoholic beverages license.~~

(7) through (9) remain the same but are renumbered (5) through (7).

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-4-301, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.324 to reflect the legislative changes made to 16-4-301, MCA, by the 2003 legislature.

42.13.105 APPLICABILITY OF LICENSES; PREMISES DEFINED; GOLF COURSE EXCEPTION; PORTABLE SATELLITE VEHICLE; MOVABLE DEVICES

(1) All licenses shall be applicable only to the premises to which they were issued. The premises are described by a floor plan on file with the department, which accompanied the application and was approved by the department. The licensee must have possessory interest in the entire premises. No more than one license can be issued for the area described in the floor plan unless the first license has been granted nonuse status. The floor plan may be licensee may amended by a licensee the floor plan after submitting an application a written request to alter the licensed premises and gaining department approval pursuant to ARM 42.13.106. In the case ~~where~~ a licensee conducts, as a single business enterprise, two or more service areas located on the same premises which have such ~~inter-communication~~ access as will enable patrons to move freely from one service area to another without leaving the premises, the various service areas shall be regarded as one premises for which one license is required. In all other cases, licenses must be obtained for each service area even though operated in the same building with another service area.

(2) Retail all-beverages licensees operating at a golf course may sell alcoholic beverages and golf courses holding a

~~retail~~ golf course beer and table wine license may sell beer and table wine, under the provisions of 16-3-302, MCA, anywhere within the golf course boundaries from portable satellite devices and other moveable satellite devices.

(3) remains the same.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-3-302, 16-3-311, 16-4-109, 16-4-404, and 16-6-104, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.13.105 to reflect amendments made by the 2003 legislature to 16-4-109, MCA.

42.13.106 CHANGE OR ALTERATION IN PREMISES (1) Any alteration or change to a licensed premises or any significant change to the manner of operation other than a cosmetic change, as defined in 16-3-311, MCA, must be pre-approved by the department.

(2) through (7) remain the same.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-1-303, 16-3-311, and 16-4-402, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.13.106 to clarify that it is not acceptable to change any manner of operation without prior approval of the department.

42.13.107 EXTENSION OF TIME FOR NONUSE (1) remains the same.

(2) The department may grant up to three extensions of nonuse status in increments not exceeding 90 days. If the license is not put into use within one year, the department must consider quota limitations when determining whether further extensions of nonuse status may be granted.

(a) If the department determines the extensions are justified ~~and the license quota is not full~~, the licensee may be granted an extension of nonuse status in excess of one year.

(b) ~~If the license quota is full,~~ The licensee shall be required to attend an informal conference conducted by the department in Helena to afford the licensee or person(s) holding a security interest in the license the opportunity to present evidence establishing justification for any further extension of nonuse status. If the department determines additional nonuse time is justified, a letter granting nonuse status will be issued. If the department determines continued nonuse status is not justified, the department will issue a notice to lapse the license.

(c) If ~~there are~~ the license issued has no quota limitations on the type of license issued nonuse status, 90-day extensions may be granted each time a written statement is received from the licensee, the licensee's representative, or the secured party that includes an explanation of the need for nonuse which is determined to be justified by the department.

(3) remains the same.

(4) Requests for extension of nonuse status based on voluntary closure due to adverse economic conditions or repeated requests based on a proposed sale of a license will not constitute sufficient grounds for extending nonuse status. An earnest money receipt signed by the proposed purchaser is needed for proof of a pending sale and is required for justification of nonuse status if the quota is full and the license has been inactive over one year. An application for transfer of ownership must be received within 30 days of receipt of proof of a pending sale to prevent lapse proceedings in accordance with ARM 42.13.108.

(5) remains the same.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-3-310, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.13.107 to ensure equitable treatment for all licensees.

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

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

(3) "Premises" means one building or a specific portion or portions of one building as described on the floor plan, identified by a unique address and approved by the department. The premises shall contain all service areas used by the licensee and the licensee's patrons and those service areas in which the licensee operates outside of and attached to the licensed building and to which patrons are permitted free access from the building.

(4) remains the same.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-3-302, 16-3-311, 16-4-404, and 16-6-104, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.13.111 to clarify that the definition for "premises" applies to the address described on the floor plan and approved by the department.

