

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 18

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

Page Number

TABLE OF CONTENTS

NOTICE SECTION

STATE AUDITOR, Title 6

6-150 Notice of Proposed Amendment - Operating Rules for the Montana Comprehensive Health Association. No Public Hearing Contemplated. 2123-2125

TRANSPORTATION, Department of, Title 18

18-106 (Transportation Commission) Notice of Public Hearing on Proposed Adoption and Amendment - Outdoor Advertising. 2126-2137

LABOR AND INDUSTRY, Department of, Title 24

8-34-35 (Board of Nursing Home Administrators) Notice of Public Hearing on Proposed Amendment - Renewals - Continuing Education. 2138-2141

8-54-40 (Board of Public Accountants) Notice of Public Hearing on Proposed Amendment, Adoption and Repeal - Examinations and Professional Quality Monitoring - Composition of the Screening Panel. 2142-2148

24-11-188 Notice of Public Hearing on Proposed Amendment and Transfer, Adoption, Repeal, and Transfer - Unemployment Insurance Tax Matters. 2149-2162

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36-12-101 Notice of Public Hearing on Proposed Adoption and Amendment - Complete and Correct Application, Department Actions, and Standards Regarding Water Rights - Definitions. 2163-2199

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-335 Notice of Public Hearing on Proposed Amendment - Low Income Energy Assistance Program (LIEAP). 2200-2212

REVENUE, Department of, Title 42

42-2-741 Notice of Public Hearing on Proposed Adoption, Amendment, Amendment and Transfer, and Repeal - Personal Income Taxes. 2213-2250

42-2-742 Notice of Public Hearing on Proposed Adoption, Amendment, Amendment and Transfer, Transfer, and Repeal - Personal Income Taxes. 2251-2263

42-2-743 Notice of Public Hearing on Proposed Amendment - Annual Appraisal Plan - Exemption for Qualified Disabled Veterans for Property Taxes. 2264-2275

RULE SECTION

ADMINISTRATION, Department of, Title 2

Corrected Notice of Adoption - Required Bond Amounts for the Licensing of Escrow Businesses. 2276

EDUCATION, Title 10

AMD (Board of Public Education) Student Records. 2277

TRANSPORTATION, Department of, Title 18

NEW Posting a Bond by Certain Fuel Tax Licensees
AMD and Other Fuel Tax Reporting Requirements. 2278-2279

LABOR AND INDUSTRY, Department of, Title 24

TRANS (Board of Occupational Therapy Practice) Transfer from the Department of Commerce. 2280-2281

TRANS (Board of Psychologists) Transfer from the Department of Commerce. 2282-2283

TRANS (Board of Speech-Language Pathologists and Audiologists) Transfer from the Department of Commerce. 2284-2285

LABOR AND INDUSTRY, Continued

NEW	Abatement of Renewal Fees.	2286
AMD	(Board of Landscape Architects) Fee Schedule.	2287

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

AMD	Purpose - Definitions - Use of the State Revolving Fund - Application - Evaluation of Projects and Applications - General Obligation Bonds - Revenue Bonds - Special Improvement Districts - Loans to Disadvantaged Municipalities - Other Types of Bonds or Additional Security or Covenants for Municipalities - Covenants Regarding Facilities Financed by Loans - Fees - Evaluation of Financial Matters and Commitment Agreement - Requirements for Disbursing of Loan - Terms of Loan and Bonds. No Public Hearing Contemplated.	2288-2290
AMD	Definitions and Construction of Rules - Fees - Evaluation of Financial Matters and Commitment Agreement - Requirements for Disbursing of Loan.	2291

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

AMD	IV-E Foster Care Eligibility: Living with a Specified Relative.	2292
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INTERPRETATION SECTION

Opinions of the Attorney General.

9	Conservation Districts - Authority to Enact Regulations to Conserve and Protect Soils - Environmental Quality - Release of Pollutants from Coal Bed Methane that May Cause Loss of Soil Structure and Other Soil and Water Erosion - Land Use - State Soil Conservation Districts: Power to Regulate under Title 76, Chapter 15, Part 7 - Soil and Water Conservation - Districts' Scope of Authority under the State Soil Conservation Laws - Water and Waterways - Coal Bed Methane Water Extraction and Impoundment.	2293-2301
---	---	-----------

SPECIAL NOTICE AND TABLE SECTION

Function of Administrative Rule Review Committee.	2302-2303
How to Use ARM and MAR.	2304
Accumulative Table.	2305-2313
Boards and Councils Appointees.	2314-2317
Vacancies on Boards and Councils.	2318-2332

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

In the matter of the proposed	)	NOTICE OF PROPOSED
amendment of ARM 6.6.1906,	)	AMENDMENT
pertaining to operating rules)	
for the Montana Comprehensive	)	NO PUBLIC HEARING
Health Association	)	CONTEMPLATED

TO: All Concerned Persons

1. On October 25, 2004, the State Auditor proposes to amend ARM 6.6.1906 pertaining to operating rules for the Montana Comprehensive Health Association.

2. The State Auditor's Office will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the State Auditor's Office no later than 5:00 p.m., on October 18, 2004, to advise us of the nature of the accommodation needed. Please contact Darla Sautter, State Auditor's Office, 840 Helena, Helena, Montana 59601; telephone (406) 444-2726; facsimile (406) 444-3497; or e-mail to dsautter@state.mt.us.

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

6.6.1906 OPERATING RULES FOR THE ASSOCIATION (1) For the purpose of carrying out the provisions and purposes of Title 33, chapter 22, part 15, MCA, comprehensive health association and plan, the commissioner ~~hereby~~ adopts and incorporates by reference the bylaws of the Montana comprehensive health association, adopted on July 22, 1987, amended on August 1, 2000, and approved by the commissioner on December 27, 2000, and the operating rules of Montana adopted on June ~~16, 2000~~ 21, 2004, and approved by the commissioner on ~~December 27, 2000~~ July 29, 2004. A copy of the bylaws and operating rules is available for inspection at the office of the Commissioner of Insurance, 840 Helena Avenue, Helena, Montana.

AUTH: Sec: 33-22-1502, MCA
IMP: Sec: 33-22-1502, MCA

4. REASONABLE NECESSITY STATEMENT: It is necessary to amend ARM 6.6.1906 in order to be up to date with changes to the corresponding operating rules.

5. Concerned persons may present their data, views, or arguments concerning the proposed amendment in writing to Christina Goe, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601, or by facsimile (406) 444-3497, or by

e-mail to cgoe@state.mt.us, and must be received no later than 5:00 p.m., October 22, 2004.

6. If persons who are directly affected by the proposed amendment wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Christina Goe, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601, or by e-mail to cgoe@state.mt.us no later than October 22, 2004.

7. If the committee receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 250 persons who have indicated interest in the rules of this department and who the department has determined could be directly affected by these rules.

8. The State Auditor's Office maintains a list of concerned persons who wish to receive notices of rulemaking actions proposed by this department. 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 specify that the person wishes to receive notices regarding insurance rules, securities rules, or both. Such written requests may be mailed or delivered to Darla Sautter, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601, or by e-mail to dsautter@state.mt.us, or by completing a request form at any rules hearing held by the State Auditor's Office.

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

JOHN MORRISON, State Auditor
and Commissioner of Insurance

By: /s/ Alicia Pichette
Alicia Pichette
Deputy Insurance Commissioner

By: /s/ Patrick M. Driscoll
Patrick M. Driscoll
Rule Reviewer

Certified to the Secretary of State on September 13,
2004.

BEFORE THE TRANSPORTATION COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption)
of new rules I and II; and the)
amendment of ARM 18.6.202,)
18.6.203, 18.6.211, 18.6.212,)
18.6.213, 18.6.242, 18.6.245,)
and 18.6.262 pertaining to)
outdoor advertising)

TO: All Concerned Persons

1. On October 18, 2004, at 10:00 a.m., a public hearing will be held in room 123, auditorium of the Department of Transportation building at 2701 Prospect Avenue, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Transportation Commission 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. on October 12, 2004, to advise us of the nature of the accommodation that you need. Please contact Larry Johns, P.O. Box 201001, Helena, MT 59620-1001; telephone: (406) 444-6064; fax: (406) 444-7254; e-mail: ljohns@state.mt.us.

3. The proposed new rules provide as follows:

RULE I COMMERCIAL ELECTRONIC VARIABLE MESSAGE SIGNS

(1) Off-premise commercial electronic variable message signs, regardless of the message, are prohibited in controlled areas.

AUTH: 75-15-121, MCA
IMP: 75-15-111, 75-15-113, MCA

REASON: Adoption of the new rule is necessary because the requirement has never been clearly addressed in the rules although it is a requirement in the Code of Federal Regulations (CFR).

RULE II ILLEGAL OUTDOOR ADVERTISING REMOVAL

(1) When the department removes a sign, the sign owner, landowner or other person responsible for erecting the sign shall pay the cost of removal to the department. The department will store the sign for 30 days immediately following removal, during which time the sign may be claimed upon payment of the cost of removal and any costs associated with the removal and storage of the sign and collection of the cost of removal.

(2) A sign that is not claimed within 30 days after removal shall be deemed the property of the department, and may be disposed of by the department. Any money received from the

disposal will be credited first towards the costs of removal and storage of the sign. Money in excess of such costs will be deposited with the state treasurer for credit to the state highway fund to offset the cost of issuing permits for signs. If the income generated from disposal of the sign does not meet or exceed the costs of removal and storage of the sign and the cost of collecting the cost of removal, the owner of the sign, landowner or other person responsible for erecting the sign shall pay the remaining costs.

AUTH: 75-15-121, MCA
IMP: 75-15-131, MCA

REASON: Sign removal is addressed in Chapter Nine of the Right-of-Way manual, which has no force of law. Additionally, the procedure has been changed. The CFR requires that the states have a legal provision for the removal of illegal signs. This new rule brings the Montana Department of Transportation into compliance with the CFR.

4. The following rules proposed to be amended provide as follows, matter to be added is underlined, matter to be deleted is interlined.

18.6.202 DEFINITIONS (1) "Advertising device" means any outdoor sign, display, device, figure painting, drawing, message, placard, poster, billboard, structure, or any other contrivance designed, intended, or used to advertise or to give information in the nature of advertising and having the capacity of being visible from the main traveled way of any interstate or federal-aid primary highway. This includes any device located outside or on the outside of any building which identifies or advertises any business, enterprise, organization or project, product or service, including all parts such as frames and supporting structures located on any premises by means of painting on or attached bills, letters, numerals, pictorial matter or electric or other devices including any airborne device tethered to any building, structure, vehicle or other anchor and an announcement, notice, directional matter, name, declaration, demonstration, display, mural or insignia, (monuments, gravestones and dedication markers are not considered advertising devices). Advertising device is synonymous with sign.

(2) "Commercial electronic variable message signs" means signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights, producing the illusion of movement by means of electronic, electrical or electro-mechanical input and/or the characteristics of one or more of the following classifications:

(a) flashing signs are animated signs or animated portions of signs whose illumination is characterized by a repetitive cycle in which the period of illumination is either the same as or less than the period of no illumination;

(b) patterned illusionary movement signs are animated signs or animated portions of signs whose illumination is

characterized by simulated movement through alternate or sequential activation of various illuminated elements for the purpose of producing repetitive light patterns designed to appear in some form of constant motion;

(c) environmentally activated signs are animated signs or devices motivated by wind, thermal changes or other natural environmental input, including spinners, pinwheels, pennant strings, reflective disks, rotating slates, glow cubes and/or other devices or displays that respond to naturally occurring external motivation to include light-sensitive devices;

(d) mechanically activated signs are animated signs characterized by repetitive motion and/or rotation activated by a mechanical system powered by electric motors or other mechanically induced means.

(3) "Commercial or industrial activity" means an activity which is permitted only in a commercial or industrial zone or a less restrictive zone by the nearest zoning authority within the state or, if prohibited by the authority, is generally recognized as commercial or industrial activity by other zoning authorities within the state, except that none of the following is a commercial or industrial activity:

(a) any erection or maintenance of an outdoor advertising structure;

(b) any agricultural, forestry, ranching, grazing, farming or related activity, or operation of a wayside stand for sale of fresh fruit;

(c) any activity normally and regularly in operation less than three months of the year;

(d) any transit or temporary activity;

(e) any activity not visible from the traffic lanes of the main traveled way;

(f) any activity more than 660 feet from the nearest edge of the right-of-way;

(g) any activity conducted in a building principally used as a residence;

(h) any operation of railroad tracks, a minor siding or a passenger depot;

(i) any activity that has been in business less than one year.

~~(2)~~ (4) "Conforming sign" means one which was lawfully erected and which complies with spacing, zoning, size, lighting and all other requirements under the Outdoor Advertising Act and the outdoor advertising regulations.

~~(3)~~ (5) "Federal/state agreement" means the agreement entered into January 27, 1972, by and between the United States of America, represented by the secretary of transportation and the state of Montana, through ~~its~~ the department of transportation to promote the reasonable, orderly, and effective display of outdoor advertising while remaining consistent with the national policy to protect the public investment in interstate and primary highways, to promote the safety and recreational value of public travel and to preserve the natural beauty. At a minimum the state of Montana shall implement and carry out the provisions of 23 USC 131, and the national policy

in order to remain eligible to receive the full amount of all federal-aid highway funds apportioned under 23 USC 104.

~~(4)~~ (6) "Main traveled way" means the interstate and federal-aid primary highway system on which through traffic is carried.

~~(5)~~ (7) "Noncommercial sign" means a sign that does not display a commercial message. For the purpose of this rule, only "welcome to" community and "public service" signs such as D-A-R-E- or ABATE are considered noncommercial signs. The Montana department of transportation shall make the determination of a noncommercial sign designation on a case-by-case basis.

~~(6)~~ (8) "Nonconforming sign" means one which was lawfully erected but which does not comply with the provisions of state law or state regulations passed at a later date, or which fails to comply with state law or state regulations due to changed conditions. Illegally erected or maintained signs are not nonconforming signs.

~~(7)~~ (9) "Off-premise signs" means all signs which are not on-premise signs as defined in ~~(8)~~(10).

~~(8)~~ (10) "On-premise sign" means signs erected on property for the sole purpose of advertising its sale or lease or of advertising an activity conducted on the property. Physical facts rather than property lines determine the premises on which an activity is conducted ~~To qualify as an on-premise sign, a sign advertising an activity conducted on the property must be located on the land actually used or occupied by the activity. The extent of the property used for the activity includes its buildings, parking area and incorporated landscaped areas, but does not include vacant land, land used for unrelated activities, or land that is separated by other ownerships or roadways. The sign must be located on the same premises as the activity or property advertised. Premises include the area occupied by the buildings and appurtenances such as parking lots, storage areas, processing areas or areas for the physical uses that are customarily incidental to the activity, including open spaces arranged and designed to be used in connection with the buildings or activities, but does not include vacant land, land used for unrelated activities, or land that is separated by other ownerships or roadways. The purpose of the advertising sign must be the identification of the establishment or activity located on the premises or its products or services, or the sale or lease of the property on which the sign is located.~~ If the activity is over 660 feet from the nearest point of the highway and is accessed by an approach and road from the highway, any sign, landscaped area or other appurtenance associated with the activity that is adjacent to the approach and access road shall not be used to qualify off-premise signs.

~~(9)~~ (11) "Sign face" means that portion of the sign structure visible from a single direction of travel and available for advertising. It includes border and trim, but excludes the base or apron, supports, and other structural members. The total area of all sign faces may also be referred to as the "sign area."

(10) (12) "Sign structure" means an advertising device including the sign face, base or apron, supports, and other structural members.

AUTH: 75-15-121, MCA

IMP: 75-15-121, 75-15-111, 75-15-112, and 75-15-113, MCA

REASON: Changes in the definitions rule were done to clarify some definitions that have caused disputes with reference to prior interpretations.

18.6.203 UNZONED COMMERCIAL OR INDUSTRIAL ACTIVITY

(1) As clarification of the statutory requirements, the following criteria shall be used to determine whether an activity qualifies an area to be considered unzoned commercial or industrial:

(a) The permanent buildings or improvements comprising a business used to qualify an area must be located within 660 feet of the right-of-way of an interstate or primary highway. A business located on what is primarily used as residential property will not qualify an area as an unzoned commercial or industrial area. Commercial and industrial activities shall have been in business at least one year prior to being considered as qualifying the area as an unzoned commercial or industrial area.

(b) The permanent buildings or improvements comprising a business intended to serve the traveling public must be clearly visible to the traveling public and be easily recognizable as a commercial ~~or industrial~~ activity. A commercial activity shall be occupied and open to the public during regularly scheduled hours in excess of 20 hours per week. ~~Commercial and industrial activities shall have been in business at least one year prior to being considered as qualifying the area as an unzoned commercial or industrial area.~~ Signs, displays or other devices identifying the business may be considered in the determination of visibility. ~~A business located on what is primarily used as residential property will not qualify an area as an unzoned commercial or industrial area.~~ Seasonal (but not temporary or transient) activities may be considered as a qualifying activity at the discretion of the Montana department of transportation. Industrial activities comprise the area occupied by the regularly used buildings, parking lot or storage or processing area of an industrial activity located within 660 feet of an interstate or primary highway not predominantly used for commercial purposes.

(c) If the activity is over 660 feet from the nearest point of the highway, and is accessed by an approach and road from the highway, any sign, landscaped area or appurtenance associated with the activity adjacent to the approach and access road shall not be used to qualify off-premise signs.

(d) A maximum of two signs shall be permitted from a qualifying activity, and they shall be located on the same side of and adjacent to the controlled highway as of the qualifying activity. There can be no roadways between the controlled highway and the qualifying business.

(e) No industrial or commercial activity which is located either partially or totally within an area which has been zoned by a bona fide state, county, or local zoning authority may be used to qualify an area as an unzoned commercial or industrial area.

(f) A commercial or industrial activity engaged in or established primarily for the purpose of qualifying an area for the displaying of outdoor advertising will not create an unzoned commercial or industrial area. It shall be rebuttably presumed that any such activity is for the primary purpose of qualifying an area for outdoor advertising if the activity is not reasonably accessible to the public, if it is not connected to one or more utilities, or if no business is actually conducted on the premises.

AUTH: 75-15-121, MCA

IMP: 75-15-103, 75-15-111, and 75-15-113, MCA

REASON: State law requires that the Administrative Rules be reviewed periodically. The changes are reasonably necessary to reflect editorial changes and to clarify the distinct activities which make an area commercial or industrial.

18.6.211 PERMITS (1) A permit must be obtained for each sign and the application for the permit must be accompanied by a nonrefundable initial application fee. The application fee is based on the maximum width times the maximum length of the sign face. If the sign has multiple faces, the initial application fee will be determined by the square footage of the largest single sign face.

32 sf or less	\$20
33 sf to 64 sf	\$25
65 sf to 128 sf	\$30
129 sf to 256 sf	\$35
257 sf to 512 sf	\$40
513 sf to 672 sf	\$45

(2) The initial permit fee shall be ~~24/36~~ of the three-year renewal fee plus ~~1/36~~ of said renewal fee for each full month remaining in the calendar year following application approval. A check payable to the Montana department of transportation in the amount of the nonrefundable inspection fee must accompany the sign permit application.

(3) Signs shall be assigned a permit number and given a permanent identification plate that must be attached to the structure and may be renewed every three years thereafter upon payment of a renewal fee as follows:

(a) ~~\$10 for signs with a face(s) of 50 square feet or less;~~

(b) ~~20 cents per square foot for signs that have face(s) exceeding 51 square feet. If the sign structure has multiple sign faces, the renewal fee is based on the total square footage of the sign area. A nonrefundable inspection fee in the amount of \$100.00 will be assessed for each off-premise outdoor advertising sign erected within any area subject to state control by the department.~~

~~(4) Permits for new signs in conforming areas may be issued only after the proposed location and sign size has been checked in regard to spacing, size and lighting criteria and approved by the department. The initial permit fee shall be 24/36 of the three-year renewal fee plus 1/36 of said renewal fee for each full month remaining in each calendar year following application approval.~~

~~(5) A new sign may not be erected without first receiving a new permit. Signs shall be assigned a permit number and given a permanent identification plate that must be attached to the structure and may be renewed every three years thereafter upon payment of a renewal fee as follows:~~

~~(a) 20 cents per square foot;~~

~~(b) if the sign structure has multiple sign faces, the renewal fee is based on the total square footage of the sign area; and~~

~~(c) \$75.00 for signs with a face(s) of 375 square feet or less.~~

~~(6) Permits for new signs in conforming areas may be issued only after the proposed location and sign site has been checked in regard to spacing, size and lighting criteria and approved by the department.~~

~~(7) A new sign may not be erected without first applying for and receiving a permit.~~

AUTH: 75-15-121, MCA

IMP: 75-15-122, MCA

REASON: Costs of operation, and a rise in costs to the department for permit plates dictated that the Agency raise fees. Additionally the fee structure was so complex for the general public to understand, that the Agency set a standard flat rate for the nonrefundable application fees to cover the costs of site inspections. Ten percent or 371 permits of the total population of the OAC permits in Montana are estimated to be affected. The revenue generated from the change in fees cannot be estimated.

18.6.212 PERMIT APPLICATIONS - NEW SIGN SITES

(1) Applications for permits must contain a minimum of the following:

(a) name, address, and signature of sign owner and land owner;

(b) location of proposed sign including highway number, nearest milepost, side of highway, county, and distance and direction to nearest sign;

(c) acknowledgement of zoning, if any, by local authority;

(d) signature of appropriate ~~zoning~~ local government authority;

(e) description of structure including width of sign, height of sign, height of structure, type of sign (single-faced, double-faced, v-type, multi-faced), lighted (yes/no), and estimated cost of construction to include labor and material; and

(f) landowner consent.

(2) Applications for permits must be accompanied by the following:

(a) sketch of the area to include the legal description of the proposed sign location; and

(b) non-refundable application fee.

(3) ~~Applicant shall place a stake or some other identifying object at the proposed sign location to assist department personnel in finding the proposed sign site. The applicant must clearly mark the exact location of the proposed sign site to enable department personnel to perform the required site inspection.~~

AUTH: 75-15-121, MCA

IMP: 75-15-122, MCA

REASON: This rule was incomplete with the need to give adequate information so that departmental personnel could find the proposed sign sites to do the required site inspections. Additionally, the Agency was not given adequate information on land descriptions in order to find the landowner. We included the requirement to give adequate land descriptions.

18.6.213 PERMIT ATTACHMENT (1) It is the responsibility of the sign owner to see that the proper permit is continuously attached to the sign or device for which it was issued.

(2) The permit shall be attached to the sign or the supporting structure near the lower left corner of the sign (or supporting pole/beam) facing the traffic. The permit plate must be visible from the roadway.

(3) Permits which are affixed to the wrong sign or are otherwise in violation of requirements may be canceled by the department if the deficiency continues for more than 30 days.

(4) If the department cancels a permit, the sign for which the permit was issued becomes an illegal sign and must be removed.

(5) If the original permit plate has been lost or destroyed, a substitute permit plate may be obtained from the department upon payment of a ~~\$10.00~~ \$20.00 fee.

AUTH: 75-15-121, MCA

IMP: 75-15-122, MCA

REASON: This is a clarification which is reasonably necessary to indicate where the permit plate needs to be placed on the sign. The fee increase is due to the reasons stated in the changes to ARM 18.6.211. Ten percent or 371 permits of the total population of the OAC permits in Montana are estimated to be affected. The revenue generated from the change in fees cannot be estimated.

18.6.242 RANCH AND RURAL DIRECTIONAL SIGNS (1) In rural residential areas, slat-type directory signs are allowed at the outer edge of the right-of-way of the intersecting roadway, giving the name only. Each slat is not to exceed 8" x 36".

(2) In cases where operations do not abut the highway, but have access via a non-public access road across other

ownerships, directional signs may be located along this roadway leading to the operation, may bear the name of the operation or owner and distance to headquarters, but shall include no advertising.

(3) Ranch and rural directional signs may only be erected along the federal-aid primary highway system. The message content on rural directional signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the activity, such as mileage, route numbers, or exit numbers. Descriptive words or phrases, and pictorial or photographic representations further describing the activity or its environs are prohibited.

(4) The signs shall not:

(a) ~~not~~ be erected or maintained within the highway right-of-way;

(b) ~~not~~ be erected or maintained if they exceed 32 square feet in area, including border and trim, but excluding base or apron, supports and other structural members; or

(c) ~~not~~ exceed 12 feet in length.

(5) The maximum height of the sign structure, including the sign face, is 30 feet measured at a right angle from the surface of the roadway at the centerline of the primary highway.

(6) A permit must be obtained for each sign accompanied by a nonrefundable application fee as set forth in ARM 18.6.211~~(1)~~. The renewal fee for the ranch and rural directional signs required by ARM 18.6.211~~(2)~~ is waived.

(7) Not more than one ranch sign may be erected which is visible to traffic proceeding in any one direction on any primary highway and advertising activities being conducted upon the real property, including ranching, grazing, and farming activities.

AUTH: 75-15-121, MCA

IMP: 75-15-111 and 75-15-121, MCA

REASON: Clarification to bring rule into compliance with the CFR. This amendment is reasonably necessary to reflect current changes to the CFR and recognizes the growing concern by rural Montanans that activities were being unreasonably restricted in being able to alert the public as to their location and activity conducted on their property.

18.6.245 NONCOMMERCIAL SIGNS (1) If a noncommercial sign is located on property of the owner of the sign, it shall be considered to be an on-premise sign and not subject to the provisions of this rule.

(2) ~~"Welcome to" community signs shall:~~ A noncommercial sign of a local government may be erected anywhere adjacent to an interstate and primary highway within its jurisdiction, except in a scenic area or parkland, so long as the sign does not create a safety hazard to the traveling public.

~~(a) not be erected or maintained that exceed 100 square feet in area, including border and trim, but excluding base or apron, supports and other structural members;~~ A noncommercial sign will not be considered in determining the spacing required

between conforming outdoor advertising signs located off premises.

(b) not exceed 12 feet in length; Local government may erect, within the limits of their jurisdiction, noncommercial signs welcoming travelers and describing the services and attractions available but may not advertise private business or brand names.

(c) not exceed 30 feet in height when measured at a right angle from the surface of the roadway at the centerline of the interstate or primary highway; Not more than one noncommercial sign welcoming visitors or providing information about a community is allowed on each highway entering the community, subject to federal and state outdoor advertising control (OAC) rules.

(d) not exceed more than two signs for each community and may not be located more than one mile from the outer edge of the community.

(3) "Welcome to" community signs may be placed outside of zoned and unzoned commercial or industrial areas, except they may not be placed in public forest, public playgrounds, and designated scenic areas. A noncommercial "welcome to" community sign shall not exceed 150 square feet in size.

(4) "Public service" signs shall not:

(a) not be erected or maintained that exceed 32 square feet in area, including border and trim, but excluding base or apron, supports and other structural members;

(b) not exceed 10 feet in length;

(c) not exceed 15 feet in height when measured at a right angle from the surface of the roadway at the centerline of the interstate or primary highway;

(d) not be placed outside of zoned or unzoned commercial or industrial areas.

(5) A permit must be obtained for each sign accompanied by a nonrefundable application fee as set forth in ARM 18.6.211(1). The renewal fee for noncommercial signs required by ARM 18.6.211(2) is waived.

AUTH: 75-15-121, MCA

IMP: 75-15-111, MCA

REASON: To come into compliance with the CFR and make this rule more community friendly. There is a reasonable necessity for the amendment of this rule to clarify the need of local communities to advise the public of their location.

18.6.262 SIGN STRUCTURES THAT ARE BLANK, ABANDONED OR IN DISREPAIR (1) Sign structures that have no face or have faces without 100% percent advertising copy shall be considered blank.

Blank is defined as all faces not leased, rented or otherwise occupied by an advertising or public service message. The sign owner is not prohibited from noticing the sign for rent or lease, however, for the purposes of this rule, the sign shall be considered blank while being noticed for rent or lease.

(2) Sign structures are considered abandoned if the sign structure:

- (a) has not been erected~~7i~~;
 - (b) has been removed~~7i~~ and
 - (c) the sign owner fails to pay the appropriate sign fees.
- (3) The department may determine a sign is in disrepair if the structure is unsafe or if the sign face is unreadable or not visible to the ~~travelling~~ traveling public.

(4) When a sign has been blank, abandoned, or in disrepair for a period of six continuous months, the department shall notify the sign owner of the violation and require remedial action within 45 days. If such action is not taken, the permit will be canceled and action for the removal of the sign will be taken as provided in 75-15-131, MCA.

AUTH: 75-15-121, MCA

IMP: 75-15-111, 75-15-113, and 75-15-121, MCA

REASON: State law requires that the Administrative Rules be reviewed periodically. Misspelling and punctuation were corrected.

5. 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 Larry Johns, Right-of-Way Bureau, P.O. Box 201001, Helena, MT 59620-1001; or emailed to ljohns@state.mt.us and must be received no later than October 22, 2004, at 5:00 p.m.

6. Timothy W. Reardon has been designated to preside over and conduct the hearing.

7. The Department of Transportation maintains a list of interested persons who wish to receive notices of the rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding rules proposed by the Administration Division, Aeronautics Division, Highways and Engineering Division, Maintenance Division, Motor Carrier Services Division, and/or Rail, Transit and Planning Division. Such written request may be mailed or delivered to the Montana Department of Transportation, Legal Services, 2701 Prospect Ave., P.O. Box 201001, Helena, MT 59620-1001; faxed to the office at (406) 444-7206; e-mailed to lmanley@state.mt.us; or may be made by completing a request form at any rules hearing held by the department.

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

MONTANA TRANSPORTATION COMMISSION

/s/ Shiell Anderson
Shiell Anderson, Chairperson

/s/ Nick A. Roterig
Nick A. Roterig,
Alternate Rule Reviewer

Certified to the Secretary of State September 13, 2004.

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

In the matter of the proposed) NOTICE OF PUBLIC
amendment of ARM 8.34.415, renewals) HEARING ON
and ARM 8.34.416, continuing) PROPOSED AMENDMENT
education)

1. On October 18, 2004, at 10:00 a.m., a public hearing will be held in room 471, Park Avenue Building, 301 South Park, Helena, Montana to consider the proposed amendment 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 Home Administrators no later than 5:00 p.m. on October 11, 2004, to advise us of the nature of the accommodation that you need. Please contact Linda Grief, Board of Nursing Home Administrators, 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdnha@state.mt.us.

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

8.34.415 RENEWALS (1) An application for renewal of license for the next subsequent calendar year shall be filed on or before ~~December 31~~ January 1 of each year and must be accompanied by the required fee, which shall not be refunded.

(2) The renewal fee for the next subsequent calendar year shall be due and payable on or before ~~December 31~~ January 1 of each year. Renewal fees paid by mail shall be considered as paid when due if the envelope bears a postmark of ~~December 31~~ January 1 or earlier.

AUTH: 37-9-201, MCA
IMP: 37-9-304, 37-9-305, MCA

REASON: The Board of Nursing Home Administrators has determined that there is reasonable necessity to amend ARM 8.34.415 in order for the Board's rule to coincide with ARM 8.2.208(2)(a).

8.34.416 CONTINUING EDUCATION (1) remains the same.

~~(2) All applicants for shall submit proposed courses to the board for approval. No course shall be accepted as satisfying the continuing education requirement unless it shall have had approval by the board. Such decision shall be~~

~~based on the relevance and scope and contemporaneous nature of the course in light of the current trends in quality nursing home administration. From time to time, the board may in its discretion designate certain courses offered to the public as courses which, upon successful completion, shall satisfy the continuing education requirement.~~

~~(2) All courses for continuing education obtained from a provider that is not on the board's preapproved list must be approved by the board based upon the relevance to current nursing home administrator issues.~~

~~(a) The board shall adopt policy guidelines for approval of continuing education courses.~~

~~(b) A list of the guidelines for approval must be provided to all new licensees and must be available from the board office and through electronic media.~~

~~(c) Licensees who attend a course not offered by a preapproved provider/sponsor shall submit the course for approval on the form prescribed by the board and accompanied by the appropriate fee. All courses must be submitted for approval by December 31 of the year in which the course was attended.~~

~~(d) A list of approved providers/sponsors and courses must be mailed to licensees with each renewal notice and must be available from the board office through the electronic media.~~

~~(3) The board may preapprove providers/sponsors of continuing education. Courses obtained from a preapproved provider/sponsor do not need to be submitted for approval. Courses sponsored by preapproved providers/sponsors that are germane to long term care will be automatically accepted by the board.~~

~~(a) Applications for approval as a provider must be made on a form prescribed by the board.~~

~~(b) The board will require that the providers/sponsors demonstrate expertise in the areas of long term care including accredited educational institutions, recognized professional or trade associations, or other legitimate organizational entities capable of conducting adult continuing education.~~

~~(c) The board shall annually review the list of preapproved providers/sponsors for assurance as to the quality and relevance of courses offered and the provider's compliance with the board's policies relative to preapproved providers.~~

~~(d) The board may grant continuing education credit to the licensees who have attended courses/programs that have been accepted by other state boards/associations of nursing home administrators.~~

~~(3) (4) Twenty-five hours of continuing education will be required annually for renewal of a license or renewal of inactive registration.~~

~~(a) The continuing education requirement will not apply until January 1 of the year following the year of original license.~~

~~(b) Up to 25 hours earned in excess of 25 hours in a calendar year may be carried over into the succeeding year.~~

(a) A licensee is exempt from the continuing education requirement the year of original licensure.

(b) The board will conduct continuing education audits. Those licensees selected shall submit proof of completion of continuing education courses. Licensees are responsible for maintaining their records of participation of continuing education and make them available upon request.

(c) One semester credit is equal to 15 continuing education hours, and 60 minutes of class time equals one continuing education hour.

~~(4)~~ (5) No more than ~~25~~ 15 hours of college courses may be submitted for continuing education without prior approval of the board. These courses ~~shall be approved in advance by the continuing education committee and~~ should contribute to the professional competence of the participant.

AUTH: 37-1-131, 37-1-319, 37-9-201, 37-9-203, MCA
IMP: 37-1-319, 37-9-203, 37-9-305, MCA

REASON: The Board of Nursing Home Administrators has determined that it is reasonable and necessary to amend ARM 8.34.416 to clarify the continuing education requirement as the Board feels the rule as currently written is vague and confusing for the licensees. The amendment will aid the continuing education requirement to be more affordable, assessable and less restrictive than the current rule offers.

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 Board of Nursing Home Administrators, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdnha@state.mt.us, and must be received no later than 5:00 p.m., October 22, 2004.

5. An electronic copy of this Notice of Public Hearing is available through the Department and Board's site on the World Wide Web at <http://www.discoveringmontana.com/dli/nha>. 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 Board of Nursing Home Administrators maintains a list of interested persons who wish to receive notices of

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

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

8. Jack Atkins, attorney, has been designated to preside over and conduct this hearing.

BOARD OF NURSING HOME ADMINISTRATORS
DEBORAH WILSON, CHAIRPERSON

/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 September 13, 2004

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 8.54.422,) ON PROPOSED AMENDMENT,
8.54.423, 8.54.702, 8.54.703,) ADOPTION AND REPEAL
8.54.901, 8.54.902, 8.54.903,)
8.54.904, 8.54.905 and)
8.54.906 regarding examinations) and professional quality)
monitoring; the proposed)
adoption of NEW RULE I; and the) proposed repeal of ARM 8.54.706)
related to composition of the)
screening panel)

TO: All Concerned Persons

1. On October 15, 2004, at 10:00 a.m., a public hearing will be held in room 489, Park Avenue Building, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment, adoption and repeal 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 Public Accountants no later than 5:00 p.m., on October 8, 2004, to advise us of the nature of the accommodation that you need. Please contact Susanne Criswell, Board of Public Accountants, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2389; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdpac@state.mt.us.

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

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

(7) Eligible applicants shall make the necessary contacts to schedule the time and place for examination at an approved test site and pay all applicable fees. Once the candidate obtains a notice to schedule from the board or the board's contractor, the applicant has six months to sit for ~~at least one test section~~ the scheduled test section(s). If the time expires without sitting for ~~at least one~~ the test section section(s) applied for, the applicant will need to reapply.

(8) remains the same.

AUTH: 37-50-204, 37-50-308, MCA

IMP: 37-50-204, 37-50-302, 37-50-303, 37-50-308, MCA

REASON: There is reasonable necessity to amend ARM 8.54.422 in

order to make the rule consistent with the scheduling protocols established for the computer-based examination.

8.54.423 EXAMINATION CREDITS - OUT-OF-STATE CANDIDATES

(1) The board will recognize credits for any part of the computer-based uniform certified public accountant examination passed in other jurisdictions, provided those credits meet the requirements of 37-50-204, MCA, and the applicable rules of the board, and were earned under circumstances comparable to those in Montana.

(2) The board will recognize credits for any part of the pencil-and-paper version of the uniform certified public accountant examination passed in other jurisdictions, provided those credits:

(a) meet the requirements of 37-50-204, MCA;

(b) were earned under circumstances comparable to those in Montana; and

(c) timely qualify for conditional credit pursuant to ARM 8.54.425.

AUTH: 37-50-204, 37-50-308, MCA

IMP: 37-50-204, 37-50-302, 37-50-303, 37-50-308, 37-50-309, MCA

REASON: There is reasonable necessity to amend ARM 8.54.423 to clarify that conditional credits earned prior to the implementation of the computer-based uniform certified public accountant examination will be recognized in Montana although obtained in another state. The Board's staff recently noted that there was a potential ambiguity because the situation was not expressly provided for in the Board's rules.

8.54.702 ENFORCEMENT AGAINST LICENSEES (1) through (1)(b) remain the same.

(c) performance of any fraudulent act ~~in the practice of the profession~~ while holding a certificate, license or permit issued under Title 37, chapter 50, MCA;

(d) and (e) remain the same.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-50-203, MCA

IMP: 37-1-136, 37-1-316, 37-1-319, MCA

REASON: There is reasonable necessity to amend ARM 8.54.702 to clarify that fraudulent acts committed by a public accountant may result in disciplinary action even if the fraudulent acts were not directly related to public accounting work. The need for the clarification has recently come to the Board's attention.

8.54.703 ENFORCEMENT PROCEDURES - INVESTIGATIONS

(1) The board may designate any person not a board member to serve as ~~positive~~ the enforcement coordinator to conduct or coordinate an investigation. During the investigative process, the report of the ~~positive~~ enforcement coordinator or designated

investigator, the testimony and documents gathered in the investigation and the pendency of the investigation shall be treated as confidential information by the board and its designees, and shall not be disclosed except to the extent deemed necessary in order to conduct the investigation or in compliance with 37-1-135, MCA, for the public's right to know provided by Article II, section 9 of the Montana Constitution.

(2) remains the same.

AUTH: 37-1-136, 37-1-319, 37-50-203, MCA
IMP: 37-1-136, 37-1-316, 37-1-319, MCA

REASON: There is reasonable necessity to amend ARM 8.54.703 to specify that an investigator other than the enforcement coordinator may be used. The Board has recently been presented with a matter where the use of another individual for investigative purposes would have been expedient and also resulted in lower costs being incurred by the Board. There is also reasonable necessity to amend the rule to conform with the current terminology used by the Board in its quality assurance and enforcement functions.

8.54.901 INTRODUCTION (1) Pursuant to 37-50-203, MCA, the purpose of ~~these rules shall be~~ this subchapter is to provide for the monitoring of the ~~profession of public accounting~~ profession's association with financial statements.

AUTH: 37-50-203, MCA
IMP: 37-50-203, MCA

REASON: There is reasonable necessity to amend ARM 8.54.901 to clarify the nexus between the issuance of financial statements and the monitoring rules, at the same time other monitoring rules are being amended or otherwise clarified. In addition, there is reasonable necessity to amend the rule to more precisely identify which rules are being introduced. The proposed amendments are a result of the periodic rule review conducted by the Board.

8.54.902 DEFINITIONS As used in this ~~section~~ subchapter:
(1) and (2) remain the same.
~~(3) "Quality review" means a review under a formal quality review program sponsored by the American institute of certified public accountants or such other formal quality review program approved by the board.~~

AUTH: 37-50-203, MCA
IMP: 37-50-203, MCA

REASON: There is reasonable necessity to amend ARM 8.54.902 to remove a definition that is no longer being used in the rules at the same time as the use of the term is being proposed for elimination from related rules.