42.13.221 ADOPTION OF CERTAIN FEDERAL REGULATIONS

(1) The United States department of treasury, bureau of alcohol, tobacco, and firearms regulations 1, 4, 5, 6, and 7, as set forth in 27 CFR, as revised April 1, ~~2001~~ 2003, available from the U.S. Government Printing Office, Washington, DC 20402-0001, are adopted by reference. These regulations apply to basic permit requirements, tied-house restrictions, labeling, sampling, and advertising of liquor (distilled spirits, wine, and malt beverages) sold within this state except where the provisions of these federal regulations may be contrary to or inconsistent with the provisions of Montana law or rules of the department.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-1-201, 16-3-103, and 16-3-244, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.13.221 to reflect the most recent date for the United States department of treasury, bureau of alcohol, tobacco, and firearms regulations, which are adopted by reference.

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

Cleo Anderson  
Department of Revenue  
Director's Office  
P.O. Box 7701  
Helena, Montana 59604-7701

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

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

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

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

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

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Don Hoffman  
DON HOFFMAN  
Acting Director of Revenue

Certified to Secretary of State May 24, 2004

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment of ARM 42.20.620, ) ON PROPOSED AMENDMENT  
42.20.625, and 42.22.1304; ) AND REPEAL  
and repeal of ARM 42.22.1401 )  
relating to industrial, )  
centrally assessed and )  
agricultural property )

TO: All Concerned Persons

1. On June 25, 2004, at 1:30 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 amendment and repeal of the above-stated rules.

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., June 14, 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 7701, Helena, Montana 59604-7701; telephone (406) 459-2646; fax (406) 444-3696; or e-mail canderson@state.mt.us.

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

42.20.620 CRITERIA FOR AGRICULTURAL LAND VALUATION FOR LAND TOTALING LESS THAN 20 ACRES (1) remains the same.

~~(2) Contiguous parcels under one ownership must be actively devoted to agricultural use and meet all of the production and income qualification tests in these rules to be classified as agricultural land. Each noncontiguous parcel of land, as defined in ARM 42.20.601, that is under one ownership and totals less than 20 acres in size must each meet agricultural eligibility criteria set forth in this rule.~~  
Contiguous and noncontiguous parcels must be under one ownership and each parcel must be actively devoted to agricultural use and meet all of the production and income qualification tests in these rules to be classified as agricultural land. Noncontiguous parcels in the same ownership that are actively devoted to agricultural use can combine agricultural production and/or current livestock carrying capacity to meet the income or carrying capacity requirements.

(3) through (7) remain the same.

(8) The sale of hobby animals, as defined in ARM 42.20.601, shall not be considered agricultural income for the purposes of meeting the \$1,500 income requirement found in 15-7-202, MCA. ~~The production of hay or the grazing on land by a horse or other animals kept as a hobby and not part of a bona fide agricultural enterprise is not considered a bona fide agricultural operation. The following examples demonstrate use by hobby animals that are not eligible for agricultural classification and assessment.~~

~~(a) A landowner sells two horses for \$2,500 that are kept on the landowner's property for personal entertainment and enjoyment. The landowner is not in the day to day business of raising and selling horses nor does the landowner own or operate any other income producing operation that used the horses in the day to day business. The sale of the horses is not eligible agricultural income.~~

~~(b) A landowner grows and harvests hay on the property that is fed to the landowner's llamas that are kept for personal entertainment and enjoyment. The landowner is not in the day to day business of raising and selling llamas nor does the landowner own or operate any other income producing operation that used the llamas in the day to day business. The hay is not eligible agricultural production when used to support hobby animals.~~

(9) If the land is used primarily to raise and market livestock, the land must currently support 30 or more animal unit (AU) months of grazing carrying capacity, with cattle as the base, ~~and the applicant must provide proof that the parcel or contiguous parcels indicated in the application marketed at least \$1,500 of gross income each year.~~ A nine-month grazing season shall be the basis for calculating the number of animal units based on current carrying capacity. One AU is assumed to consume 790 pounds of dry herbage production per month. The carrying capacity ~~shall~~ may be based on information obtained from the United States natural resource and conservation service (NRCS) soil survey. If a soil survey does not exist, the carrying capacity ~~shall~~ may be based on an estimate by the NRCS ~~or~~, the local county agricultural extension agent or the department. Based on the manner in which the NRCS measures dry herbage production and the lost forage consumption due to grazing livestock, the per-acre per-year dry herbage production estimate is reduced by 75% on non-irrigated grazing land. The department shall use the following formula, based on NRCS soil survey information, to calculate the carrying capacity for non-irrigated grazing land, which does not exhibit significant over-grazing or weed infestation:

(a) per-acre per-year dry herbage production multiplied by 0.25 equals the per-acre per-year dry herbage production consumed by livestock;

(b) per-acre per-year dry herbage production consumed by livestock divided by 790 pounds of dry herbage production consumed per-month per-animal unit equals the animal unit months per acre (AUMs/acre); and

(c) livestock acres grazed multiplied by AUMs/acre equals the total AUMs for the non-irrigated pasture.

(10) If agricultural products, other than livestock, 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. Annual rental payments, government payments, or lease payments are not eligible agricultural income. Acceptable proof of income shall include:

(a) through (d) remain the same.

(11) If the land is primarily used to grow crops ~~or animals~~ that are not marketed but consumed by humans, livestock, poultry, or other animals in the agricultural operation, the applicant must prove that the land on the application produced the equivalent of \$1,500 in gross agricultural income each year from crops ~~or animals~~ that were consumed. The applicant must make a written estimate of the weight or quantity of food or animal fiber produced ~~must be made by the applicant~~. The written estimate must include all proof set forth in this rule. The weight or quantity estimate will be multiplied by the current commodity price to determine whether the \$1,500 annual gross income test has been met.

(12) remains the same.

(13) Acceptable proof of production shall include:

(a) a statement from the United States farm services agency (FSA) indicating estimated yield if crops are the basis for income;

(b) if livestock is the basis for income, a statement from the NRCS or the county agricultural extension agent indicating that the parcel(s) is/are capable of producing in its current state a minimum of 30 animal unit months of grazing capacity; or

~~(c) a statement from the county brand inspector or meat packing plant (animal fiber) if they inspected or slaughtered animals owned by the applicant; or~~

~~(d) a confirmation by the department.~~

(14) through (16) remain the same.

(17) For valuation as agricultural land, the owner of land used solely for summer fallow farmland as defined in the Montana Agricultural Classification and Appraisal Manual must produce a minimum of \$1,500 in agricultural crop income every other growing season.

(17) remains the same but is renumbered (18).

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 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 proposes to amend ARM 42.20.625 because the department has met with representatives of several state agricultural organizations and the Montana Taxpayers Association. Representatives of these organizations made several recommendations to clarify that noncontiguous parcels of land in the same ownership can combine crop production income or livestock carrying capacity to meet the



agricultural income requirement, strike unneeded language on hobby animals and allow bi-annual crop income from summer fallow crop land. Additionally, the department has added language defining the formula used to determine the per-acre carrying capacity for livestock operations based on information in the United States Natural Resource and Conservation Service Soil Survey.

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

(2) Contiguous and noncontiguous parcels must be under one ownership and each parcel must be actively devoted to agricultural use and meet all of the production and income qualification tests in these rules to be classified as agricultural land. ~~Each noncontiguous parcel of land as defined in 42.20.601 that is under one ownership and totals between 20 and 160 acres in size must be part of a bona fide agricultural operation and meet agricultural eligibility criteria set forth in this rule. Each noncontiguous parcel of land that is under one ownership and totals between 20 and 160 acres in size that is not part of a bona fide agricultural operation must each meet agricultural eligibility criteria set forth in this rule.~~ Noncontiguous parcels in the same ownership that are actively devoted to agricultural use can combine agricultural production and/or livestock carrying capacity to meet the income or carrying capacity requirements.

(3) through (7) remain the same.