8.54.903 STATEMENT BY PERMIT HOLDERS (1) Every individual applying for a permit to practice or renewal thereof must submit a statement to the board which describes ~~his/her the individual's~~ level of association with ~~public accounting reports that indicates expert knowledge of accounting or auditing financial statements.~~ This statement shall disclose the practice unit, if any, of which the permit holder is a member. This statement shall be used to determine if the permit holder is required to comply with ARM 8.54.904.

(2) through (4) remain the same.

AUTH: 37-50-203, MCA
IMP: 37-50-203, MCA

REASON: There is reasonable necessity to amend ARM 8.54.903 to clarify the nexus between the issuance of financial statements and the monitoring rules, at the same time other monitoring rules are being amended or clarified. The proposed amendments are a result of the periodic rule review conducted by the Board.

8.54.904 FILING OF REPORTS (1) and (2) remain the same.

(3) The report submitted must have been issued within the period of time specified by the board ~~and must have the client's or employer's name and similar identifying information deleted.~~ For reports submitted pursuant to (1)(c), the client's or employer's name and similar identifying information must be redacted.

(4) remains the same.

AUTH: 37-50-203, MCA
IMP: 37-50-203, MCA

REASON: There is reasonable necessity to amend ARM 8.54.904 to clarify that compilation reports are to be "sanitized" to protect the identity of the individual or entity whose reports are being reviewed. Because of the need for review of the work papers associated with audit reports and review reports, found in (1)(a) and (1)(b), respectively, eliminating identifying information is neither feasible nor efficient. The proposed amendments are a result of the periodic rule review conducted by the Board.

8.54.905 ALTERNATIVES AND EXEMPTIONS (1) A practice unit which has undergone an AICPA or board-sanctioned peer ~~or quality~~ review within three calendar years must file a copy of its peer ~~or quality~~ review report, including letter of comments (if any), letter of responses (if any) and acceptance of the review report by the administering entity.

(2) The board reserves the authority to request a practice unit to submit a copy of any or all reports, financial statements and supporting ~~workpapers~~ work papers for engagements ~~by a subject to peer or quality review report.~~

(3) remains the same.

AUTH: 37-50-203, MCA
IMP: 37-50-203, MCA

REASON: There is reasonable necessity to amend ARM 8.54.905 to conform the language used with respect to professional reviews, at the same time other monitoring rules are being amended or otherwise clarified. The proposed amendments are a result of the periodic rule review conducted by the Board.

8.54.906 REVIEWS AND ENFORCEMENT (1) remains the same.

(2) Responses are required from those practice units whose reports are classified as not acceptable or from practice units that have submitted a peer ~~or review~~ report that is other than ~~unqualified~~ unmodified. The board may also require a written comprehensive statement of future procedures to be followed that will ~~insure~~ ensure an improvement in the quality of future reports.

(3) For those practice units which are required to submit responses under (2) ~~above~~, the board may require one or more of the following actions:

(a) through (e) remain the same.

(f) participation in an approved peer ~~or quality~~ review program; and

(g) through (4) remain the same.

AUTH: 37-1-319, 37-50-203, MCA
IMP: 37-1-312, 37-50-203, MCA

REASON: There is reasonable necessity to amend ARM 8.54.906 to conform the terminology used in the rule with language used in related rules, at the same time other monitoring rules are being amended or otherwise clarified. The proposed amendments are a result of the periodic rule review conducted by the Board.

4. The proposed new rule provides as follows:

NEW RULE I ACCEPTANCE OF EXAMINATION CREDITS (1) In order for credits for passing the uniform certified public accountant's examination to be recognized by the board, a candidate who has never held a certificate as a certified public accountant, or a license as a licensed public accountant in any state must have earned those credits under circumstances and conditions identical to the circumstances and conditions applicable to Montana candidates at the time those credits were earned. Those circumstances and conditions include the conditioning requirements for accumulation of examination credits, if the applicant did not pass all required parts of the examination on the first attempt.

AUTH: 37-1-131, 37-50-203, MCA
IMP: 37-50-302, 37-50-303, 37-50-309, MCA

REASON: There is reasonable necessity to adopt NEW RULE I in order to identify the circumstances under which the Board will

accept examination credits earned in other states. In the process of adopting rules concerning the transition from the former "paper-and-pencil" version of the Uniform CPA examination to the current computer-based examination, the Board repealed ARM 8.54.405 and 8.54.407 which addressed how the Board accepted examination credits earned in other jurisdictions. Although the Board adopted rules for acceptance of computer-based credits, and paper-and-pencil credits earned in conjunction with computer-based credits, the Board overlooked providing for acceptance of credits where the credits had been earned entirely under the paper-and-pencil version of the exam. The Board has recently received applications from individuals who had previously passed the Uniform CPA exam, but for one reason or another had not yet applied for a certificate or license.

5. The rule proposed to be repealed is as follows:

8.54.706 SCREENING PANEL found at ARM page 8-1504.

AUTH: 37-50-203, MCA

IMP: 37-1-307, MCA

REASON: There is reasonable necessity to repeal ARM 8.54.706 in light of recent Board discussions concerning the relationship of the screening panel membership and the adjudication panel membership. The Board has concluded that the rule's provisions do not allow the Board to appropriately exercise its discretion with regards to which member sits on which panel. The proposed repeal is a result of the periodic rule review conducted by the Board.

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 Public Accountants, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsdpac@state.mt.us and must be received no later than 5:00 p.m., October 22, 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/pac> under the Board of Public Accountants rule notice section. The Department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. 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 Public Accountants maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Public Accountants administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Public Accountants, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2309, e-mailed to dlibsdpac@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

9. The Board of Public Accountants will, during its regular meeting on November 8 and 9, 2004, at the Board's offices, 301 South Park Avenue, Helena, consider the comments made by the public, the proposed responses to those comments, and take final action on the proposed amendments, adoption and repeal. Members of the public are welcome to listen to the Board's deliberations.

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

11. Mark Cadwallader, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PUBLIC ACCOUNTANTS
GARY KASPER, LPA, CHAIR

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

/s/ MARK CADWALLADER
Mark Cadwallader,
Alternate Rule Reviewer

Certified to the Secretary of State September 13, 2004

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

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING
amendment and transfer of ARM	)	ON PROPOSED AMENDMENT AND
42.17.501, 42.17.502,	)	TRANSFER, ADOPTION, REPEAL,
42.17.505, 42.17.507,	)	AND TRANSFER
24.11.813, 24.11.814 and)	
24.11.815; the proposed)	
adoption of NEW RULES I)	
through XV; the proposed)	
repeal of ARM 24.11.701,)	
24.11.702, 24.11.704,)	
24.11.705, 24.11.707,)	
24.11.802, 24.11.808,)	
24.11.831, 24.11.833, and)	
24.11.840; and the proposed)	
transfer of ARM 24.11.820,)	
42.17.503, and 42.17.504, all)	
pertaining to unemployment)	
insurance tax matters)	

TO: All Concerned Persons

1. On October 18, 2004, at 10:00 a.m., the Department of Labor and Industry will hold a public hearing in the first floor conference room (Room 104) of the Walt Sullivan Building, 1327 Lockey, Helena, Montana, to consider the proposed amendment and transfer, adoption, repeal, and transfer 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 Department no later than 5:00 p.m., October 12, 2004, to advise us of the nature of the accommodation that you need. Please contact the Unemployment Insurance Contributions Bureau, Unemployment Insurance Division, Attn: Sandy Bay, P.O. Box 6339, Helena, Montana 59604-6339; telephone (406) 444-3302; TTY (406) 444-0532; fax (406) 444-0629; or via email at sabay@state.mt.us.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: There is reasonable necessity to amend, transfer, adopt and repeal the following rules in order to implement the provisions of Chapter 597, Laws of 2003 (Senate Bill 271), relating to the return of the unemployment insurance tax program from the Department of Revenue to the Department of Labor and Industry.

In addition to the transfer and renumbering of certain rules of the Department of Revenue, there is reasonable necessity to amend the authorization and implementation citations to reflect the fact that the unemployment insurance tax program is no

longer administered by the Department of Revenue, which has rulemaking authority pursuant to Title 15, MCA. Other amendments are necessary to correct references to statutes or rules. In addition, there are minor typographical or technical errors that are appropriate to correct when the rules are otherwise being transferred or amended.

There is reasonable necessity to adopt the proposed NEW RULES to ensure that appropriate procedures or requirements are adequately described in Department of Labor and Industry rules. The rules generally describe the existing tax process and requirements as described in Department of Revenue income tax withholding rules, which are being retained by the Department of Revenue and which implement tax functions that the Department of Revenue still administers.

There is reasonable necessity to repeal certain existing Department of Labor and Industry rules to ensure that a cohesive set of unemployment insurance tax rules are in place and to remove outdated, obsolete or redundant language or process descriptions.

Finally, there is reasonable necessity to transfer, without amendment, two existing rules that are logically related to unemployment insurance tax matters, but which are currently located elsewhere in the Administrative Rules of Montana.

The Department of Labor and Industry notes that a similar rulemaking activity is currently being conducted by the Department of Revenue that, in part, complements this rulemaking project by also implementing Chapter 597, Laws of 2003. The two agencies have coordinated their rulemaking in order to minimize confusion by taxpayers, maximize the efficiency of those taxpayers in reporting wages and paying appropriate taxes while also minimizing disruption of the unemployment insurance tax functions.

Except as noted, this general statement of reasonable necessity applies to all of the rule changes proposed, whether the proposed action is to amend, transfer, adopt or repeal.

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

~~42.17.501~~ 24.11.2201 EXPERIENCE-RATED EMPLOYERS

(1) through (7) remain the same.

(8) The rate notice is final unless the employer files a written request for a re-determination within 30 days of ~~receiving~~ mailing the rate notice. The request for re-determination must explain why the employer believes the assigned contribution rate is incorrect.

(9) If, after re-determination, the employer still contests the contribution rate, the employer may appeal the

department's decision under ~~15-1-211~~ 39-51-2402, MCA.

(10) remains the same.

AUTH: ~~See. 15-30-305,~~ 39-51-301~~7~~ and 39-51-302, MCA

IMP: ~~See. 39-51-301,~~ 39-51-404, 39-51-1103, 39-51-1121, 39-51-1123, and 39-51-1213, MCA

~~42.17.502~~ 24.11.2202 STATE, LOCAL GOVERNMENT AND NON-PROFIT ORGANIZATIONS ELECTING REIMBURSABLE ACCOUNT

(1) through (3) remain the same.

AUTH: ~~See. 15-30-305,~~ 39-51-301~~7~~ and 39-51-302, MCA

IMP: ~~See. 15-30-301,~~ 39-51-1124, 39-51-1125, and 39-1-1126, MCA

~~42.17.505~~ 24.11.2205 EXPERIENCE-RATING RECORD TRANSFER

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

(c) the successor employer files an employer registration form as provided in ~~ARM 42.17.112~~ [NEW RULE II].

(5) remains the same.

AUTH: ~~See. 39-8-201,~~ 39-51-301, and 39-51-302, MCA

IMP: ~~See. 39-8-201~~ and 39-51-1219, MCA

~~24.11.813~~ 24.11.2504 PAYMENTS THAT ARE RENTAL OF EQUIPMENT OR CAPITAL ASSETS--NOT WAGES--EQUIPMENT RENTAL (1) Payments

made by the employer to the employee for rental of equipment or capital assets owned by the employee are not wages if:

(a) the equipment is necessary for the employee to perform the job;

(b) the employment contract or the entity's records provides for such payments;

(c) the amount of each employee's reimbursement is entered separately in the employer's records; and

(d) the reimbursement does not replace the customary wage for the occupation.

(2) The actual expenses incurred by the employee may be considered reasonable rental fees if the employer's records show:

(a) the initial cost ~~of the equipment;~~

(b) ~~the equipment's~~ depreciation; and

(c) maintenance and operational costs in connection with the services performed for the employer.

(3) With respect to equipment or capital assets, other than vehicles, the employer may pay an allowance not greater than the reasonable rental value for that equipment~~7~~.

(4) For which for individuals involved in timber falling, the reasonable rental value may not exceed \$22.50 per working day for chain saw and related timber falling expense.

(4) remains the same, but is renumbered (5).

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

(6) remains the same.

AUTH: ~~See. 39-51-301~~ and 39-51-302, MCA

IMP: ~~See. 39-51-1103~~ and 39-51-201, MCA

~~24.11.814~~ 24.11.2511 PAYMENTS THAT ARE NOT WAGES--EMPLOYEE EXPENSES (1) through (1)(b) remain the same.

(c) the reimbursement is not deducted from or based on a percentage of the employee's wage;

(d) and (e) remain the same.

AUTH: ~~See.~~ 39-51-301 and 39-51-302, MCA

IMP: 39-51-201 and 39-51-1103, MCA

~~24.11.815~~ 24.11.2515 PAYMENTS THAT ARE NOT WAGES--JUROR FEES, INSURANCE PREMIUMS, ANNUITIES, DIRECTOR AND PARTNERSHIP FEES

(1) Expense reimbursements, fees, meals, or other payments provided through a court to a juror are not wages.

(2) Insurance premiums or other regular payments paid by the employer into a fund for costs arising from employee sickness, disability, medical or hospital expenses are not wages if:

~~(a) the coverage is offered under a plan available to all employees, a class or classes of employees; and~~

~~(b) the employee may not choose to receive cash instead of payment of the expenses, or to receive cash upon termination of the plan or upon termination of employment~~ the plan constitutes a qualified plan under the United States internal revenue code.

(3) Annuities, insurance premiums or other regular payments made by the employer into a fund for costs arising upon retirement or death are not wages, if the plan ~~is offered to all employees or a class or classes of employees~~ constitutes a qualified plan under the United States internal revenue code.

(4) Customary and reasonable director's fees for attending meetings of the board of directors of a corporation are not wages, if the fees are not paid in lieu of reasonable compensation for services performed.

(5) Draws by a sole proprietor or partner are not wages, even if designated as salary.

AUTH: ~~39-51-301,~~ 39-51-302, and 39-51-2407, MCA

IMP: 39-51-201 and 39-51-1103, MCA

~~42.17.507~~ 24.11.2701 POSTING NOTICE TO WORKERS

(1) Every employer must post and maintain a printed notice provided by the department showing that the employer is subject to Montana unemployment insurance law and has been registered by the department. This notice must be posted in conspicuous places near the locations where services are performed.

AUTH: ~~See. 15-30-305,~~ 39-51-301, and 39-51-302, MCA

IMP: ~~See. 15-30-257 and~~ 39-51-1110, MCA

5. The proposed NEW RULES provide as follows:

NEW RULE I DEFINITIONS For purposes of subchapters 20, 22, 24, 25, 27, and 28, the following definitions apply:

(1) "Employer" has the same meaning as "employing unit" as defined in 39-51-201, MCA.

(2) "Tax" means contributions and assessments required under Title 39, chapter 51, MCA, but does not include penalties or interest for past-due or unpaid contributions or assessments.

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

IMP: 39-51-201 and 39-51-1103, MCA

NEW RULE II ESTABLISHING AN EMPLOYER'S UNEMPLOYMENT INSURANCE ACCOUNT

(1) Every employer required to pay unemployment insurance tax must register for an employer account number on a form provided by the department. A new employer who has acquired the business of another employer must not use the predecessor's identification number. Application for an employer account number is to be sent to the Unemployment Insurance Division, P.O. Box 6339, Helena, Montana 59604-6339.

(2) Failure to properly register does not relieve an employer from reporting and remitting unemployment insurance tax.

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

IMP: 39-51-1101, MCA

NEW RULE III EMPLOYER ENTITY FORMS (1) An employer must identify the type of legal entity under which it operates.

(2) Legal entity forms include, but are not necessarily limited to a:

- (a) sole proprietorship;
- (b) partnership, pursuant to the provisions of Title 35, chapter 10, MCA;
- (c) limited partnership, pursuant to Title 35, chapter 12, MCA;
- (d) corporation, pursuant to Title 35, chapters 1 through 4 and chapter 9, MCA;
- (e) member-managed limited liability company, pursuant to Title 35, chapter 8, MCA;
- (f) manager-managed limited liability company, pursuant to Title 35, chapter 8, MCA;
- (g) member-managed limited liability partnership, pursuant to Title 35, chapter 10, MCA;
- (h) manager-managed limited liability partnership, pursuant to Title 35, chapter 10, MCA; and
- (i) governmental unit.

(3) An employer that attempts to form or operate as an entity other than a sole proprietorship will not be treated as such until the employer complies with Montana law regarding creation and/or maintenance of that entity form. As an example, if two individuals intend to form a limited liability company but fail to properly do so, the individuals will be treated as partners for unemployment insurance purposes. In general, two or more individuals owning a business and functioning as an employer are deemed to be in a partnership and have joint and several liability for unpaid unemployment insurance contributions.

(4) An employer that changes its legal entity form must promptly report to the department the date of the change and identify its new entity form.

(5) The department may require an employer to document its legal entity form.

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

IMP: 39-51-201 and 39-51-603, MCA

NEW RULE IV SPECIAL TYPES OF EMPLOYERS REQUIRED TO PROVIDE ADDITIONAL INFORMATION WHEN REGISTERING (1) An employer that operates as a temporary services contractor within the meaning of 39-71-116, MCA, must identify itself as such when registering as an employer or when beginning to function as a temporary services contractor.

(2) An employer licensed pursuant to Title 39, chapter 8, MCA, as a "professional employer organization" or as a "professional employer group" (collectively known as a "PEO") must identify itself as a PEO when registering with the department and establishing an unemployment insurance account.

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

IMP: 39-8-207, 39-51-201, 39-51-202, and 39-51-302, MCA

NEW RULE V CLOSING AN EMPLOYER ACCOUNT (1) An employer that ceases all employment and reports no wages to the department for eight consecutive calendar quarters is removed from the department's record of active employers. The department will notify the employer of that action.

(2) An employer that has notified the department it has ceased to employ is removed from the department's record of active employers.

(3) The quarterly report and payment for the final quarter wages as were paid must be filed with the department within 30 days if the employer:

(a) quits doing business;

(b) sells or transfers the business, or the major portion of the business assets; or

(c) becomes insolvent.

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

IMP: 39-51-204, 39-51-603, 39-51-1101, 39-51-1102, and 39-51-1103, MCA

NEW RULE VI BENEFIT OVERPAYMENTS--CREDITING EMPLOYER ACCOUNTS (1) The department credits employer accounts for overpayments as provided by ARM 24.11.616.

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

IMP: 39-51-1110, MCA

NEW RULE VII IDENTIFICATION OF EMPLOYEES (1) Each employer must ascertain the social security number of each employee, and refer to such account number, as well as the employee's name, whenever referencing that employee in any:

(a) letter;

(b) report form;

(c) claim for benefits; or

(d) other communication addressed to the department.

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

IMP: 39-51-603, MCA

NEW RULE VIII DETERMINING EMPLOYEE STATUS (1) If there is a dispute as to whether a worker is an employee of a temporary service contractor or a professional employer organization, the matter will be resolved by reference to the

provisions of Title 39, chapters 8 and 71, MCA. If such a worker is not the employee of a temporary service contractor or professional employer organization, the worker is deemed to be an employee of the temporary service contractor's or professional employer organization's client.

(2) It is the intent of the department that any determination of a worker's status as an employee for unemployment insurance tax purposes be consistent with the determination of the same person's status under the Workers' Compensation Act and the professional employer organization laws.

AUTH: 39-51-301 and 39-71-302, MCA

IMP: 39-51-202, 39-51-203, 30-51-204, and 39-51-603, MCA

NEW RULE IX STATUS OF CERTAIN PERSONAL ASSISTANTS (1) A

person with a disability who receives services of a personal assistant or an immediately involved representative of the disabled person, such as a parent or guardian, is not the employer of the personal service assistant despite the exercise of control over the selection, management and supervision of the personal assistant if:

(a) the personal assistant is providing services to the disabled person pursuant to 53-6-145, MCA, and rules adopted by the department of public health and human services implementing that statute; and

(b) the personal assistant is the employee of another person or entity that has the right to exercise an employer's control over the personal assistant, including the right to discipline and terminate employment.

AUTH: 39-51-301, 39-51-302, and 53-6-145, MCA

IMP: 53-6-145, MCA

NEW RULE X WAGES (1) For the purposes of reporting and

paying unemployment insurance tax, the term "wages", as defined in 39-51-201, MCA, includes but is not limited to the following types of remuneration for services:

(a) holiday and vacation pay, or payments in lieu of vacation pay;

(b) payments made from an employee's gross remuneration into deferred compensation or cafeteria plans and other similar plans. Such payments are wages reportable for the period in which the compensation was earned;

(c) back pay awards, to the extent such awards are based on services performed or services that would have been performed if the worker had not been wrongfully terminated;

(d) the cash value of room and board. The department determines the cash value of room and board, unless the employment contract sets the value at an amount equal to or greater than the amounts established in this rule. Room and board has at least the following cash value:

- (i) full room and board, weekly \$130
- (ii) meals, per week 60
- (iii) meals, per meal 3
- (iv) room, per week 70

(e) payments for termination, severance, separation, or other similar payments;

(f) advances or draws against future earnings, when paid. Payments designated as loans in the employer's records are considered wages unless the loan is to be repaid under a written schedule agreed upon by the employee and the employer;

(g) payments distributed to corporate officers or shareholders in lieu of reasonable compensation for services performed, even though designated as profits or dividends; and

(h) payments for sick leave and accident disability even if not paid directly by the employer, but by a third party such as an insurance agent. For example, if the employer pays premiums to the third party to cover sick leave or accident disability costs, the payments paid by the third party to the employee are wages. If the employee pays the premiums for such coverage, the sick leave or accident disability payments are not wages.

(2) The employer is responsible for tax payments attributable to sick leave or accident disability payments made to, or on behalf of, an employee for six months after the last calendar month in which the employee worked for such employer. The third party assumes responsibility for the payments if the third party fails to give the following information to the employer within 15 days of the end of the calendar quarter in which the payments were made:

(a) name and social security number of the employee who received the sick leave payments; and

(b) total amount of the payments.

(3) The name by which compensation is designated is immaterial.

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

IMP: 39-51-1103, MCA

NEW RULE XI RECORDS TO BE KEPT BY EMPLOYER (1) Employers must keep employment and payroll records for each employee for five years.

(2) For each pay period, those records must show:

(a) the beginning and ending dates;

(b) the total wages, as defined in 39-51-201, MCA, for employment in such pay period; and

(c) the number and date of weeks in which there were one or more employees.

(3) For each employee, those records must show:

(a) the employee's full name;

(b) the employee's social security number;

(c) the employee's wages for each pay period, showing separately:

(i) money wages payable including special payments or constructive payment of wages;

(ii) reasonable cash value of remuneration by the employer in any medium other than cash;

(iii) estimated or actual amount of gratuities received from persons other than employer; and

(iv) special payments of any kind, including annual

bonuses, gifts, prizes, etc.;

(d) the date(s) the employee was hired, rehired, or returned to work after a temporary layoff;

(e) the date(s) employment was terminated by layoff, quit, discharge, or death;

(f) the cause of any termination;

(g) the method of compensation, by specifying whether the employee is paid:

(i) a salary;

(ii) a commission;

(iii) on an hourly basis;

(iv) on a by-piece basis or other variable rate basis; or

(v) if on a fixed daily basis, the employee's daily rate and the customarily scheduled days per week prevailing in the establishment for the employee's occupation; and

(h) documents supporting employee expense reimbursements.

(4) Evidence of business ownership including, but not limited to, partnership agreements and documents issued or acknowledgments by the secretary of state.

(5) The department is authorized to examine any and all records necessary for the administration of the unemployment insurance laws, Title 39, chapter 51, MCA. These records include, but are not limited to:

(a) payroll records;

(b) disbursement records;

(c) tax returns;

(d) personnel records;

(e) minutes of meetings;

(f) loan documentation; and

(g) any other records which might be necessary to determine claimant eligibility and employer liability.

(6) The records and reports are open to periodic review by the department's authorized representatives.

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

IMP: 39-51-603, MCA

NEW RULE XII REPORTING OF WAGES IN EXCESS OF TAXABLE WAGE BASE FOR CERTAIN EMPLOYERS (1) The provisions of this rule apply only to those employers which:

(a) are not governmental entities; and

(b) are classified as experience rated pursuant to 39-51-1217, MCA.

(2) All wages paid to an employee by an employer are reportable as total wages. Wages paid to an employee in any single calendar year by an employer, up to and including the annual taxable wage base as defined in 39-51-1108, MCA, for that calendar year, are taxable wages. All further wages paid to the employee by that employer in that calendar year are "excess wages" and not taxable.

(3) A successor employer, as described in 39-51-1219, MCA, may use the amount of wages paid by the predecessor to determine the successor employer's taxable wages. If a successor does not acquire a portion or all of the experience-rating record of a predecessor, the successor cannot use the amount of wages paid

by the predecessor to determine the successor employer's taxable wages.

(4) If an employer has reported wages for an employee to another state, these wages may be used in calculating the employee's taxable wage in Montana.

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

IMP: 39-51-1108 and 39-51-1217, MCA

NEW RULE XIII DUE DATE OF TAXES AND QUARTERLY REPORTS BY EMPLOYERS

(1) Every employer must report information to the department on an approved quarterly report form. The department may request any information from the employer necessary for the collection of the tax.

(2) All employers must complete and return this form even if the employer did not pay any wages during the calendar quarter.

(3) Wages become subject to tax when they are actually or constructively paid. Wages must be reported in the calendar quarter they are actually or constructively paid. Wages are constructively paid if they are credited to the employee's account and set apart for an employee so they may be withdrawn at the employee's discretion.

(4) The quarterly reports and tax payments must be postmarked by the following dates:

<u>Quarter</u>	<u>Months Covered</u>	<u>Due Date</u>
First:	January, February, March	April 30
Second:	April, May, June	July 31
Third:	July, August, September	October 31
Fourth:	October, November, December	January 31

(5) If a due date falls on a weekend or holiday, the next business day becomes the due date the quarterly reports and tax payment must be postmarked.

(6) If a tax payment or quarterly report is postmarked after the due date, the department may assess a penalty and interest.

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

IMP: 39-51-603, MCA

NEW RULE XIV DUE DATE AND APPLICATION OF TAXES

(1) Payments are applied to unemployment insurance liabilities as provided in the following order unless bankruptcy proceedings or the department have determined otherwise:

- (a) contributions;
- (b) administrative fund tax;
- (c) interest; then
- (d) penalty.

(2) Payments submitted with quarterly reports or payment transmittal forms are applied to that quarter and any overpayment is applied to amounts due in other quarters, beginning with the oldest quarter. Any remaining overpayment may only be applied to future unemployment insurance tax

obligations or refunded to the employer.

(a) The employer may request that payments be applied to a more recent quarter.

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

IMP: 39-51-1103 and 39-51-1110, MCA

NEW RULE XV RELEASING PROPERTY SUBJECT TO DEPARTMENT LIEN

(1) Pursuant to 39-51-1304, MCA, the department may acquire a lien on an employer's property for unpaid contributions. Property may be released from this lien if:

(a) the department has a lien on other property owned by the employer that has unencumbered equity, as determined by the department, of at least twice the amount of debt secured by the property;

(b) the employer pays to the department an amount, determined by the department, that is not less than the value of the department's interest in the property subject to the lien;

(c) the department determines its interest in the property has little or no value; or

(d) upon sale of the secured property, a fund from the sale's proceeds is established to satisfy all claims against the property under an escrow agreement approved by the department.

(2) An employer or other applicant must give the following information when requesting the release of property secured by a department lien:

(a) the applicant's name, address, and telephone number;

(b) the name, address, and account number of the employer owning the property subject to the lien;

(c) the legal description and address of all property to be released by the department. If the request is based on (1)(a), the request must include a legal description and address of all property secured by the department's lien;

(d) a list of the encumbrances, or a copy of the instrument creating the encumbrance, with priority over the department's lien, including:

(i) name and address of the secured party or holder of the encumbrance;

(ii) a description of the encumbrance with the date it was imposed;

(iii) the date and place the encumbrance was recorded;

(iv) the terms of the security agreement creating the encumbrance;

(v) the amount of money owed under the encumbrance at the time of application;

(e) a current written appraisal by a qualified appraiser of all property for which a release is requested; and

(f) a copy of the proposed escrow and sales agreement if the property is to be released because of sale.

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

IMP: 39-51-1304, MCA

6. The rules proposed for repeal are:

24.11.701 RECORDS TO BE KEPT BY EMPLOYER found at page

24-679 of the Administrative Rules of Montana.

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

IMP: 39-51-603, MCA

24.11.702 QUARTERLY REPORTS BY EMPLOYERS found at page 24-680 of the Administrative Rules of Montana.

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

IMP: 39-51-603, MCA

24.11.704 IDENTIFICATION OF EMPLOYEES found at page 24-681 of the Administrative Rules of Montana.

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

IMP: 39-51-603, MCA

24.11.705 POSTING NOTICE TO WORKERS found at page 24-681 of the Administrative Rules of Montana.

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

IMP: 39-51-603, MCA

24.11.707 EMPLOYER'S DUTY TO NOTIFY DIVISION OF DISSOLUTION OR DISTRIBUTION found at page 24-681 of the Administrative Rules of Montana.

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

IMP: 39-51-603, MCA

24.11.802 INTEREST ON UNPAID TAXES found at page 24-685 of the Administrative Rules of Montana.

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

IMP: 39-51-1301, MCA

24.11.808 WAGES found at page 24-687 of the Administrative Rules of Montana.

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

IMP: 39-51-1103, MCA

24.11.831 DEFINITION OF DIRECT SELLER found at page 24-692.1 of the Administrative Rules of Montana.

AUTH: 39-51-302, MCA

IMP: 39-51-204, MCA

REASON: There is reasonable necessity to repeal ARM 24.11.831 because the term "direct seller" is now specifically defined by section 39-51-204(1)(i), MCA, and thus the rule is no longer needed.

24.11.833 STATUS OF CERTAIN PERSONAL ASSISTANTS FOR THE PURPOSE OF UNEMPLOYMENT INSURANCE LAW found at page 24-693 of the Administrative Rules of Montana.

AUTH: 53-6-145, MCA

IMP: 53-6-145, MCA

24.11.840 RELEASING PROPERTY SUBJECT TO DEPARTMENT LIEN found at page 24-693 of the Administrative Rules of Montana.

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

IMP: 39-51-1304, MCA

7. The Department also notifies all concerned persons that it intends to transfer the following existing rules, without amendment, to integrate with the unemployment insurance tax program rules that are the subject of this Notice:

24.11.820 (24.11.2407) DETERMINATION OF INDEPENDENT CONTRACTORS--DEPARTMENT PROCEDURES found at pages 24-691 and 24-692 of the Administrative Rules of Montana.

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

IMP: Sec. 39-51-201 and 39-51-1103, MCA

42.17.503 (24.11.2203) STATE AND LOCAL GOVERNMENT EXPERIENCE RATING found at pages 42-1763 and 42-1764 of the Administrative Rules of Montana.

AUTH: 39-51-302, MCA

IMP: 39-51-404 and 39-51-1212, MCA

42.17.504 (24.11.2204) RATES FOR NEW EMPLOYERS found at pages 42-1765 and 42-1766 of the Administrative Rules of Montana.

AUTH: 39-8-201 and 39-51-302, MCA

IMP: 39-8-207 and 39-51-1101, MCA

8. 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:

Sandy Bay, Bureau Chief
Unemployment Insurance Contributions Bureau
Unemployment Insurance Division
Department of Labor and Industry
P.O. Box 6339
Helena, Montana 59604-6339

and must be received no later than 5:00 p.m., October 25, 2004. Comments may also be submitted electronically as noted in the following paragraph.

9. An electronic copy of this Notice of Public Hearing is available through the Department's website at <http://dli.state.mt.us/events/calendar.asp>, under the Calendar of Events, Administrative Rule Hearings section. Interested persons may make comments on the proposed rules via the comment forum, <http://dli.state.mt.us/forums.asp>, linked to the Notice of Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m., October 25, 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.

10. 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, Montana 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.

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

12. 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: September 13, 2004

BEFORE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING
adoption of new rules I	)	ON PROPOSED ADOPTION AND
through XXIX regarding	)	AMENDMENT
complete and correct)	
application, department)	
actions, and standards)	
regarding water rights and the)	
amendment of ARM 36.12.101,)	
definitions)	

TO: All Concerned Persons

1. On October 13, 2004, a public hearing will be held from 1:00 p.m. until 7:00 p.m. in the auditorium of the DPHHS building, 111 N. Sanders, Helena, Montana, to consider the adoption of new Rules I through XXIX, and the amendment of ARM 36.12.101.

2. The Montana Department of Natural Resources and Conservation will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Montana Department of Natural Resources and Conservation no later than 5:00 p.m. on October 6, 2004, to advise us of the nature of the accommodation that you need. Please contact Kim Overcast, Montana Department of Natural Resources and Conservation, 1424 Ninth Avenue, P.O. Box 201601, Helena, MT 59620-1601, (406) 444-6614, fax (406) 444-0533, or e-mail kovercast@state.mt.us.

3. The proposed new rules provide as follows:

NEW RULE I WATER RIGHT PERMIT AND CHANGE - CORRECT AND COMPLETE DETERMINATION (1) A water right permit application will be deemed correct and complete if a permit applicant's information, required to be submitted by [New Rules II through X, XII, XIII, and XV through XXIII], conforms to the standard of substantial credible information and all the necessary parts of the application form requiring the information have been filled in with the required information.

(2) A water right change application will be deemed correct and complete if an application is in substantial compliance with [New Rules II through X, XIII, and XXII through XXVIII].

AUTH: 85-2-302, MCA
IMP: 85-2-302, MCA

REASON: House Bill #720 enacted by the 2001 legislature directs the department to adopt rules to determine whether a water right application is correct and complete. This rule is reasonably necessary because the public and the department need

to understand what constitutes a correct and complete application so that unnecessary processing delays do not cause economic or other harm to water right applicants.

NEW RULE II EVAPORATION STANDARDS (1) The following reports contain acceptable methods for estimating evaporation losses:

(a) Joint Technical Working Group Report, Water Rights Compact Between the State of Montana and the Department of the Interior, Bureau of Land Management, November 1998;

(b) Estimation of Evaporation from Shallow Ponds and Impoundments in Montana, Donald E. Potts, Miscellaneous Publication No. 48, Montana Conservation and Experiment Station School of Forestry, University of Montana, Missoula, March 1988;

(c) Evaporation Pond Design for Agricultural Wastewater Disposal, USDA Soil Conservation Service, Montana Technical Note: Environment No. 7, February 1974; and

(d) Evaporation from Lakes and Reservoirs, a study based on 50 years of weather bureau records, Minnesota Resource Commission, June 1942.

(2) Deviations from the acceptable standards in (1) require additional information supporting the volume requested for evaporation losses.

(3) The department will determine the acceptability of other evaporation loss estimates on a case-by-case basis.

AUTH: 85-2-113, MCA

IMP: 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, 85-2-350, 85-2-351, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-415 through 85-2-419, 85-2-436, 85-2-437, 85-2-439, 85-2-501 through 85-2-512, 85-2-601 through 85-2-606, 85-2-608, and 85-2-804 through 85-2-806, MCA

REASON: The evaporation standard rule is reasonably needed to ensure the public and the department are using sound, reliable, and commonly accepted information.

NEW RULE III LEGAL LAND DESCRIPTION STANDARDS

(1) Primary or secondary points of diversion must be described as one or more of the following:

(a) $\frac{1}{4}$ section, section, township, range and county;

(b) lot, block, subdivision, $\frac{1}{4}$ section, township, range and county;

(c) government lot, $\frac{1}{4}$ section, section, township, range and county; or

(d) certificate of survey number with or without a lot number, $\frac{1}{4}$ section, section, township, range and county.

(2) The point of diversion legal description of an on-stream reservoir must be described as the point where the dam or pit crosses the source of supply.

(3) Transitory diversions must be described as the most upstream diversion point on the source.

(4) If secondary diversions are described, they must be identified as "secondary".

(5) The legal land description for the place of use must be listed to the nearest reasonable and concise legal land description. For example, it would be appropriate to describe 20 acres in the N $\frac{1}{2}$ NWNW rather than 10 acres in the NWNWNW and 10 acres in the NENWNW. For a subdivision covering most of the SW, it would be appropriate to describe the place of use as the SW rather than the NWSW, NESW, SWSW, and SESW.

AUTH: 85-2-113, MCA

IMP: 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, 85-2-350, 85-2-351, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-415 through 85-2-419, 85-2-436, 85-2-437, 85-2-439, 85-2-501 through 85-2-512, 85-2-601 through 85-2-606, 85-2-608, and 85-2-804 through 85-2-806, MCA

REASON: A rule setting forth legal land description standards is reasonably necessary because the precise location of diversion points and places of use are an important element of a water right and are needed for enforcement of that right.

NEW RULE IV MAP STANDARDS (1) A United States geological survey (USGS) quadrangle map or United States department of agriculture (USDA) aerial photo must be included with the application and the following items must be clearly identified on the map:

- (a) north arrow;
- (b) scale bar;
- (c) section corners and numbers;
- (d) township and range numbers;
- (e) all past and proposed points of diversion;
- (f) all past and proposed places of use;
- (g) past and proposed reservoir locations; and
- (h) past and proposed ditch or pipeline locations.

(2) maps must reflect the place of use of all associated water rights.

(3) Additional maps must be submitted if the information on one map cannot convey the required information clearly and must be of the same scale so that they can be overlain.

(4) The applicant must provide a notice area map that identifies water rights that may be affected by the proposed appropriation.

(5) For change applications to irrigation water rights, in addition to the map required in (1) and (2), a copy of the Water Resources Survey map, if available for the land affected by the change, shall be submitted with the historically irrigated acreage identified.

(6) For change applications, all historically irrigated acreage must be identified on an aerial photograph that shows the date the aerial photo was taken.

(7) In addition, a county plat map obtained from the

county office may be submitted. The county plat map must show the same information as required under (1).

AUTH: 85-2-113, MCA

IMP: 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, 85-2-350, 85-2-351, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-415 through 85-2-419, 85-2-436, 85-2-437, 85-2-439, 85-2-501 through 85-2-512, 85-2-601 through 85-2-606, 85-2-608, and 85-2-804 through 85-2-806, MCA

REASON: A rule defining the type, quality, and required information on maps is reasonably needed to ensure that the visual presentation accurately reflects water right elements that exist or will exist on the ground.

NEW RULE V PERIOD OF DIVERSION AND PERIOD OF USE STANDARDS

(1) Deviations from the standards listed below require information supporting the period of diversion or use requested in an application:

(a) domestic January 1 to December 31

(b) stock January 1 to December 31

(c) irrigation based on the climatic area designated by the USDA natural resources and conservation service (NRCS) which is generally as follows:

(i) climatic area I March 15 to November 15

(ii) climatic area II April 1 to October 31

(iii) climatic area III April 15 to October 15

(iv) climatic area IV April 20 to October 10

(v) climatic area V April 25 to October 5

(2) Applications for diversions into a storage reservoir for later use must include the period of diversion for when water will be diverted into the reservoir and the period of use when water will be used from the reservoir.

(3) Applications for temporary permits must identify the beginning and ending month, day, and year.

(4) The basis for the requested periods for other uses must be explained.

AUTH: 85-2-113, MCA

IMP: 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, 85-2-350, 85-2-351, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-415 through 85-2-419, 85-2-436, 85-2-437, 85-2-439, 85-2-501 through 85-2-512, 85-2-601 through 85-2-606, 85-2-608, and 85-2-804 through 85-2-806, MCA

REASON: A period of diversion and period of use rule is reasonably needed to set forth typical time periods that are commonly accepted for various purposes and projects.

NEW RULE VI RESERVOIR STANDARDS (1) An application

project involving a new or existing reservoir must include the annual volume of water that will evaporate from the reservoir water surface.

(2) The application must include information explaining how the storage reservoir will be managed to satisfy senior water rights.

(3) Design specifications for a reservoir's primary and emergency spillways must be included.

(4) If a reservoir is located off-stream:

(a) the conveyance means to and from the reservoir must be identified; and

(b) any losses that may occur with the means of conveyance must be calculated.

(5) For on-stream reservoirs, no flow rate is required. If a flow rate is requested for an on-stream reservoir, documentation must show why a flow rate is needed and reasonable.

(6) Water tanks or cisterns that are a part of a public water supply system are not considered storage reservoirs and no water right application is needed to add a water storage tank or cistern to a water system.

AUTH: 85-2-113, MCA

IMP: 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, 85-2-350, 85-2-351, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-415 through 85-2-419, 85-2-436, 85-2-437, 85-2-439, 85-2-501 through 85-2-512, 85-2-601 through 85-2-606, 85-2-608, and 85-2-804 through 85-2-806, MCA

REASON: The reservoir standards rule is reasonably needed to ensure the public and the department know what information is required for water right applications that include a reservoir as part of a project.

NEW RULE VII SOURCE NAME STANDARDS (1) A source name must adhere to one of the following, which are shown in order of preference:

- (a) USGS map;
- (b) water resource survey book; or
- (c) DNRC water rights database.

(2) Waste and seepage is not an accepted source name. Waste and seepage must be described as an unnamed tributary (UT) to the next named source into which the UT flows.

AUTH: 85-2-113, MCA

IMP: 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, 85-2-350, 85-2-351, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-415 through 85-2-419, 85-2-436, 85-2-437, 85-2-439, 85-2-501 through 85-2-512, 85-2-601 through 85-2-606, 85-2-608, and 85-2-804 through 85-2-806, MCA

REASON: The source name standards rule is reasonably needed because the source of a water right is one of the most important factors of a water right and this rule is to ensure the public and the department use the same naming standards.

NEW RULE VIII WATER USE STANDARDS (1) A water right has several elements, one of which is the amount of water that is used for each purpose described in the right. A reasonable amount of water will vary with the type and location of the use and will depend on various circumstances such as:

- (a) soil conditions;
- (b) method of conveyance;
- (c) topography;
- (d) climate;
- (e) system efficiency; or
- (f) other conditions affecting the particular use.

(2) The department will use the following standards when reviewing notices or applications for new uses of water:

(a) for domestic use, for one household, 1.0 acre-foot per year of water for year-round use. The 1.0 acre-foot does not include water needs for lawn, garden, shrubbery, or shelterbelts;

(b) for lawn, garden, shrubbery, and shelterbelts, 2.5 acre-feet per acre per year;

(c) for stockwater, a consumptive use of 15 gallons per day or .017 acre-foot per year per animal unit. Animal unit equivalencies for water consumption are set out in ARM 36.12.101 and the water conversion table, form no. 615;

(d) for irrigation, the number of acres to be irrigated, the type of crop, the method of irrigation, soil type, means of conveyance, and the climatic area determine a reasonable volume of water to irrigate a project. The NRCS Irrigation Guide for Montana dry year figures will be used as the standard; and

(e) fire protection water needs shall be determined by the type of equipment used, diversion rate, the size of the area to be covered, the frequency of the water use and must be explained and documented.

(3) A permit is required when a reservoir is proposed to include fire protection purposes and the volume of water reasonably needed for fire prevention must be explained and must reference reliable industry sources.

(4) For fire protection reservoirs located within a basin closure area, evaporation losses must be made up from nontributary water sources or addressed in an augmentation plan.

(5) The flow rate and volume of water for any uses not listed in this rule must be calculated, explained, and documented based on the beneficial use and operation of the project.

(6) Deviations outside the standards will require information supporting the requested amount.

AUTH: 85-2-113, MCA

IMP: 85-2-301 through 85-2-319, 85-2-321 through 85-2-

323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, 85-2-350, 85-2-351, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-415 through 85-2-419, 85-2-436, 85-2-437, 85-2-439, 85-2-501 through 85-2-512, 85-2-601 through 85-2-606, 85-2-608, and 85-2-804 through 85-2-806, MCA

REASON: The water use standards rule is reasonably necessary because water use cannot exceed the amount that is reasonable for the purpose and cannot be wasted.

NEW RULE IX PERMIT AND CHANGE APPLICATION ACCEPTANCE

(1) A permit application will not be assigned a priority date and will be returned to the applicant if any of the following is not completed on the application form or included with the application:

- (a) the name and address of the applicant;
- (b) the water source of supply;
- (c) the point of diversion;
- (d) the place of use;
- (e) the purpose for which the water will be used;
- (f) the flow rate or volume required;
- (g) the applicant's notarized signature; and
- (h) the appropriate filing fee found at ARM 36.12.103.

(2) A change application will be returned to the applicant if any of the following is not completed on the application form:

- (a) general abstracts of the water rights being changed reflecting the proposed changes;
- (b) applicant's notarized signature; and
- (c) the appropriate filing fee found at ARM 36.12.103.

AUTH: 85-2-113, MCA

IMP: 85-2-310, MCA

REASON: The department has determined that this rule is a reasonable necessity because water rights are assigned a priority date, which identifies who has junior and senior water rights in relation to other water rights. If an application is deficient in the defined areas, without this rule, an applicant may unfairly gain a senior priority date over an applicant who has included the required information in their application.

NEW RULE X PERMIT AND CHANGE APPLICATION MODIFICATION

(1) Any element of a permit or change application may be modified prior to or after an application has been published.

(2) If a modification requires republication, the priority date of a permit application or the date received of a change application will be changed to the date the last modification was made.

(3) Republication is required if an application substantially changes the nature or scope of the permit or change application criteria from the original application. The following require republication:

- (a) the flow rate is increased;
- (b) the volume is increased;
- (c) the acreage is increased;
- (d) the period of diversion is expanded;
- (e) the source of supply is changed;
- (f) the point of diversion is changed;
- (g) the place of use is changed;
- (h) the purpose is changed;
- (i) the period of use is expanded, unless the application involves a use from a reservoir, because the impact would not change; and

(j) any change where the effect on the source of supply or its tributaries could cause a different impact from the originally published information.

(4) Depending on the circumstances, the applicant may be responsible for the cost of republication and mailing of individual notices.

(5) A new analysis of the application criteria must be submitted when an application modification requires republication and the department will make a new correct and complete determination on the modifications.

AUTH: 85-2-113, MCA
IMP: 85-2-302, 85-2-307, MCA

REASON: The modification rule is reasonably needed because an applicant may need to modify their application at various times during the process. The department is required to make a determination of "correct and complete" on an application and that determination must be made on the current or accurate application elements. Further, the department is required to publish the particulars of an application and if that information is modified, republication may be required in order to inform the public of the changes made to a water right application.

NEW RULE XI APPLICATION DEFICIENCY LETTER AND TERMINATION

(1) If the department determines the application does not contain the information requested in [New Rule I], the department will notify the applicant in a deficiency letter of any defects in a permit or change application within 180 days of receipt of the application. The defects and the administrative rule not met will be identified in the deficiency letter.

(2) If all of the requested information in the deficiency letter is submitted to the department within 30 days of the date of the deficiency letter, the priority date on a permit application will not be changed, or for change applications, the date received will not be changed.

(3) If all of the requested information in the deficiency letter is submitted within 31 to 90 days of the date of the deficiency letter, the permit application priority date will be changed to the date when the department receives all of the requested information, or for a change application, the date received will be changed.

(4) If all of the requested information in the deficiency letter is not submitted within 90 days of the date of the deficiency letter, the permit or change application will be terminated.

(5) If a second or follow-up deficiency letter is required, the 90-day period does not start over.

AUTH: 85-2-113, MCA
IMP: 85-2-302, MCA

REASON: House Bill #720 enacted by the 2001 legislature directs the department to adopt rules to determine whether a water right application is correct and complete. This rule is reasonably necessary because the public and the department need to understand what action will be taken if a water right application is not correct and complete.

NEW RULE XII BASIN CLOSURE AREA EXCEPTIONS AND COMPLIANCE

(1) In the numerous basin closure areas in Montana, the department cannot process an application unless it qualifies as a basin closure exception.

(2) An applicant must provide a written summary of their application information explaining how their application meets the basin closure exceptions and why their application located in a basin closure area can be processed.

(3) The department will determine whether an application in a basin closure area can be processed and will document its findings before it will review the application to determine whether it is correct and complete.

(4) In a basin closure area that allows applications for nonconsumptive uses, evaporation losses must be mitigated. A pond is considered consumptive because evaporation and seepage losses typically occur.

(5) In basin closure areas that allow augmentation plans and applications for nonconsumptive uses, the department must approve the augmentation plan prior to processing the application. If an augmentation plan requires more than one application, all applications will be processed simultaneously. If any of the augmentation applications are terminated or denied, all related applications will be terminated or denied.

(6) In basin closure areas that allow applications for ground water that is not immediately or directly connected to surface water, information must be included in the document required in (2) demonstrating that the application qualifies as a ground water exception.

(a) The department will not determine an application to be for a permit to appropriate ground water unless the department can determine from the information provided that the cone of depression or radius of influence of a pumping well will not intercept surface water by inducing infiltration during the proposed period of diversion.

(b) The department staff shall make a written determination that the evidence submitted by an applicant is sufficient on which to base a determination that the proposed

ground water use is not hydraulically connected or if hydraulically connected, will not induce surface water infiltration.

(c) An applicant must address whether the source aquifer is hydraulically connected to any surface water sources that lie within an estimated or actual delineated zone of influence. An applicant may use the results of an appropriate nearby aquifer test to approximate the zone of influence. Depending on circumstances, such as proposed flow rate and volume, cyclic pumping, well depth, or distance to surface water, an applicant may be able to demonstrate that there is not nor will there be a hydraulic connection to surface water.

(i) High and low transmissivity and storativity values can be evaluated and used to estimate a radius of influence. If the estimated radius of influence lies near a surface water source, then the applicant must determine if the source aquifer is hydraulically connected to the surface water source.

(ii) Relative or absolute elevations of ground water levels and beds of surface water sources are needed to evaluate whether a hydraulic connection exists.

(iii) Water level data may be obtained from existing wells located near or at the surface water source.

(iv) If existing wells are not available, the installation of small diameter wells, wellpoints, or piezometers, including those adjacent to or in the surface water source, can be used to obtain these data.

(d) If an applicant demonstrates and provides a technical explanation concluding induced surface water infiltration will not occur when static ground water level is greater than 10 feet below the bed of a surface water source, the source aquifer will not be considered hydraulically connected to surface water at that location. Further testing for induced surface water infiltration at the tested location is not required.

(e) If an applicant demonstrates and provides a written technical explanation concluding the static ground water level is less than 10 feet below the bed of a surface water source, the source aquifer is considered to be hydraulically connected to surface water at the tested location and further testing must be conducted to determine whether pumping the proposed well will induce surface water infiltration during the proposed period of diversion.

(f) Induced surface water infiltration can be best evaluated by conducting an aquifer test. The following rules address the evaluation of whether the proposed well will induce surface water infiltration.

(7) Aquifer tests must be conducted using methods described in [New Rule XIII] that will determine the aquifer properties needed to determine the zone of influence for the period of diversion and the potential for drawdown to induce the infiltration of surface water within the zone of influence.

(a) One or more observation wells may be needed to measure ground water levels between the proposed production well and surface water sources and to determine hydraulic gradients before and during aquifer testing.

(b) Staff gages must be installed in surface water sources adjacent to the observation wells to monitor stages during the aquifer test for comparison to ground water levels.

(c) Relative or absolute elevations of all monitoring points must be surveyed to accurately determine hydraulic gradients.

(d) Relative or absolute elevations of ground water levels and surface water stages must be compared to determine whether the hydraulic gradient between the source aquifer and gaining surface water sources is reversed or whether the hydraulic gradient between losing surface water sources and the source aquifer is steepened. The occurrence of either during the aquifer test constitutes induced surface water infiltration.

(e) To evaluate whether induced surface water infiltration will occur during the period of diversion, an applicant must project drawdown to the surface water sources for the period of diversion using aquifer properties determined from the aquifer test. Analytical equations, an analytical ground water flow model, or a numerical ground water flow model may be used to evaluate whether induced surface water infiltration will occur.

(f) The hydraulic gradient must be compared with the slope of the cone of depression near the surface water source(s) for the period of diversion. If the comparison shows that the slope of the cone of depression is greater than the hydraulic gradient, the department will determine that pumping the proposed well will induce surface water infiltration.

(8) For ground water pits, the department will determine that evaporation alone cannot induce streambed infiltration, therefore, no hydraulic connection exists with surface water unless water is being pumped from the pit. If water is being pumped from the pit, then a hydraulic analysis is required to determine if, by pumping, water is induced from a surface water source.

AUTH: 85-2-113, MCA
IMP: 85-2-302, 85-2-330, 85-2-337, 85-2-341, 85-2-343,
MCA

REASON: The basin closure rule is reasonably necessary because in basin closure areas water is limited and an applicant must show that water is available for their use. The rule is also reasonably needed so that both the applicant and the department understand what is required in order to allow the department to begin processing an application.

NEW RULE XIII AQUIFER TESTING REQUIREMENTS (1) There are numerous tests that can be performed on wells and aquifers, with a variety of objectives and procedures. The type of testing required depends on factors such as whether the well is located in a basin closure area (see [New Rule XII]), the expected typical use of the well, the potential interference with existing water rights and the characteristics of the aquifer in which the well is completed.

(2) Outside of a basin closure area, and depending on

other circumstances, some flexibility regarding aquifer testing may be allowed; therefore applicants are encouraged to confer with department experts prior to the aquifer testing.

(a) Department experts will provide guidance on testing procedures, monitoring, and reporting, but will not provide technical support or assistance.

(b) The department staff will determine the adequacy of the test design or test conducted.

(3) Aquifer testing must follow standard procedures that are discussed in hydrogeology textbooks and professional literature. The following apply to aquifer testing:

(a) A hydrogeologist, hydrologist, or engineer familiar with aquifer testing procedures must supervise the aquifer test, analyze data, and report results and conclusions.

(b) Aquifer test data form no. 633, or equivalent, must be used to record the data required for the test.

(c) Pumping must be maintained at a constant discharge rate equal to or greater than the requested pumping rate for the entire duration of the test. If the discharge rate varies, the applicant must note the clock time and discharge rate. If unforeseeable circumstances prevent the applicant from pumping at or above the proposed discharge rate, a discharge rate of not less than 75% of the proposed discharge rate can be accepted.

(d) Minimum duration of pumping during an aquifer test must be 24 hours for a proposed use or discharge of 150 gpm or less and a proposed volume of 50 acre-feet or less.

(e) Minimum duration of pumping during an aquifer test must be 72 hours for a proposed use or discharge of greater than 150 gpm and proposed volume greater than 50 acre-feet.

(f) Discharge of the pumped well must be measured with a reliable measuring device, which can include a barrel, in-line flow meter, flume, or weir.

(g) Discharge rate must be monitored and recorded with clock time and adjusted if necessary at 15-minute intervals during the first three hours of the aquifer test and at frequent intervals until the end of the test to maintain a constant discharge.

(h) Discharged water must be conveyed a sufficient distance from the production and observation wells to prevent recharge to the aquifer during the test. Adequate water conveyance devices include pipe, large-diameter hose (e.g., fire hose), lined ditch or canal, or an existing irrigation system.

(4) The following must be used to ensure monitoring is adequate:

(a) One or more observation well(s) must be completed in the same water-bearing aquifer as the proposed production well and close enough to the production well so that drawdown is measurable and far enough that well pumping hydraulics do not affect the observation well.

(b) One or more observation well(s) must be completed in the overlying water-bearing zone if the proposed well is purported to be completed in a hydraulically disconnected deeper aquifer.

(c) An observation well can be an existing well. An

existing well should not be pumped, or if pumped should be monitored at a frequency necessary to separate the effects of its pumping.

(d) New observation wells must be constructed as described in ARM Title 36, chapter 21, subchapter 6. However, some observation wells may be shallow and are not subject to those rules. In those cases, observation wells might be constructed by simple excavation, or installing PVC pipe, perforated black pipe, or a sand point.

(e) Electronic pressure transducer/data logger instrumentation, electric well probes, pressure gauges on turbine pumped wells, or graduated steel tapes are acceptable methods of measuring ground water levels.

(f) Ground water levels in the production and all of the observation wells must be monitored at frequent intervals for at least two days prior to beginning the aquifer test to evaluate background water-level trends and the prepumping hydraulic gradient. An applicant must evaluate and correct for background water-level trends.

(g) Ground water-level drawdown in the production and observation well(s) during the pumping phase of the aquifer test must be measured with 0.01-foot precision according to the schedule specified on form no. 633.

(h) Ground water-level recovery in the production and observation wells must be measured with 0.01-foot precision according to the schedule specified on form no. 633 or at a minimum, according to the specified schedule on form no. 633 for the first 24 hours of recovery and several times per day until end of the recovery test.

(5) A report describing all testing and monitoring procedures and presenting analyses, interpretations, and conclusions must be submitted with the application and must include the following:

(a) a topographic map with labeled locations of production and observation wells, discharge point, surface water monitoring sites, other well monitoring sites, and a scale bar and north arrow;

(b) if available, a geologic map, stratigraphic, geomorphic, or lithologic descriptions, and drilling logs;

(c) distances between the pumping well and the observation well, and depths, dimensions, and perforated intervals of each well as specified on form no. 633;

(d) surveyed wellhead elevations and staff gage elevations if basin closure testing is required;

(e) a narrative description or conceptual model of the distribution of aquifers and confining layers, and locations of aquifer boundaries;

(f) a description of testing methods;

(g) ground water level and surface water monitoring data;

(h) aquifer-testing data, transmissivity and storage coefficient determinations and effects to ground water and surface water availability;

(i) analyses, interpretations, and conclusions; and

(j) all pumping schedules and drawdown and recovery data

must be submitted in electronic format.

AUTH: 85-2-113, MCA
IMP: 85-2-302, 85-2-311, 85-2-330, 85-2-337, 85-2-341,
85-2-343, 85-2-402, 85-2-419, 85-2-506, 85-2-508,
MCA

REASON: The aquifer testing rule is reasonably needed to ensure that thorough ground water testing requirements are employed and that the results of the testing are adequately analyzed and reported.

NEW RULE XIV CONTACTS (1) If communication about a water right application filing or objection filing is to be conducted through an individual other than the applicant, the name address, and phone numbers must be supplied.

(2) If a contact person is identified as legal counsel, all communication will be sent only to the attorney unless the attorney provides written instruction to the contrary.

(3) If a contact person is identified as a consultant, employee, or lessee, the individual filing the water right form or objection form will receive all correspondence and a copy will be sent to the contact person.

AUTH: 85-2-113, MCA
IMP: 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, 85-2-350, 85-2-351, 85-2-401 through 85-2-419, 85-2-421 through 85-2-424, 85-2-431, 85-2-436 through 85-2-440, 85-2-501 through 85-2-514, 85-2-518, 85-2-520, 85-2-601 through 85-2-608, 85-2-804 through 85-2-807, MCA

REASON: The department has determined that the contacts rule is reasonably needed to ensure that the public and the department know who will be contacted under certain situations and to preserve attorney-client privilege.

NEW RULE XV FILING A PERMIT APPLICATION (1) An application for beneficial water use permit (form no. 600) must be filed when an individual desires to use surface water or ground water that exceeds 35 gallons per minute or a volume of 10 acre-feet, and for ground water sources within a controlled ground water area.

(2) An application must contain sufficient factual documentation to be considered substantial credible information as defined at 85-2-102, MCA.

(3) Form no. 600 must be completed and must describe the details of the proposed project. The form and addendums must be filled in with the required information.

(4) Each source of supply requires a separate application. For example, if an application is for two diversions, one on an unnamed source and another on the downstream tributary of the unnamed source, two separate applications must be submitted, one for each source of supply.

(5) One application is allowed for one purpose and multiple points of diversion.

(6) One application is allowed for several purposes if all the points of diversion supply the same purposes.

(7) Separate applications are required if multiple purposes are supplied by different points of diversion, except if the entire project is manifold into one system, then a single application is allowed.

(8) Calculations, references, and methodologies used to determine flow rate, volume, and reservoir capacity must be included in the application materials.

(9) Flow rate (in gallons per minute [gpm] or cubic feet per second [cfs]), volume (in acre-feet) or reservoir capacity (in acre-feet) figures will be rounded to the nearest tenth.

(10) The source name standards outlined in [New Rule III] must be followed.

(11) The legal descriptions for the point of diversion and place of use must be identified as required under [New Rule III].

(12) The period of diversion standards outlined in [New Rule V] must be followed.

(13) The reservoir standards outlined in [New Rule VI] must be followed if an application involves a reservoir.

(14) The permit application materials must include a general project plan stating when and how much water will be put to beneficial use.

(15) Photographs must include the name of the photographer, the date taken, and an explanation of what the photograph purports to show.

(16) If there are associated water rights to the application, they must be identified and additional information may be required.

(17) If after receipt of an application the ownership of the property changes, the original applicant must submit written documentation requesting or consenting to a change in the applicant name.

(18) If a permit application is to supplement acres that are irrigated under another water right, the water right numbers and abstracts of the associated water rights must be included in the application.

(19) An explanation of why supplemental irrigation water is needed and how the associated water rights will be managed must be included in the application materials.

(20) The flow rate at which water will be diverted from the source of supply for each purpose, a reasonable volume of water for each purpose, and the period of time that water will be used for each purpose must be identified.

(21) An application to only increase the flow rate or volume must reflect a value of zero in the nonapplicable field.

(22) Information must be included in the application that explains why the time period for completion is requested. The explanation may include information about the cost and magnitude of the project and the complexity of the project or any other reason for the time period identified to complete the project.

AUTH: 85-2-113 and 85-2-302, MCA
IMP: 85-2-302, MCA

REASON: House Bill #720 enacted by the 2001 legislature directs the department to adopt rules to determine whether a water right application is correct and complete. The permit application rule is reasonably necessary because the public and the department need to understand what constitutes a correct and complete application so that unnecessary processing delays do not cause economic or other harm to water right applicants.

NEW RULE XVI PERMIT APPLICATION CRITERIA - PHYSICAL SURFACE WATER AVAILABILITY (1) Substantial credible information must be provided showing there is surface water physically available at the flow rate and volume that the applicant seeks to appropriate.

(2) If actual flow rate and volume measurements are available for the source of supply in the amount the applicant seeks to appropriate, the following is required:

(a) the average flow rate and volume for a median year for each month during the period of diversion;

(b) a legible copy or excerpt of the study or report(s) used in documenting water availability in the source of supply; and

(c) a description of the conclusions, calculations, data, and assumptions used in determining water availability.

(3) If there are not adequate flow data and volume measurements to estimate the median monthly flows in a median year, then the applicant will need to use the most appropriate method listed in (5) and follow the appropriate steps in this rule. This information must then be correlated with known data from another similar or comparable surface water source.

(a) Stream flow measurements in cfs or gpm must be collected at least once every month during the entire proposed period of diversion at the most suitable location on the source of supply, and at or directly upstream of the proposed point of diversion. Measurements taken and submitted under this method must include:

(i) a legible copy of the actual flow measurements;

(ii) calculations used to establish flow rates in cfs or gpm;

(iii) the dates measurements were taken, with a description of current weather conditions;

(iv) the type of measuring device or method used; and

(v) a written legal land description or map clearly showing where the measurements were taken.

(b) If one of the methods identified in (6) is used, the applicant must also include a brief description of the method used and assumptions, calculations, and estimations used in establishing flow rates and volume per year.

(4) If the application involves new storage of surface water such as a reservoir, pond or pit, or enlargement of a natural or manmade lake, the application must include the

following information:

(a) that the source of supply has the volume of water physically available for the proposed beneficial use;

(b) information and data that show the amount of water to be stored is physically available during a median year and in the amount the applicant seeks to appropriate;

(c) projected evaporation and seepage losses; and

(d) for proposed storage facilities with a capacity of 50 acre-feet or more, the application must also include the following information:

(i) the proposed storage capacity of the reservoir and the average monthly inflows into the reservoir; or

(ii) if no or insufficient information is available on flow rates into the proposed facility, the applicant must use the methods in (3). The applicant must also conduct a drainage basin analysis that includes the average monthly flow rate and volume produced by the basin from which water will be collected and describe all conclusions, data, measurement techniques, calculations and assumptions used in determining available storage volumes and flow rates.

(5) The following reports may contain accepted methods for estimating surface water flow rates and volumes:

(a) "Methods for Estimating Monthly Stream Flow Characteristics at Ungaged Sites in Western Montana," USGS Open-file Report 89-40;

(b) "A Method for Estimating Mean and Low Flows of Streams in National Forests of Montana," USGS Water Resources Investigation Report 85-4071;

(c) "Stream Flow Characteristics of Mountain Streams in Western Montana," USGS Open-File Report 84-244;

(d) "Estimated Monthly Percentile Discharges at Ungaged Sites in the Upper Yellowstone River Basin in Montana," USGS Water Resources Investigation Report 86-4009;

(e) "A Method for Estimating Mean Annual Runoff of Ungaged Streams Based on Characteristics in Central and Eastern Montana," USGS Water Resources Investigation Report 84-4143;

(f) "Estimates of Monthly Flow Characteristics at Selected sites in the Upper Missouri River Basin, Montana, Base Period Water Years 1937 - 86," USGS Water Resources Investigations Report 89-4082;

(g) "Mean Annual Runoff and Peak Flow Estimates Based on Channel Geometry of Streams in Southeastern MT," USGS Water Resources Investigation Report 82-4092;

(h) "Mean Annual Runoff and Peak Flow Estimates Based on Channel Geometry of Streams in Northeast and Western Montana," USGS Water Resources Investigation Report 83-4046; and

(i) "Estimates of Mean Monthly Stream Flow for Selected Sites in the Musselshell River Basin, Montana," USGS Water Resources Investigation Report 89-4164.

(6) Any other professionally documented hydrologic method for estimating stream flow or annual runoff which may be applicable and acceptable to the department, including the Orsborn method, Mannings equation, U.S. natural resources and conservation service-developed mean annual runoff data, and

drainage area information paired to gaged streams in similar type basins may be acceptable. The department will determine the acceptability of other methods on a case-by-case basis.

AUTH: 85-2-113 and 85-2-302, MCA
IMP: 85-2-302, MCA

REASON: House Bill #720 enacted by the 2001 legislature directs the department to adopt rules to determine whether a water right application is correct and complete. The permit application rule regarding physical availability of surface water is reasonably necessary because the public and the department need to understand what constitutes a correct and complete application.

NEW RULE XVII PERMIT APPLICATION CRITERIA - PHYSICAL GROUND WATER AVAILABILITY (1) Applicants for ground water must provide substantial credible information demonstrating that water is available for their use from the source aquifer in the amount the applicant seeks to appropriate.

(2) The requirements of [New Rule XIII] must be followed.

AUTH: 85-2-113 and 85-2-302, MCA
IMP: 85-2-302, MCA

REASON: House Bill #720 enacted by the 2001 legislature directs the department to adopt rules to determine whether a water right application is correct and complete. This rule, related to physical availability of ground water, is reasonably necessary because the public and the department need to understand what constitutes a correct and complete application.

NEW RULE XVIII PERMIT APPLICATION - EXISTING LEGAL DEMANDS

(1) Legal demands usually exist on the source of supply or its downstream tributaries that may be affected by a proposed water right application, including prior appropriations, water reservations, or unperfected permits. These existing legal demands will be senior to a new application and the senior rights must not be adversely affected.

(2) The applicant must provide a notice area map that will be used to identify senior water rights that may be affected by the proposed appropriation.

(3) For surface water, the notice area map must extend the applicable distances in Table 1. If there are no diversions by other water users within the applicable distance, then the map must extend to the applicable number of diversions shown in Table 1.

Table 1

Application Flow Rate	Miles Downstream from the most upstream proposed point of diversion	Points of Diversion downstream from the most downstream proposed point of diversion
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Less than 100 gpm	2 miles	Next 3 diversion points
100 - 1000 gpm	5 miles	Next 6 diversion points
Greater than 1000 gpm	10 miles	Next 12 diversion points

(4) For applications to only increase volume or that do not require a flow rate, an estimate of the maximum flow rate of the source of supply must be made and based on the estimate, using the figures in Table 1.

(5) For ground water, the notice area for pumping wells is the cone of depression created during the plan of operation. The notice area map must show the limit of the cone of depression that is created during an aquifer test.

(6) When the vertical projection of the outer limits of the cone of depression intersects a surface water source, the notice area map must also display the applicable distances or points of diversion from Table 1. The starting point of the notice area distance must be measured from the most upstream intersection point of the vertical projection.

(7) The application must include an index, or general abstract of water rights found in the department records, that are located within the identified notice area and must include state water reservations, instream water uses, and unperfected permits. The index or general abstract of each water right must contain, but is not limited to the following information:

- (a) water right number;
- (b) priority date;
- (c) source of supply name;
- (d) point of diversion;
- (e) period of diversion;
- (f) purpose of use;
- (g) period of use;
- (h) flow rate; and
- (i) volume.

(8) After an application is deemed correct and complete, the department shall, independent of the information provided by the applicant under this chapter, identify existing water right owners that may be affected by the proposed application.

AUTH: 85-2-113 and 85-2-302, MCA
IMP: 85-2-302, MCA

REASON: House Bill #720 enacted by the 2001 legislature directs the department to adopt rules to determine whether a water right application is correct and complete. The rule related to existing legal demands within the area of possible impact is reasonably necessary because the public and the department need to understand what constitutes a correct and complete application.

NEW RULE XIX PERMIT APPLICATION CRITERIA - COMPARISON OF

PHYSICAL WATER AVAILABILITY AND EXISTING LEGAL DEMANDS (1) To determine if water is legally available, the applicant must compare the physical water supply at the proposed point of diversion and the existing legal demands within the area of potential impact. One must become familiar with senior water rights operations to accurately evaluate the effect to the senior water right.

(2) Applicants must analyze all of the senior water rights on a source of supply and its downstream tributaries within the area of potential impact and provide a written narrative comparing the physical water supply at the point of diversion during the period of diversion requested and the legal demands that exist for the water supply during that same period.

(3) If known patterns of use differ from the legal water rights filings, an explanation may be submitted explaining the current water operation. For example, if a prior appropriator uses less water than was claimed or a water right has not been in use for a number of years, that information may help show why water is legally available.

AUTH: 85-2-113 and 85-2-302, MCA
IMP: 84-2-302, MCA

REASON: House Bill #720 enacted by the 2001 legislature directs the department to adopt rules to determine whether a water right application is correct and complete. This rule is reasonably necessary because the public and the department need to understand what constitutes a correct and complete application.

NEW RULE XX PERMIT APPLICATION CRITERIA - ADVERSE EFFECT

(1) Adverse effect for permit applications is based on the applicant's plan showing the diversion and use of water and operation of the proposed project can be properly regulated during times of water shortage so that the water rights of prior appropriators will be satisfied.

(2) A written narrative must be provided addressing the potential adverse effect to all of the water rights listed in [New Rule XVIII].

(3) For surface water applications, in addition to (1) and (2), the applicant shall explain the rate and timing of depletions from the source of supply and its downstream tributaries and what effect that will have on other water rights.

(4) For ground water applications, in addition to (1) and (2), the applicant shall describe how water levels in wells of prior water rights will be lowered and the rate and timing of depletions from hydraulically connected surface waters.

(5) An applicant may propose conditions to eliminate or mitigate potential adverse effects to senior water rights.

AUTH: 85-2-113 and 85-2-302, MCA
IMP: 85-2-302, MCA

REASON: House Bill #720 enacted by the 2001 legislature directs the department to adopt rules to determine whether a water right application is correct and complete. This rule on permit criteria regarding adverse effect is reasonably necessary because the public and the department need to understand what constitutes a correct and complete application.

NEW RULE XXI PERMIT APPLICATION CRITERIA - ADEQUATE DIVERSION MEANS AND OPERATION (1) The diversion works must be capable of diverting the amount of water requested to accomplish the proposed use without unreasonable loss through design or operation.

(2) The applicant must show any conditions required to protect prior water appropriators can and will be implemented.

(3) The diversion works must conform to current industry design, construction, and operation standards.

(4) Wells must be constructed according to ARM Title 36, chapter 21, subchapter 6.

(5) The applicant shall describe how the proposed system will be operated, from point of diversion through the place of use and on through the discharge of water, if any.

(6) Design plans and specifications for the diversion and conveyance facilities and the equipment used to put the water to beneficial use must be submitted including the following:

(a) the proposed flow rate and volume design capacity;

(b) the expected overall efficiency, including diversion, conveyance, and system efficiencies;

(c) the proposed diversion schedule, such as number and timing of irrigation sets;

(d) system design, construction, or operation features which are intended to reduce or eliminate adverse effects on other water rights; and

(e) the flow rate and operation of secondary diversions must be described.

(7) For developed springs, an explanation of how the spring will be developed must be included.

AUTH: 85-2-113 and 85-2-302, MCA

IMP: 85-2-302, MCA

REASON: House Bill #720 enacted by the 2001 legislature directs the department to adopt rules to determine whether a water right application is correct and complete. The rule regarding adequate means of diversion is reasonably necessary because the public and the department need to understand what constitutes a correct and complete application.

NEW RULE XXII PERMIT AND CHANGE APPLICATIONS - BENEFICIAL USE (1) Beneficial use consists of two components:

(a) first, the purpose for which the water right is used must be beneficial; and

(b) second, the annual flow rate and volume requested must be reasonable for each use without waste as defined in 85-2-102, MCA.

- (2) Water may be appropriated for beneficial use:
 - (a) by a governmental entity for the public;
 - (b) by a person for the sale, rent, or distribution to others; or
 - (c) by a person for the person's own use, unless provided otherwise by statute.

(3) The following information must be included in an application to show that the water use is beneficial and that the flow rate and volume of water is reasonable for each purpose:

- (a) how the purpose for the water benefits the appropriator; and
- (b) that the requested flow rate and volume for each purpose is reasonably needed to accomplish that purpose.

(4) An application to change must contain information explaining why the requested flow rate and volume to be changed are reasonable.

AUTH: 85-2-113 and 85-2-302, MCA
IMP: 85-2-302, MCA

REASON: House Bill #720 enacted by the 2001 legislature directs the department to adopt rules to determine whether a water right application is correct and complete. The beneficial use rule is reasonably necessary because the public and the department need to understand what constitutes a correct and complete application.

NEW RULE XXIII PERMIT AND CHANGE APPLICATIONS - POSSESSORY INTEREST (1) An applicant or a representative who has power of attorney shall sign the application form affidavit to affirm the following information:

- (a) the statements on the application and all information submitted with the application are true and correct; and
- (b) the applicant has possessory interest in the property where the water is to be put to beneficial use or has the written consent of the person having the possessory interest.

(2) If the applicant is a corporation, a corporation officer must sign the application and provide their corporation title, such as president or treasurer.

(3) A copy of the document transferring power of attorney must be submitted if a representative who has power of attorney signs the application.

(4) The department may require a copy of the written consent of the person having the possessory interest.

AUTH: 85-2-113 and 85-2-302, MCA
IMP: 85-2-302, MCA

REASON: House Bill #720 enacted by the 2001 legislature directs the department to adopt rules to determine whether a water right application is correct and complete. This possessory interest rule is reasonably necessary because the public and the department need to understand what constitutes a

correct and complete application.

NEW RULE XXIV FILING A CHANGE APPLICATION (1) An application to change a water right (form no. 606) must be filed when an individual desires to change the point of diversion, place of use, purpose of use, or place of storage of an existing right.

(2) A change application must contain sufficient factual documentation to be considered substantial credible information as defined at 85-2-102, MCA.

(3) The department must consider historical use in determining whether a proposed change would constitute an enlargement in use of the original water right.

(4) The applicant must show that each water right to be changed has been used and must explain the extent of the historic use.

(5) Form no. 606 must be completed and must describe the details of the proposed project. The form and addendums must be filled in with the required information.

(6) The application must contain a brief narrative explaining the general nature of the requested change and why it is being requested.

(7) Only an owner of record, as shown in the department's water right records, can apply to change a water right, except if a change application is for a water right lease pursuant to 85-2-436, MCA, the change applicant must be the state of Montana, department of fish, wildlife, and parks.

(8) A current detailed water right abstract of each water right being changed must be submitted with proposed changes noted on the abstract. If the information supplied in the application is changed, the modifications must be submitted to the department.

(9) Final water court approved stipulations, master's reports, or examination information related to the water right being changed must be submitted with the application.

(10) A change application must include all water rights owned by the individual making the change that have the following in common:

- (a) source of supply;
- (b) purpose; and
- (c) same or a portion of the same place of use.

(11) Multiple water rights may be changed on one application if, upon completion of the project, the diversion, place of use, purpose, or storage information will be exactly the same for each changed water right. If not, separate applications must be filed.

(12) The legal descriptions for the point of diversion and place of use must be identified as required under [New Rule III].

(13) Calculations showing how the existing and proposed flow rate, volume, and capacity were determined must be included in the application materials and the methodology employed must be described.

(14) Flow rate (in gpm or cfs), volume (in acre-feet) or

reservoir capacity (in acre-feet) will be rounded to the nearest tenth.

(15) The proposed diverted and consumed volume of water must be identified for each changed right.

(16) A comparison between the historic consumptive use of the water rights being changed and the consumptive use under the proposed change to those rights must be included with the application.

(17) If a portion of a water right with multiple owners is to be changed, documentation must address how the water right will be operated under the changed conditions. For example, if an applicant will no longer be using water from a ditch, but will be taking it directly from the source of supply, the loss of carriage water in the ditch must be addressed.

(18) The potential effect to all water sources involved in a change must be evaluated and documented.

(19) An applicant shall compare historical acres irrigated to acres identified as irrigated in the Water Resources Survey, if available for the place of use. If the Water Resources Survey does not support the historical irrigation alleged in the application, the applicant shall explain why. Information from irrigation journals or logs or old aerial photographs can be submitted for consideration.

(20) The time needed to complete and put the changed project into operation must be identified. Information must be included in the application materials that justify the requested time. The justification must include information that would lead a person not familiar with the project to conclude the period requested is reasonable and needed to complete the change and put the changed water to use.

(21) For a change application that is only to add stock tanks to an existing stock water system, the following rules apply:

(a) form no. 606 must be completed and must describe the details of the proposed project. The form and addendums must be filled in with the required information;

(b) the applicant must show that each water right to be changed has been used and must explain the extent of the historic use including the flow rate and volume; and

(c) the applicant must provide information to show that the historic flow rate diverted will be adequate even though the additional stock tanks may be further away from the source of supply.

AUTH: 85-2-113 and 85-2-302, MCA
IMP: 85-2-302, MCA

REASON: House Bill #720 enacted by the 2001 legislature directs the department to adopt rules to determine whether a water right application is correct and complete. This change application-filing rule is reasonably necessary because the public and the department need to understand what constitutes a correct and complete application so that unnecessary processing delays do not cause economic or other harm to water right

applicants.

NEW RULE XXV CHANGE APPLICATION - HISTORIC USE (1) A change applicant shall bear the burden of proving their actual historic beneficial use of water no matter how that water right was described in previous claims, applications, district court decrees or Montana water court decrees. An abstract of a water right from the department or the Montana water court by itself is not sufficient to prove the existence or extent of the historical right.

(2) The amount of water being changed for each water right cannot exceed or increase the flow rate historically diverted under the existing use, nor exceed or increase the historic volume consumptively used under the existing use, nor increase the net depletion from the source of supply or its tributaries.

(3) If an applicant provides a "best available estimate" to any element or requirement in the following sections, an explanation of how the estimate was derived must be included.

(4) The applicant shall provide a narrative of the historic use of each water right being changed. The description must be based on actual physical measurements when available and use commonly accepted engineering principles. The narrative must contain the following:

(a) the maximum flow rate diverted from each point of diversion listed on the water right in each month during the period of diversion;

(b) the volume of water consumed from each point of diversion listed on the water right for each month during the period of diversion;

(c) a description of how and when unconsumed water returns to a ground or surface water source; and

(d) documentation of the basis of all data used in the analysis, methods of analysis and calculations.