(8) The sale of hobby animals, as defined in ARM 42.20.601, shall not be considered agricultural income for the purposes of meeting the \$1,500 income requirement found in 15-7-202, MCA. ~~The production of hay or the grazing on land by a horse or other animals kept as a hobby and not part of a bona fide agricultural enterprise is not considered a bona fide agricultural operation. The following examples demonstrate use by hobby animals that are not eligible for agricultural classification and assessment:~~

~~(a) A landowner sells two horses for \$2,500 that are kept on the landowner's property for personal entertainment and enjoyment. The landowner is not in the day to day business of raising and selling horses nor does the landowner own or operate any other income producing operation that used the horses in the day to day business. The sale of the horses is not eligible agricultural income.~~

~~(b) A landowner grows and harvests hay on the landowner's property that is fed to the landowner's llamas, which are kept for personal entertainment and enjoyment. The landowner is not in the day to day business of raising and selling llamas nor does the landowner own or operate any other income producing operation that used the llamas in the day to day business. The hay is not eligible agricultural production when used to support hobby animals.~~

(9) If the land is used primarily to raise and market livestock, the land must currently support 30 or more animal unit (AU) months of grazing carrying capacity, with cattle as

~~the base and the applicant must provide proof that the land indicated in the application marketed at least \$1,500 of gross income each year. A nine-month grazing season shall be the basis for calculating the number of animal units based on current carrying capacity. One AU is assumed to consume 790 pounds of dry herbage production per month. The carrying capacity shall may be based on the information obtained from the NRCS soil survey. If a soil survey does not exist, the carrying capacity shall may be based on an estimate by the NRCS, the county agricultural extension agent or the department. Based on the manner in which the NRCS measures dry herbage production and the lost forage consumption due to grazing livestock, the per-acre per-year dry herbage production estimate is reduced by 75% on non-irrigated grazing land. The department shall use the following formula, based on NRCS soil survey information, to calculate the carrying capacity for non-irrigated grazing land, which does not exhibit significant over-grazing or weed infestation:~~

~~(a) per-acre per-year dry herbage production multiplied by 0.25 equals the per-acre per-year dry herbage production consumed by livestock;~~

~~(b) per-acre per-year dry herbage production consumed by livestock divided by 790 pounds of dry herbage production consumed per-month per-animal unit equals the animal unit months per acre (AUMs/acre); and~~

~~(c) livestock acres grazed multiplied by AUMs/acre equals the total AUMs for the non-irrigated pasture.~~

(10) If agricultural products other than livestock 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 (e) remain the same.

(11) If the land is primarily used to grow crops that are not marketed but consumed by humans, livestock, poultry, or other animals in the agricultural operation, the applicant must prove that the land on the application produced the equivalent of \$1,500 in gross agricultural income each year from the crops ~~or animals~~ that were consumed. The applicant must make ~~A~~ a written estimate of the weight or quantity of food or animal fiber produced ~~must be made by the applicant~~. The written estimate must include all proof set forth in this ~~section~~ rule. The weight or quantity estimate will be multiplied by the current commodity price to determine whether the \$1,500 annual gross income test has been met.

(12) If the consumption was from livestock, the land must support 30 or more animal unit months of grazing carrying capacity, with cattle as the base. Acceptable proof of production shall include:

(a) a statement from the United States farm services agency (FSA) indicating estimated yield if crops are the basis for production; or

(b) a statement from the NRCS or the county agricultural extension agent indicating that the parcel(s) is/are capable of producing in its current state, a minimum of 30 animal unit months of grazing capacity if livestock is the basis for production; and

~~(c) a statement from the county brand inspector or meat packing plant (animal fiber) if they inspected or slaughtered animals owned by the applicant; or~~

~~(d) a confirmation by the department.~~

(13) through (15) remain the same.

(16) For valuation as agricultural land, the owner of land used solely for summer fallow farmland as defined in the Montana Agricultural Classification and Appraisal Manual must produce a minimum of \$1,500 in agricultural crop income every other growing season.

(16) and (17) remain the same but are renumbered (17) and (18).

AUTH: Sec. 15-1-201, MCA

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

REASONABLE NECESSITY: The department proposes to amend ARM 42.20.625 because the department has met with representatives of several state agricultural organizations and the Taxpayers Association. Representatives of these organizations made several recommendations to clarify that noncontiguous parcels of land in the same ownership can combine crop production income or livestock carrying capacity to meet the agricultural income requirement, strike unneeded language on hobby animals and allow bi-annual crop income from summer fallow crop land. Additionally, the department has added language defining the formula used to determine the per-acre carrying capacity for livestock operations based on information in the United States Natural Resource and Conservation Service Soil Survey.