(5) The applicant shall provide written documentation explaining how the information was acquired to substantiate the historic use about the following elements of each water right being changed including, but not limited, to the following:

(a) point of diversion;

(b) period of diversion;

(c) volume used for each purpose;

(d) period of use for each purpose;

(e) place of use for each purpose;

(f) maximum number of acres historically irrigated;

(g) means of conveyance;

(h) location of reservoir;

(i) maximum volume in acre-feet of water stored;

(j) maximum number of times a reservoir was filled during a year; and

(k) maximum period of time when water was collected for storage.

(6) A narrative must be included in the application materials explaining the historic operation of the right, including flow rate, volume, period of diversion, period of use, and period of storage are reasonable and typical of the purpose

for which the historic right was used.

(7) A report must be included specifying the flow rate of water diverted, the volume of water consumed, conveyance or other losses, and the volume of water that returned (return flow) to either a ground water or surface water source and how the return flow volume was calculated.

AUTH: 85-2-113 and 85-2-302, MCA
IMP: 85-2-302, MCA

REASON: House Bill #720 enacted by the 2001 legislature directs the department to adopt rules to determine whether a water right application is correct and complete. This rule is reasonably necessary because the public and the department need to understand what constitutes a correct and complete application so that unnecessary processing delays do not cause economic or other harm to water right applicants. Further, the change application - historic use rule is reasonably needed because the extent of the historic use must be clearly known by the applicant and the department in order to determine whether the historic water right supports the proposed change project and so information is available to determine if other water users will be adversely affected by the change.

NEW RULE XXVI CHANGE APPLICATION - ADVERSE EFFECT

(1) Both junior and senior water appropriators are entitled to the maintenance of the stream conditions similar to those that existed when they began appropriating water.

(2) Individuals applying to change a water right must identify the effect their change application will have and then, based on that information, determine the area of potential impact to both junior and senior water rights.

(3) The applicant must provide a description for the proposed use of each water right being changed containing the same information as shown in [New Rule XXV].

(4) The applicant must compare the information requested in this section and [New Rule XXV] and then identify both surface water and ground water sources that would be affected by the proposed change and the magnitude and timing of the effect.

(5) The applicant must provide a notice area map which will be used to identify junior and senior water rights that may be affected by the proposed change.

(6) For surface water, the notice area map must extend the applicable distances in Table 2. If there are no diversions by other water users within the applicable distance, then the map must extend to the applicable number of diversions shown in Table 2.

Table 2

Total Flow Rate of Water Rights being Changed	Miles Downstream from the most upstream existing or proposed point of diversion	Points of Diversion downstream from the most downstream existing or proposed point of diversion
Less than 100 gpm	2 miles	Next 3 diversion points
100 - 1000 gpm	5 miles	Next 6 diversion points
Greater than 1000 gpm	10 miles	Next 12 diversion points

(7) For changes to ground water rights, the notice area map must show the vertical projection of the limits of the cone of depression that is created during the aquifer test. See [New Rule XIII].

(8) When the vertical projection of the outer limits of the cone of depression extends to a surface water source, the notice area map must also display the applicable distances and points of diversion from Table 2. The starting point of the notice area distance must be measured from the most upstream intersection point of the vertical projection.

(9) For changes in point of diversion, the notice area map must identify the water rights between the past and proposed points of diversion in addition to (6), or (7) and (8).

(10) The application materials must include an index or general abstracts of junior and senior water rights found in the department records, that are located within the notice area, and must also include state water reservations, instream water uses, and unperfected permits. The index or general abstract of each water right must contain, but is not limited to, the following information:

- (a) water right number;
- (b) priority date;
- (c) source of supply;
- (d) purpose of use;
- (e) period of use;
- (f) point of diversion;
- (g) period of diversion;
- (h) flow rate; and
- (i) volume.

(11) An analysis must be provided addressing the potential effect of the change to all of the water rights identified in (10) and must explain why the change will not adversely affect those rights. Further, the analysis must include effects of other water rights including:

- (a) those using the existing or proposed point of diversion;
- (b) other ditch users;

(c) down-slope water users; and
(d) the effect to water rights dependent on the return flow.

(12) For surface water applications, the applicant shall explain any changes in the rate and timing of depletions, from the source of supply and its tributaries, resulting from the change and what effect those changes will have on junior and senior water rights.

(13) For ground water applications, the applicant shall explain how the proposed change will affect water levels in wells of junior and senior water rights and the rate and timing of depletions from hydraulically connected surface waters, and what effect those changes will have on those water rights within the notice area.

(14) If an application is for a water right that has not been used for a period of 10 successive years and there was water available for use, the applicant must provide information showing that beginning to exercise the water right again will not create an adverse effect to other water rights.

(15) A change applicant shall provide an explanation showing how the changed use will be controlled so that the legal entitlements of junior or senior appropriators will be satisfied.

(16) An applicant may propose conditions to eliminate or mitigate potential adverse effects to other water rights.

(17) After an application is deemed correct and complete, the department shall, independent of the information provided by the applicant under this chapter, identify existing water right owners that may be affected by the proposed application.

AUTH: 85-2-113 and 85-2-302, MCA
IMP: 85-2-302, MCA

REASON: House Bill #720 enacted by the 2001 legislature directs the department to adopt rules to determine whether a water right application is correct and complete. This rule is reasonably necessary because the public and the department need to understand what constitutes a correct and complete application so that unnecessary processing delays do not cause economic or other harm to water right applicants. Further, the change application adverse effect rule is a reasonable necessity because both junior and senior appropriators have the right to expect that source of supply conditions remain essentially as they existed before the change took place.

NEW RULE XXVII CHANGE APPLICATION CRITERIA - ADEQUATE DIVERSION MEANS AND OPERATION (1) The diversion works must be capable of diverting the amount of water requested to accomplish the proposed use without unreasonable loss through design or operation.

(2) The applicant must show any conditions required to protect prior water appropriators can and will be implemented.

(3) Design plans and specifications for the current and/or proposed diversion and conveyance facilities and the equipment

used to put the water to beneficial use must be submitted with the application including the following:

(a) a description of the historical operation, including the diversion schedule from the point of diversion to the place of use;

(b) a description of how the proposed system will be operated, from point of diversion through the place of use and on through the discharge of water, if any;

(c) the historic and proposed flow rate and volume design capacity;

(d) the historic efficiency and the projected overall efficiency, including diversion, conveyance, and system efficiencies; and

(e) the system design, construction, or operation features which are intended to reduce or eliminate adverse effects to other water rights.

(4) For applications where a different type of diversion will be used for the proposed system, the applicant shall describe why a new type of diversion means was selected over the historic type used.

(5) The diversion works must conform to current design, construction, and operation standards.

AUTH: 85-2-113 and 85-2-302, MCA

IMP: 85-2-302, MCA

REASON: House Bill #720 enacted by the 2001 legislature directs the department adopt rules to determine whether a water right application is correct and complete. This rule regarding adequate means of diversion and operation is reasonably necessary because the public and the department need to understand what constitutes a correct and complete application.

NEW RULE XXVIII SALVAGE WATER APPLICATIONS (1) In addition to the rules for change applications, a salvage water application must include a professional report documenting the volume of water that is being saved by the proposed water saving method.

(2) For the purpose of implementing 85-2-419, MCA, the destruction of phreatophytes is not a water saving method. For example, one cannot deforest the cottonwoods on a source to obtain salvage water.

(3) Salvaged water includes water lost to deep percolation when the applicant provides geohydrologic evidence that deep percolation occurs.

AUTH: 85-2-113 and 85-2-302, MCA

IMP: 85-2-302, 85-2-402, and 85-2-419, MCA

REASON: House Bill #720 enacted by the 2001 legislature directs the department adopt rules to determine whether a water right application is correct and complete. The salvage water rule is reasonably necessary because the public and the department need to understand what constitutes a correct and

complete application.

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

36.12.101 DEFINITIONS Unless the context requires otherwise, to aid in the implementation of the Montana Water Use Act and as used in these rules:

(1) remains the same.

(2) "Amount" refers to both a flow rate in gallons per minute (gpm), or cubic feet per second (cfs), and a volume of water in acre-feet (af).

(3) "Animal unit month (AUM)" means a measurement of livestock numbers.

(a) one beef cow = 1 AUM

(b) one dairy cow = 1.5 AUM

(c) one horse = 1.5 AUM

(d) three pigs = 1 AUM

(e) five sheep = 1 AUM

(f) 300 chickens = 1 AUM

(4) "Applicant" means the person, as defined in 85-2-102(14), MCA, who files a permit or change application with the department.

(5) "Application" for purposes of [New Rules I, IX, X, XI, XII, XIII, and XIV] means an application for beneficial water use permit, form no. 600, or application to change a water right, form no. 606.

~~(2)~~ (6) "Appropriation right" means any right to the use of water which would be protected under the law as it existed prior to July 1, 1973, and any right to the use of water obtained in compliance with the provisions and requirements of the Act.

(7) "Associated right" means those water rights that share the same source of supply, point of diversion, place of use, or place of storage.

(8) "Augmentation plan" means a plan to provide water to a source of supply and its tributaries to mitigate the depletion effects of a permit or change authorization. The augmentation water right priority date is important to the success of any augmentation plan since call can be made on that water right. Examples of augmentation include, but are not limited to augmenting the source of supply with water from a nontributary source, or retiring all or a portion of senior water rights in the same source of supply in amounts equal to or greater than the net depletion effects of the permit or change application.

(9) "Basin closure area" means a hydrologic drainage basin area within which applications for certain water use permits cannot be accepted. Basin closure areas can be designated by statute, administrative rule, or in compacts.

(10) "Beneficial use" defined at 85-2-102, MCA, includes:

(a) the amount of water reasonably needed for the intended purpose, without waste;

(b) the amount needed for conveyance to the intended purpose, without waste; and

(c) water used for instream flow.

(11) "Certificate of survey number" means the official number given a parcel of land created by a registered land survey as filed with the county clerk and recorder.

(12) "Cfs" means a flow rate of water in cubic feet per second and is equivalent to 448.8 gallons per minute. Applications for a flow rate of less than one cfs will be converted to gallons per minute.

(13) "Change authorization or change" means an approval by the department to make a change in appropriation right as defined by 85-2-102, MCA and allowed by 85-2-402, MCA.

(14) "Claim" means a statement of claim filed pursuant to 85-2-221, MCA, for a water right established prior to July 1, 1973.

(7) remains the same but is renumbered (15).

(16) "Cone of depression" means a cone-shaped depression of water table or pressure surface developing around a pumping well.

(17) "Consumptive use" means the annual volume of water used for a beneficial purpose, such as water transpired by growing vegetation, evaporated from soils or water surfaces, or incorporated into products that does not return to ground or surface waters of the state.

(18) "Controlled ground water area" means an area that has additional management controls applied to new ground water uses pursuant to 85-2-506 through 85-2-508, MCA.

(19) "Criteria addendum" means that additional portion of an application on which substantial credible information must be provided to prove by a preponderance of the evidence that the criteria for approval of a permit or change authorization listed in 85-2-311 and 85-2-402, MCA, are met.

(20) "Dam" means an artificial barrier designed to form a basin to hold water and create a pond or reservoir.

(21) "Deep percolation" means water that percolates below the root zone and infiltrates a deeper aquifer that is not used by other appropriators or connected to a surface water source.

(22) "Department" means the Montana department of natural resources and conservation (DNRC).

(23) "Domestic use" means those water uses common to a household including:

(a) food preparation;

(b) washing;

(c) drinking;

(d) bathing;

(e) waste disposal;

(f) cooling and heating; and

(g) garden and landscaping irrigation up to five acres.

(24) "Drainage device" means a mechanism capable of draining or releasing substantially the full capacity of a reservoir.

(25) "Element" means the factors which describe a water right including, but not limited to:

(a) the priority date;

(b) source of supply;

- (c) point of diversion;
- (d) means of diversion;
- (e) period of diversion;
- (f) flow rate;
- (g) volume;
- (h) acreage;
- (i) purpose;
- (j) place of use;
- (k) period of use;
- (l) storage capacity; and
- (m) storage location.

(5) remains the same but is renumbered (26).

(27) "Evapotranspiration" means the loss of water from the soil both by evaporation and by transpiration from living plants.

(28) "Flow rate" is a measurement of the rate at which water flows or is diverted, impounded, or withdrawn from the source of supply for beneficial use, and commonly measured in cubic feet per second (cfs) or gallons per minute (gpm).

(29) "Form no. 600" means an application for beneficial water use permit.

(30) "Form no. 606" means an application to change a water right.

(31) "Gpm" means a flow rate of water in gallons per minute.

(32) "Ground water" as defined in 85-2-102, MCA, means any water beneath the ground surface.

(33) "Household" means the dwelling, house, or other domestic facilities where an individual, family, or social unit lives.

(34) "Hydraulically connected" means a saturated water-bearing zone or aquifer in direct contact with surface water where free exchange of water may occur between the two sources.

(35) "Hydrologic system" means the overall movement of water, including snow and ice, above, on or below the earth's surface.

(36) "Immediately or directly connected to surface water" means ground water which induces surface water infiltration directly from a stream or other source of surface water.

(37) "Induced surface water infiltration" means that water being pumped from a ground water source is pulling surface water into the cone of depression.

(38) "Irrigation use" means the controlled application of water to land to supply water requirements not satisfied by rainfall.

(39) "Legally available" means that water is physically available from the source of supply to satisfy existing legal demands in the source of supply or its tributaries and the requested amounts in an application.

(40) "Means of diversion" means the type of structures, facilities, or methods used to appropriate, impound, or collect water. Examples include, but are not limited to the following:

- (a) dike;
- (b) dam;

- (c) ditch;
- (d) headgate;
- (e) infiltration gallery;
- (f) pipeline;
- (g) pump;
- (h) pit; or
- (i) well.

(41) "Multiple domestic use" means a domestic use by more than one household or dwelling characterized by long-term occupancy as opposed to guests. Examples are domestic uses by:

- (a) colonies;
- (b) condominiums;
- (c) townhouses;
- (d) subdivisions; and
- (e) public water supply systems.

(42) "Municipal use" means uses associated with a water system for municipalities and incorporated or unincorporated towns and cities.

(43) "Net depletion" means the amount of water removed from an aquifer or surface water source by an appropriator, that does not return to a ground or surface water source and becomes unavailable to other appropriators.

(44) "Notice area" means the geographic area in which applicants must evaluate current water rights.

(45) "Off-stream reservoir" means a reservoir that is not located on the source of supply and is supplied with water from a diversion means such as a pipe, headgate and ditch, or other means.

(46) "On-stream reservoir" means a reservoir that is located on the source of supply.

(47) "Overlapping rights" means multiple water rights filed by different individuals and used on the same or a portion of the same place of use.

(48) "Owner of record" means a person who, according to the department's records, is the current owner of a water right.

(49) "Ownership update" means the updating of the department's water right ownership records by the filing of an ownership update form, form no. 608, pursuant to 85-2-421 through 85-2-426, MCA. The department's form does not transfer water rights or legally determine water right ownership. It only updates the department's centralized ownership records as reflected by the legal documents that actually transfer water rights.

(50) "Period of diversion" means the period in a calendar year when water is diverted, impounded, or withdrawn from the source of supply. It is described by the earliest month and day and the latest month and day water is diverted during each year.

(51) "Period of use" means the period in a calendar year when water is used for specified beneficial use. It is described as the earliest month and day and the latest month and day the water is beneficially used during each year.

(52) "Place of use (POU)" means the land, facility, or site where water is beneficially used.

(53) "Point of diversion (POD)" means the location or

locations where water is diverted from the source of supply.

(54) "Pit, pit-dam, or pond" means a body of water that is created by manmade means, which stores water for beneficial use.

(55) "Possessory interest" means the right to exert some interest or form of control over specific land. It is the legal right to possess or use property by virtue of an interest created in the property though it need not be accompanied by fee title, such as the right of a tenant, easement holder, or lessee.

(56) "Primary diversion" means the initial point from which a diversion means will remove or impound water from the source of supply.

(57) "Project" means a place of use that has its own identifiable flow rate, volume, and means of diversion.

(58) "Recreational use" includes but is not limited to swimming, boating, water sports, and fishing.

(59) "Reservoir" means a pond, pit, or pit-dam, created by manmade means that impounds and stores water.

(60) "Return flow" means that part of a diverted flow which is not consumed and returns underground to its original source or another source of water, and to which other water users are entitled to a continuation of as part of their water right.

(61) "Salvage water" means seepage, waste, or deep percolation water that may be appropriated by the appropriator, moved to other lands, leased, or sold after implementing a water-saving method and proving lack of adverse effect to other water rights.

(62) "Secondary diversion" means a diversion that is not from the source of supply but is a diversion that is used after the water is diverted from the source of supply at the primary diversion. For example, a pump in a ditch or reservoir is a secondary diversion.

(63) "Seepage water" means that part of a diverted flow which is not consumptively used and which slowly returns through small cracks and pores to a surface or ground water source, and which other water users can appropriate, but have no legal right to its continuance.

(64) "Senior water right" means a water right with a priority date that is earlier in time than another water right.

(65) "Source aquifer" means the specific ground water aquifer from which water is diverted for a beneficial use.

(66) "Source of supply" means the specific surface water body from which water is diverted for a beneficial use.

(4) remains the same but is renumbered (67).

(68) "Stock use" means the use of water for livestock, including but not limited to cattle, horses, pigs, sheep, llamas, and animals owned and controlled on game farms. It does not include domestic animals such as dogs and cats or wild animals.

(3) remains the same but is renumbered (69).

(70) "Temporary authorization or temporary change" means an authorization to change granted pursuant to 85-2-407 and 85-2-408, MCA, for a specific period of time and with an automatic

expiration date.

(6) remains the same but is renumbered (71).

(72) "Temporary permit" means a permit to appropriate water granted pursuant to Title 85, chapter 2, part 3, MCA, for a specific period of time and with an automatic expiration date.

(73) "Transitory diversion" means a movable diversion that will divert water from several nonspecific points along a source of supply.

(74) "Tributary" means the following:

(a) a surface water source feeding another surface water source;

(b) ground water discharge to a surface water source;

(c) surface water recharge to an aquifer;

(d) an overlying aquifer recharging an underlying aquifer or vice versa; and

(e) ground water hydraulically connected to a surface water source.

(75) "Unappropriated water" means water which is not yet legally appropriated pursuant to law or which is not reserved, and is therefore available for new beneficial uses obtained in accordance with the requirements of 85-2-311, MCA, and these rules.

(76) "Unnamed tributary" means a surface water stream, coulee, or draw, which is not named on a United States geological survey (USGS) or Water Resources Survey (WRS) map.

(77) "Volume" means the acre-feet of water. Twelve acre-inches are equal to one acre-foot.

(78) "Waste water" means that part of a diverted flow which is not consumptively used and which returns as surface water to any surface water source, and which other water users can appropriate, but have no legal right to its continuance.

(79) "Water flow estimating technique" means a mathematical method of estimating flow generally accepted by the department. This may be accomplished by correlating measurements of diversion system components with actual water use to estimate flow rate or volume of water used. An example is the use of measurements of power consumed by a pump to estimate the amount of water delivered by a pump. Another flow estimating technique would be to apply specific formulas developed by professional hydrologists based on climatic, basin or stream channel characteristics to estimate stream flow.

(80) "Water measuring device" means equipment that directly measures water flow in open or closed channels and conduits. Examples would be flow meters, weirs, flumes, and bucket and stop watch.

(81) "Water Resources Survey (WRS)" means a survey, by county, of water resources and water rights in Montana by the former state engineer's office or water resources board, predecessors of the department.

(82) "Water saving method" means a change to the actual water use system or management of water use in which the modification being made would decrease the amount of water needed to accomplish the same result. Water saving methods might include:

(a) changing from a ditch conveyance to a pipeline;
(b) lining an earthen ditch with concrete or plastic; and
(c) changing management of a water system to decrease
water consumption.

(83) "Zone of influence" means the horizontal extent of
the cone of depression.

AUTH: 85-2-113, MCA

IMP: 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, 85-2-350, 85-2-351, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-415 through 85-2-419, 85-2-436, 85-2-437, 85-2-439, 85-2-501 through 85-2-514, 85-2-518, 85-2-520

REASON: These additional definitions are reasonably needed to clarify the meanings of certain terms and phrases used throughout water right rules and to assure that both the public and the department use the terms in the context intended.

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 Kim Overcast, Montana Department of Natural Resources and Conservation, 1424 Ninth Avenue, P.O. Box 201601, Helena, MT 59620-1601, (406) 444-6614, fax (406) 444-0533, or e-mail wrvrulescomments@state.mt.us and must be received no later than October 25, 2004.

6. Mary Vandenbosch has been designated to preside over and conduct the hearing.

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 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 conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources or combination thereof. Such written request may be mailed or delivered to Legal Unit, Department of Natural Resources and Conservation, P.O. Box 201601, 1625 11th Avenue, Helena, MT 59620-1601, faxed to the office at (406) 444-2684, or may be made by completing a request form at any rules hearing held by the department.

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

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

By: /s/ Arthur R. Clinch
ARTHUR R. CLINCH
Director

By: /s/ Tim Hall
TIM HALL
Rule Reviewer

Certified to the Secretary of State September 13, 2004.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING
amendment of ARM 37.70.106,	)	ON PROPOSED AMENDMENT
37.70.311, 37.70.401,)	
37.70.406, 37.70.407,)	
37.70.408, 37.70.601,)	
37.70.607 and 37.70.901)	
pertaining to Low Income)	
Energy Assistance Program)	
(LIEAP))	

TO: All Interested Persons

1. On October 22, 2004, at 10:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on October 14, 2004, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

2. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.70.106 FAIR HEARINGS (1) Any ~~person~~ applicant/recipient who is aggrieved by an adverse department action ~~taken on an application, benefit status, form or condition of payment, as defined in ARM 37.5.304~~ may request a fair hearing as provided in ARM ~~37.5.304, 37.5.305, 37.5.307, 37.5.310, 37.5.311,~~ Fair hearings and appeals of fair hearing decisions shall be conducted as provided in ARM 37.5.313, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, and 37.5.334 ~~and 37.5.337.~~

(2) remains the same.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201, MCA

37.70.311 PROCEDURES FOLLOWED IN PROCESSING APPLICATIONS

(1) Procedures followed in determining eligibility for low income energy assistance are:

(a) remains the same.

(b) Eligibility requirements that must be verified ~~are~~ include but are not limited to:

(b)(i) and (ii) remain the same.

(iii) lack of tax dependency status for individuals enrolled at least half time in an institution of higher education; ~~and~~

(iv) primary heating fuel-; and

(v) receipts to support paid eligible energy costs when a household seeks direct reimbursement for paid eligible energy costs as provided in ARM 37.70.607. Failure to provide receipts to the local contractor by June 15 of the calendar year in which the heating season for which benefits are sought ends will result in forfeiture of any remaining benefits for that heating season.

(c) remains the same.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

37.70.401 DEFINITIONS (1) and (1)(a) remain the same.

(2) "Annual gross receipts" applies to households with income from self-employment and ~~mean~~ means all income before any deductions, including any non-excluded income not from self-employment, which was received by members of the household in the 12 months immediately preceding the month of application.

(3) through (14) remain the same.

(15) "Paid eligible energy costs" means out-of-pocket expenditures paid by an eligible household in the form of rent payments or direct payments to a fuel vendor or person responsible for the fuel account for energy costs incurred during the heating season.

(15) through (19) remain the same but are renumbered (16) through (20).

(21) "U.S. department of health and human services poverty guidelines" means the poverty guidelines computed annually and published each year in the Federal Register.

(22) "Valid loan" means a monetary payment received from a source outside the household, including but not limited to a private individual or a commercial institution, which must be repaid at a future date. The agreement to repay may be either oral or written.

(23) "Vendor payment" means a monetary payment made on behalf of the household by a person or entity which is not a member of the household to a third party outside the household such as a creditor of the household or a person or entity providing services or goods to the household.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

~~37.70.406 TABLES OF INCOME STANDARDS (1) The income standards in the table in (2) are the 2003 U.S. department of health and human services poverty guidelines for households of~~

~~different sizes. This table applies to all households, including self-employed households.~~

~~(a) (1) Households with annual gross income at or below 150% of the 2003 2004 U.S. department of health and human services poverty guidelines are financially eligible for low income energy assistance on the basis of income. Households with an annual gross income above 150% of the 2003 2004 poverty guidelines are ineligible for low income energy assistance, unless the household is automatically financially eligible for LIEAP benefits as provided in ARM 37.70.402 because all members of the household are receiving SSI, TANF-funded ~~case~~ cash assistance, or county or tribal general assistance.~~

~~(2) Annual income standards for all households:~~

<u>Family Size</u>	<u>Poverty Guideline</u>	<u>150 Percent</u>
One	\$ 8,980	\$13,470
Two	12,120	18,180
Three	15,260	22,890
Four	18,400	27,600
Five	21,540	32,310
Six	24,680	37,020
Additional member add	3,140	4,710

(2) The table of income standards for households of various sizes for the 2004-2005 heating season may be accessed at the department's website at www.dphhs.state.mt.us, or a copy may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, Intergovernmental Human Services Bureau, PO Box 202956, Helena, MT 59620.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201, MCA

37.70.407 CALCULATING INCOME (1) Excluded from income are the following types of unearned income and deductions:

(a) through (u) remain the same.

(v) foster care payments received for a foster child or adult if the LIEAP applicant has chosen to exclude the foster child or adult from the household; such payments are not excluded if the applicant has chosen to include the foster adult or child as a member of the household. Additionally, any foster care payments received during the 12 months immediately preceding the month of application for a foster child or adult who is no longer living in the household at the time of application shall be excluded; ~~and~~

(w) ~~in-kind income;~~

(x) valid loans, except that the funds received from valid loans are considered as a resource until the funds are spent;

(y) gifts of up to \$50 per month per household member. If the gift is in an amount equal to or greater than \$50, however,

the entire gift will be counted;

(z) nonrecurring lump sum payments that do not constitute income or benefits for any of the 12 months immediately preceding the month of application. The funds received from a nonrecurring lump sum payment are considered as a resource until the funds are spent, however; and

(aa) vendor payments, except the following types of vendor payments:

(i) payments which are legally owed or otherwise payable to the household but are diverted by the provider of the payment to a third party for an expense or debt of the household;

(ii) federal, state or tribal benefits payable directly to the household but are diverted to a third party or protective payee for an expense or debt of the household; and

(iii) rent or mortgage payments made to the household's landlord or mortgagee.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

37.70.408 RESOURCES (1) through (3) remain the same.

(4) In state fiscal year ~~2004~~ 2005, a household will be eligible if its total countable non-business resources do not exceed ~~\$8,419~~ \$8,608 for a single person, ~~\$12,629~~ \$12,913 for two persons and an amount equal to ~~\$12,629~~ \$12,913 plus ~~\$842~~ \$861 for each additional household member, up to a maximum of ~~\$16,839~~ \$17,218 per household. In addition, the household may have business assets whose equity value does not exceed \$12,500.

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

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

37.70.601 BENEFIT AWARD (1) The benefit matrices in (1)(c) and (1)(d) are used to establish the benefit payable to an eligible household for a full heating season (October through April). The benefit varies by household income level, type of primary heating fuel, the type of dwelling (single family unit, multi-family unit, mobile home), the number of bedrooms in the dwelling, and the heating districts in which the household is located, to account for climatic differences across the state.

(a) and (b) remain the same.

(c) The following table of base benefit levels takes into account the number of bedrooms in a house, the type of dwelling structure, and the type of fuel used as a primary source of heating:

TABLE OF BENEFIT LEVELS

(i) SINGLE FAMILY

# BEDROOMS	NATURAL				
	GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL

ONE	\$ 474	\$ 582	\$ 625	\$ 598	\$ 341	\$ 225
TWO	689	846	908	869	496	327
THREE	939	1,153	1,237	1,184	676	446
FOUR	1,291	1,587	1,702	1,629	930	613

# BEDROOMS	<u>NATURAL</u>					
	<u>GAS</u>	<u>ELECTRIC</u>	<u>PROPANE</u>	<u>FUEL OIL</u>	<u>WOOD</u>	<u>COAL</u>
<u>ONE</u>	<u>\$378</u>	<u>\$ 423</u>	<u>\$ 485</u>	<u>\$ 437</u>	<u>\$253</u>	<u>\$167</u>
<u>TWO</u>	<u>550</u>	<u>615</u>	<u>706</u>	<u>636</u>	<u>368</u>	<u>243</u>
<u>THREE</u>	<u>749</u>	<u>837</u>	<u>962</u>	<u>866</u>	<u>501</u>	<u>331</u>
<u>FOUR</u>	<u>1,031</u>	<u>1,152</u>	<u>1,323</u>	<u>1,192</u>	<u>690</u>	<u>455</u>

(ii) MULTI-FAMILY

# BEDROOMS	<u>NATURAL</u>					
	<u>GAS</u>	<u>ELECTRIC</u>	<u>PROPANE</u>	<u>FUEL OIL</u>	<u>WOOD</u>	<u>COAL</u>
ONE	\$ 401	\$ 492	\$ 528	\$ 635	\$ 288	\$ 190
TWO	603	742	795	957	434	286
THREE	885	1,088	1,167	1,404	637	420
FOUR	1,035	1,271	1,364	1,640	744	491

# BEDROOMS	<u>NATURAL</u>					
	<u>GAS</u>	<u>ELECTRIC</u>	<u>PROPANE</u>	<u>FUEL OIL</u>	<u>WOOD</u>	<u>COAL</u>
<u>ONE</u>	<u>\$ 320</u>	<u>\$ 357</u>	<u>\$ 411</u>	<u>\$ 465</u>	<u>\$214</u>	<u>\$141</u>
<u>TWO</u>	<u>482</u>	<u>538</u>	<u>618</u>	<u>700</u>	<u>322</u>	<u>212</u>
<u>THREE</u>	<u>707</u>	<u>790</u>	<u>907</u>	<u>1,027</u>	<u>472</u>	<u>312</u>
<u>FOUR</u>	<u>826</u>	<u>923</u>	<u>1,060</u>	<u>1,200</u>	<u>552</u>	<u>364</u>

(iii) MOBILE HOME

# BEDROOMS	<u>NATURAL</u>					
	<u>GAS</u>	<u>ELECTRIC</u>	<u>PROPANE</u>	<u>FUEL OIL</u>	<u>WOOD</u>	<u>COAL</u>
ONE	\$ 399	\$ 491	\$ 529	\$ 528	\$ 287	\$ 190
TWO	584	717	769	772	420	277
THREE	774	951	1,020	1,023	557	367
FOUR	864	1,061	1,138	1,142	622	410

# BEDROOMS	<u>NATURAL</u>					
	<u>GAS</u>	<u>ELECTRIC</u>	<u>PROPANE</u>	<u>FUEL OIL</u>	<u>WOOD</u>	<u>COAL</u>
<u>ONE</u>	<u>\$319</u>	<u>\$356</u>	<u>\$409</u>	<u>\$386</u>	<u>\$213</u>	<u>\$141</u>
<u>TWO</u>	<u>466</u>	<u>521</u>	<u>598</u>	<u>565</u>	<u>312</u>	<u>206</u>
<u>THREE</u>	<u>618</u>	<u>690</u>	<u>793</u>	<u>749</u>	<u>413</u>	<u>273</u>
<u>FOUR</u>	<u>689</u>	<u>770</u>	<u>885</u>	<u>836</u>	<u>461</u>	<u>304</u>

(d) remains the same.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201, MCA

37.70.607 AMOUNT AND METHOD OF PAYMENT (1) For eligible households that are billed for energy costs directly by the fuel vendor: shall be paid a benefit in the amount provided by ARM 37.70.601 and shall be paid as follows:

(a) Reimbursement may, ~~with at the approval discretion~~ of the department only, be made by check payable to the household for any eligible energy costs which have been paid by the household at the time of the benefit or adjusted award. Paid eligible ~~fuel~~ energy costs claimed by the household must be supported by fuel receipts.

(b) through (d) remain the same.

(2) Eligible households that pay energy costs for heating their homes that are not billed directly by the fuel vendor because the fuel account is not in the name of a member of the household shall be reimbursed for eligible energy costs paid by the household, provided that the amount paid to the household for the heating season shall not exceed the benefit amount provided by ARM 37.70.601. Reimbursement shall be made by check payable to the household. The household must provide receipts to document paid eligible energy costs claimed. The household must provide receipts to support the paid eligible energy costs to the local contractor by June 15 of the calendar year in which the heating season for which benefits are sought ended.

~~(2) (3) For eligible households that have their energy costs included in their rental payments:~~

~~(a) Reimbursement at the rate of 1/7 of the full amount of the benefit award matrix per month not to exceed the household's benefit award will be made by check payable to the household for paid eligible energy costs. Paid eligible energy costs claimed by the household must be supported by rent receipts. Payments will not exceed 50% of the amount of paid rent evidenced by the rent receipt.~~

(a) The household shall be paid a benefit computed on a monthly basis. For each of the seven months of the current heating season from October through April for which the household provides a paid rent receipt, the household shall be reimbursed 1/7 of the benefit amount provided in ARM 37.70.601; provided, however, that the benefit paid to the household for any month shall not exceed 50% of the rent paid for that month as evidenced by the rent receipt. Failure to provide rent receipts to the local contractor by June 15 of the calendar year in which the heating season for which benefits are sought ends shall result in the forfeiture of any benefits to which the household would otherwise be entitled.

(b) The benefit shall be paid by check payable to the household.

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

(c) when the household provides receipts to verify that the household has purchased wood between July 1 and April 30 of

the current state fiscal year, by a payment ~~directly~~ directly to the household reimbursing the household for wood already purchased. Households which are reimbursed by a direct payment do not lose their right to additional benefits for the current heating season as provided in ~~(3)(b)~~ (4)(b). Failure to provide receipts verifying wood purchases to the local contractor by June 15 of the calendar year in which the heating season for which benefits are sought ended shall result in the forfeiture of any benefits to which the household would otherwise be entitled.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201, MCA

37.70.901 EMERGENCY ASSISTANCE (1) through (3) remain the same.

(4) Emergency assistance payments may be made on behalf of the eligible household for actual costs necessary to alleviate the emergency. However, no emergency assistance payments will be made for costs which are the liability of a third party, unless the household assigns to the department in writing its rights to such third party payments. Emergency assistance payments are limited to a total of \$250 per household in a 12 month period commencing on the first of October immediately preceding the date of the request for emergency assistance, except as follows:

(a) An eligible household may receive emergency assistance payments which total more than \$250 in a 12 month period if the ~~department~~ local contractor determines before the services are rendered that services are necessary to alleviate an emergency and ~~authorizes emergency assistance payments totaling more than \$250 before the services are rendered.~~

~~(b) An eligible household may receive emergency assistance payments which total more than \$250 in a 12 month period without prior authorization as required in (4)(a), if services are necessary to alleviate a life threatening emergency and the department is notified of the type and actual cost of services within 48 hours after the services are rendered.~~

(5) through (7) remain the same.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201, MCA

3. The Low Income Energy Assistance Program (LIEAP) is a federally funded program to help low income households pay their home heating costs. The maximum income standards used to determine whether a household is eligible for LIEAP benefits are contained in ARM 37.70.406. These income standards are computed as a specified percentage of the federal poverty guidelines issued annually by the U.S. Department of Health and Human Services (HHS). HHS updates the poverty guidelines each year to take into account increases in the cost of living. The standards currently in ARM 37.70.406 are based on the HHS poverty guidelines for 2003.

The amendment of ARM 37.70.406 is therefore necessary to provide that the 2004 poverty guidelines rather than the 2003 guidelines will be used to determine LIEAP eligibility and benefit amount for the 2004-2005 heating season. If the Department did not use the 2004 guidelines, which are higher than the 2003 guidelines, some households might be ineligible for benefits or receive a smaller benefit due to inflationary increases in the household's income which do not reflect an increase in actual buying power.

Additionally, the Department proposes to delete the tables of income standards in section (2) of ARM 37.70.406 and instead that rule will state that the income standards can be accessed at the Department's website or a hard copy can be obtained from the Department. This will provide adequate notice to the public of what the income standards are without amending the rule each year to publish the current income standards. The deletion of the income standards will promote efficiency and economy because it will eliminate the need to insert new standards each year.

ARM 37.70.106 currently provides that any person who is aggrieved by an adverse action taken by the Department may request a fair hearing. The Department proposes to delete the word "person" and insert the term "applicant/recipient" in its place. This change is necessary in order to clarify that only an applicant for or recipient of LIEAP benefits is entitled to a hearing. For example, a fuel vendor is not entitled to a fair hearing to dispute the denial of a customer's application for LIEAP benefits. This is not a change in policy but merely clarifies existing policy. Additionally, ARM 37.70.106 cites several rules governing fair hearings in ARM Title 37, Chapter 5 which are not relevant to the LIEAP program. For example, ARM 37.5.310 and 37.5.311 pertain to fair hearings requested by medical assistance providers. The Department proposes to delete references to rules which do not pertain to LIEAP fair hearings because they are confusing and unnecessary.

ARM 37.70.311 specifies the procedures used in processing applications for LIEAP. Among other things, it lists what information must be verified in order for eligibility to be determined, such as income, resources, and the type of heating fuel which is the primary source of heat for the household. The Department proposes to amend ARM 37.70.311(1)(b) to specify that the list of items which must be verified contained in the rule is not all-inclusive. This amendment is necessary because it would be difficult to list everything which must be verified in the rule but persons reading the rule might assume that the list included all possible items of verification if this clarification was not added. Additionally, the Department proposes to amend ARM 37.70.311(1)(b) to include a provision that receipts must be provided to verify the household's paid eligible energy costs when a household seeks reimbursement for paid eligible energy costs as provided in ARM 37.70.607. It is necessary to add this provision because the Department is

amending ARM 37.70.607 to provide that households which pay energy costs for heating their homes but are not billed directly by a fuel vendor can be reimbursed if the household provides receipts to document their paid eligible energy costs. Thus, ARM 37.70.311 must be amended to include receipts for paid eligible energy costs as an item which must be verified.

ARM 37.70.401 contains definitions of terms used in the LIEAP rules. It is necessary to add several new definitions to ARM 37.70.401 at this time to define terms which currently appear in the rules but are not defined and to define terms which are being used for the first time in the rules. The term "U.S. department of health and human services poverty guidelines" is currently used in ARM 37.70.406 but is not defined. A definition of that term is being added to specify that these guidelines are revised and published annually in the Federal Register. The term "paid eligible energy costs" is used in the new provision being added to ARM 37.70.607. It is therefore necessary to specify what that term means. ARM 37.70.407, which specifies types of income which are excluded in determining eligibility for LIEAP, is being amended to provide that valid loans and some types of vendor payments are excluded. It is therefore necessary to define what the terms "valid loan" and "vendor payments" mean for purposes of the LIEAP rules.

ARM 37.70.407(1) contains a list of types of income which are excluded in determining LIEAP eligibility. The Department proposes to amend (1) by adding several new categories of income which will be excluded. As amended, the rule will provide for the exclusion of valid loans, gifts of up to \$50 per month per household member, portions of nonrecurring lump sum payments, and certain types of vendor payments. The Department has decided not to count loans as income because a loan by definition must be repaid and therefore there is no net monetary gain to the household in the long run due to receipt of a loan. The Department has decided not to count certain small gifts as income because small gifts do not have a major impact on the household's ability to pay heating and cooling costs. The Department will count as income vendor payments made to pay the household's rent or mortgage obligation because this can be a significant benefit to the household which should be considered in determining the household's need for energy assistance. Similarly, payments that are legally payable to the household but are diverted to a third party and state, federal, or tribal benefits that are payable directly to the household but which are diverted to a third party will be counted because it would be unfair not to count payments that the household could receive directly but chooses not to receive. On the other hand, the Department believes it is fair to exclude other vendor payments which are not for shelter and which the household is not entitled to receive directly, since such payments are not a source of cash which could be used to pay heating costs. The proposed policy regarding exclusion of loans, gifts, and vendor payments is consistent with the policies followed in some other

public assistance programs such as Food Stamps and Temporary Assistance for Needy Families.

In determining eligibility for LIEAP, the Department considers not only income but also what resources the household has which can be used to pay heating costs. ARM 37.70.408 lists all resources which are counted in determining eligibility. ARM 37.70.408(4) currently specifies the maximum amount of non-business resources which households of varying sizes can have and still qualify for LIEAP in state fiscal year 2004. Since (5) states that the dollar limits on non-business resources will be revised annually to adjust for inflation, it is necessary to amend (4) to increase the dollar amounts for fiscal year 2005. Section (5) provides that the revised non-business resource limits shall be computed by multiplying the current dollar limits by the percentage increase in the national consumer price index (CPI) for the previous calendar year or by 3%, whichever is less. The CPI for 2003 was 2.25%, so the Department is increasing the dollar amounts in (4) by 2.25%.

ARM 37.70.601 contains tables of benefit amounts which are used to establish the amount of benefits an eligible household will receive. The size of the household's benefit depends on income level, type of primary heating fuel, the type of dwelling and number of bedrooms, and the heating district in which the household is located. The benefit amounts in the table are being revised based on the expected appropriation of federal funds for the Montana LIEAP program as well as fuel cost projections for the upcoming heating season and an estimate of the number of households which will apply for and be found eligible for LIEAP.

ARM 37.70.607 specifies the methods by which LIEAP benefits are paid to different types of households. For example, 37.70.607(1) provides that LIEAP benefits for households which are billed for energy costs directly by the fuel vendor will generally be paid to the fuel vendor, and section (2) provides that benefits will be paid directly to the household in the case of households whose energy costs are included in their rent payments. The rule currently contains no provision for paying LIEAP benefits to households which pay heating costs separate from their rent if the fuel account is in the name of someone who is not a household member. For example, the fuel bill may be in the name of the landlord or of a relative or friend of the household.

The Department proposes to amend ARM 37.70.607 to provide that households which pay energy costs for heating their homes but are not billed directly by a fuel vendor can be reimbursed if the household provides receipts to document their paid energy costs. The Department is making this change to the rule because households which pay heating costs where the bill is not in the household's name have as much need for energy assistance as households whose bill is in their own name. In addition to

inserting this provision, the Department also is amending the rule to specify the amount of LIEAP benefits each type of household is entitled to receive. This is being added merely for clarification. In most cases, the rule will provide that the payment amount will be computed in accordance with the benefit matrices contained in ARM 37.70.601 or the household will be reimbursed for actual paid energy costs subject to the maximum benefit amount contained in ARM 37.70.601. However, in the case of households whose energy costs are included in their rent payments, the benefit amount is computed in accordance with a formula currently set forth in subsection (2)(a). The amendment of this provision is necessary because the formula as currently written is unclear. The Department is rewriting the formula so it is easier to understand how the benefits are calculated, but there is no change in the formula itself. Households whose energy costs are included in their rent will continue to receive benefits based on the same formula currently being used.

In addition to the foregoing changes to ARM 37.70.607, the Department is also adding provisions that receipts to document the amount a household paid for energy costs or paid for rent must be submitted by June 15. When the LIEAP benefit amount is based on paid energy costs or paid rent, the LIEAP contractor cannot compute the household's LIEAP payment for the heating season until these receipts are provided. There is currently no deadline provided in the rules for submitting receipts, so a household could submit receipts months or years after the heating season ended and the household would still be entitled to payment. In order to provide finality, the Department has determined that there should be a deadline for submission of receipts. The Department believes that six weeks after the end of the heating season, which ends on April 30, is a reasonable amount of time to allow for the household to provide receipts.

ARM 37.70.901 provides that households which are eligible for LIEAP may qualify for emergency assistance to alleviate an emergency which constitutes a serious immediate threat to the health and safety of the household, such as a defective heating system. Section (4) of the rule provides that emergency assistance payments are limited to a total of \$250 per household in a 12 month period, but (4)(a) currently specifies an exception to the \$250 limit. Subsection (4)(a) provides that a household may receive emergency assistance payments which total more than \$250 if the Department determines before services are rendered that the services are necessary to alleviate the emergency and authorizes emergency assistance payments in excess of \$250.

The Department now proposes to amend ARM 37.70.901(4)(a) to eliminate the requirement for prior authorization by the Department and to provide that the local contractor rather than the Department may determine whether the services are necessary to alleviate an emergency. The Department believes based on

past experience that the local contractor is capable of determining whether the services are necessary without the Department being involved. It will be more efficient and will save time if the Department does not have to grant prior authorization for emergency services before they are rendered. ARM 37.70.901(4)(b) currently provides that a household may receive emergency assistance payments in excess of \$250 without obtaining prior authorization from the Department as provided in (4)(a) if the services were necessary to alleviate a life threatening emergency and the Department is notified of the type and cost of the services within 48 hours after they are rendered. Since the Department proposes to eliminate the requirement for prior authorization, the provisions of (4)(b) will no longer be necessary. It is not necessary to provide an exception to a requirement which no longer exists.

The Department estimates that 20,000 households will receive LIEAP benefits during the 2004-2005 heating season. All of these households will be affected by the changes in benefit amounts as set forth in ARM 37.70.601. The increases in the income standards based on the use of the 2004 poverty guidelines rather than the 2003 guidelines as provided in ARM 37.70.406 and the increases in the resource limits as provided in ARM 37.70.408 are cost of living adjustments and are not expected to result in more households becoming eligible for LIEAP; rather, the purpose of the increases is to prevent households from being ineligible due to inflationary increases in household income and resources which do not reflect an increase in actual buying power. It is anticipated that the federal appropriation the State of Montana will receive for LIEAP for the 2004-2005 heating season will be \$2,020,913 less than last year's appropriation. There are no unspent LIEAP funds remaining from last year, nor did LIEAP receive any supplemental funds from other sources for the current heating season, as occurred last year when LIEAP received \$500,000 of Temporary Assistance for Needy Families (TANF) funds and \$1.5 million of federal Jobs and Growth Tax Relief Reconciliation Act of 2003 funds. Thus, the average household will receive a LIEAP benefit for the current heating season which is \$385 less than last year's benefit.

4. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on October 26, 2004. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. The Office of Legal Affairs, Department of Public

Health and Human Services has been designated to preside over and conduct the hearing.

Russ Cater
Rule Reviewer

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

Certified to the Secretary of State September 13, 2004.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
adoption of New Rules I through) ON PROPOSED ADOPTION,
VIII; amendment of ARM 42.15.112,) AMENDMENT, AMENDMENT AND
42.15.301, 42.15.312, 42.15.314,) TRANSFER, AND REPEAL
42.15.315, 42.15.316, 42.15.321,)
42.15.325, 42.15.401, 42.15.402,)
and 42.15.403; amendment and)
transfer of ARM 42.15.111,)
42.15.113, 42.15.114, 42.15.115,)
42.15.116, 42.15.117, 42.15.118,)
42.15.121, 42.15.211, 42.15.302,)
42.15.308, 42.15.309, 42.15.324,)
42.15.421, 42.15.423, 42.15.426;)
and repeal of ARM 42.15.102,)
42.15.104, 42.15.105, 42.15.106,)
42.15.201, 42.15.305, 42.15.313,)
42.15.404, 42.15.405, 42.15.425,)
42.15.429, 42.15.433, 42.15.434,)
42.15.435, and 42.15.436)
relating to personal income taxes)

TO: All Concerned Persons

1. On November 30, 2004, at 1:00 p.m., a public hearing will be held in the Director's Conference Room (Fourth Floor) of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption, amendment, amendment and transfer, and repeal of the above-stated rules relating to personal income taxes.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., November 15, 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 proposed new rules do not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS The following definitions apply to rules found in this subchapter:

(1) "Permanent place of abode" means a dwelling place

habitually used by an individual as the individual's home, whether or not owned by the individual or a dwelling the individual may someday leave.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-101, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to define terms used in ARM Title 42, chapter 15, subchapter 1.

NEW RULE II DETERMINING TAX LIABILITY (1) A person required to file a Montana income tax return must determine Montana income tax liability as provided by the applicable Montana statutes and rules. The rules for determining if an individual, whether resident for a full or part tax year, or a nonresident, must file a Montana individual income tax return, are located in ARM Title 42, chapter 15, subchapter 3.

(a) Special rules, located in ARM Title 42, chapter 15, subchapter 1, apply to certain wages of nonresident military servicepersons and enrolled tribal members.

(b) The rules for determining if a trust or estate must file a fiduciary return are located in ARM Title 42, chapter 15, subchapter 3. Except as otherwise specifically provided, trusts and estates are subject to all rules applicable to individuals.

(2) All income except income specifically exempted in Title 15, chapter 30, MCA, or these rules is included in determining income subject to Montana income tax.

(3) The starting point for computing Montana individual income tax liability is usually adjusted gross income as determined for federal income tax purposes. If a taxpayer is not required to, or does not, file a federal income tax return for a tax year for which the taxpayer is required to file a Montana individual income tax return, the taxpayer shall compute federal adjusted gross income and complete the applicable federal schedules. A married taxpayer not filing a federal income tax return who files a separate Montana income tax return must compute federal adjusted gross income as if a married individual filing a separate federal return. The federal computations and tax schedules required by this rule are tax records the taxpayer must retain and provide the department on request.

(4) Federal adjusted gross income is adjusted for Montana additions and subtractions to arrive at Montana adjusted gross income. The subtractions reduce the amount of income subject to tax for all taxpayers, whether they claim the Montana standard deduction or itemized deductions.

(5) The additions for which additional rules are provided include:

(a) an S corporation shareholder's share of federal income tax paid by the S corporation located in ARM Title 42, chapter 9, subchapter 4;

(b) unqualified withdrawals from medical savings accounts located in ARM Title 42, chapter 15, subchapter 6;

and

(c) unqualified withdrawals from first-time home buyer accounts located in ARM Title 42, chapter 15, subchapter 9.

(6) Unless otherwise specified below, rules that address subtractions are found in ARM Title 42, chapter 15, subchapter 2. The subtractions for which additional rules are provided include:

- (a) certain military salary of resident servicepersons;
- (b) certain interest income of taxpayers 65 and older;
- (c) interest on federal obligations, and mutual fund dividends attributable to interest on federal obligations;
- (d) certain disability income;
- (e) certain capital gain income realized on or before December 31, 1986 that is being recognized on the installment reporting method;
- (f) certain pension and annuity income;
- (g) certain income of enrolled tribal members;
- (h) certain income of a dependent child included in a parent's federal adjusted gross income;
- (i) certain taxed social security benefits;
- (j) certain contributions to, and earnings on, medical savings accounts, ARM Title 42, chapter 15, subchapter 6;
- (k) certain contributions to and earnings on family education savings accounts, ARM Title 42, chapter 15, subchapter 8;
- (l) certain contributions to and earnings on first-time home buyer savings accounts, ARM Title 42, chapter 15, subchapter 9; and

(m) dividends and capital gains realized from investment in certain small business investment companies, ARM Title 42, chapter 15, subchapter 2 and chapter 23, subchapter 1.

(7) After Montana adjusted gross income is determined, a taxpayer is allowed the standard deduction unless the taxpayer claims itemized deductions. The standard deduction is addressed in ARM Title 42, chapter 15, subchapter 5.

(8) Unless otherwise specified below, rules that address itemized deductions are found in ARM Title 42, chapter 15, subchapter 5. As provided in 15-30-123, MCA, deductions for expenses associated with the excluded income described in (6) are not allowed. Additional rules related to itemized deductions include:

- (a) a rule describing the calculation of itemized deductions that are limited to a percent of adjusted gross income;
- (b) a rule describing how certain itemized deductions must be computed when a married taxpayer filing a joint federal income tax return files a separate Montana return; and
- (c) a rule describing calculation of the Montana net operating loss.

(9) After income is reduced by the standard deduction or itemized deductions, it is further reduced by personal and dependent exemptions to determine Montana taxable income. The rules relating to personal and dependent exemptions are found in ARM Title 42, chapter 15, subchapter 4.

(10) The tax rates set forth in 15-30-103, MCA, are applied to Montana taxable income. Tax brackets are adjusted annually for inflation. The Montana tax liability of a nonresident or part-year resident is determined by multiplying the calculated tax by the ratio of Montana source income to total income.

(11) Rules describing credits that may be taken against income tax liability are located in ARM Title 42, chapter 4.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-101, 15-30-102, 15-30-103, 15-30-105, 15-30-111, 15-30-112, 15-30-121, and 15-30-137, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule II to identify and direct taxpayers to the appropriate chapter and subchapter where rules may be located to assist them in determining their Montana income tax liability. The department proposes to place this rule in chapter 15, subchapter 1.

NEW RULE III RESIDENCY (1) As provided in 15-30-101, MCA, an individual may be a resident for Montana individual income tax purposes if the individual is domiciled in the state or maintains a permanent place of abode in the state. Section 1-1-215, MCA, sets forth rules for determining residency, and "domiciled" is defined in ARM 42.2.304. Whether an individual is a Montana resident for Montana income tax purposes is determined in light of all facts and circumstances.

(2) A Montana resident who enters the United States armed forces does not lose that status as a Montana resident solely by reason of being absent from this state in compliance with military orders.

(3) Special rules regarding nonresident military personnel and their dependents are located at ARM 42.15.112.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-101, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule III to provide a single rule regarding residency that provides cross-references to relevant statutes and rules. The department proposes to place this new rule in ARM Title 42, chapter 15, subchapter 1.

NEW RULE IV DEFINITIONS The following definitions apply to rules found in this subchapter:

(1) "Armed forces" means the United States army, navy, marine corps, air force, or coast guard.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-116, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule IV to define terms used in ARM Title 42, chapter 15, subchapter 2.

NEW RULE V SMALL BUSINESS CORPORATION DIVIDEND AND CAPITAL GAIN EXCLUSION (1) Certain capital gain and dividend income realized by an individual from an investment in a small business investment company is exempt from taxation. The rules regarding small business investment companies are located in ARM Title 42, chapter 23, subchapter 1.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-33-103, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule V to provide cross-references to the corporation license tax rules because it is repealing the duplicative rules ARM 42.15.433, 42.15.434, 42.15.435, and 42.15.436. The department proposes to place this new rule in ARM Title 42, chapter 15, subchapter 2.

NEW RULE VI DEFINITIONS The following definitions apply to rules found in this subchapter:

(1) "Injured spouse" means a taxpayer who does not owe a child support obligation, but who has reported income on a joint return with a taxpayer who does owe a past due child support obligation.

(2) "Obligated spouse" means a taxpayer who is liable for a past due child support obligation.

AUTH: Sec. 17-4-110, MCA

IMP: Sec. 17-4-105, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule VI to define terms used in ARM Title 42, chapter 15, subchapter 3.

NEW RULE VII PERSONAL EXEMPTION FOR ESTATES AND TRUSTS

(1) A trust or estate is allowed one personal exemption as provided in ARM 42.15.402.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-136, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule VII to implement 15-30-136, MCA, and to clarify the personal exemption allowed trusts and estates, whether resident or nonresident. The department proposes to place this new rule in ARM Title 42, chapter 15, subchapter 4.

NEW RULE VIII DEFINITIONS The following definitions apply to rules found in this subchapter:

(1) "Nonbusiness deduction" has the same meaning as nonbusiness deduction for federal income tax purposes when computing a net operating loss and includes the following Montana items:

(a) the standard deduction provided in 15-30-122, MCA;

(b) the deduction for federal income taxes provided in 15-30-121, MCA, to the extent not attributable to business profits;

(c) the deduction for political contributions provided in 15-30-121, MCA;

(d) the part of the deduction for expenses for organic and byproduct inorganic fertilizer provided in 15-30-121, MCA, that is not a trade or business expense;

(e) the deduction for payments for premiums for medical care and for premiums and certificates for long-term care provided in 15-30-121, MCA;

(f) the deduction for a light vehicle registration fee provided in 15-30-121, MCA, if it is not a trade or business expense;

(g) the deduction for the patriotic license plate surcharge provided in 15-30-154, MCA;

(h) the deduction for per capita livestock fees if they are not trade or business expenses; and

(i) the deductions for charitable contributions, including contributions to the child abuse and neglect prevention program provided in 15-30-121 and 15-30-156, MCA, donations of computer equipment to schools by small business corporations provided in 15-30-126, MCA, and donations to the veterans' services account or the state veterans' cemetery program provided in 15-30-154, MCA.

(2) "Nonbusiness income" has the same meaning as nonbusiness income for federal income tax purposes when computing a net operating loss and includes the following Montana items:

(a) interest on the obligations of another state or territory and mutual fund dividends attributable to the interest;

(b) federal income tax refunds and other recoveries of nonbusiness deductions in a prior tax year that reduced Montana income tax;

(c) income attributable to the unqualified withdrawals from medical savings accounts provided in 15-61-203, MCA, and the unqualified withdrawals from first-time home buyer savings accounts provided in 15-63-203, MCA; and

(d) decrease in the federal charitable contribution deduction attributable to claiming a charitable endowment tax credit.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-101, 15-30-110 and 15-30-117, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule VIII to define terms used in ARM Title 42, chapter 15, subchapter 5.

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

42.15.112 NONRESIDENT MILITARY PERSONNEL (1) ~~Members A~~ nonresident member of the ~~Armed Forces of the~~ United States armed forces ~~who are not Montana residents and who are~~ is living in this state solely by reason of compliance with military orders does not become a Montana resident solely by

reason of being present in this state in compliance with military orders and are not subject to tax on their compensation for military service is not Montana source income.

(2) However, such persons Nonresident military servicepersons and their spouses are, except as provided in (4), subject to Montana individual income tax in the same manner and to the same extent on any other income derived from or attributable to sources within Montana and are subject to the same gross income filing requirements as any other nonresident with Montana source income described in 15-30-142(1), MCA.

(3) As provided in 1-1-215, MCA, if a person claims a residence within Montana for any purpose, such as obtaining a resident hunting or fishing license, that location is their residence for all purposes, including Montana individual income tax, unless there is a specific statutory exception. The definition of "resident" in 87-2-102, MCA, permits certain nonresident military personnel and their dependents to obtain resident hunting, fishing, and trapping licenses without subjecting them to individual income tax liability as residents.

(4) While the Montana income tax liability of nonresidents is usually determined by calculating the tax as if they were residents then multiplying that calculation by their ratio of Montana source income to total income, the Military Family Tax Relief Act of 2003 requires states to implement special rules when the nonresident is a military serviceperson. If a nonresident serviceperson with Montana source income or their spouse is required to file a Montana individual income tax return, the exempt military income must be excluded from both the numerator and the denominator in determining the ratio of Montana source income to total income.

(5) An example of how the tax liability would be calculated is:

(a) A nonresident serviceperson and their nonresident spouse who are filing a joint return have the following income:

<u>Military compensation</u>	<u>\$ 40,000</u>
<u>Spouse's - Montana source income</u>	<u>\$ 30,000</u>
<u>Interest income - Joint</u>	<u>\$ 500</u>
<u>Dividend income - Joint</u>	<u>\$ 1,000</u>
<u>Total Income</u>	<u>\$ 71,500</u>

(b) The exempt military compensation is a subtraction that reduces Montana adjusted gross income:

<u>Gross income:</u>	<u>\$ 71,000</u>
<u>Less: Exempt military compensation</u>	<u>(\$ 40,000)</u>
<u>Montana adjusted gross income</u>	<u>\$ 31,500</u>

(c) The Montana personal and dependent exemptions and either the standard deduction or itemized deductions are subtracted from Montana adjusted gross income to determine Montana taxable income:

<u>Montana adjusted gross income</u>	<u>\$ 31,500</u>
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<u>Less: Deductions and exemptions</u>	<u>(\$ 17,340)</u>
<u>Taxable income</u>	<u>\$ 14,160</u>

(d) The tax, determined on the taxable income, is multiplied by the ratio of Montana source income to total income from all sources except the exempt military compensation:

<u>Montana source income</u>	<u>\$ 30,000</u>
<u>Total income from all sources except military compensation (\$30,000 + 500 + 1,000) =</u>	<u>\$ 31,500</u>
<u>Ratio \$30,000/\$31,500 =</u>	<u>.9523</u>

(e) If the tax determined on the taxable income were \$1,000, the taxpayers' Montana tax liability would be \$952, the Montana tax liability of \$1,000 multiplied by .9523, the ratio of \$30,000 to \$31,500.

AUTH: Sec. 15-30-305, MCA
IMP: Sec. 15-30-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.112 to clarify the taxation of a nonresident's military compensation and that of their spouse when they file a joint return. These changes are consistent with changes in federal law made by the Veterans Benefits Act of 2002, the Military Family Tax Relief Act of 2003, and the Servicemembers Civil Relief Act of 2003.

42.15.301 WHO MUST FILE RETURNS (1) ~~The following individuals~~ must file an individual income tax or fiduciary return:

(a) through (3) remain the same.

AUTH: Sec. 15-1-201, 15-30-305, and 15-31-501, MCA

IMP: Sec. 15-30-142, 15-30-143, 15-30-1102, 15-30-1111, and 15-30-1112, MCA

REASONABLE NECESSITY: The department is amending ARM 42.15.301 for housekeeping purposes to comply with the requirement of 2-4-314, MCA.

42.15.312 REPRODUCTION OF RETURN ACCEPTANCE OF REPRODUCED TAX FORMS (1) Subject to the following conditions and except as provided in (2), the department will accept paper reproductions of the official tax return forms and other supporting documents. These forms must be:

~~(a) Reproductions must be facsimiles of the official form-;~~

~~(b) They must duplicate the color of paper and the color of ink or be on white paper with black ink.~~

~~(c) They must be clearly legible-;~~

~~(d)(b) They must be on paper the quality and weight of the official form-;~~

~~(e)(c) They must be made produced on paper which may readily and permanently be written upon and stamped with ink-; and~~

~~(f)(d)~~ They must be of the same size as the official form.

~~(g)~~ Only electronically transmitted returns using department approved software will be accepted.

(2) The department will not accept reproductions of scannable payment coupons.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-144, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.312 for housekeeping purposes and to clarify that the department does not accept scannable coupons.

42.15.314 CHANGES IN FEDERAL RETURNS OR TAXES TAXABLE INCOME (1) ~~If~~ When a taxpayer's federal taxable income is changed or corrected by the Internal Revenue Service, or other authority, the taxpayer must file an amended return, Montana Form 2X, fails to file within 90 days, a required report of changes or corrections in the taxpayer's federal taxable income or an amended Montana return reflecting changes in federal taxable income as reported on an amended federal return, the period within which a deficiency in tax may be assessed is extended after receiving notice from the IRS.

(2) ~~In addition, the taxpayer will be liable for the penalties provided for under 15-30-321(2) and (3), MCA~~ When a taxpayer changes his or her own federal taxable income ~~is~~ by amending his or her federal income tax return, the taxpayer must file an amended return, Montana Form 2X, reporting these changes within 90 days after filing the federal amended tax return.

(3) Interest is assessed on any unpaid tax under the original return from the prescribed due date of the original return until the department receives an amended Montana income tax return. The department will waive interest from the date the department receives the amended return until it sends the taxpayer a statement of increased liability.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-1-216, 15-30-145, 15-30-146 and 15-30-304,
MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.314 to bring the rule into compliance with changes made to the applicable laws by the 1999 legislature.

42.15.315 ORIGINAL AND AMENDED RETURNS DEFINED (1) remains the same.

(2) Original returns are Montana Forms 2, 2S and FID-3 only.

(3) An amended return is not an original return but ~~only~~ a correction to ~~the~~ an original return.

(4) through (12) remain the same.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-1-216, 15-30-142, 15-30-149, 15-30-241, and 15-30-321, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.315 with minor housekeeping changes and change the title to better reflect the contents of the rule.

42.15.316 EXTENSIONS — LATE FILE AND LATE PAY PENALTY

~~(1) Effective with tax years beginning after December 31, 1994 a~~ A four-month extension of time to file an individual income tax return may be obtained by is automatically allowed a taxpayer only if the following conditions are met on or before the due date of the return:

~~(a) A properly completed Montana application for automatic extension (form EXT) is either delivered to the department or postmarked on or before the original due date of the return. The due date is April 15th for calendar year taxpayers or the 15th day of the 4th month following the close of the taxable year for fiscal year taxpayers. the taxpayer has applied for a corresponding extension of time to file their federal income tax return; and~~

~~(b) At the time of making the application, the taxpayer has paid either through withholding, estimated tax payments, payments with the extension request, or a combination of all three withholding and estimated payments, either of the following:~~

- ~~(i) 90% of their current year's income tax liability; or~~
- ~~(ii) 100% of their prior year's income tax liability.~~

~~(2) For this purpose, a A taxpayer's tax liability is defined as the tax less any income tax credits (excluding the refundable elderly homeowner credit, withholding, and estimated tax payments) and percent level of payment are determined as provided in ARM Title 42, chapter 17, subchapter 3.~~

~~(3) For purposes of (1)(b), in determining a taxpayer's percentage level of payment, the total of their Montana withholding tax, any estimated payments plus any payment made with the application for extension are divided by the taxpayer's total tax liability.~~

~~Example: A taxpayer has a current year tax liability of \$10,000 before any income tax credits. The taxpayer has an income tax credit of \$600, withholding of \$4,000, an estimated tax payment of \$2,000 and a elderly homeowner credit of \$400. The taxpayer's prior year tax liability after credits was \$12,000. If the taxpayer requests a four month extension, the amount of payment required is calculated as follows:~~

	<u>PREVIOUS YEAR</u>	<u>CURRENT YEAR</u>
Total tax liability		
before credits	= \$12,000	\$10,000
Less income tax credits	= 0	<u>(600)</u>
Total tax liability	= \$12,000	\$ 9,400
	<u>x 100%</u>	<u>x 90%</u>
Amount required to be paid	= \$12,000	\$ 8,460

LESS CURRENT YEAR PAYMENTS:

Montana withholding	= \$ 4,000	\$ 4,000
Estimated tax payments	= 2,000	2,000
Elderly homeowner credit	= 400	400
Total payments	\$ 6,400	\$ 6,400
Amounts required to meet threshold figures	\$ 5,600	\$ 2,060

After subtracting the withholding, estimated tax and elderly homeowner credit, the amount of \$2,060 (the lesser of the two) is the amount required to be paid in order to receive an extension.

(4) If a taxpayer obtains an extension and does not meet either of the required payment thresholds in (1)(b) as required by 15-30-144, MCA, a late pay penalty and late file of 10 is imposed on the underpayment. Late file penalties will not apply be applied as provided in 15-1-216, MCA.

(4) Underpayment interest, as provided in 15-30-241, MCA, accrues to the original due date of the return. Interest from and after the original due date of the return accrues as provided in 15-1-216, MCA, whether or not the time for filing the return has been extended.

(5) The underpayment is calculated as provided in ARM Title 42, chapter 17, subchapter 3 the difference between the lesser of:

(a) 90% of the current year's income tax liability after credits, less the amount of payments from withholding, estimated tax, and payments with the extension; or

(b) 100% of the prior year's income tax liability after credits, less the amount of payments from withholding, estimated tax, and payments with the extension.

(6) In the case where a taxpayer is single the prior year and married the current year and wishes to file a married filing joint return, they are required to pay either 90% of the current year's income tax liability or 100% of the combined tax liabilities of both taxpayer's prior year single return. An additional two month extension is automatically allowed if the taxpayer has applied for a corresponding extension of time to file their federal income tax return and made the payments required for the initial extension described in (1).

(7) In the case where a taxpayer is married the prior year and single the current year, they are required to pay either 90% of their current year's income tax liability or 50% of the tax liability of the taxpayer's prior year return.

(8) Additional time of up to two months will be granted if good cause exists and the taxpayer submits a second extension request which is delivered to the department or postmarked by the due date of the original extension and if the requirements of the four month extension have been satisfied. A copy of federal form 2688 listing good cause is acceptable. The department reserves the right to disapprove

~~an extension if good cause does not exist.~~

~~(9) Interest is charged at 9% per annum or 3/4% per month on the underpayment of taxes from the original due date of the return.~~

~~(10) An extension of time to file does not extend the time to pay. When a return is filed before the extension date and payment is not made, the return is subject to late pay penalties.~~

~~(11) Taxpayers who are either first time filers, or have a zero or negative taxable income for the previous year, are considered to have paid 100% of the previous year's tax for purposes of meeting the threshold requirements in ~~(1)(b)~~ 15-30-144, MCA.~~

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-1-201, 15-1-216, 15-30-144 and 15-30-331,
MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.316 to implement the automatic extension amendments made by Chapter 26, L. 1999, and to clarify that the uniform penalty and interest rules apply after the return due date when failing to meet the required payment threshold and to comply with the requirements of 2-4-314, MCA.

42.15.321 JOINT RETURNS (1) A joint return may be filed even though one of the spouses has no income or deductions. However, a joint return is not permitted if the ~~husband and wife~~ spouses have different taxable years, ~~or~~ if one is a resident and one is a nonresident, ~~or~~ either spouse is a part-year resident. A joint return must include all income and deductions of both spouses. If a joint return is filed, both the husband and the wife must sign the return, and both are jointly and severally liable for the tax.

~~(2) If a joint return has been filed for a taxable year, the spouses may file separate returns for the same taxable year. If the time for filing for both spouses has not expired, department consent to the separate filing is not required. If the time for filing the return of either spouse has expired, and both agree to file separate returns after filing a joint return, department consent is required.~~

~~(a) In order for consent to be given Married taxpayers who have filed a joint return may not revoke their election to file jointly and file separately unless, the following conditions ~~must be~~ are met:~~

~~(i)(a) both spouses must agree to file separately ~~returns~~ on the same form;~~

~~(ii)(b) all prior years' tax liabilities must be paid; and~~

~~(iii)(c) the tax liability determined under the joint return for the tax year for which a change is sought must be paid.~~

~~(b) If the above conditions are met, consent is considered granted if the department does not notify the~~

~~taxpayers in writing of disapproval of the amended return or returns.~~

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-142, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.321 to clarify when taxpayers who file joint returns may file a separate return for the same year.

42.15.325 FAILURE TO FURNISH REQUESTED INFORMATION OR FILE A DELINQUENT RETURN (1) ~~The department, for the purpose of determining the correctness of any return, may request additional information to verify amounts or items on the return.~~

~~(2) If, after a taxpayer does not provide information the department requests to ascertain the correctness of a return within 30 days from after the date of the second request for or obtain the department's consent to provide the information, the taxpayer has not responded and the amounts or items still remain they at a later date, the department will be adjust or disallowed. any amount or item that remains unverified. If the request is in writing, the 30 days are computed from the date of the written request.~~

~~(2) If a taxpayer does not file a delinquent return within 30 days after the date of a written request to file the return or obtain the department's consent to file the return at a later date, the department will estimate the taxpayer's taxable income.~~

~~(3) Failure to supply the information requested or to file a requested return will result in the assessment of tax, and any the assessment of interest, or and penalty as provided at 15-30-145 in 15-1-216, MCA.~~

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-1-216 and 15-30-145, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.325 for housekeeping purposes to comply with the requirement of 2-4-314, MCA, and to bring the rule into compliance with the uniform penalty and interest rules adopted by the 1999 legislature.

42.15.401 DEFINITIONS The following definitions apply to rules found in this subchapter:

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

~~(2) "Ancestor" shall mean a lineal ancestor and a collateral ancestor if related by blood.~~

~~(3) "Child" means a son, stepson, daughter, stepdaughter, or legally adopted son or daughter of the~~

taxpayer. The term does not include the following persons who are within the definition of "child" for purposes of determining dependent exemptions for federal income tax purposes:

(a) a child who lived with the taxpayer in the taxpayer's home as a member of the taxpayer's family if placed with the taxpayer by an authorized placement agency for legal adoption; or

(b) a foster child (any child who lived with the taxpayer in the taxpayer's home as a member of the taxpayer's family for the entire year).

~~(4) "Department" means the department of revenue.~~

~~(5)(2) "Dependent" means any individual listed in 15-30-113, MCA, as amended, over one half of whose support for the calendar year in which the taxable year of the taxpayer begins was received from the taxpayer. In determining whether or not an individual received for a given calendar year over one half of his support from the taxpayer, there shall be taken into account the amount of support received from the taxpayer as compared to the entire amount of support the individual received from all sources, including support which the individual himself supplied. The term "support" includes food, shelter, clothing, medical and dental care, education, and the like. Generally, the amount of an item of support will be the amount of expense incurred by the one furnishing such item. However, if the item of support furnished is in the form of property or lodging, it will be necessary to measure the amount of such item in terms of its fair market value. has the same meaning as "dependent" for purposes of determining dependent exemptions for federal income tax purposes, except as follows:~~

(a) The list of individuals in 15-30-113, MCA, for whom a Montana dependent exemption is allowed is broader than the list of eligible relatives for whom a federal dependent exemption is allowed. The list includes a cousin or other lineal descendant of the sister or brother of the mother or father of the taxpayer, if for the taxpayer's tax year the individual received institutional care because of physical or mental disability, and if, before receiving the institutional care, they lived with the taxpayer in the taxpayer's home as a member of the taxpayer's family.

(b) The list of individuals in 15-30-113, MCA, for whom a Montana dependent exemption is allowed is narrower than the eligible list of individuals for whom a federal dependent exemption is allowed and excludes a child placed for adoption, a foster child, and any other person who is not related to the taxpayer as provided in 15-30-113, MCA, unless:

(i) their gross income did not exceed the limits provided in this rule; and

(ii) they lived with the taxpayer in the taxpayer's home as a member of the taxpayer's family for the entire tax year.

(c) A federal dependent exemption may be claimed for a person under a multiple support agreement exception even if the taxpayer does not provide over half of their total

support. Because Montana does not provide a multiple support agreement exception, a dependent exemption is not allowed for any person who does not receive over half of their total support from the taxpayer. See the definition of "support," however, for special rules for determining the support of a child of divorced or separated parents.

~~(6) "Descendant" shall mean a lineal descendant and a collateral descendant related by blood.~~

~~(7)(3) "Educational institution" means a school maintaining a regular faculty and established curriculum and having an organized body of students in attendance. It includes primary and secondary schools, colleges, universities, normal schools, technical schools, mechanical schools, and similar institutions. It does not include noneducational institutions, on the job training, correspondence or schools, night schools, etc. has the same meaning as "educational institution" for purposes of determining dependent exemptions for federal income tax purposes.~~

~~(8) "Household" shall mean a family living together.~~

~~(9) "Immediate family member" means or any individual who is a lineal descendent of the account holder and also includes their spouse. Stepchildren are considered decedents if that relationship was created before the child's eighteenth birthday.~~

~~(10) "Last business day" means the last day of the account administrator's business year.~~

~~(11) "Long term care" means a period of not less than 12 consecutive months in which a necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care service is provided in a setting other than an acute care unit of a hospital.~~

~~(12) "Recovery" means the return or recoupment of amounts that were previously deducted in Montana taxable income or credited against Montana tax in any prior taxable year.~~

~~(13) "Student" means an individual who during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins is a full time student at an educational institution or is pursuing a full time course of institutional on farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state. A full time student is one who is enrolled for some part of 5 calendar months for the number of hours or courses which is considered to be full time attendance. The 5 calendar months need not be consecutive. School attendance exclusively at night does not constitute full time attendance.~~

(4) "Support" has the same meaning as "support" for purposes of determining dependent exemptions for federal income tax purposes except as follows:

(a) Under the federal rules, the support provided to an individual by both spouses is considered only if a joint return is filed. For Montana income tax purposes, the support

provided by both spouses is considered whether the spouses file a joint return or separate returns if the spouses agree in writing which spouse may claim an exemption for a dependent. If the spouses file separate returns on the same form, a separate written agreement is not required. If spouses file separate returns on separate forms and do not agree in writing which spouse may claim a dependent exemption for an individual, a dependent exemption may be claimed only by the spouse, if either, who provided over half the individual's total support. By filing a separate return claiming a dependent exemption for an individual, a married taxpayer represents, as applicable, either that both spouses have together provided over half of the individual's total support and the spouses have agreed in writing the taxpayer may claim an exemption for the dependent or that the individual for whom the taxpayer is claiming a dependent exemption has received over half of their total support from the taxpayer alone. The agreement by spouses filing separate returns is a tax record the taxpayer must retain and provide the department on request.

(b) If a decree of divorce or legal separation, or a binding written agreement between legally separated spouses or divorced former spouses, provides that the taxpayer may claim, and the other parent will not claim, a dependent exemption for a child for state income tax purposes, the taxpayer is treated as having provided over half of the child's support for Montana income tax purposes. If the taxpayer entitled to claim a dependent exemption under this rule is remarried, the taxpayer may claim the exemption on a joint return or, as provided in (4)(a), the taxpayer or taxpayer's spouse may claim the exemption.

AUTH: Sec. 15-30-305, MCA

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

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.401 to delete some definitions that do not apply to this subchapter any longer and to redefine others.

42.15.402 PERSONAL EXEMPTIONS (1) The Each taxpayer is always entitled to an \$800, adjusted as provided in subsection (3), allowed one personal exemption for himself or herself. If the taxpayer is age 65 or older by the close of their tax year, they are entitled to an additional personal exemption. If the taxpayer is blind, as provided in 15-30-112, MCA, at the close of their tax year, they are entitled to an additional personal exemption. The additional exemptions are cumulative and a taxpayer who is at least 65 years old and blind by the close of the tax year is allowed three personal exemptions.

(2) He is also entitled to an \$800, adjusted as provided in subsection (3), exemption for his spouse if he is filing a separate return and if the spouse for the calendar year in which the taxable year of the taxpayer begins has no gross income and is not the dependent of another taxpayer. Thus,

~~the taxpayer is not entitled to an exemption for his spouse on his separate return for the taxable year beginning in a calendar year during which the spouse has any gross income. However, in cases where husband and wife file a joint return, there are two taxpayers and, accordingly, two exemptions of \$800, adjusted as provided in subsection (3), are allowed. The following provisions apply to the personal exemptions of married persons:~~

~~(a) a married taxpayer filing a separate return whose spouse, for the calendar year in which the tax year of the taxpayer begins, has no gross income and is not a dependent of another taxpayer, is allowed the following additional personal exemptions:~~

- ~~(i) one additional exemption for their spouse;~~
- ~~(ii) another additional exemption if their spouse is 65 years or older at the close of the taxpayer's tax year; and~~
- ~~(iii) another additional exemption if their spouse is blind at the close the taxpayer's tax year or, if the spouse dies before the end of the tax year, is blind at the spouse's date of death;~~

~~(b) as provided in (1), married taxpayers filing a joint return are allowed two personal exemptions in computing their joint taxable income; and~~

~~(3) By November 1 of each year the department will multiply the exemption amount by the inflation figure for the taxable year.~~

~~(4)(c) If if a joint return is made by the married taxpayers and his spouse, no other person may claim an exemption for the either spouse even though such other person would have been entitled to claim an exemption for the spouse as a if the spouse is the other person's dependent if the joint return had not been made for whom a dependent exemption would otherwise be allowed as provided in ARM 42.15.403.~~

~~(3) An individual attains the age of 65 on the first moment of the day preceding their 65th birthday. Accordingly, a person whose birthday falls on January 1 attains the age of 65 on December 31 of the immediately preceding calendar year.~~

~~(4) The amount allowed as a personal exemption is as follows:~~

~~(a) for tax years beginning before December 31, 2004, the personal exemption is \$800, adjusted annually for inflation by November 1 or each year as provided in 15-30-112, MCA (temporary). The amount of the personal exemption, as adjusted for inflation for recent tax years, can be obtained by accessing past-year downloadable tax forms from the department's internet homepage website located at: <http://www.discoverinqmontana.com/revenue>; and~~

~~(b) for tax years beginning after December 31, 2004, the personal exemption is \$1,900, adjusted annually for inflation by November 1 of each year as provided in 15-30-112, MCA (effective January 1, 2005).~~

~~AUTH: Sec. 15-30-305, MCA~~

~~IMP: Sec. 15-30-112, MCA~~

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.402 for housekeeping purposes, to reorganize the multiple existing personal exemption rules into a single rule, and to incorporate changes made to 15-30-112 by the 2003 legislature that changed the personal exemption amount for tax years beginning after December 31, 2004.