42.22.1304 VALUATION OF INDUSTRIAL IMPROVEMENTS

(1) and (2) remain the same.

(3) Upon the determination of the property's effective age, it shall be depreciated on an age/life basis according to the internal program schedules of the ~~1996~~ 2002 Montana appraisal manual.

(4) If the reproduction cost of the property is not listed, or is not accurately listed in the ~~1996~~ 2002 Montana appraisal manual for the specific property being appraised, then the department may use other appropriate cost manuals such as "Means" or "Marshall Valuation Service" to obtain the best estimate of reproduction cost. This reproduction cost would be depreciated on an age/life basis to arrive at market value for assessment purposes.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-6-134, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.22.1304 to update the current date of the Montana appraisal manual.

4. The Department proposes to repeal the following rule:

42.22.1401 TAX BENEFITS FOR CLASS FOUR NONPRODUCTIVE PROPERTY which can be found on page 42-2267 of the Administrative Rules of Montana.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-6-101, 15-6-150, 15-6-155, 15-8-111, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.22.1401 because Ch. 773, L. 1991, repealed the supporting statutes for 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 7701  
Helena, Montana 59604-7701

and must be received no later than July 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/ Don Hoffman  
DON HOFFMAN  
Acting Director of Revenue

Certified to Secretary of State May 24, 2004

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the repeal	)	NOTICE OF REPEAL
of ARM 2.21.121 through	)	
2.21.123, 2.21.132 through	)	
2.21.134, 2.21.136 through	)	
2.21.139, 2.21.141 through	)	
2.21.145, and 2.21.155	)	
pertaining to Sick Leave	)	

TO: All Concerned Persons

1. On April 22, 2004, the Department of Administration published MAR Notice No. 2-2-346 regarding the proposed repeal of ARM 2.21.121 through 2.21.123, 2.21.132 through 2.21.134, 2.21.136 through 2.21.139, 2.21.141 through 2.21.145, and 2.21.155 pertaining to Sick Leave at page 770 of the 2004 Montana Administrative Register, issue number 8.

2. The department has repealed the rules as proposed.

3. No comments or testimony were received.

BY: Dal Smilie  
Dal Smilie  
Rule Reviewer

Steve Bender  
Steve Bender  
Acting Director

Certified to the Secretary of State May 24, 2004.

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

In the matter of the )  
amendment of ARM 12.3.120 ) NOTICE OF AMENDMENT  
pertaining to hunter safety )  
requirements )

TO: All Concerned Persons

1. On March 11, 2004, the Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-305 regarding the proposed amendment to ARM 12.3.120 pertaining to hunter safety requirements at page 540 of the 2004 Montana Administrative Register, Issue Number 5.

2. The commission has amended ARM 12.3.120 as proposed.

3. No comments or testimony were received.

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 May 24, 2004

BEFORE THE DEPARTMENT OF JUSTICE  
STATE OF MONTANA

In the matter of the adoption ) NOTICE OF ADOPTION  
of New Rules I through X to )  
implement An Act Enhancing )  
Enforcement of the Tobacco )  
Product Reserve Fund Act, )  
16-11-501 through 16-11-512, MCA )

TO: All Concerned Persons

1. On April 8, 2004, the Department of Justice published MAR Notice No. 23-18-145 regarding a public hearing on the proposed adoption of the above-stated rules at page 703, 2004 Montana Administrative Register, issue number 7.

2. The Department of Justice has adopted new rules I, (23.18.201), II (23.18.202), III (23.18.203), IV (23.18.204), V (23.18.205), VI (23.18.206), VIII (23.18.208), IX (23.18.209), and X (23.18.210) exactly as proposed.

3. The Department of Justice has amended proposed new rule VII as follows:

NEW RULE VII (23.18.207) WHOLESALER REPORTING  
(1) remains as proposed.

AUTH: ~~16-11-507~~ 16-11-511, MCA  
IMP: ~~16-11-511~~ 16-11-507, MCA

4. The Department of Justice has thoroughly considered the comment and testimony received on the proposed adoption of these rules. The following is a summary of the comment received and the Department's response.

COMMENT 1: Staff Attorney John MacMaster of the Law and Justice Interim Committee pointed out a typographical error that transposed the authority and implemented section of proposed new rule VII.

RESPONSE: The Department concurs with Mr. MacMaster. The typographical error has been corrected.

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

/s/ Ali Bovingdon  
ALI BOVINGDON, Rule Reviewer

Certified to the Secretary of State May 24, 2004.



BEFORE THE BOARD OF VETERINARY MEDICINE  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 8.64.402, fee schedule ) AND ADOPTION  
and the adoption of NEW RULES I-X, )  
relating to animal euthanasia )  
technicians and agencies )

TO: All Concerned Persons

1. On March 25, 2004, the board of Veterinary Medicine published MAR Notice No. 8-64-30 regarding the public hearing on the proposed amendment and adoption of the above-stated rules relating to fee schedule and animal euthanasia technicians and agencies at pages 619 of the 2004 Montana Administrative Register, issue no. 6.

2. On April 15, 2004, a public hearing on the proposed amendment and adoption of the above-stated rules was conducted in Helena.

3. One written comment was received concerning the proposed amendment of ARM 8.64.402. A summary of the comment and the Board's response are as follows:

Comment 1: One comment was received that noted that the fee increase for annual veterinary license renewal was approximately an 85% increase. The commenter hoped that such large percentage fee increases would not become the norm.

Response 1: The Board appreciates the comment and agrees that the fee increase appears to be substantial, but notes that this is the first fee increase since 1999. The Board hopes that this increase will obviate the need for further increases in the near future. The Board also notes that this fee is substantially less than the fee charged by other states for annual veterinary license renewal. The Board has experienced increased costs associated with certain licensing categories and overall day-to-day operations that make it necessary to increase fees commensurate with costs.

4. Three written comments were received regarding proposed NEW RULES I-X, relating to animal euthanasia technicians and agencies. A summary of the comments and the Board's responses are as follows:

Comment 1: One comment was received that questioned whether state licensed veterinarians and veterinary hospitals and clinics were exempt from the new euthanasia rules.

Response 1: The Board thanks the commenter for his concern and notes that Section 37-18-605(1), MCA, allows licensed

veterinarians and support personnel to administer controlled substances for euthanasia purposes while working in their own facilities.

Comment 2: One comment was received expressing support for the new euthanasia rules.

Response 2: The Board appreciates the commenter's support.

Comment 3: One comment was received that expressed concern about environmental safety and proper/safe carcass disposal.

Response 3: The Board thanks the commenter for this thoughtful and important comment and notes that it contemplated carcass disposal in New Rule III(1)(b)(iii), pharmacology of approved euthanasia drugs. Instruction in the pharmacology of euthanasia drugs, particularly sodium pentobarbital, would include information about post-mortem tissue toxicity. New Rule IV(1)(d), pharmacology of sodium pentobarbital, would also include testing relevant to tissue toxicity and proper disposal of carcasses.

5. After considering all of the comments, the Board of Veterinary Medicine amended ARM 8.64.402 and adopted NEW RULES I-X (8.64.901 through 8.64.910) exactly as proposed.

BOARD OF VETERINARY MEDICINE  
LINDA KAUFFMAN, DVM  
PRESIDENT

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

/s/ DARCEE L. MOE  
Darcee L. Moe  
Alternate Rule Reviewer

Certified to the Secretary of State May 24, 2004.

BEFORE THE BOARD OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the amendment        )  
of ARM 32.3.224 and 32.3.403        )     NOTICE OF AMENDMENT  
pertaining to bison imported        )  
into Montana                            )

To: All Concerned Persons

1. On April 8, 2004, the department of livestock published MAR Notice No. 32-4-163 regarding the proposed amendment of ARM 32.3.224 and 32.3.403, pertaining to bison imported into Montana at page 715 of the 2004 Montana Administrative Register, Issue Number 7.

2. The department of livestock has amended ARM 32.3.224 and 32.3.403 exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF LIVESTOCK

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

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

Certified to the Secretary of State May 24, 2004.