42.15.403 EXEMPTIONS FOR DEPENDENTS (1) ~~The~~ Except as provided in (2), a taxpayer is entitled to an allowed a dependent exemption of \$800, adjusted as provided in subsection (2), for each person who qualifies as his dependent and whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than \$800 or who receives over half of his or her total support from the is a child of a taxpayer, and meets one of the following conditions:

~~(a) has not attained the age of 19 at the close of the calendar year in which the taxable year of the taxpayer begins; or~~

~~(b) is a student.~~

~~(2) By November 1 of each year the department will multiply the A dependent exemption amount by the inflation figure for the taxable year is not allowed for an individual described in (1):~~

~~(a) who, during the calendar year, has gross income of \$800 or more unless the individual is the taxpayer's child and either:~~

~~(i) has not attained the age of 19 at the close of the calendar year in which the tax year of the taxpayer begins; or~~

~~(ii) is, during each of five calendar months during the calendar year in which the tax year of the taxpayer begins, a fulltime student at an educational institution or is pursuing a fulltime course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of the state;~~

~~(b) who makes a joint return with their spouse for the same tax year or for a tax year that begins in the calendar year in which the tax year of the taxpayer begins; or~~

~~(c) for whom an exemption for a dependent child with a disability is claimed as provided in (3).~~

~~(3) No exemption is allowed for any dependent who has made a joint return with his or her spouse for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins. Except as provided in (7), in lieu of the dependent exemption described in (1), a taxpayer is allowed a dependent disabled child exemption as provided in this section and (4), (5), (6), (7), and (8), equal in amount to twice the dependent exemption. The exemption is allowed for a child who receives over half of his or her support from the taxpayer if:~~

~~(a) the taxpayer's home is the dependent disabled child's principal place of abode;~~

(b) the dependent child has a permanent disability constituting 50% or more of the body as a whole; and

(c) a licensed physician has certified the qualifying disability.

(4) For each tax year beginning before December 31, 2002, a taxpayer claiming a dependent disabled child deduction must file a physician's certification of qualifying disability with their individual income tax return.

(5) For tax years beginning after December 31, 2002, filing an annual certification is not required, but the taxpayer must have a physician's certification of qualifying disability that they retain as a tax record and provide the department upon request. In addition, the taxpayer makes the following representations when filing a return claiming a dependent disabled child exemption:

(a) if the taxpayer has filed the physician's certification with a prior year's return, the taxpayer represents there is no change in the dependent's physical circumstances to the extent the dependent no longer qualifies for the exemption; and

(b) if the taxpayer has not filed the physician's certification with a prior year's return, the taxpayer represents they have a copy of the certification of a licensed physician of a qualifying disability and there is no change in the dependent's physical circumstances to the extent the dependent no longer qualifies for the exemption.

(6) The dependent disabled child exemption may be claimed for a qualifying child of any age and may be claimed for a qualifying child who has gross income of \$800 or more.

(7) A dependent disabled child exemption is not allowed for an individual who makes a joint return with his or her spouse.

(8) The amounts allowed as a dependent exemption are:

(a) for tax years beginning before December 31, 2004, the dependent exemption is \$800, adjusted annually for inflation by November 1 or each year as provided in 15-30-112, MCA (temporary); and

(b) for tax years beginning after December 31, 2004, the dependent exemption is \$1,900, adjusted annually for inflation by November 1 of each year as provided in 15-30-112, MCA (effective January 1, 2005).

(9) A taxpayer claiming a dependent disabled child deduction for a tax year beginning after December 31, 2002 is required to notify the department if the child's physical circumstances have changed and the child no longer has a permanent disability constituting 50% or more of the whole body and of any other change in the child's eligibility for the dependent disabled child exemption. The notice must be in writing and mailed to the Department of Revenue, P.O. Box 5805, Helena, MT 59604-5805.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-112, 15-30-113, 15-30-114, and 15-30-115, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.403 to incorporate changes made to 15-30-112 and 15-30-115, MCA by the 2003 legislature. The amendments to 15-30-112, MCA, in chapter 544, L. 2003, changed the amount of the dependent deduction for tax years beginning after December 31, 2004. Because the disabled dependent child deduction is twice the amount of the dependent deduction, the disabled dependent child deduction was also changed for tax years beginning after December 31, 2004. The amendments to 15-30-115, MCA, in chapter 123, L. 2003, removed the requirement for filing an annual physician's certification of disqualifying disability.

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

42.15.111 MONTANA RESIDENT MILITARY PERSONNEL SALARY EXCLUSION (1) ~~Residents of Montana do not lose their residence or domicile in Montana solely by reason of being absent from this state in compliance with military orders. Accordingly, such persons remain subject to this tax in the same manner and to the same extent as other persons who are residents of Montana.~~

~~(2) However, effective with taxable years ending after December 31, 1974, compensation~~ The following items of military compensation received by a resident service member are exempt from Montana income tax:

(a) basic, special, and incentive pay received for serving on active duty service as a member of the regular Armed Forces is exempt from tax;

(b) basic, special, and incentive pay received by a member of a reserve component of the armed forces or a member of the national guard, for active duty in a "contingent operation" as defined in 10 USC 101; and

(c) basic, special, and incentive pay received by a member of the national guard for active service authorized by the president of the United States or the secretary of the defense for a period of more than 30 consecutive days for the purpose of responding to a national emergency declared by the president and supported by federal funds.

(2) Military compensation that is not exempt from Montana income tax includes:

(a) salary received for annual training and weekend duty;

(b) salary received by a member of a reserve component of the armed forces for service not described in (1)(b); and

(c) retired, retainer, or equivalent pay, or allowances.

~~(3) Residents will be considered members of the Armed Forces on active duty when they are called to duty under Title 10, U.S.C.A. As provided in the Military Family Tax Relief Act of 2003, for federal income tax purposes a member of a reserve component of the armed forces Montana National Guard members and others serving under another authority are subject to the tax may deduct certain travel expenses incurred after December 31, 2002, in connection with serving more than 100 miles away~~

from home. Because the deduction reduces federal adjusted gross income, the deduction also reduces the service member's income subject to Montana tax.

~~(4) Effective for taxable years beginning after December 31, 1981, members of each reserve component, as listed under Title 10, U.S.C. 261(a), are subject to state income tax.~~

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-116, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.111 to clarify the taxation of resident's military compensation following changes in federal law made by the Veterans Benefits Act of 2002, the Military Family Tax Relief Act of 2003, and the Service Members Civil Relief Act of 2003. In compliance with the requirement of 2-4-314, MCA, additional housekeeping amendments have been made to the rule. The department is further proposing to transfer this rule to subchapter 2 of this chapter.

42.15.113 SENIOR INTEREST INCOME EXCLUSION (1) Pursuant to 15-30-111, MCA, interest income earned by ~~If a taxpayer or a taxpayer's spouse who is age 65 or over, is exempt from Montana income tax for the following amounts and filing requirements:~~ certain interest income is exempt as provided in this rule.

~~(a)(2) If a taxpayer is single, the taxpayer may exclude the exclusion cannot exceed up to \$800 of interest income included in the taxpayer's federal adjusted gross income.~~

~~(b)(3) If married taxpayers file and a joint return is filed, they may exclude up to the exclusion cannot exceed \$1600 this exclusion applies of interest income included in their joint or in their separate federal adjusted gross income even if only one spouse is age 65 or over.~~

~~(c)(4) If a married and only one spouse is taxpayer who is age 65 or older files over and separately, returns are filed, the exclusion cannot exceed the taxpayer may exclude up to \$800 for the spouse who is age 65 or over; of interest income earned by them and included in their federal adjusted gross income. The taxpayer may not exclude interest income earned by the taxpayer's spouse.~~

~~(d) if married and both spouses are age 65 or over and separate returns are filed, the exclusion cannot exceed \$800 for each spouse and each spouse must claim his or her own exclusion.~~

~~(2)(5) The exclusion cannot exceed the amount reported as taxable interest income.~~

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.113 for housekeeping purposes to comply with the requirement of 2-4-314, MCA to review all department rules. The department further proposes to transfer this rule to subchapter 2 of this chapter.

42.15.114 TAX STATUS EXCLUSION OF INTEREST ON FEDERAL OBLIGATIONS OF UNITED STATES GOVERNMENT AND U.S. POSSESSIONS

~~(1) Pursuant to 15-30-111, MCA, interest income earned from obligations of the on United States government is exempt obligations, and mutual fund dividends attributable to that interest, to the extent included in federal adjusted gross income, are exempt from Montana income tax. Interest on obligations of U.S. territories and government agency obligations specifically exempted by federal law, and mutual fund dividends attributable to that interest, are also exempt from Montana income tax.~~

~~(2) For Montana tax purposes, an obligation of the United States must meet the following requirements:~~

~~(a) be issued by a governmental agency through its exercise of power given to it by congress; and~~

~~(b) must be borrowed on the credit of the United States which will pay specified sums at specified times. Obligations guaranteed by the United States government are not tax-exempt. Interest on, and mutual fund dividends attributable to, Government National Mortgage Association (Ginnie Mae) bonds, Federal National Mortgage Association (Fannie Mae) bonds, and Federal Home Loan Mortgage Corporation (FHLMC) securities are not exempt.~~

~~(3) Effective January 1, 1984, interest earned on Government National Mortgage Association (GNMA) and Federal National Mortgage Association (FNMA) securities are no longer exempt from taxation. United States obligations that are exempt include:~~

~~(a) series E, F, G and H savings bonds;~~

~~(b) U.S. treasury bills;~~

~~(c) U.S. government notes; and~~

~~(d) U.S. government certificates.~~

~~AUTH: Sec. 15-30-305, MCA~~

~~IMP: Sec. 15-30-111, MCA~~

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.114 for housekeeping purposes and to clarify the federal obligations eligible for exemption. The department further proposes to transfer this rule to subchapter 2 of this chapter.

42.15.115 DISABILITY INCOME EXCLUSION (1) A taxpayer ~~who is a resident of Montana~~ qualifies for the disability income exclusion if ~~he or she~~ they:

~~(a) is~~ are under age 65;

~~(b) is~~ are retired on disability;

~~(c) was~~ were permanently and totally disabled when ~~he~~ they retired; and

~~(d) has~~ have not, ~~chosen to treat for this or a prior tax year, treated his~~ their disability income as a pension or annuity.

(2) The adjusted gross income used in the computation of the exclusion is the taxpayer's Montana adjusted gross income computed without this exclusion.

(3) ~~If the qualified taxpayer is married and filing separate returns, files separately, both the taxpayer and the spouse's~~ Montana adjusted gross income of the taxpayer and their spouse are to must be combined to compute the exclusion.

(4) ~~The department reserves the right to ask for taxpayer must on the department's request provide satisfactory proof of disability. Satisfactory proof includes a document issued by a governmental unit, such as the social security administration, certifying the taxpayer's permanent and total disability. If such certification is not available, the department may require such other forms of verification that establish the taxpayer's permanent and total disability as is necessary.~~

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.115 for housekeeping purposes to comply with the requirement of 2-4-314, MCA. The department further proposes to transfer this rule to subchapter 2 of this chapter.

42.15.116 SPECIAL MONTANA NET OPERATING LOSSES COMPUTATIONS (1) ~~The Montana net operating loss computation will be filed on the forms prescribed by the department of revenue.~~

~~(2) The capital gain deduction taken under 15-30-110 MCA must be added back to arrive at the Montana net operating loss. Net operating losses must be determined as provided in section 172 of the IRC. A taxpayer has a Montana net operating loss if their Montana taxable income, recomputed with the adjustments provided in section 172(d) of the IRC, is less than zero. In recomputing Montana taxable income, the following must be added back:~~

~~(a) any net operating loss deduction;~~

~~(b) any deduction for personal and dependent exemptions if the taxpayer is an individual, and the exemption provided in 15-30-136, MCA, if the taxpayer is an estate or trust;~~

~~(c) any gain excluded from the sale or exchange of qualified small business stock pursuant to section 1202 of the IRC;~~

~~(d) the amount by which a deduction for losses from sales or exchanges of capital assets exceeds the amount includable for gains from sales or exchanges of capital assets; and~~

~~(e) the amount by which nonbusiness deductions exceed nonbusiness income.~~

~~(3)(2) In general, this subsection prescribes procedures for When computing the net operating losses, and the carrybacks, and carryovers, and the refund limits for a husband and wife of taxpayers whose marital or filing status has changed, the federal rules and instructions applicable to change in marital status and change in filing status must be followed.~~

~~(a) In the case of a taxpayer who has continuously filed separate returns, a net operating loss on a separate return~~

must be carried back or carried over to his or her own separately filed returns.

(b) A husband and wife who have continuously used joint returns must carryback or carryover the net operating loss from their joint return to their combined joint income in the carryback or carryforward year.

(c) If a net operating loss occurs in a year when a joint return was filed, and is carried to a separate return year, it is calculated by computing each spouse's share of the joint net operating loss. The deductions attributable to the husband, for example, would be compared with the gross income attributable to him, and the excess of such deductions is his share of the loss to be carried to his separate return. A similar computation is made for the wife. If the gross income attributable to either spouse exceeds the deductions attributable to that spouse, no part of the loss can be carried to that spouse's separate return.

(d) A taxpayer sustaining a net operating loss on a separate return must carryback or carryforward the loss to his or her own portion of the income on a joint return. The purpose of this method is to divide income and deductions reported on a joint return between the two spouses in a manner that reflects the actual allocation that would have occurred had separate returns been filed. Thus, income items are allocated to the spouse earning the income, and deductions are allocated to the spouse incurring the expense.

(4) The net operating loss for nonresidents and fractional year residents shall include only those income/loss and expense items attributable to income from a Montana trade or business.

Example 1: A nonresident has a loss on the operation of a Montana business and income from a separate business located in his state of residence.

Montana business loss	(\$75,000)
State of residence business income	\$85,000
Federal income	\$10,000
Income for federal purposes	\$10,000
Less state of residency business income	\$85,000
Montana loss	(\$75,000)

Example 2: A nonresident has oil income from Montana and a ranch in his state of residence that shows a loss.

Montana oil income	\$100,000
State of residence ranch loss	(\$140,000)
Loss for federal purposes	(\$ 40,000)
Loss for federal purposes	(\$ 40,000)
Less state of residence loss	(\$140,000)
Montana income	\$100,000

~~Example 3: A nonresident has a loss on the operation of a Montana farm and income from a separate business located in his state of residence.~~

Montana farm loss	(\$ 75,000)
State of residence business Income	\$ 50,000
Loss for federal purposes	(\$ 25,000)
Loss for federal purposes	(\$ 25,000)
Less state of residence business Income	\$ 50,000
Montana loss	(\$ 75,000)

~~Example 4: An individual moves to Montana and becomes a resident of Montana. He sustains a loss outside Montana before becoming a resident and he also sustains a loss in Montana after becoming a resident.~~

Out of state loss	(\$ 65,000)
Montana loss	(\$ 75,000)
Loss for federal	(\$140,000)
Loss for federal	(\$140,000)
Less out of state loss	(\$ 65,000)
Montana loss	(\$ 75,000)

~~(5)(3) A nonresident of Montana who owns a business which that operates both within and without Montana must follow the provisions in 15-1-601, MCA, and ARM 42.16.1115 the principles of allocation and apportionment located in ARM Title 42, chapter 26 to determine the amount of the business-wide loss attributable to Montana.~~

~~(6)(4) To determine the portion of the federal income tax and motor vehicle fee a deductible expense attributable to income from a Montana trade or business, the expense must be multiplied by the ratio of net income from the trade or business must be divided by to Montana adjusted gross income to arrive at a percentage. The percentage is multiplied by the federal tax or motor vehicle fee. When calculating the portion of federal tax attributable to trade or business income, the ratio must be calculated using the net business income and Montana adjusted gross income the total income figures used for the computation must be for the year the federal tax was incurred.~~

~~(7)(5) An election to waive the carryback of the net operating loss is irrevocable. If a taxpayer elects to waive the carryback of the net operating loss, the election must be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable tax year of the net operating loss for which the election is to be irrevocable for such taxable year.~~

AUTH: Sec. 15-30-305, MCA
IMP: Sec. 15-30-110 and 15-30-117, MCA

REASONABLE NECESSITY: The department is proposing to amend

ARM 42.15.116 for housekeeping purposes to comply with the requirement of 2-4-314, MCA, and to conform the rule to changes made to 15-30-117, MCA, by the 1999 legislature. The department further proposes to transfer this rule to subchapter 5 of this chapter.

42.15.117 CAPITAL GAIN EXCLUSION FOR PRE-1987 SALES

(1) Adjusted gross income for tax years beginning after December 31, 1986, does not include 40% of the deferred capital gain on assets sold or exchanged on or before December 31, 1986.

(2) The capital gain exclusion applies only to the deferred gain on installment sales of items considered capital assets under Subchapter P, Parts I, II, III and IV of Chapter I of the ~~Internal Revenue Code~~ IRC as it read on December 31, 1986.

(3) remains the same.

(4) The deferred capital gain exclusion applies only after the capital gain is netted against capital losses as ~~put~~ set forth in Subchapter P of Chapter I of the ~~Internal Revenue Code~~ IRC as of December 31, 1986.

(5) through (7) remain the same.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-110, 15-30-111, and 15-30-131, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.117 for housekeeping purposes to comply with the requirement of 2-4-314, MCA. The department further proposes to transfer this rule to subchapter 2 of this chapter.

42.15.118 EXEMPT RETIREMENT LIMITATION PENSION AND ANNUITY INCOME EXCLUSION

(1) The ~~retirement pension and annuity~~ exclusion is limited to the lesser of the ~~retirement pension and annuity~~ income received or \$3,600 for a single person or married couple where only one person receives pension or annuity income. The exclusion is reduced \$2 for every \$1 over federal adjusted gross income of \$30,000.

(2) ~~For a~~ When married couple ~~taxpayers who~~ file a joint return and each receives pension and annuity income, their individual exclusion is limited to the lesser of each person's retirement income or \$3,600. The total of both individuals' exclusion is ~~reduced~~ phased out at the ~~same rate as~~ in described in subsection (1).

(3) ~~For a~~ When married couple ~~taxpayers who~~ file separately, ~~the reduction of the each spouse's exclusion and phase-out over federal adjusted gross income of \$30,000 is~~ are computed independently of each other and a spouse's exclusion begins to be phased out only when his or her federal adjusted gross income exceeds \$30,000. Examples are:

(a) ~~Example 1: A Jane, a~~ single taxpayer has a federal adjusted gross income of \$20,000 which is made up of \$5,000 of ~~retirement pension~~ income and \$15,000 of other income. ~~His Her retirement pension and annuity~~ exclusion for Montana purposes is \$3,600.

~~(b) Example 2: A Frank and Edith, a married couple, file a joint income tax return and who both receive retirement pension and annuity income file a joint Montana income tax return. The husband Frank's taxable pension included in federal adjusted gross income is receives \$5,600. of retirement income and his wife receives Edith's taxable pension included in federal adjusted gross income is \$2,000 of retirement income. They have a Their combined federal adjusted gross income of is \$25,000. For Montana purposes, their retirement Their Montana pension and annuity exclusion is exclusion is \$3,600 and \$2,000 or a total of \$5,600 (the maximum \$3,600 for Frank and the full taxable amount of \$2,000 for Edith). Even though their combined federal adjusted gross income is below \$30,000, Edith is not entitled to a \$3,600 pension exclusion as the exclusion is limited to her taxable pension of \$2,000.~~

~~(c) Example 3: A John, a single taxpayer, has a federal adjusted gross income of \$31,000. which is made up This consists of \$8,000 of retirement taxable pension income and \$24,000 of other income. His John's retirement Montana pension exclusion for Montana purposes is \$1,600. ($\$3,600 - ((\$31,000 - \$30,000) \times 2)$).~~

~~(d) Example 4: A John and Barbara, a married couple, who file a joint income tax return and both receive retirement report federal taxable pension income file a joint Montana income tax return. The husband receives John's federal taxable pension is \$5,600 of retirement income and his wife receives and Barbara's federal taxable pension income is \$3,000 of retirement income. They have a Their combined federal adjusted gross income of is \$33,000. For Montana purposes, their retirement Their combined Montana pension and annuity exclusion is \$600. ($\$6,600 - ((\$33,000 - \$30,000) \times 2)$).~~

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.118 for housekeeping purposes, as well as to bring the rule into conformance with language provided in 15-30-111, MCA. The department is expanding the examples to provide more clarity. The department is further proposing to transfer this rule to subchapter 2 of this chapter.

42.15.121 TAX STATUS OF INDIANS EXEMPTION OF CERTAIN INCOME OF ENROLLED TRIBAL MEMBERS (1) ~~An enrolled tribal member who resides on an Indian reservation and is an enrolled member of a tribe which resides on that reservation is not taxable with respect to income derived from sources within the exterior boundaries of that Indian reservation or lands restored to tribal ownership by 72 Stat. 121, May 19, 1958. When income is earned both on and off reservations, it shall be allocated according to the source. Wages are exempt from individual income tax when:~~

~~(a) the individual is an enrolled tribal member of the governing tribe of the reservation on which the enrolled tribal member works and resides; and~~

(b) the wages are derived from reservation sources.

~~(2) An Indian, regardless of residence, is not taxable with respect to income derived directly from allotted or restricted lands held in trust by the United States for the Indian's benefit of a tribe~~ When wages are derived from both reservation sources and nonreservation sources, only wages derived from reservation sources are exempt from taxation, provided the individual meets all the criteria in (1).

(3) When a Native American does not reside on his or her reservation for an entire year, only wages earned while he or she was residing on the reservation are exempt from taxation, provided he or she meets all the criteria in (1).

~~(4) An Indian~~ Native American residing outside the exterior boundaries of ~~an~~ his or her Indian reservation has no special exemption other than income derived directly from allotted or restricted lands, ~~as set forth in subsection (1)(b) of this section held in trust by the United States.~~

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.121 to bring the rule into conformance with terms used in court cases and federal statutes regarding the determination of Native American issues pertaining to taxation. The department further proposes to transfer this rule to subchapter 2 of this chapter.

42.15.211 ACCOUNTING METHODS (1) The taxpayer's method of accounting must be ~~his~~ the taxpayer's method of accounting for federal income tax purposes. If the taxpayer's accounting method is changed for federal income tax purposes, ~~his~~ the taxpayer's accounting method for Montana income tax purposes is automatically ~~so~~ changed.

(2) Acceptable accounting methods include the cash basis, accrual method, a hybrid of the cash and accrual methods, or any other method permitted under ~~§~~section 446 of the ~~Internal Revenue Code~~ IRC.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-101, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.211 for housekeeping purposes to comply with the requirement of 2-4-314, MCA. The department further proposes to transfer this rule to subchapter 3 of this chapter.

42.15.302 FILING DATE ON HOLIDAY OR WEEKEND (1) remains the same.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 1-1-307 and 15-30-144, MCA

REASONABLE NECESSITY: The department is proposing to transfer ARM 42.15.302 to ARM Title 42, chapter 2, subchapter 3, with other general department rules because this subject matter applies to other areas of taxation and registration

administered by the department.

~~42.15.308 MONTANA ADJUSTED GROSS INCOME DEPENDENT CHILD UNEARNED INCOME EXCLUSION~~ (1) ~~Montana adjusted gross income is the adjusted gross income as defined by 15-30-111, MCA. The unearned income of a dependent child that is included in a parent's federal adjusted gross income pursuant to the IRC is exempt from taxation if for the tax year:~~

~~(a) the child is not required to file a Montana individual income tax return; or~~

~~(b) the child filed a Montana individual income tax return reporting the income.~~

~~(2) Montana adjusted gross income of a parent does not include the unearned income of a dependent child that is included in the parent's federal adjusted gross income under Internal Revenue Code, section 1(g) if:~~

~~(a) the child was not required to file a Montana individual income tax return; or~~

~~(b) the child filed a Montana individual income tax return showing the income.~~

~~(3) The income cannot be excluded from the parent's Montana adjusted gross income if the child was required to file a Montana individual income tax return and the child did not file the required return.~~

~~AUTH: Sec. 15-30-305, MCA~~

~~IMP: Sec. 15-30-111, MCA~~

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.308 for housekeeping purposes to comply with the requirement of 2-4-314, MCA. The catchphrase was amended to reflect the substance of the rule and (2) and (3) were deleted as this information is already included in statute. The department further proposes to transfer this rule to subchapter 2 of this chapter.

~~42.15.309 MONTANA MODIFIED ADJUSTED GROSS INCOME RAILROAD RETIREMENT AND SOCIAL SECURITY BENEFIT EXCLUSION~~

~~(1) The first step in determining if social security benefits are taxable to Montana is to calculate Montana modified adjusted gross income. Retirement benefits paid by the railroad retirement board are exempt from Montana income tax.~~

~~(2) Montana modified adjusted gross income shall be the taxpayer's federal modified adjusted gross income as calculated by using section 86 of the Internal Revenue Code. The taxable and excludable portions of social security benefits are determined in the same manner as determined for federal income tax purposes except that federal modified adjusted gross income must be modified as provided in (3) to determine Montana modified adjusted gross income, and Montana modified adjusted gross income must be used to determine the extent to which modified adjusted gross income exceeds the federal base and adjusted base amounts.~~

~~(3) In addition Montana modified adjusted gross income~~

~~shall include Federal modified adjusted gross income, determined as provided in section 86 of the IRC, must be:~~

~~(a) taxable federal refunds received increased by the additions to federal adjusted gross income provided in 15-30-111, MCA, and any other additions to Montana taxable income provided in Title 15, MCA; and~~

~~(b) interest on all state and county municipal bonds; decreased by the reductions to federal adjusted gross income provided in 15-30-111, MCA, other than tax-exempt interest on United States obligations or interest on any state or county municipal bonds.~~

~~(c) interest on U.S. obligations;~~

~~(d) any other income taxable under 15-30-111(1), MCA.~~

~~(4) Montana modified adjusted gross income does not include the following:~~

~~(a) state refunds;~~

~~(b) exempt Montana retirement income;~~

~~(c) any tier one and tier two railroad retirement benefits;~~

~~(d) the Montana capital gain exclusion; and~~

~~(e) any other income not taxable under 15-30-111, MCA, except for interest received from U.S. and Montana obligations.~~

~~(5) In determining the taxable and excludable portions of social security benefits, A a married person filing separately who has filed a joint federal income tax return on the same form must claim use one-half of the federal base and adjusted base amount amounts allowed a married individual under section 86 of the Internal Revenue Code.~~

~~AUTH: Sec. 15-30-305, MCA~~

~~IMP: Sec. 15-30-111, MCA~~

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.309 for housekeeping purposes, as well as to clarify the computations of taxable social security. The department further proposes to transfer this rule to subchapter 2 of this chapter.

42.15.324 HANDLING OF CLAIMING AN ELDERLY HOMEOWNER CREDIT RETURNS (1) ~~Filing date for elderly credit returns:~~

~~(a) Returns claiming the elderly homeowner credit, when filed apart from the income tax return, must be submitted on or before April 15 of the year following the year for which credit is sought. When such a claim is filed late, a letter which states the reason for being late must be attached. If there is good reason for the late filing, the return will be accepted by the department. Claims filed more than five years late will not be accepted.~~

~~(b) Returns claiming the elderly homeowner credit, when filed with or when amending an income tax return, are considered a part of the income tax return and are subject to the same statute of limitations that applies to income tax returns. The elderly homeowner credit may be claimed by an eligible individual or, if an eligible individual dies before~~

making a claim, by the personal representative of their estate, and must be made on Form 2EC.

(2) The time for, and manner of making, a claim for the credit depends on whether or not the qualified individual (or the personal representative for them) files an individual income tax return for the year for which the credit is claimed.

(a) If an eligible individual files or is required to file an individual income tax return for the year for which the credit is claimed, the claim must be filed with the return on or before the due date of the return, including extensions. ARM 42.15.301 sets forth the rules for determining whether an individual is required to file a return. If a return is made by or for an eligible individual without making a claim for the credit, the credit may be claimed by filing an amended return within five years after the due date of the return, not including extensions.

(b) If an eligible individual is not required to, and does not, file an individual income tax return, the claim must be mailed to the department at the address set forth in ARM 42.1.101 or delivered to the department at the Sam W. Mitchell Building, third floor, 125 N. Roberts, Helena, MT no later than April 15th of the fifth year following the claim year.

(c) If an eligible individual is required to, but did not, file an individual income tax return the claim must be made by filing an individual income tax return with completed form 2EC as provided in (2)(a).

(d) If the taxpayer claiming the credit files their tax return electronically, he or she represents that they have completed Form 2EC and have all the required documentation. The form and required documentation are tax records the taxpayer must retain and provide to the department on request.

(3) The following are examples showing how this rule is applied:

(a) Taxpayer is required to file an individual income tax return for 2003 and, although eligible, neglects to claim the credit by filing Form 2EC with their 2003 individual income tax return which they file April 6, 2004. Taxpayer may claim the credit by filing an amended 2003 individual income return with completed Form 2EC on or before April 15, 2009.

(b) Taxpayer, who is not required to file an individual income tax return for 2003, dies in February 2004. Personal representative, appointed June 2004, may at any time before April 15, 2009, either file a 2003 individual income tax return for the taxpayer with completed Form 2EC or file Form 2EC without filing a 2003 return.

(c) Taxpayer is required to but does not file an individual income tax return for 2007. Taxpayer or, if the taxpayer has died, the personal representative of the taxpayer's estate, may claim the credit by filing a 2007 individual income return with completed Form 2EC on or before April 15, 2013.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-149, 15-30-174, and 15-30-175, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.324 for housekeeping purposes and to bring the rule into compliance with changes made to 15-30-174, MCA by the 2003 legislature that allow the credit to be claimed within five years after the last day prescribed for filing a claim. Some examples have been provided to aid the taxpayer in determining when it is appropriate to file certain tax returns. The department is further proposing to transfer this rule to ARM Title 42, chapter 4 with the other tax credit rules.

42.15.421 STANDARD DEDUCTION (1) Individuals who were residents of Montana during the taxable year, including individuals who were residents of this state for a fractional part of the taxable year, may elect to claim the standard deduction. The optional standard deduction is not allowed to nonresidents. Except as provided in (3) and (4), a taxpayer who does not claim itemized deductions is allowed the standard deduction.

(2) The allowable standard deduction is 20% of the taxpayer's Montana adjusted gross income for the taxable year but may not exceed \$1,500, adjusted as provided in subsection (3), except in the case of a joint return of husband and wife, in which case it may not exceed \$3,000, adjusted as provided in subsection (3). The standard deduction is in lieu of all itemized deductions referred to in 15-30-121, MCA subject to the following minimum and maximum amounts, which are adjusted annually for inflation:

(a) Tax years beginning before December 31, 2004:

	<u>Minimum</u>	<u>Maximum</u>
<u>Married filing a joint return</u> <u>or head of household</u>	<u>\$ 1,300</u>	<u>\$ 3,000</u>
<u>Single or married filing a</u> <u>separate return</u>	<u>\$ 665</u>	<u>\$ 1,500</u>

(b) Tax years beginning after December 31, 2004:

	<u>Minimum</u>	<u>Maximum</u>
<u>Married filing a joint return</u> <u>or head of household</u>	<u>\$ 3,160</u>	<u>\$ 7,120</u>
<u>Single or married filing a</u> <u>separate return</u>	<u>\$ 1,580</u>	<u>\$ 3,560</u>

(3) By November 1 of each year the department will multiply the maximum amount by the inflation figure for the taxable year. The following requirements govern the standard deduction of married taxpayers who do not file a joint return with their spouse:

(a) A married taxpayer filing separately may claim the

standard deduction only if his or her spouse does not file a Montana individual income tax return claiming itemized deductions;

(b) As provided in 15-30-134, MCA, a taxpayer who is legally separated from his or her spouse at the end of the tax year under a decree of divorce, legal separation, or separate maintenance is not considered married for purposes of this rule;

(c) In the event of death of one of the spouses, the restriction described in (3)(a) is applicable with respect to the tax year ending with death and the tax year of the surviving spouse in which the death occurs; and

(d) By filing a separate return claiming a standard deduction, a married taxpayer represents that the taxpayer's spouse did not or will not claim itemized deductions.

~~(4) In the event husband and wife file separate returns, if one spouse elects to claim itemized deductions, then the other spouse may not claim the standard deduction. The restriction upon the right of a married person to elect the standard deduction in his separate return is applicable unless the spouses are legally separated under a decree of divorce or separate maintenance in effect on the last day of the taxable year. In the event of death of one of the spouses, the restriction is applicable with respect to the taxable year ended with death and the taxable year of the surviving spouse in which the death occurs. A standard deduction may not be claimed for an estate or trust.~~

~~(5) Effective for taxable years beginning after December 31, 1984, section 15-30-122, MCA, allows a head of household to claim the same standard deduction allowed married individuals filing a joint return.~~

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-122, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.421 to provide for changes passed during the 2003 legislature in 15-30-122, MCA, that changed the amount of the standard deduction for tax years beginning after December 31, 2004. The department further proposes to transfer this rule to subchapter 5 of this chapter.

42.15.423 ITEMIZED DEDUCTIONS WHEN OF MARRIED COUPLE TAXPAYERS FILE SEPARATELY (1) ~~When husband and wife itemize deductions on separate returns, each may claim only the allowable deductions paid with his or her own funds. If one of the spouses files separately and itemizes deductions, then both must do so.~~

(2) An itemized deduction of a married taxpayer who files a separate federal income tax return claiming the itemized deduction may not be claimed as an itemized deduction by the taxpayer's spouse.

(3) If a married taxpayer files a separate Montana return, the following rules apply if the taxpayer filed a joint federal income tax return with the taxpayer's spouse or

did not file a federal income tax return:

(a) an itemized deduction clearly attributable to one spouse may be claimed only by the spouse to whom it is attributable; and

(b) if the spouses file a separate return on the same form, an itemized deduction not clearly attributable to one spouse may be divided as provided on the form;

(c) if one or both of the spouses files a separate return on a separate form, an itemized deduction not clearly attributable to one spouse must be divided equally unless the spouses enter into a binding written agreement providing a different division;

(d) the agreement described in (3)(c) is a tax record each spouse must retain and provide to the department on request.

(4) If a taxpayer files a Montana return claiming an adjustment to gross income or an itemized deduction that is allowed only to taxpayers claiming a specific federal filing status, except as follows, the adjustment is disallowed unless the taxpayer files their Montana income tax return using the same status:

(a) a capital loss of up to \$1,500 is allowed a married taxpayer filing separately but must be calculated using only that spouse's gains and losses; and

(b) a taxpayer who converted an IRA to a Roth IRA and elected to defer the income ratably may file separately and defer the gain.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-122, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.423 regarding the itemized deductions of married taxpayers to clarify how the deductions may and may not be divided and to clarify when conformity to federal filing status is or is not required, including changes for Roth IRA reporting adopted by the 1999 legislature. The department further proposes to transfer this rule to subchapter 5 of this chapter.

42.15.426 MONTANA ADJUSTED GROSS INCOME TO BE USED WHEN CALCULATING ITEMIZED DEDUCTIONS (1) When the deductions allowed under 15-30-121, MCA, are limited to a percentage of adjusted gross income by reference to the ~~internal revenue code~~ IRC, Montana adjusted gross income must be used when calculating the deductions limitation for the Montana return. Montana adjusted gross income is defined in 15-30-111, MCA.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-121, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.426 to specify the definition of Montana adjusted gross income because the subsection of ARM 42.15.308 that contained the cross-reference is being deleted. The department further proposes to transfer this rule to

subchapter 5 of this chapter.

6. The department proposes to repeal the following rules:

42.15.102 CHANGE OF DOMICILE which can be found on page 42-1505 of the Administrative Rules of Montana.

AUTH: 15-30-305, MCA

IMP: 15-30-101, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.15.102 because significant portions are now included in the department's general definitions located at ARM 42.2.304 and a new rule combining the remaining portions of this rule and another rule, ARM 42.15.104, is being adopted.

42.15.104 PERMANENT PLACE OF ABODE which can be found on page 42-1506 of the Administrative Rules of Montana.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-101, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.15.104 because the rule is no longer necessary. The text was transferred to the definition rule in subchapter 1 where the term "permanent place of abode" is used.

42.15.105 INSPECTION OF INFORMATION RETURNS which can be found on page 42-1506 of the Administrative Rules of Montana.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-303, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.15.105 because it requires a variety of authorized agencies to use different procedures and forms to request information and the procedure described in the rule is no longer the department's practice.

42.15.106 INCOME TAX SURCHARGE which can be found on page 42-1506 of the Administrative Rules of Montana.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-108, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.15.106 because it applies only to tax years 1987, 1988, 1990 and 1991 and is obsolete.

42.15.201 ACCOUNTING which can be found on page 42-1521 of the Administrative Rules of Montana.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-101, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.15.201 because tax year is defined in ARM 42.2.303, one of the department's general rules, and this rule is no longer

necessary.

42.15.305 TRUST AND ESTATE RETURNS which can be found on page 42-1533 of the Administrative Rules of Montana.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-135, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.15.305 because ARM 42.15.301 contains provisions that address the filing requirements of all taxpayers, including trusts and estates, and ARM 42.15.421 is being amended to address applicability of the standard deduction.

42.15.313 FEDERAL RETURNS which can be found on page 42-1535 of the Administrative Rules of Montana.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-304, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.15.313 because the language found in this rule is now set forth in 15-30-304, MCA. ARM 42.15.325 addresses the consequences of all failures to provide requested information, including federal income tax returns, and therefore the rule is no longer necessary.

42.15.404 ADDITIONAL EXEMPTION FOR SENIOR CITIZENS which can be found on page 42-1553 of the Administrative Rules of Montana.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-112, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.15.404 because the provisions are now incorporated in ARM 42.15.403.

42.15.405 ADDITIONAL EXEMPTION FOR BLINDNESS which can be found on page 42-1554 of the Administrative Rules of Montana.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-112, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.15.405 because the provisions are now incorporated in 42.15.403.

42.15.425 CONFORMANCE TO FEDERAL FILING STATUS REQUIRED IN CERTAIN CASES which can be found on page 42-1562 of the Administrative Rules of Montana.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-111, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.15.425 because the provisions shown in this rule have been incorporated into ARM 42.15.423.

42.15.429 RECOVERY OF A TAX CREDIT which can be found on page 42-1563 of the Administrative Rules of Montana.

AUTH: Sec. 15-30-305, MCA

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

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.15.429 because the recapture of a tax credit is addressed in other rules relating to the particular credit.

42.15.433 DEFINITIONS which can be found on page 42-1565 of the Administrative Rules of Montana.

AUTH: Sec. 15-33-105, MCA

IMP: Sec. 15-33-102, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.15.433 because New Rule V addresses the exclusion of small business corporation dividends and capital gains by cross-referencing the corporation license tax rules.

42.15.434 CONDITIONS FOR EXEMPTION FOR DIVIDENDS which can be found on page 42-1565 of the Administrative Rules of Montana.

AUTH: Sec. 15-33-105, MCA

IMP: Sec. 15-33-102, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.15.434 because New Rule V addresses the exclusion of small business corporation dividends and capital gains by cross-referencing the corporation license tax rules.

42.15.435 REPORTING REQUIREMENTS which can be found on page 42-1566 of the Administrative Rules of Montana.

AUTH: Sec. 15-33-105, MCA

IMP: Sec. 15-33-104, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.15.435 because New Rule V addresses the exclusion of small business corporation dividends and capital gains by cross-referencing the corporation license tax rules.

42.15.436 DETERMINATION OF QUALIFIED INVESTMENTS which can be found on page 42-1566 of the Administrative Rules of Montana.

AUTH: Sec. 15-33-105, MCA

IMP: Sec. 15-33-102, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.15.436 because New Rule V addresses the exclusion of small business corporation dividends and capital gains by cross-referencing the corporation license tax rules.

7. 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 December 1, 2004.

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

9. 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.