BEFORE THE BOARD OF HORSE RACING  
DEPARTMENT OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the amendment )  
of ARM 32.28.601 and 32.28.608; ) NOTICE OF AMENDMENT  
and the adoption of NEW RULE I ) AND ADOPTION  
and NEW RULE II pertaining )  
to starters and valets )

To: All Concerned Persons

1. On April 22, 2004, the board of horse racing, department of livestock published MAR Notice No. 32-4-164 regarding the proposed amendment of ARM 32.28.601 and 32.28.608, and the proposed adoption of new rules concerning starters and valets at page 897 of the 2004 Montana Administrative Register, Issue Number 8.

2. The department of livestock has amended ARM 32.28.601 and 32.28.608 exactly as proposed and adopted New Rule I (32.28.613) and New Rule II (32.28.614) exactly as proposed.

3. No comments or testimony were received.

BOARD OF HORSE RACING  
DEPARTMENT OF LIVESTOCK

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

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

Certified to the Secretary of State May 24, 2004

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

In the matter of the adoption )  
of Rules I through VIII and )  
the amendment of ARM )  
37.88.101, 37.88.1101 and )  
37.88.1106 pertaining to )  
reimbursement of inpatient )  
psychiatric hospitals )

NOTICE OF ADOPTION AND  
AMENDMENT

TO: All Interested Persons

1. On December 11, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-309 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules relating to reimbursement of inpatient psychiatric hospitals at page 2725 of the 2003 Montana Administrative Register, issue number 23.

2. The Department has adopted rules III [37.88.1119], IV [37.88.1121], V [37.88.1129] and VI [37.88.1133] as proposed.

3. The Department has amended ARM 37.88.101, 37.88.1101 and 37.88.1106 as proposed.

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

RULE I [37.88.1102] INPATIENT PSYCHIATRIC SERVICES, DEFINITIONS As used in this subchapter, the following definitions apply:

(1) through (6)(b) remain as proposed.

(7) "Inpatient psychiatric services" means inpatient hospital psychiatric care, residential psychiatric care, or hospital based residential psychiatric care.

(8) through (10)(b) remain as proposed.

AUTH: Sec. 2-4-201, 53-2-201 and 53-6-113, MCA

IMP: Sec. 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-149, MCA

RULE II [37.88.1131] HOSPITAL BASED RESIDENTIAL TREATMENT FACILITY CENTERS, REQUIREMENTS (1) through (1)(f) remain as proposed.

AUTH: Sec. 2-4-201, 53-2-201 and 53-6-113, MCA

IMP: Sec. 2-4-201, 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

RULE VII [37.88.1125] INPATIENT PSYCHIATRIC HOSPITALS,

REIMBURSEMENT (1) For inpatient psychiatric services provided by inpatient psychiatric hospital facilities located in the state of Montana, the Montana medicaid program will pay a provider according to the diagnosis related groups (DRG) prospective payment system described in ARM 37.86.2905. In addition to the prospective DRG rate, providers will be reimbursed for the following:

(a) through (c) remain as proposed.

(d) disproportionate share hospital (DSH) payments and supplemental DSH payments ~~as provided~~; and

(e) ~~continuity of care payments~~ hospital reimbursement adjustor payments.

(2) remains as proposed.

AUTH: Sec. 53-2-201 and 53-6-113, MCA

IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

RULE VIII [37.88.1137] RESIDENTIAL TREATMENT CENTERS, CONTINUITY OF CARE PAYMENT (1) through (1)(b)(iv) remain as proposed.

(2) The number of medicaid days shall be determined from the department's medicaid paid claim data for the most recent calendar year that ended at least 12 months prior to the calculation of the continuity of care payment.

AUTH: Sec. 53-2-201 and 53-6-113, MCA

IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-149, MCA

5. The Department has made changes to the catchphrases in Rules II and VIII to more clearly identify the rule content as a result of reviewing the rules in order to respond to the comments received.

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

COMMENT #1: In proposed Rule I [37.88.1102], the definitions of "hospital based residential psychiatric care" and "inpatient hospital psychiatric care" should include references to inpatient hospital services in order to assure that Centers for Medicare and Medicaid Services (CMS) cannot go astray and deem these to be otherwise.

RESPONSE: The Department disagrees that adding such references is necessary. Hospital based residential psychiatric care is provided in a facility licensed as a hospital pursuant to Title 50, chapter 5, MCA. Thus, the services are subject to Montana's hospital utilization fee as provided in 15-66-101, MCA.