10. 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 7 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.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Don Hoffman
DON HOFFMAN
Acting Director of Revenue

Certified to Secretary of State September 13, 2004

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING
adoption of New Rules I and II;	)	ON PROPOSED ADOPTION,
amendment of ARM 42.16.101,	)	AMENDMENT, AMENDMENT AND
42.16.102, and 42.16.132;	)	TRANSFER, TRANSFER, AND
amendment and transfer of ARM	)	REPEAL
42.16.103, 42.16.104, 42.16.105,)	
42.16.106, 42.16.108, and)	
42.16.109; transfer of ARM)	
42.16.1101 and 42.16.1201; and)	
repeal of ARM 42.16.107,)	
42.16.133, 42.16.134, 42.16.1104,)	
42.16.1111, 42.16.1112,)	
42.16.1113, 42.16.1114,)	
42.16.1115, and 42.16.1117)	
relating to personal income taxes))	

TO: All Concerned Persons

1. On November 30, 2004, at 10:00 a.m., a public hearing will be held in the Director's Office (Fourth Floor) Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption, amendment, amendment and transfer, transfer, and repeal of the above-stated rules relating to personal income taxes.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., November 15, 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 proposed new rules do not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rules provide as follows:

NEW RULE I TAXATION OF NONRESIDENTS AND PART-YEAR RESIDENTS

(1) Nonresidents and part-year residents are subject to the same filing requirements as residents unless expressly exempted otherwise in statute.

(2) Part-year residents and nonresidents must include all Montana source income on Schedule III. Montana source income is defined in 15-30-101, MCA.

(3) Part-year residents and nonresidents must complete

Schedule IV and compute their tax liability by the tax determined as if they were a resident by the ratio of their Montana source income to income from all sources.

AUTH: Sec. 15-30-105, MCA

IMP: Sec. 15-30-101, 15-30-103, 15-30-105, 15-30-111, 15-30-112, 15-30-121, 15-30-122, 15-30-131, and 15-30-132, MCA

REASONABLE NECESSITY: The department is proposing New Rule I because the taxation of nonresidents was changed by the 1992 Special Legislature. The rule will help clarify the requirements for nonresidents and part-year residents regarding the forms and schedules that must be filed. This rule will be placed in ARM Title 42, chapter 16, subchapter 1.

NEW RULE II TAXATION OF NONRESIDENT ESTATES AND TRUSTS

(1) Nonresident estates and trusts are subject to the same filing requirements set forth for resident estates and trusts unless expressly exempted otherwise in statute.

AUTH: Sec. 15-30-105, MCA

IMP: Sec. 15-30-101, 15-30-103, 15-30-105, 15-30-111, 15-30-112, 15-30-121, 15-30-122, 15-30-131, 15-30-132, 15-30-135, 15-30-136, 15-30-137, and 15-30-138, MCA

REASONABLE NECESSITY: The department is proposing New Rule II because the taxation of nonresidents was changed by the 1992 Special Legislature in chapter 14. The new rule will help clarify how nonresident estates and trusts will be handled for nonresidents. This rule will be placed in ARM Title 42, chapter 16, subchapter 1.

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

42.16.101 TIME AND DATE, AND PLACE OF FILING AND PAYMENT

(1) The due date for filing an individual income tax return is the 15th day of the 4th month following close of the tax year and payment of the tax is the due date prescribed for the filing of the returns or, the 15th day of the 4th month following the close of the taxable year. ~~Every taxpayer must compute his tax liability and pay the balance of any tax due in full at the time of filing his return, and this also applies when the taxpayer has an extension of time and files the return early. If the balance due is less than \$1, payment is not required.~~

(2) ~~Payments of tax are to be made to the Department of Revenue, Helena, Montana 59620. Checks and money orders should be made payable to the "State Treasurer". Excess payments of \$1 or more over the tax due will be refunded to the taxpayer~~ A return may be filed by personal delivery, mail and, in some cases, electronically or by telephone.

(a) A return may be filed by personal delivery to the Montana Department of Revenue, 3rd Floor, Sam W. Mitchell Building, 125 Roberts, Helena, Montana.

(b) A return may be filed by mailing it postage prepaid

by U.S. postal service first-class or priority mail to:

Department of Revenue
P.O. Box 5805
Helena, Montana 59604-5805

(i) If a return is mailed as provided in this section, on or before the due date, and received by the department, the return is considered filed on the date mailed. A taxpayer is responsible for establishing the date a return is mailed.

(c) The rules for filing a return electronically or by telephone are located in ARM Title 42, chapter 5, subchapter 2.

(3) Every taxpayer must compute their tax liability and pay the balance of any tax due in full on or before the prescribed due date as stated in 15-30-142, MCA. If the balance due is less than \$1, payment is not required. If full payment of the balance due is not made on or before the prescribed due date, interest and penalty accrue from the prescribed due date of the return until paid as provided in 15-1-216, MCA.

(a) If tax is paid by check or money order, the check or money order should be made payable to the "state treasurer."

(b) The rules for paying a tax electronically are located in ARM Title 42, chapter 5, subchapter 2.

(c) The rules for paying a tax by credit card are located in ARM Title 42, chapter 5, subchapter 2.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-142, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.16.101 to implement Chapter 10 passed by the 2003 Montana Legislature and to bring the rule into conformity with what is currently required when filing tax returns and paying taxes to the department.

42.16.102 DEFICIENCY ASSESSMENTS NOTICES AND PAYMENTS

(1) As soon as practical after a return is filed, the department ~~must~~ will examine ~~it~~ the return and verify the amount of tax. If the department determines that the ~~amount of~~ tax liability is greater than the amount previously paid, it will mail ~~to the taxpayer~~ notice of the additional tax ~~assessed~~ plus accrued interest ~~to the taxpayer~~. If the additional tax and accrued interest are paid within 60 days after the date of the notice, the underpayment penalty provided in 15-1-216, MCA, will not be imposed.

(2) Within 30 days of the date of the deficiency notice, the taxpayer may file a written request for informal review or a written objection as provided in ARM 42.2.510. ~~The amount of the additional tax and accrued interest must be paid within 60 days from the date the notice is mailed to the taxpayer or the deficiency assessment becomes delinquent and penalty attaches; unless, before the expiration of the 60 day period, the taxpayer files with the department a written request for reconsideration of the assessment.~~

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-142, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.16.102 to incorporate the department's uniform resolution and uniform penalty and interest statute, 15-1-216, MCA.

42.16.132 FORM OF CLAIM FOR REFUND (1) A claim for refund may be in the form of an amended return, a formal claim, or any written instrument signed by the taxpayer, clearly stating the facts concerning payment of the tax and the grounds upon which the claim is based. If the claim is not made on an amended return form, it must be mailed to:

Department of Revenue
P.O. Box 5805
Helena, MT 59604-5805.
AUTH: Sec. 15-30-305, MCA
IMP: Sec. 15-30-149, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.16.132 to clarify where a nonamended return form for a refund claim should be mailed.

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

42.16.103 JEOPARDY ASSESSMENTS AND EMERGENCY EXECUTION

~~(1) Sections 15-30-204 and 15-30-312, MCA, shall be applicable to those situations where the department finds that a taxpayer designs quickly to depart from the state or the United States or to remove his property there from or to conceal himself or his property therein or to do an act tending to prejudice or to rend wholly or partly ineffectual proceedings to collect the tax due under Title 15, chapter 30, MCA.~~ If the department finds the assessment or collection of a deficiency will be jeopardized by delay and a deficiency notice has not been issued, the deficiency, penalty and accrued interest become immediately due and payable on the date the department mails the taxpayer a written notice:

(a) of its finding that assessment or collection of the deficiency will be jeopardized by delay and its basis for making the finding;

(b) of the amount of deficiency, penalty and accrued interest (the statement of account);

(c) that immediate payment of the deficiency, penalty and interest is demanded;

(d) that the department may immediately commence collection proceedings, including issuing a warrant for distraint;

(e) that if the taxpayer does not file a written objection to the amount of the statement of account or a request for informal review form (APLS101F) with the department within 30 days of the date of the notice, the assessment becomes final and may not be appealed to the state tax appeal board; and

(f) that while filing the objection or request as provided in (1)(e) will not stop or delay collection proceedings, including issuing a warrant for distraint, if the taxpayer files the objection or request and it is subsequently determined in the department dispute resolution proceedings or on subsequent appeal that the amount of tax collected is in excess of the amount due, the amount of the overpayment will be credited against any income tax, penalty, or interest then due from the taxpayer and the balance of the excess refunded to the taxpayer as provided in 15-30-149, MCA.

(2) If the department finds the collection of a deficiency, for which a notice of deficiency has been mailed, will be jeopardized by delay and the time for filing a written objection to the amount of the statement of account or a request for informal review form (APLS101F) with the department as provided in ARM 42.2.510 has not yet expired, the deficiency, penalty and accrued interest become immediately due and payable on the date the department mails the taxpayer a written notice:

(a) of its finding that collection of the deficiency will be jeopardized by delay and its basis for making the finding;

(b) that immediate payment of the deficiency, penalty and interest is demanded;

(c) that the department may immediately commence collection proceedings, including issuing a warrant for distraint; and

(d) that if it is subsequently determined in the department dispute resolution proceedings or on subsequent appeal that the amount of tax collected is in excess of the amount due, the amount of the overpayment will be credited against any income tax, penalty, or interest then due from the taxpayer and the balance of the excess refunded to the taxpayer as provided in 15-30-149, MCA.

(3) If the department finds the collection of a tax, including penalty and interest, will be jeopardized by delaying the issuance of a warrant for distraint until the notice provided in 15-1-702, MCA, has been given and 30 days have passed, the department will issue the warrant for distraint without giving the taxpayer prior notice. On the date a warrant for distraint is issued, the department will mail the taxpayer written notice that warrants have been issued.

(4) If the department has reason to believe that collection of the amount of any tax withheld is in jeopardy, the department will issue the warrant for distraint without giving the employer prior notice. On the date a warrant for distraint is issued, the department will mail the employer written notice that warrants have been issued.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-1-701, 15-1-703, 15-1-705, 15-1-707, 15-30-204, 15-30-312, 25-13-211, and 25-13-212, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.16.103 for housekeeping purposes to comply with the requirements of 2-4-314, MCA, whereby the department conducts a

biennial review of its rules. The department is also proposing to transfer this rule to ARM Title 42, chapter 2, subchapter 3 because the subject matter better fits the rules contained in that chapter. Jeopardy assessments and emergency executions apply to more than personal income taxes.

42.16.104 INTEREST ON UNPAID TAX (1) ~~Effective with taxable years ending on and after December 31, 1968, if the tax or any part thereof is not paid by the 15th day of the 4th month following the close of the taxable year, whether by reason of extension granted or otherwise, interest accrues on the amount of tax unpaid at the rate of 9% per annum~~ Interest on unpaid tax must be calculated as set forth in 15-1-216, MCA.

(2) ~~In the case of failing purposely or knowingly to pay the tax or any part of the tax by its due date, interest accrues thereon at the rate of 1% per month from the 15th day of the 4th month following the close of the taxable period.~~

(3) ~~Interest on any additional deficiency tax that may be assessed shall be at the rate of 9% per annum or fraction thereof. Except as provided otherwise, interest shall accrue from when the tax was originally due to the date of payment, even if time for filing is extended.~~

(4) ~~No~~ A taxpayer must file an amended Montana return within 90 days after filing an amended federal return or receiving notice that their taxable income was changed or corrected by the IRS, or other competent authority, as required by 15-30-304, MCA. If this occurs, the department will waive interest shall accrue on any additional tax attributable to the federal amendment from the date the department is notified of a change in federal income, either by the taxpayer or the Internal Revenue Service, receives the amended Montana return until the date and the department notifies the taxpayer of the increased tax.

~~(5)~~(3) In the case where there is unpaid tax for a year ~~which that~~ is reduced by the carryback of a subsequent year's net operating loss, interest on the unpaid tax ~~runs up~~ accrues to the later of:

(a) the due date of the loss year return~~;~~ or

(b) the date the loss year return is actually filed.

This limited interest calculation applies only to the unpaid tax ~~which is~~ offset by the net operating loss carryback.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-142, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.16.104 to bring the rule into compliance with various changes made to the law since 1999. These amendments are a result of the department's review of the entire chapter as required by 2-4-314, MCA. The department is also proposing to transfer this rule to ARM Title 42, chapter 2, subchapter 3 because the subject matter better fits the rules contained in that chapter.

42.16.105 PENALTIES (1) ~~Effective with taxable years~~

~~ending on and after December 31, 1974:~~ Applicable late filing penalties and late pay penalties must be calculated as set forth in 15-1-216, MCA.

~~(a) the penalty for failure to file a return by its due date, without purposely or knowingly failing to do so, is 5% of any balance of tax unpaid with respect to said return as of its due date, but in no event shall the penalty be less than \$5. The due date of a return is determined with regard to an extension granted for the filing thereof. If the taxpayer shows to the satisfaction of the department that the failure to file on time was due to reasonable cause and was not due to neglect on his or her part, the penalty may be abated. Failure to have funds available to pay the tax will not of itself be considered reasonable cause for late filing.~~

~~(b) the penalty for failure to pay the tax by its due date, without purposely or knowingly failing to do so, is 10% of the tax unpaid but not less than \$5. The due date of the tax is with regard to an extension of time granted for the filing of the return with respect to which the tax is due. If the taxpayer shows to the satisfaction of the department that the failure was due to reasonable cause and was not due to neglect on his or her part, the penalty may be abated. Failure to have funds available to pay the tax will not of itself be considered reasonable cause for late payment of the tax.~~

~~(2) The penalty for purposely or knowingly failing to file a return or to pay the tax by the due date, is 25% of the amount of the unpaid tax, but not less than \$25 set forth in 15-1-216, MCA.~~

~~(a) "Purposely or knowingly failing to file a return or pay the tax by the due date" includes, but is not limited to:~~

~~(i) habitually failing to file a return or to pay the tax due unless the taxpayer can establish that the failure was not done purposely or knowingly; or~~

~~(ii) an attempt to evade or defeat the tax.~~

~~(b) "Habitually" means more than once in a 3 year period subsequent to notification by the department of a prior failure to file a return or to pay the tax due.~~

~~(3) If a deficiency in tax is not paid within 60 days from the date of mailing notice thereof to the taxpayer or if a deficiency in tax is due to negligence on the part of the taxpayer, the penalty is 5% of the amount of the deficiency but not less than \$2 penalties set forth in 15-1-216, MCA, apply.~~

~~(4) A taxpayer who files, renders, or signs a false or fraudulent return or statement, or who supplies the department false or fraudulent information, is subject to the additional civil and criminal penalties described in 15-30-321, MCA.~~

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-1-216, 15-30-321, and 15-30-323, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.16.105 to bring the rule into compliance with amendments made to 15-1-216, 15-30-142, and 15-30-323, MCA. The department is also proposing to transfer this rule to ARM Title 42, chapter 2, subchapter 3 because the subject matter better

fits the rules contained in that chapter.

42.16.106 COLLECTION OF DELINQUENT TAXES OR OTHER FUNDS THROUGH OFFSET PROCEDURES (1) ~~In order to~~ collect delinquent taxes after the time for appeal has expired, the department may direct the offset of tax refunds or other funds due the taxpayer from the state except wages subject to the provisions of 25-13-614, MCA, and retirement benefits that are exempt from execution.

~~(a) For purposes of these procedures, "wages" are defined as any money due an employee from his employer or employers, whether to be paid by the hour, day, week, semi monthly, monthly, or yearly, and shall include bonus, piecework, tips, and gratuities of any kind. Tax refunds are not wages and are therefore excluded by definition.~~

~~(b)(2)~~ Contract proceeds subject to offset may include wages due the taxpayer. Taxpayers may exclude wages from offset on contract proceeds by submitting a claim to the department ~~of revenue~~ within 30 days of notification of the offset. The claim must set forth the amount of wages and include documentation to support the claimed wage exclusion. Should the department dispute the claim, the claim and documentation shall be considered a request for hearing.

~~(2)(3)~~ Upon determination by the department ~~of revenue~~ of a tax refund or other funds owed by the state to a delinquent taxpayer, the department ~~of revenue~~ may direct the offset of such funds by serving notification of the offset to the taxpayer ~~and providing a copy to the state auditor.~~

(a) The department shall provide notice of the right to request a hearing pursuant to the Montana Administrative Procedure Act on the matter of the offset action or the department's intent to file a claim on behalf of a taxpayer.

(b) All tax refunds or other funds subject to offset by the department ~~of revenue~~ shall be held pending either the expiration of the 30-day notification period, or the resolution of the taxpayer's hearing, if requested.

(c) The provisions of ~~subsection (2) and (2)(a)(3) and (3)(a)~~ also apply to claims for tax refunds submitted on behalf of delinquent taxpayers by the department.

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

AUTH: Sec. 15-1-201, 15-1-217, 15-30-305 and 17-4-110, MCA

IMP: Sec. 15-1-211, 15-1-216, 15-30-310, 17-4-103, 17-4-105, 17-4-106, and 17-4-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.16.106 for housekeeping purposes only. The department proposes to transfer this rule to ARM Title 42, chapter 2, new subchapter 9 that will be created to deal with offset rules. This is appropriate because this rule deals with collecting taxes through an offset process and that process applies to other taxes administered by the department and is more appropriately located in ARM Title 42, chapter 2, new

subchapter 9.

42.16.108 REQUEST FOR ADJUSTMENT OF JOINT RETURN (1) A taxpayer may request the department to adjust a joint tax return that was filed in the circumstance where the refund is being offset by the ~~bad debts/collection bureau~~ department for a child support arrearage.

(2) The adjustment will reflect the dollar amount of the refund that is attributable to the "obligated spouse," and the part of the refund that is attributable to the "injured spouse." The amount attributable to the injured spouse will be deemed exempt from offset.

(3) This request must be made in writing, and must be made within 30 days after the notice of offset and opportunity for hearing is mailed to the taxpayer.

AUTH: Sec. 15-1-201 and 17-4-110, MCA

IMP: Sec. 15-1-211 and 17-4-105(4), MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.16.108 for housekeeping purposes only and to add newly enacted authority and implementing cites. The department further proposes to transfer this rule to ARM Title 42, chapter 15, subchapter 3, which deals with tax returns and the procedures for claiming "injured spouse".

42.16.109 STATEMENT REQUIRED FOR ADJUSTMENT OF JOINT RETURN (1) The written request for an adjustment of the joint tax return referenced in ARM 42.16.108 [42.16.3XX], shall include a statement entitled "injured spouse statement." This statement must:

(a) contain the identical social security numbers of both spouses in the same order as they appear on the original joint tax return;

(b) ~~it should~~ clearly indicate how any income, itemized deductions, exemptions, credits, and tax payments (as originally claimed) should be divided between the spouses;

(c) ~~be signed by the "injured spouse" (both spouses if possible) must sign the statement;~~ and

(d) ~~the statement must~~ be mailed to the Department of Revenue, ~~Income Tax Division, Office Audit Bureau, Mitchell Building P.O. Box 5805, Helena, Montana 59620~~04-5805, before any adjustment can be made.

(2) This statement, when mailed to the department, does not relieve the obligated taxpayer of the responsibility for requesting a hearing, in writing, if the taxpayer wishes to contest the child support debt. This request must be made within 30 days after the notice of offset and opportunity for hearing is mailed to the taxpayer.

~~(2)(3)~~ (3) The ~~office audit bureau~~ department will review the statement and the tax return, make the adjustment of the tax liability and refund, and will subsequently notify the taxpayer in writing of the final determination. If the taxpayer disagrees with the adjustment made by the ~~office audit bureau~~ department, the taxpayer may request a reconsideration of the

adjustment pursuant to ~~the procedure set out in~~ ARM 42.16.111
42.2.613 through 42.2.621.

AUTH: Sec. 15-1-201 and 17-4-110, MCA

IMP: Sec. 15-1-211, 17-4-105(4) and 17-4-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.16.109 to provide other internal references to applicable rules, to correct the mailing address and make other general housekeeping changes. Authority and implementing statutes have been added that have been enacted since this rule was originally adopted. Further, the department proposes to transfer this rule to ARM Title 42, chapter 15, subchapter 3, which applies to tax returns and the specific provisions dealing with injured spouse statements.

6. The rules as proposed to be transferred provide as follows:

42.16.1101 ALTERNATIVE TAX (1) and (2) remain the same.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-105, MCA

REASONABLE NECESSITY: The department is proposing to transfer ARM 42.16.1101 to ARM Title 42, chapter 16, subchapter 1 because this subchapter applies to general tax applications.

42.16.1201 INTENT which can be found on page 42-1671 of the Administrative Rules of Montana.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-1-601 and 15-30-131, MCA

REASONABLE NECESSITY: The department is proposing to transfer ARM 42.16.1201 to ARM Title 42, chapter 15, subchapter 1 which contains the general provisions for individual income tax because it is a general provision that cross-references rules formerly located in repealed ARM 42.16.1202 through 42.16.1229 that are now located in ARM Title 42, chapter 26.

7. The department proposes to repeal the following rules:

42.16.107 DEFINITIONS RELATING TO ADJUSTMENT OF JOINT RETURN which can be found on page 42-1608 of the Administrative Rules of Montana.

AUTH: Sec. 17-4-110, MCA

IMP: Sec. 17-4-105(4), MCA

REASONABLE NECESSITY: The department proposes to repeal ARM 42.16.107 because the definitions found in this rule were transferred to ARM Title 42, chapter 15, subchapter 3.

42.16.133 CIRCUMSTANCES WHEN INTEREST IS NOT PAID ON REFUNDS which can be found on page 42-1621 of the Administrative Rules of Montana.

AUTH: Sec. 15-30-305, MCA
IMP: Sec. 15-30-149, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.16.133 because there is no longer an investment tax credit available to taxpayers.

42.16.134 CIRCUMSTANCES WHEN INTEREST IS PAID ON REFUNDS which can be found on page 42-1621 of the Administrative Rules of Montana.

AUTH: Sec. 15-30-305, MCA
IMP: Sec. 15-30-149, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.16.134 because this provision is now set forth in statute.

42.16.1104 EARNED INCOME DEFINITION which can be found on page 42-1651 of the Administrative Rules of Montana.

AUTH: Sec. 15-30-305, MCA
IMP: Sec. 15-30-131, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.16.1104 because the taxation of nonresidents was changed as a result of legislation passed during the 1992 special legislative session. This rule is no longer applicable.

42.16.1111 COMPENSATION FOR PERSONAL SERVICES which can be found on page 42-1655 of the Administrative Rules of Montana.

AUTH: Sec. 15-30-305, MCA
IMP: Sec. 15-30-131, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.16.1111 because the taxation of nonresidents was changed as a result of the adoption of a comprehensive definition of Montana source income by the 2001 Legislature. Accordingly, this rule is no longer applicable.

42.16.1112 TRAVEL EXPENSES which can be found on page 42-1655 of the Administrative Rules of Montana.

AUTH: Sec. 15-30-305, MCA
IMP: Sec. 15-30-131, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.16.1112 because the taxation of nonresidents was changed as a result of legislation passed by the 1992 Special Legislative Session. This rule is no longer applicable.

42.16.1113 INCOME FROM INTANGIBLE PERSONAL PROPERTY which can be found on page 42-1655 of the Administrative Rules of Montana.

AUTH: Sec. 15-30-305, MCA
IMP: Sec. 15-30-131, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.16.1113 because the taxation of nonresidents was changed as a result of the adoption of a comprehensive definition of Montana source income by the 2001 Legislature. Accordingly, this rule is no longer applicable.

42.16.1114 INCOME FROM TANGIBLE PERSONAL PROPERTY which can be found on page 42-1656 of the Administrative Rules of Montana.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-131, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.16.1114 because the taxation of nonresidents was changed as a result of the adoption of a comprehensive definition of Montana source income by the 2001 Legislature. Accordingly, this rule is no longer applicable.

42.16.1115 INCOME ATTRIBUTABLE TO MULTISTATE ACTIVITIES which can be found on page 42-1656 of the Administrative Rules of Montana.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-131, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.16.1115 because the taxation of nonresidents was changed as a result of legislation passed during the 1992 Special Legislative Session. This rule is no longer applicable.

42.16.1117 APPORTIONMENT OF MULTISTATE INCOME which can be found on page 42-1656 of the Administrative Rules of Montana.

AUTH: Sec. 15-30-305, MCA

IMP: Sec. 15-30-131, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.16.1117 because it is a duplicate of ARM 42.16.1201 and which is being transferred to ARM Title 42, chapter 15, subchapter 1 and ARM 42.16.1202 through 42.16.1229 have been repealed.

8. 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 December 1, 2004.

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

10. 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.

11. 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 8 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.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Don Hoffman
DON HOFFMAN
Acting Director of Revenue

Certified to Secretary of State September 13, 2004

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 42.18.106,) ON PROPOSED AMENDMENT
42.18.107, 42.18.109, 42.18.110,))
42.18.112, 42.18.113, 42.18.115,))
42.18.116, 42.18.118, 42.18.119,))
42.18.121, 42.18.122, 42.18.124,))
and 42.19.501 relating to)
annual appraisal plan rules and)
the exemption for qualified)
disabled veterans for property)
taxes)

TO: All Concerned Persons

1. On November 29, 2004, at 2:00 p.m., a public hearing will be held in the Director's Office (Fourth Floor) Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rules, relating to the annual appraisal plan rules and the exemption for qualified disabled veterans rule for property taxes.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., November 15, 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 proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

42.18.106 ~~1997~~ 2003 MONTANA REAPPRAISAL PLAN (1) The Montana reappraisal plan implements the legislature's cyclical reappraisal program set forth in 15-7-111, MCA. The ~~1997~~ 2003 Montana reappraisal plan consists of seven parts:

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

(4) New appraised values were entered on the tax rolls for tax year ~~1997~~ 2003.

(5) This rule applies to tax years beginning January 1, ~~1997~~ 2003, through December 31, ~~2002~~ 2008.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-7-111 and 15-7-133, MCA

REASONABLE NECESSITY: The department is proposing to amend

ARM 42.18.106 to update the internal date references and make general housekeeping changes to bring the rules into compliance with current practice. In some instances general terminology has been updated to reflect terms that are used throughout the industry.

42.18.107 2003 2009 MONTANA REAPPRAISAL PLAN (1) The Montana reappraisal plan implements the legislature's cyclical reappraisal program set forth in 15-7-111, MCA. The ~~2003~~ 2009 Montana reappraisal plan consists of seven parts:

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

(4) New appraised values will be entered on the tax rolls for tax year ~~2003~~ 2009.

(5) This rule applies to tax years January 1, ~~2003~~ 2009, through December 31, ~~2008~~ 2014.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-7-111 and 15-7-133, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.107 for the same reasons as stated in ARM 42.18.106.

42.18.109 1997 2003 RESIDENTIAL REAPPRAISAL PLAN

~~(1) Multiple field reviews of each property will be kept to an absolute minimum. The reappraisal of residential property consists of:~~

~~(a) limited field reviews;~~

~~(b) comprehensive field reviews;~~

~~(c) collection, verification, and analysis of sales information;~~

~~(d)(c) data entry of missing or updated information, new improvements, and sales information;~~

~~(e)(d) development and review of CALP models, as CALP is defined in ARM 42.2.304;~~

~~(f)(e) development of market sales models/benchmarking;~~

~~(f) use of door hangers, where appropriate, to collect specific construction detail and building material information regarding a property when the property owner is not present and an internal inspection is not possible;~~

~~(g) use of self-reporting forms, where appropriate;~~

~~(g)(h) generation and review of inventory contents sheets and comparable sales sheets; and~~

~~(h)(i) final determinations of value.~~

~~(2) The reappraisal plan provided for limited field reviews beginning January 1, 1993, through December 31, 1994. Limited field review of residential property consisted of an external observation to:~~

~~(a) determine accuracy of existing information on the inventory contents sheets and property record card;~~

~~(b) observe condition;~~

~~(c) review grade and depreciation assignment; and~~

~~(d) collect additional data Multiple field reviews of each property will be kept to an absolute minimum.~~

~~(3) The reappraisal plan provided for comprehensive field reviews beginning January 1, 1993, through June 30, 1995~~

to be conducted. Appraisal staff identified specific areas of the county where property data needed a complete review. The comprehensive field review consisted of an internal inspection, and/or external inspection of the residential property. No call backs were made to the property unless specifically requested by the taxpayer, the appraisal supervisor, or area manager. Field reviews of residential property consist of an internal or external observation to:

(a) determine accuracy of existing information on the inventory contents sheets (ICS) and property record card;

(b) observe condition;

(c) review grade and depreciation assignment; and

(d) collect additional data.

(4) Residential property data entry consisted of correcting, updating, and adding residential property data on CAMAS. The process also included the review of edit reports, the addition of supplementary data to CAMAS, and sketch vectoring. No return visits will be made to the property unless the taxpayer specifically requests an on-site visit be made by the department to review property characteristics or perform an internal inspection of the property, or if the department determines that a return visit is necessary to review or correct information about the property.

(5) Residential property data entry consists of correcting, updating, and adding residential property data on CAMAS. The process includes the review of edit reports, the addition of supplementary data to CAMAS, and sketch vectoring.

+5)(6) The collection, verification, analysis, and data entry of sales information is an important component of CAMAS. The department shall formulate procedures for collection, verification, and validation of sales information shall be formulated by the department. Accuracy of sales information is critical to the development of:

(a) accurate land valuation;

(b) benchmarking;

(c) accurate market sales comparison models;

(d) individual property final value determinations; and

(e) defense of final value estimates.

+6)(7) Residential lots and tracts are valued through the use of CALP models. Homogeneous areas within each county are geographically defined as neighborhoods. The CALP models will reflect January 1, 1996 2007, land market values.

+7)(8) The development of market sales comparison models using CAMAS is a requirement for property valuation during the reappraisal cycle. The key components that influence value and the appropriate level of influence are determined through use of multiple regression analysis. Staff may develop separate market sales comparison models for each neighborhood.

+8)(9) Inventory contents sheets (ICS) and comparable sales sheets are generated and reviewed by appraisal staff. These sheets include:

(a) physical characteristics and component information;

(b) sales information; and

(c) valuation information.

~~(9)(10)~~ The review consists of:
~~(a)~~ analyzing; and
~~(b)~~ collecting component information such as condition, desirability, and utility (CDU) factors, and style of improvements.

~~(10)~~ This review allows the appraiser to compare property information to an estimate of value. Discrepancies in data or the collection of additional information required by the review will result in updating CAMAS data.

(11) through (11)(c) remain the same.

(12) The appraised value, supported by the most defensible market data, valuation information serves as the value for ad valorem tax purposes.

(13) This rule applies to tax years January 1, ~~1997~~, 2009 through December 31, ~~2002~~ 2014.

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

IMP: Sec. 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.109 for the same reasons as stated in ARM 42.18.106.

42.18.110 2003 2009 RESIDENTIAL REAPPRAISAL PLAN

(1) The reappraisal of residential property consists of:

(a) field reviews;

(b) collection, verification, and analysis of sales information;

(c) data entry of missing or updated information, new improvements, and sales information;

(d) development and review of CALP models, as CALP is defined in ARM 42.2.304;

(e) development of sales comparison models/benchmarking;

(f) use of door hangers, where appropriate, to collect specific construction detail and building material information regarding a property when the property owner is not present and an internal inspection is not possible;

(g) use of self-reporting forms, where appropriate;

(h) generation and review of inventory contents sheets (ICS) and comparable sales sheets; and

(i) final determinations of value.

(2) remains the same.

(3) The reappraisal plan provides for field reviews to be conducted. Field reviews of residential property consist of an internal or external observation to:

(a) determine accuracy of existing information on the ICS and property record card;

(b) observe condition;

(c) review grade and depreciation assignment; and

(d) collect additional data.

(4) No ~~call-backs~~ return visits will be made to the property unless the taxpayer specifically requested ~~by the taxpayer or an on-site visit be made by the department to review property characteristics or perform an internal inspection of the property, or if the department determines that a return visit is necessary to review or correct~~

information about the property.

(5) remains the same.

(6) The collection, verification, analysis, and data entry of sales information is an important component of CAMAS. The department shall formulate procedures for collection, verification, and validation of sales information. Accuracy of sales information is critical to the development of:

(a) through (e) remain the same.

(7) Residential lots and tracts are valued through the use of CALP models. Homogeneous areas within each county are geographically defined as neighborhoods. The CALP models reflect January 1, ~~2002~~ 2007, land market values.

(8) The development of ~~market sales comparison~~ market sales comparison models using CAMAS is a requirement for property valuation during the reappraisal cycle. The key components that influence value and the appropriate level of influence are determined through use of multiple regression analysis. Staff may develop separate sales comparison models for each neighborhood.

(9) through (12) remain the same.

(13) This rule applies to tax years January 1, ~~2003~~ 2009, through December 31, ~~2008~~ 2014.

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

IMP: Sec. 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.110 for the same reasons as stated in ARM 42.18.106.

42.18.112 1997 2003 COMMERCIAL REAPPRAISAL PLAN

(1) The reappraisal of commercial property consists of:

(a) ~~limited~~ field reviews;

(b) ~~comprehensive field reviews;~~

~~(c)~~ collection, verification, and analysis of sales and income information;

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

(2) remains the same.

(3) The reappraisal plan provides for ~~limited~~ field reviews ~~conducted January 1, 1993, through December 31, 1994.~~ A ~~limited~~ field review of commercial property consists of an internal or external observation to:

(a) determine accuracy of existing information on the inventory contents sheets (ICS) and property record card;

(b) through (d) remain the same.

(4) ~~The reappraisal plan provides for comprehensive field reviews beginning January 1, 1993, through June 30, 1995. Appraisal staff identified specific areas of the county where property data needed a complete review. The comprehensive field review consisted of an internal inspection and/or external inspection of the commercial property. No eall-backs return visits were will be made to the property unless the taxpayer specifically requesteds an on-site visit be made by the taxpayer or department to review property characteristics or perform an internal inspection of the~~

property, or if the department determines that a return visit is necessary to review or correct information about the property.

(5) remains the same.

(6) The collection, verification, analysis, and data entry of sales information and income and expense information is an important component of CAMAS. The department shall formulate procedures for collection, verification, and validation of sales information and income and expense information shall be formulated by the department. Accuracy of sales information and income and expense information is critical to:

(a) and (b) remain the same.

(c) development of accurate income models and sales comparison models;

(d) and (e) remain the same.

(7) Commercial lots and tracts are valued through the use of CALP models. Homogeneous areas within each county are geographically defined as neighborhoods. The CALP models will reflect January 1, ~~1996~~ 2002, land market values.

(8) through (12) remain the same.

(13) This rule applies to tax years January 1, ~~1997~~ 2003, through December 31, ~~2002~~ 2008.

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

IMP: Sec. 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.112 for the same reasons as stated in ARM 42.18.106.

42.18.113 2003 2009 COMMERCIAL REAPPRAISAL PLAN

(1) through (3) remain the same.

(4) No ~~call-backs~~ return visits will be made to the property unless the taxpayer specifically requested an on-site visit be made by the taxpayer or department to review property characteristics or perform an internal inspection of the property, or if the department determines that a return visit is necessary to review or correct information about the property.

(5) remains the same.

(6) The collection, verification, analysis, and data entry of sales information and income and expense information is an important component of CAMAS. The department shall formulate procedures for collection, verification, and validation of sales information and income and expense information. Accuracy of sales information and income and expense information is critical to:

(a) accurate land valuation;

(b) benchmarking;

(c) development of accurate income models and sales comparison models;

(d) individual property final value determinations; and

(e) defense of final value estimates.

(7) Commercial lots and tracts are valued through the use of CALP models. Homogeneous areas within each county are

geographically defined as neighborhoods. The CALP models reflect January 1, ~~2002~~ 2007, land market values.

(8) through (12) remain the same.

(13) This rule applies to tax years January 1, ~~2003~~ 2009, through December 31, ~~2008~~ 2014.

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

IMP: Sec. 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.113 for the same reasons as stated in ARM 42.18.106.

42.18.115 ~~1997~~ 2003 AGRICULTURAL/FOREST LANDS AND IMPROVEMENTS REAPPRAISAL PLAN (1) Agricultural and forest lands are valued in accordance with ARM Title 42, chapter 20. ~~In accordance with the rules in chapter 20,~~ Use changes are updated annually on both agricultural and forest lands. For agricultural lands the valuation methodology and agricultural lands valuation schedules are developed in accordance with 15-7-201, MCA. For forest lands, the valuation methodology and forest lands valuation schedules are developed in accordance with 15-44-103, MCA. The agricultural and forest lands values reflect productivity values in accordance with 15-7-201 and 15-44-103, MCA. ~~Agricultural and forest lands values will be placed on the tax rolls for tax year 1997.~~

(2) The reappraisal of agricultural/forest lands and improvements consists of:

(a) ~~limited~~ field reviews that may be conducted;

(b) ~~comprehensive field reviews of agricultural/forest lands improvements~~;

(c) ~~agricultural/forest lands property data collection and analysis~~;

(d) ~~(c) the data entry of agricultural/forest lands information~~;

(e) ~~(d) the generation and review of inventory contents sheets (ICS)~~; and

(f) ~~(e) final determinations of value.~~

(3) remains the same.

(4) The reappraisal plan provides for ~~limited~~ field reviews ~~to be conducted from January 1, 1993, through December 31, 1994.~~ A ~~limited~~ field review may consists of an internal or external observation to:

(a) through (e) remain the same.

(5) ~~The reappraisal plan provides for comprehensive field reviews to be conducted from January 1, 1993, through June 30, 1995. Appraisal staff will identify specific areas of the county where property data needs a complete review. The comprehensive field review consists of an internal inspection and/or external inspection of the agricultural/forest lands improvements. No call backs return visits will be made to the property unless the taxpayer specifically requested an on-site visit be made by the taxpayer or department to review property characteristics or perform an internal inspection of the property, or if the department determines that a return visit is necessary to~~

review or correct information about the property.

(6) remains the same.

(7) Inventory contents sheets (ICS) and comparable sales sheets are generated and reviewed by appraisal staff. These inventory contents sheets include:

(a) through (8)(c) remain the same.

(9) This review allows the appraiser to compare property information to estimate value. Discrepancies in data or the collection of additional information required by the review may results in the updating the data on CAMAS. The addition or refinement of existing data results in a more accurate valuation estimate.

(10) remains the same.

(11) The appraisal value supported by the most defensible valuation information serves as the value for ad valorem tax purposes.

(12) This rule applies to tax years from January 1, ~~1997~~ 2003, through December 31, ~~2002~~ 2008.

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

IMP: Sec. 15-7-111, 15-7-201, and 15-44-103, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.115 for the same reasons as stated in ARM 42.18.106.

42.18.116 ~~2003~~ 2009 AGRICULTURAL/FOREST LAND AND IMPROVEMENTS REAPPRAISAL PLAN (1) through (4)(e) remain the same.

(5) No ~~call-backs~~ return visits will be made to the property unless the taxpayer specifically requested an on-site visit be made by the taxpayer or the department to review property characteristics or perform an internal inspection of the property, or if the department determines that a return visit is necessary to review or correct information about the property.

(6) through (11) remain the same.

(12) This rule applies to tax years January 1, ~~2003~~ 2009, through December 31, ~~2008~~ 2014.

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

IMP: Sec. 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.116 for the same reasons as stated in ARM 42.18.106.

42.18.118 ~~1997~~ 2003 INDUSTRIAL PROPERTY REAPPRAISAL

(1) ~~Approximately 1,500~~ Industrial properties are appraised by industrial appraisers and the resulting appraised values are distributed to the appropriate department field office. Each industrial property is reappraised annually.

(2) The reappraisal plan provides for industrial property to be valued as an entity; that is to say, the valuation includes both real and personal property valuation components. For valuation methodology, the department will rely upon ARM 42.22.1304 through 42.22.1310. The department will be responsible for valuing industrial property as that

concept is defined in ARM 42.22.1301, 42.22.1302, and 42.22.1303.

(3) This rule applies to tax years January 1, ~~1997~~ 2003, through December 31, ~~2002~~ 2008.

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

IMP: Sec. 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.118 for the same reasons as stated in ARM 42.18.106.

42.18.119 ~~2003~~ 2009 INDUSTRIAL PROPERTY REAPPRAISAL

(1) and (2) remain the same.

(3) This rule applies to tax years January 1, ~~2003~~ 2009, through December 31, ~~2008~~ 2014.

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

IMP: Sec. 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.119 for the same reasons as stated in ARM 42.18.106.