COMMENT #2: In proposed Rule I [37.88.1102], a typographical error was noted in the definition of "inpatient psychiatric services".

RESPONSE: The Department agrees and has corrected the error by adding ", or" after the second "care".

COMMENT #3: In proposed Rule IV(1) [37.88.1121], a reference to hospital based residential treatment facilities is needed to complete the list of facility types where inpatient psychiatric service can be provided.

RESPONSE: The Department does not agree that the suggested change is necessary. A hospital based residential treatment facility is a type of residential treatment facility, thus, it is listed in the rule.

COMMENT #4: In proposed Rule VII(1)(d) [37.88.1125], a typographical error was noted. In subsection (1)(e) of the same rule, a reference should be made to the hospital reimbursement adjustor (HRA), rather than to the continuity of care payment (CCP).

RESPONSE: The Department agrees and has corrected the typographical error in Rule VII(1)(d) [37.88.1125] by striking the words, "as provided". In Rule VII(1)(e) [37.88.1125], the phrase "continuity of care" was replaced with "hospital reimbursement adjustor payments".

COMMENT #5: In proposed Rule VIII(1)(b)(iv) [37.88.1137], the percentage of revenue in the definition of "P" appears to be incorrect. In the same rule, section (2), "paid" claim data should be used to calculate the continuity of care payment and adding the word "paid" will clarify this.

RESPONSE: In Rule VIII(1)(b)(iv) [37.88.1137], the Department disagrees. The definition of "P" correctly includes 4% of the revenue generated by the Montana hospitalization fee. In Rule VIII(2) [37.88.1137], the Department agrees and has added the word "paid" before "claim data".

COMMENT #6: In paragraph 2 of the rule rationale, the rationale should be revised to narrow the focus to hospital based residential treatment facilities, and to provide a reason for choosing the form of payment.

RESPONSE: The Department does not agree that the rationale is too broad. Taken in context, the discussion clearly included only hospital based residential treatment facilities. The Department also believes the rationale provided adequate reasons for the rule changes.

COMMENT #7: The rationale in support of proposed Rule II [37.88.1131] does not appear to be accurate. The proposed rule sets forth the requirements for a hospital based psychiatric residential treatment facility. The rationale states that the text is currently in ARM 37.88.1101. However, it appears to include new substantive matters.

RESPONSE: The Department disagrees. The requirements in Rule II [37.88.1131], for hospital based residential treatment facilities were adopted in MAR Notice No. 37-308 (February 27, 2004). Rule II [37.88.1131] contains only incidental and organizational changes and is not intended to make substantive changes.

COMMENT #8: In the rationale for Rule VII [37.88.1125], a statement about the addition of the reference to the hospital reimbursement adjustor needs to be added.

RESPONSE: The Department agrees and is making the change to this rule in response to both this comment and Comment #4.

COMMENT #9: In the rationale for Rule VIII [37.88.1137], the correct percentage needs to be shown.

RESPONSE: The percentage shown in both the rule and the rationale is correct.

COMMENT #10: In the fiscal impact portion of the rationale, the reimbursement figures appear to be inaccurate. Should one reference be to state fiscal year (SFY) 2003 and the other to SFY 2004?

RESPONSE: The figures in the rationale were the Department's best estimates. They were made according to sound methods and with the best statistical information available. It is possible that the actual dollar amounts may vary from these estimates. The Department agrees that the rationale contains a typographical error. The state fiscal years referenced in the final sentence of the paragraph entitled "Fiscal Impact and Persons Affected" should have been "2003 and 2004", not "2003 and 2003".

COMMENT #11: The retroactivity date should be October 1, 2003 in order to match the proposed effective date of the RTC state plan amendments.

RESPONSE: The Department disagrees. The retroactive applicability date of January 1, 2004 is sufficient. The applicability date is not required to coincide with the effective date of the state plan amendment. The Department does not intend to make continuity of care payments prior to January 1, 2004, so an earlier applicability date would be of no benefit.

7. The Department will apply these new rules and amendments retroactively to January 1, 2004.

Dawn Sliva  
Rule Reviewer

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

Certified to the Secretary of State May 24, 2004.



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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2004. This table includes those rules adopted during the period April 1, 2004 through June 30, 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 March 31, 2004, 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.

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