42.18.121 VALUATION MANUALS (1) through (4) remain the same.

(5) For the reappraisal cycle ending December 31, 2002, the 2002 Montana Appraisal Manual, adjusted for local conditions, will be used for valuing commercial and industrial real property. If the property is not listed in the 2002 Montana Appraisal Manual, other construction cost manuals such as Marshall Valuation Service, Boeckh, Richardson Engineering Services, Inc., entitled "Process Plant Construction Estimating Standards"; or R.S. Means Company, Inc., entitled "Building Construction Cost Data" will be used with a publication date as close to the 2002 Montana Appraisal Manual as possible. The cost base schedules reflect January 1, 2002, cost information.

(6) Copies of the valuation manuals used by the department may be reviewed in the department field office or purchased from the department by writing to Department of Revenue, P.O. Box ~~5805~~ 8018, Helena, Montana 59604-~~5805~~ 8018.

~~(6)~~(7) This rule applies to tax years January 1, 1993, through December 31, ~~2002~~ 2008.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.121 for the same reasons as stated in ARM 42.18.106.

42.18.122 REVALUATION MANUALS (1) For residential, and agricultural/forest lands new construction, the ~~1996~~ 2002 Montana Appraisal Manual is used through tax year ~~2002~~ 2008.

(2) For the reappraisal cycle ending December 31, ~~2002~~ 2008, the ~~2002~~ 2009 Montana Appraisal Manual, adjusted for local conditions, will be used for valuing residential and agricultural/forest lands real property. The cost base schedules reflect January 1, ~~2002~~ 2007, cost information.

(3) For commercial and industrial new construction the ~~1996~~ 2002 Montana Appraisal Manual will be used through tax year ~~2002~~ 2008. If the property is not listed in the ~~1996~~ 2002 Montana Appraisal Manual, other construction cost manuals, such as Marshall Valuation Service, Boeckh, or Means, will be used with a publication date as close to the ~~1996~~ 2002 Montana Appraisal Manual as possible.

(4) For the reappraisal cycle ending December 31, ~~2002~~ 2008, the ~~2002~~ 2009 Montana Appraisal Manual, adjusted for local conditions, will be used for valuing commercial and industrial real property. If the property is not listed in the ~~2002~~ 2009 Montana Appraisal Manual, other construction cost manuals such as Marshall Valuation Service, Boeckh, Richardson Engineering Services, Inc., entitled "Process Plant Construction Estimating Standards"; or R.S. Means Company, Inc., entitled "Building Construction Cost Data" will be used with a publication date as close to the ~~2002~~ 2009 Montana Appraisal Manual as possible. The cost base schedules reflect January 1, ~~2002~~ 2007, cost information.

(5) Copies of the valuation manuals used by the department may be reviewed in the department field office or purchased from the department by writing to the Department of Revenue, P.O. Box ~~5805~~ 8018, Helena, Montana 59604-~~5805~~ 8018.

(6) This rule applies to tax years January 1, ~~2003~~ 2009, through December 31, ~~2008~~ 2014.

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

IMP: Sec. 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.122 for the same reasons as stated in ARM 42.18.106.

42.18.124 CLARIFICATION OF VALUATION PERIODS (1) In compliance with 15-7-103, MCA:

(a) For the taxable years from January 1, ~~1997~~ 2003, through December 31, ~~2002~~ 2008, all property classified in 15-6-134, MCA, (class four) must be appraised at its market value as of January 1, ~~1996~~ 2002.

(b) For the taxable years from January 1, ~~2003~~ 2009, through December 31, ~~2008~~ 2014, all property classified in 15-6-134, MCA, (class four) must be appraised at its market value as of January 1, ~~2002~~ 2007.

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

IMP: Sec. 15-6-134, 15-7-103, and 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.124 for the same reasons as stated in ARM 42.18.106.

42.19.501 PROPERTY TAX EXEMPTION FOR QUALIFIED DISABLED VETERANS (1) The property owner of record or the property owner's agent must make application through the Department of Revenue, P.O. Box ~~5805~~ 8018, Helena, Montana 59604-~~5805~~ 8018, in order to obtain a property tax exemption. An application must be filed, on a form available from the local department office, before ~~March~~ April 15 of the year for which the

exemption is sought. Applications postmarked after ~~March~~ April 15 will not be considered for that tax year unless the agent of the department determines the following conditions are met:

(a) through (7) remain the same.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-6-191 and 15-6-211, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.19.501 to change the filing date requirement from March 15 to April 15, which will coincide with the federal tax filing for the Internal Revenue Service. The exemption provided for in this rule relies on the submission of the applicant's federal income tax return. The mailing address for this exemption is also being corrected from the general mailing address for the department to the Property Assessment Division's post office box.

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 December 1, 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, do not apply.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Don Hoffman
DON HOFFMAN
Acting Director of Revenue

Certified to Secretary of State September 13, 2004

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of new) CORRECTED NOTICE
Rule I regarding trust company) OF ADOPTION
examination fees and new Rule II)
regarding required bond amounts for)
the licensing of escrow businesses)

TO: All Concerned Persons

1. On May 20, 2004, the Department of Administration, Division of Banking and Financial Institutions published MAR Notice No. 2-2-347 regarding the public hearing on the proposed adoption of the above-stated rules at page 1179 of the 2004 Montana Administrative Register, Issue Number 10. On August 19, 2004, the Division published notice of the adoption of the rules at page 1947 of the 2004 Montana Administrative Register, Issue Number 16.

2. The reason for the correction is the Notice of Adoption incorrectly showed new Rule II as ARM 2.59.703, when it should have shown new Rule II as 2.59.704. The corrected rule reads as follows:

~~2.59.703~~ 2.59.704 ESCROW BUSINESS BONDING (1) An applicant for an escrow business license shall file with the division of banking and financial institutions a bond in the amount of \$100,000 along with the application for licensure.
AUTH: 32-7-108, MCA
IMP: 32-7-109, MCA

3. Replacement pages for the corrected notice of adoption will be submitted to the Secretary of State on September 30, 2004.

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

By: /s/ Dal Smilie
Dal Smilie, Rule Reviewer
Department of Administration

Certified to the Secretary of State September 13, 2004.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF
amendment of ARM 10.55.909) AMENDMENT
relating to student records)

TO: All Concerned Persons

1. On August 5, 2004, the Board of Public Education published MAR Notice No. 10-55-233 regarding the public hearing on the proposed amendment of the above-stated rule concerning student records at page 1659 of the 2004 Montana Administrative Register, Issue Number 15.

2. The Board of Public Education has amended ARM 10.55.909 exactly as proposed.

3. No comments or testimony were received.

/s/ Dr. Kirk Miller
Dr. Kirk Miller, Chair
Board of Public Education

/s/ Steve Meloy
Steve Meloy, Executive Secretary
Rule Reviewer
Board of Public Education

Certified to the Secretary of State September 13, 2004.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION AND
of new rules I and II, and) AMENDMENT
amendment of ARM 18.9.302,)
18.10.106, and 18.10.404)
concerning posting a bond by)
certain fuel tax licensees and)
other fuel tax reporting)
requirements)

TO: All Concerned Persons

1. On July 22, 2004, the Montana Department of Transportation published MAR Notice No. 18-103 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1553 of the 2004 Montana Administrative Register, issue number 14. The public hearing was held on August 17, 2004, in Helena.

2. The department has adopted rules I (18.10.124) and II (18.10.125) as proposed.

3. The department has amended ARM 18.10.106 as proposed.

4. The department has amended ARM 18.9.302 and 18.10.404 with the following changes, stricken matter interlined, new matter underlined.

18.9.302 SELLERS' INVOICE (1) remains as proposed.

(2) Any person who requests a refund or credit of motor fuel tax must have evidence that the Montana motor fuel tax was included in the total fuel price paid.

18.10.404 SELLER INVOICES (1) remains as proposed.

(2) Any person who requests a refund or credit of motor fuel tax must have evidence that the Montana motor fuel tax was included in the total fuel price paid.

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

COMMENT 1: Ken Crouse representing JTL Group, Billings, Montana sought clarification of the proposed new rule I regarding the circumstance under which a bond would be required.

RESPONSE: The rule mirrors the International Fuel Tax Agreement (IFTA) requirements that bonds be required under certain circumstances such as when a licensee fails to file a fuel tax return, continuously files late, fails to pay fuel taxes or the person's license was previously revoked.

COMMENT 2: Ken Crouse representing JTL Group of Billings, Montana commented on the proposed amendment to ARM 18.10.404; he noted that the rule imposes the responsibility on the driver/purchaser to note that tax is paid on fuel purchased by marking the receipt accordingly as "tax paid" rather than requiring the seller/vendor to be responsible for verifying the payment of the tax.

RESPONSE: Robert Turner, representing the Department, noted that the proposed rule is consistent with the state's IFTA agreement. Further the procedure allowing the buyer/purchaser to verify the payment of tax by writing such on a receipt is consistent with IFTA rules and current practice for record keeping.

COMMENT 3: Barry Stang representing the Montana Motor Carriers Association commented that the proposed amendments to ARM 18.9.302 and 18.10.404 may not satisfy Department auditors because a receipt may only show price and gallons and a driver/purchaser may not have written "tax paid" on a receipt when audited.

RESPONSE: Robert Turner, representing the Department, noted that current practice allows a buyer/purchaser to mark receipts as tax paid. He noted that auditors will accept the notation as evidence of payment of taxes. Further, Mr. Turner noted that the Department would consider the price divided by gallons as a means of verifying whether tax was paid.

In addition, Lorraine Bigelow, Senior Auditor for the Department, noted that the amendment provides less restrictive burden on a buyer/purchaser than current practice by allowing the buyer to note the tax paid on the receipt.

COMMENT 4: A written comment was received from Dave Mott, representing Ash Grove Cement Company, who questioned whether a licensee seeking a fuel tax refund under the requirements of ARM 18.9.302(2) and 18.10.404(2) would be responsible for proving a vendor paid tax on fuel purchased.

RESPONSE: Robert Turner, representing the Department, commented that it was not the intent to impose the burden on the buyer/purchaser to show that a vendor paid the tax. Mr. Turner agreed that the proposed amendment might be interpreted as Mott noted and has made the suggested changes.

By: /s/ David A. Galt
David A. Galt, Director
DEPARTMENT OF TRANSPORTATION

/s/ Nick A. Rotering
Alternate Rule Reviewer

Certified to the Secretary of State September 13, 2004

BEFORE THE BOARD OF OCCUPATIONAL THERAPY PRACTICE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the transfer) NOTICE OF TRANSFER
of ARM 8.35.101 through)
8.35.504, pertaining to the)
board of occupational therapy)
practice)

TO: All Concerned Persons

1. Pursuant to Chapter 483, Laws of Montana 2001, effective July 1, 2001, the Board of Occupational Therapy Practice was transferred from the Department of Commerce to the Department of Labor and Industry ARM Title 24, Chapter 165.

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

<u>OLD</u>	<u>NEW</u>	
8.35.101	24.165.101	Organization Rule
8.35.201	24.165.201	Procedural Rules
8.35.202	24.165.202	Public Participation
8.35.402	24.165.301	Definitions
8.35.407	24.165.401	Fees
8.35.403	24.165.404	Applications For Licensure
8.35.405	24.165.407	Examinations
8.35.406	24.165.410	Pass-Fail Criteria
8.35.401	24.165.411	Board Filing Practices
8.35.415	24.165.501	Supervision - General Statement
8.35.416	24.165.502	Supervision - Methods
8.35.501	24.165.503	Approval To Use Modalities
8.35.503	24.165.506	Qualifying Education Programs
8.35.504	24.165.507	Standards Of Practice
8.35.502	24.165.508	Permission To Use Electrical Or Sound Physical Agents
8.35.404	24.165.601	Temporary Practice Permit
8.35.412	24.165.604	Inactive Status
8.35.417	24.165.2101	Continuing Education
8.35.418	24.165.2102	Continuing Education--Waiver
8.35.408	24.165.2301	Unprofessional Conduct

3. The transfer of rules is necessary because this board was transferred from the Department of Commerce to the Department of Labor and Industry by the 2001 legislature by Chapter 483, Laws of Montana 2001.

BOARD OF OCCUPATIONAL
THERAPY PRACTICE

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

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State September 13, 2004

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

In the matter of the transfer) NOTICE OF TRANSFER
of ARM 8.52.101 through)
8.52.908, pertaining to the)
board of psychologists)

TO: All Concerned Persons

1. Pursuant to Chapter 483, Laws of Montana 2001, effective July 1, 2001, the Board of Psychologists was transferred from the Department of Commerce to the Department of Labor and Industry ARM Title 24, Chapter 189.

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

<u>OLD</u>	<u>NEW</u>	
8.52.101	24.189.101	Board Organization
8.52.201	24.189.201	Procedural Rules
8.52.202	24.189.202	Public Participation Rules
8.52.402	24.189.205	Board Meetings
8.52.624	24.189.301	Definitions of One Year's Residency
8.52.616	24.189.401	Fee Schedule
8.52.610	24.189.404	Preparation Of Licenses
8.52.611	24.189.407	Renewals
8.52.603A	24.189.411	Use Of Title
8.52.602	24.189.414	Non-Resident Psychological Services
8.52.604	24.189.601	Application Procedures
8.52.605A	24.189.604	Minimum Standards
8.52.606	24.189.607	Required Supervised Experience
8.52.608	24.189.610	Examination
8.52.609	24.189.620	Licenses From Other States Or Canadian Jurisdictions
8.52.625	24.189.625	Licensure Of Foreign-Trained Psychologists
8.52.604A	24.189.630	Licensure As A Psychologist By Experience (Senior)
8.52.901	24.189.801	Orienting Guidelines
8.52.902	24.189.804	Role Of The Psychologist
8.52.903	24.189.807	Dual Relationships
8.52.904	24.189.810	Competency
8.52.905	24.189.813	Limits Of Confidentiality
8.52.906	24.189.817	Disclosure And Informed Consent
8.52.907	24.189.820	Collection And Use Of Data
8.52.908	24.189.823	Documentation
8.52.701	24.189.2101	Continuing Education Requirements
8.52.702	24.189.2104	Continuing Education Program Options
8.52.703	24.189.2107	Continuing Education Implementation
8.52.801	24.189.2301	Representation Of Self And Services
8.52.802	24.189.2305	Practice Of Psychology

8.52.803	24.189.2309	Professional Responsibility
8.52.804	24.189.2314	Relationships
8.52.805	24.189.2318	Privileged Information And Records
8.52.623	24.189.2401	Complaint Procedure
8.52.622	24.189.2405	Screening Panel

3. The transfer of rules is necessary because this board was transferred from the Department of Commerce to the Department of Labor and Industry by the 2001 legislature by Chapter 483, Laws of Montana 2001.

BOARD OF PSYCHOLOGISTS

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

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State September 13, 2004.

BEFORE THE BOARD OF SPEECH-LANGUAGE
PATHOLOGISTS AND AUDIOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the transfer) NOTICE OF TRANSFER
of ARM 8.62.101 through)
8.62.705, pertaining to the)
board of speech-language)
pathologists and audiologists)

TO: All Concerned Persons

1. Pursuant to Chapter 483, Laws of Montana 2001, effective July 1, 2001, the Board of Speech-Language Pathologists and Audiologists was transferred from the Department of Commerce to the Department of Labor and Industry, ARM Title 24, Chapter 222.

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

<u>OLD</u>	<u>NEW</u>	
8.62.101	24.222.101	Board Organization
8.62.201	24.222.201	Procedural Rules
8.62.202	24.222.202	Public Participation Rules
8.62.402	24.222.301	Definitions
8.62.425	24.222.401	Fees
8.62.401	24.222.404	Board Standards And Policy
8.62.403	24.222.501	Applications For License
8.62.407	24.222.503	Qualifications For Active Temporary License
8.62.420	24.222.506	Licensure Of Out-Of-State Applicants
8.62.421	24.222.507	Temporary Practice Permits
8.62.404	24.222.510	Examinations
8.62.405	24.222.511	Pass/Fail Criteria
8.62.406	24.222.512	Waiver Of Examination
8.62.424	24.222.513	Inactive Status And Reactivation
8.62.501	24.222.701	Supervisor Responsibility
8.62.502	24.222.702	Schedule Of Supervision - Contents
8.62.504	24.222.703	Functions Of Aides
8.62.505	24.222.704	Unlicensed Individuals
8.62.701	24.222.2101	Policy
8.62.703	24.222.2102	Continuing Education Required When <u>Requirements</u>
8.62.702	24.222.2103	<u>Continuing Education</u> Definitions
8.62.418	24.222.2301	Unprofessional Conduct
8.62.423	24.222.2401	Complaint Procedure
8.62.422	24.222.2402	Screening Panel

3. The transfer of rules is necessary because this board was transferred from the Department of Commerce to the Department of Labor and Industry by the 2001 legislature by Chapter 483, Laws of Montana 2001.

BOARD OF SPEECH-LANGUAGE PATHOLOGISTS
AND AUDIOLOGISTS

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

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State September 13, 2004

DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION
of NEW RULE I, pertaining to)
abatement of renewal fees)

TO: All Concerned Persons

1. On June 3, 2004, the Business Standards Division published MAR Notice No. 24-101-183 regarding the public hearing on the proposed adoption of the above-stated rule relating to abatement of renewal fees, at page 1292 of the 2004 Montana Administrative Register, issue no. 11.

2. The hearing was held on June 29, 2004. No comments or testimony were received.

3. The Division has adopted NEW RULE I (ARM 24.101.301) exactly as proposed.

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 September 13, 2004.

BEFORE THE BOARD OF LANDSCAPE ARCHITECTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 24.153.403,)
fee schedule)

TO: All Concerned Persons

1. On July 1, 2004, the Board of Landscape Architects published MAR Notice No. 24-153-27 regarding the public hearing on the proposed amendment of the above-stated rule relating to fee schedule at page 1449, of the 2004 Montana Administrative Register, issue no. 13.

2. A public hearing on the proposed amendment was held on July 26, 2004. No comments or testimony were received.

3. The Board met on August 2, 2004. The Board has amended ARM 24.153.403 exactly as proposed.

BOARD OF LANDSCAPE ARCHITECTS
SHELLY ENGLER, CHAIR

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

/s/ MARK CADWALLADER
Mark Cadwallader,
Alternative Rule Reviewer

Certified to the Secretary of State September 13, 2004

BEFORE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of amendment of	)	NOTICE OF AMENDMENT
ARM 36.23.101 Purpose;)	
36.23.102 Definitions;)	
36.23.104 Use of the State)	
Revolving Fund; 36.23.106)	
Application; 36.23.107)	
Evaluation of Projects and)	
Applications; 36.23.110)	
General Obligation Bonds;)	
36.23.111 Revenue Bonds;)	
36.23.112 Special Improvement)	
Districts; 36.23.113 Loans to)	
Disadvantaged Municipalities;)	
36.23.114 Other Types of)	
Bonds or Additional Security)	
or Covenants for)	
Municipalities; 36.23.116)	
Covenants Regarding)	
Facilities Financed by Loans;)	
36.23.117 Fees; 36.23.118)	
Evaluation of Financial)	
Matters and Commitment)	
Agreement; 36.23.119)	
Requirements for Disbursing)	
of Loan; and 36.23.120 Terms)	
of Loan and Bonds)	

TO: All Concerned Persons

1. On August 5, 2004, the Department of Natural Resources and Conservation published MAR Notice No. 36-23-98 regarding the proposed amendment of the above-stated rules at page 1714 of the 2004 Montana Administrative Register, Issue No. 15.

2. The Department has amended ARM 36.23.101, 36.23.102, 36.23.104, 36.23.106, 36.23.107, 36.23.110 through 36.23.114, and 36.23.116 through 36.23.119 exactly as proposed.

3. The Department has amended ARM 36.23.120 with the following changes, stricken matter interlined, new matter underlined:

36.23.120 TERMS OF LOAN AND BONDS (1) The source of funding of the loans under this program initially will be 80% from the EPA and 20% from the proceeds of the state's bonds, but may be adjusted from time to time if required or permitted by the federal act, the act, and applicable program documents. The interest rate on the loan will be determined by the department at the time the loan is made. The rate on a loan must be such that the interest payments thereon and on other loans funded from the proceeds of the state's bonds will be

sufficient, if paid timely and in full, with other available funds in the state revolving fund including investment income, from which the loan was funded to pay the principal of and interest on the state's bonds issued by the state.

(2) remains as proposed.

(3) Unless the department otherwise agrees, each loan shall be payable, including principal and interest thereon and the administrative expense surcharge and loan loss reserve surcharge, if any, over a term approved by the department, not to exceed 20 years after the completion date of a project, or such longer period as may then be permissible under the federal act or the act, provided that the department may allow a disadvantaged municipality to repay its loan over a term not to exceed 30 years, provided that the term of the loan does not exceed the expected design life of the project being financed. In no case shall the term of a loan exceed the useful life of the project being financed.

(a) Interest, administrative expense surcharge and loan loss reserve surcharge, if any, on, and amortization of principal of, payments on each disbursement of each loan ~~or portion thereof which that~~ is not a construction loan shall begin no later than 15 days prior to the next interest payment date (unless the loan is closed within 15 days of the next interest payment date, in which case interest, administrative expense surcharge and loan loss reserve surcharge, if any, on, and amortization of principal of, such a loan shall begin the first payment date shall be no later than 45 days prior to the next following interest payment date).

(b) For construction loans, the department may permit principal amortization to be delayed until as late as one year after completion of the project, provided that ~~the payment of interest, administrative expense surcharge and loan loss reserve surcharge, if any~~ on each disbursement of a construction loan shall begin no later than 45 15 days prior to the next interest payment date (unless the loan is closed within 15 days of the next interest payment date, in which case interest, administrative expense surcharge and loan loss reserve surcharge, if any, on a construction loan shall begin the first payment date shall be no later than 15 45 days prior to the next following interest payment date) unless the state has provided for ~~the~~ payment of interest on its bonds by capitalizing interest.

(c) In any event, the payment of interest must commence no later than the payment of principal.

(4) remains as proposed.

AUTH: 75-6-205, MCA

IMP: 75-6-224, MCA

4. The Department received one comment. The Department has thoroughly considered the comment. The comment received and the Department's response to the comment follow:

COMMENT: Bond counsel stated that subsections ARM 36.23.120(3)(a) and (3)(b) could be clarified by the inclusion of administrative expense surcharge and loan loss reserve surcharge in the rule. Bond counsel stated that subsections (3)(a) and (3)(b) should be consistent if modified.

RESPONSE: The Department agrees.

/s/ Arthur R. Clinch
By: ARTHUR R. CLINCH
Director

/s/ Tim Hall
TIM HALL
Rule Reviewer

Certified to the Secretary of State September 13, 2004.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of amendment of	)	NOTICE OF AMENDMENT
ARM 36.24.102 Definitions and)	
Construction of Rules;)	
36.24.107 Fees; 36.24.108)	
Evaluation of Financial)	
Matters and Commitment)	
Agreement; and 36.24.109)	
Requirements for Disbursing)	
of Loan)	

TO: All Concerned Persons

1. On August 5, 2004, the Department of Natural Resources and Conservation published MAR Notice No. 36-24-99 regarding the proposed amendment of the above-stated rules at page 1730 of the 2004 Montana Administrative Register, Issue No. 15.

2. The Department has amended ARM 36.24.102 and 36.24.107 through 36.24.109 exactly as proposed.

3. No comments were received.

/s/ Arthur R. Clinch
By: ARTHUR R. CLINCH
Director

/s/ Tim Hall
TIM HALL
Rule Reviewer

Certified to the Secretary of State September 13, 2004.

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

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 37.49.112 pertaining to)
IV-E foster care eligibility:)
living with a specified)
relative)

TO: All Interested Persons

1. On August 5, 2004, the Department of Public Health and Human Services published MAR Notice No. 37-333 pertaining to the proposed amendment of the above-stated rule relating to IV-E foster care eligibility: living with a specified relative, at page 1735 of the 2004 Montana Administrative Register, issue number 15.

2. The Department has amended ARM 37.49.112 as proposed.

3. No comments or testimony were received.

Russ Cater
Rule Reviewer

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

Certified to the Secretary of State September 13, 2004.

VOLUME NO. 50

OPINION NO. 9

CONSERVATION DISTRICTS - authority to enact regulations to conserve and protect soils;
ENVIRONMENTAL QUALITY - release of pollutants from coal bed methane that may cause loss of soil structure and other soil and water erosion;
LAND USE - State Soil Conservation Districts: power to regulate under Title 76, chapter 15, part 7;
SOIL AND WATER CONSERVATION - Districts' scope of authority under the State Soil Conservation laws;
WATER AND WATERWAYS - Coal bed methane water extraction and impoundment;
MONTANA CODE ANNOTATED - Title 75, chapter 7, part 1; Title 76, chapter 15, part 1; sections 76-15-101, (3), -102, -701 to -707, -706, (1)(a), (b), (c), (d), (e), (2), -901 to -905; 82-11-173 to -175, (2)(d);
MONTANA LAWS OF 1937 - Chapters 72, 157;
OPINIONS OF THE ATTORNEY GENERAL - 36 Op. Att'y Gen. No. 97 (1976); 39 Op. Att'y Gen. No. 2 (1981).

HELD: A Conservation District has authority under Mont. Code Ann. § 76-15-706 (2003) to implement land use regulations, following a referendum by the voters, in order to implement reasonable measures to conserve the soils, protect the soil structure from coal bed methane water, and conserve the water resources of the district.

August 31, 2004

Mr. Michael B. Hayworth
Rosebud County Attorney
County Courthouse
Post Office Box 69
Forsyth, Montana 59327-0069

Dear Mr. Hayworth:

You have requested my opinion on the following question:

Does a conservation district's authority to implement Land Use Regulations include authority to implement regulations and requirements specific to coal bed methane wastewater operations?

Based on the following analysis, it is my opinion that a conservation district has authority under Mont. Code Ann. § 76-15-706 (2003) to implement land use regulations as part of their broad program to protect and conserve soils and water. Following a referendum by the voters, a district may implement reasonable measures that must be taken to prevent soil erosion and saline seep contamination from coal bed methane produced

water impoundments during runoff events. Such land use regulations fulfill the purpose of conserving soil and soil resources of the state, protecting the soil structure from pollutants and conserving the water resources of the district, all of which fall within the delegated authority of the conservation district.

This question arose specifically because the Rosebud Conservation District has proposed a land use referendum ordinance pursuant to Mont. Code Ann. § 76-15-706(1)(e) and (2) that includes the following regulatory elements:

- Review of the anticipated effect of coal bed methane production on the watershed and Conservation District approval of a Conservation Plan prior to commencement of methane extraction operations;

- Mandatory performance bond (held by the District) to insure compliance with Reclamation Plans for reclaiming impoundment sites.

Mont. Code Ann. § 76-15-706 provides a Conservation District with clear authority to implement Land Use Regulations, and enumerates specific provisions for regulations which may be adopted under the provisions in subsections (a), (b), and (c). Your inquiry calls for statutory interpretation of whether subsection (e) of § 76-15-706 is sufficient to provide authority for the Conservation Districts to enact provisions to address wastewater from coal bed methane production as a conservation provision in the district.

Mont. Code Ann. § 76-15-706(1) states:

Contents of land use regulations. (1) The regulations to be adopted by the supervisors under the provisions of 76-15-701 through 76-15-707 may include:

- (a) provisions requiring the carrying out of necessary engineering operations, including the construction of water spreaders, terraces, terrace outlets, check dams, dikes, ponds, ditches, fences, and other necessary structures;

- (b) provisions requiring observance of particular methods of cultivation or grazing, including contour cultivating, contour furrowing, lister furrowing, sowing, planting, strip cropping, seeding, and planting of lands to water conserving and erosion preventing plants, trees, and grasses, forestation and reforestation;

(c) specifications of cropping and range programs and tillage and grazing practices to be observed;

(d) provisions requiring the retirement from cultivation of highly erosive areas or of areas on which erosion may not be adequately controlled if cultivation is carried on;

(e) provisions for such other means, measures, operations, and programs as may assist conservation of soil and water resources and prevent or control erosion in the district, having due regard to the legislative findings set forth in 76-15-101 and 76-15-102.

The authority of the Conservation Districts to regulate land use and water resources has been addressed in two previous opinions issued by the Attorney General. 36 Op. Att'y Gen. No. 97 (1976) held that state Conservation Districts have not been granted broad administrative powers that would authorize them to regulate state water, and more particularly that the Lakeshore Protection Act does not conflict with the statutory powers of Conservation Districts by conferring on local governmental entities, such as county commissioners, power to regulate projects potentially injurious to lakes. 39 Op. Att'y Gen. No. 2 (1981) further held that state Conservation District Supervisors do not have authority under The Natural Streambed and Land Preservation Act of 1975 (Title 75, ch. 7, pt. 1) to review the route of a proposed pipeline within the county at places other than stream crossings. Within that 1981 opinion, however, is recognition that the Supervisors may formulate regulations under Title 76, chapter 15, to address the issue of land use within their jurisdiction. Conservation District regulatory authority over the effects of coal bed methane impoundments on soil and water resources has not been addressed either in an Attorney General Opinion or by judicial determination.

Rosebud Conservation District's proposed Ordinance would be the first regulation of coal bed methane wastewater under a conservation district's land use regulation authority. Under current state law coal bed methane is the direct subject of two laws, The Coal Bed Methane Protection Act, Mont. Code Ann. § 76-15-901 to -905 (2003), and the Coal Bed Methane Production Offset Act, Mont. Code Ann. § 82-11-173 to -175 (2003). The Coal Bed Methane Production Offset Act provides for ways in which water produced from CBM wells must be managed, one of which is "through other methods allowed by law." Mont. Code Ann. § 82-11-175(2)(d). The proposed ordinance would provide another method of management of coal bed methane produced water consistent with the Coal Bed Methane Production Offset Act. The Coal Bed Methane Protection Act provides that conservation districts may

establish procedures to compensate landowners or water right holders for damages, subject to approval of the Department of Natural Resources and Compensation. Such compensation would be available only after June 30, 2011. Neither act restricts the conservation districts' authority to protect and conserve the water and soil from erosion and protect the soil structure of the land.

The environmental threats to soil and water conservation from the development of coal bed methane are generally recognized. The Conservation District more specifically identifies the potential for immediate and long-term adverse effects on soil structure and water conservation. While waters of the state are afforded protection under the Clean Water Act, and both soil and water are afforded protection from hazardous substances under both state and federal law, the conservation of water and protection from adverse effects on the soil structure remain largely unprotected by existing federal or state law. Rosebud Conservation District's recognition of the regulatory void and consideration of an ordinance to conserve its soil, protect it from erosion and defend against the loss of critical soil structure are consistent with its land use regulation authority.

The Conservation Districts were born of the dust bowl of the 1930s. Montana was among the first states to enact a law creating the conservation districts. See, Ch. 157, Laws of Montana 1937. During the next legislative session, Montana enacted a much more comprehensive bill as "The State Soil Conservation District Law," Ch. 72, Laws of 1939, now Mont. Code Ann. § 76-15-101, et seq. (2003). Within the structure of the 1939 law was the declaration of the necessity of creating governmental subdivisions of the state to engage in conserving soil resources and preventing and controlling soil erosion that were eroding the farming base of the lands. The 1939 act further empowered the districts to adopt programs and regulations for the discontinuance of land-use practices contributing to soil wastage and soil erosion, and authorized the districts to adopt and carry out soil conserving land-use practices. The 1939 act also granted the Conservation Districts the power to enforce their programs and regulations.

Any regulation under the act must be proposed as an ordinance and submitted to the voters within the district. Mont. Code Ann. § 76-15-701. Rosebud Conservation District proposes to enact a regulation by submitting it to the qualified voters within the district. Additionally the purpose of the regulation is to conserve the water and soil within the district, thus keeping the land and water from being damaged, lost, or wasted. The ordinance, as proposed, appears to fall within the regulatory authority of the district over its soil and water conservation matters and further appears to comply with the statutorily required referendum process.

The Conservation Districts serve as the primary coordinators for pilot programs to conserve the soil and water and to provide feedback to the Environmental Protection Agency and to the Montana Department of Environmental Quality. Montana's Board of Oil and Gas has adopted general regulations for earthen pits and disposal of produced water that requires a permit prior to construction for any oil or gas production facility. Mont. Admin. R. 36.22.1226-1232 (1997). The Board also has authority to review water flood programs as the conditions may justify under A.R.M. 36.22.1232 and to require reclamation bonds under A.R.M. 36.22.1308. The Board of Oil and Gas rules are not specific to coal bed methane water production nor are they the sole authority to regulate floodwater, water impoundments or water discharges. The Conservation Districts are uniquely charged with the stewardship of the land and the conservation of water within the district. The Rosebud Conservation District is exercising stewardship by proposing regulation of impoundments of coal bed methane produced water to protect the soil structure and conserve water from potential effects of coal bed methane production water. Conservation district regulations may not conflict with state regulation; however, as a general rule, conservation districts may impose more stringent requirements based on local conditions. The conservation district's proposed regulation authority should be coordinated with the existing process and regulations by the Board of Oil and Gas and the Department of Environmental Quality.

In addressing your question, I must follow the well-established principle of statutory construction that "statutory language must be construed according to its plain meaning and, if the language is clear and unambiguous, no further interpretation is required." Dahl v. Uninsured Employers' Fund, 1999 MT 168, ¶ 16, 295 Mont. 173, 983 P.2d 363. The meaning of the Land Use Regulation statute is clear in its purpose and intent. It contains the enumerated provisions for engineering, construction, methods of cultivation or grazing, specifications, programs, as well as a provision for "other" areas of regulation. In this request, the Rosebud Conservation District's ordinance is proposed under subsection (e) of Mont. Code Ann. § 76-15-706(1), which reads:

. . . provisions for such other means, measures, operations, and programs as may assist conservation of soil and water resources and prevent or control erosion in the district, having due regard to the legislative findings set forth in 76-15-101 and 76-15-102.

In Mont. Code Ann. § 76-15-101, the legislature made extensive findings regarding the need for soil conservation practices to defeat the effects of the dust bowl conditions of the 1930s. Among those findings, the legislature stated:

[T]o conserve soil resources and control and prevent soil erosion and prevent floodwater and sediment damages and further the conservation, development, utilization, and disposal of water, it is necessary that land use practices contributing to soil wastage and soil erosion be discouraged and discontinued and appropriate soil-conserving land use practices and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water be adopted and carried out

Mont. Code Ann. § 76-15-101(3) (emphasis added). The legislature then stated "that among the procedures necessary for widespread adoption are" matters within the scope of the first four subsections of Mont. Code Ann. § 76-15-706(1). Id. Mont. Code Ann. § 76-15-102 then provides:

It is hereby declared to be the policy of the legislature to provide for the conservation of soil and soil resources of this state, for the control and prevention of soil erosion, for the prevention of floodwater and sediment damages, and for furthering the conservation, development, utilization, and disposal of water and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state.

(Emphasis added.)

Regulation of coal bed methane produced water and runoff is not expressly authorized under specific statutory provisions at (a) through (d), and your letter suggests that the authority to adopt "such other means . . . as may assist conservation of soil and water resources" provided in Mont. Code Ann. § 76-15-706(1)(e) should be read as being limited in some way by the specific provisions describing the district's authority in subsections (a) through (d) of the statute. Since those other subsections make no mention of controlling runoff associated with oil and gas production (or, for that matter mineral production generally), you suggest that the proposed ordinance does not fall within the district's authority.

The doctrine of ejusdem generis, under which specific language in a statute is deemed to qualify more general catchall provisions, may not be used to defeat the intention of the legislature. Burke v. Sullivan, 127 Mont. 374, 378-79, 265 P.2d 203, 206-07 (1954), quoting 50 Am. Jur. 2d, Statutes, § 250 (doctrine "does not warrant a court in subverting or defeating the legislative will by confining the operation of the statute within narrower limits than intended by

lawmakers.") Mont. Code Ann. § 76-15-706(1) describes provisions that are within the discretion of the district in adopting regulations authorized by Mont. Code Ann. § 76-15-701. In subsection (1)(e) of the statute, the legislature has made it clear that the catchall provision was to be interpreted in light of the broad aims of the conservation district laws generally, requiring the district to have "due regard to the legislative findings set forth in 76-15-101 and 76-15-102."

It is apparent that the legislature intended this statute to be a forward-looking provision designed to provide flexibility to address changing conditions over time. In my opinion, the legislature did not intend that the listing in Mont. Code Ann. § 76-15-706(1)(a) through (d) of measures that are "among the procedures" that are necessary to protect soil and water limited the flexibility of conservation districts to devise means, consistent with the overall objective of conserving soil and water, to control the adverse effects of CBM runoff--a specific threat to soil and water not within the contemplation of the legislature in 1939.

Any regulations proposed by a conservation district under Title 76, chapter 15, part 7, may be adopted for such means, measures, operations, and programs as may assist a conservation district in the conservation of soil and water resources. Conserving the water and soils from saline seeps and blowing salts appears to be fully contemplated within the purpose for which conservation districts were formed--and any ordinance enacted which adopts means, measures, operations or programs that assist in preventing the saline seeps and blowing salts that would destroy the soil structure and make the water unusable for irrigating the lands is clearly within the purpose and authority of the district.

Under this analysis, subsection (e) provides for any other means to assist in the conservation of soil and water resources and prevent or control erosion in the district. That the erosion may include high sodium absorption ratio (SAR) water and destruction of the soil structure essential for the farm land base provides legal justification for the ordinance. The Ninth Circuit Court of Appeals recently addressed the very concern that served as the impetus for this proposed regulation. The Court stated:

Farmers who use water from the Tongue River for irrigation are concerned with the "saltiness" and high SAR of CBM water because of the potential hazards these characteristics pose to soil structure. High [**5] SAR water, such as CBM water, causes soil particles to unbind and disperse, destroying soil structure and reducing or eliminating the ability of the soil to drain water. The Montana Department of Environmental Quality

(MDEQ), in a Final Environmental Impact Statement analyzing coal bed methane extraction, warns that "clayey" soil, like that in the Tongue River Valley, is vulnerable to damage from high SAR water. Montana Statewide Final Oil and Gas Environmental Impact Statement and Proposed Amendment of the Powder River and Billings Resource Management Plans (hereinafter "Montana FEIS"), Soils Appendix SOI-1, available at www.deq.state.mt.us/CoalBedMethane/finaleis.asp. Fidelity's soil expert concluded that "the SAR of CBM water creates a permeability hazard and precludes its use for irrigation without mixing, treatment or addition of soil amendments." The MDEQ cautioned that unregulated discharge of CBM water would cause "[s]urface water quality in some watersheds [to] be slightly to severely degraded, resulting in restricted downstream use of some waters." *Id.*, 4-72. Some of the CBM water, however, is used by Fidelity's grazing lessee, CX Ranch, in livestock watering [**6] ponds and stock tanks.

Northern Plains Res. Council v. Fid. Exploration & Dev. Co., 325 F.3d 1155, 1158 (9th Cir., 2003).

Here, the Rosebud Conservation District is proposing the ordinance to conserve both the soil and water because the risk is not merely to surface water quality, but to the capacity of soil to produce crops or grasses. The risk goes to the heart of the conservation districts' role in the management of the resources in Montana. The Rosebud Conservation District has proposed an ordinance that addresses an issue of water and soil conservation that is of paramount concern within the district. They have proposed its enactment properly under the restrictions in the Conservation Districts Land Use Regulations statutes. In doing so, the Conservation District is addressing a subject that is within its authority to regulate--the conservation of its water and soil. Where a statute confers powers or duties in general terms, all powers and duties incidental and necessary to make such legislation effective are included by implication. 2B Sutherland Statutory Construction, § 55.04 (6th ed. 2000).

Whether that authority extends to authority to require a bond is beyond the scope of this review of the district's regulatory authority. Additionally, this opinion makes no determination of the validity of the proposed ordinance itself, but merely reviews the authority of the Conservation District to regulate the coal bed methane wastewater operations as it would regulate other runoff or erosion.

THEREFORE, IT IS MY OPINION:

A Conservation District has authority under Mont. Code. Ann. § 76-15-706 (2003) to implement land use regulations, following a referendum by the voters, in order to implement reasonable measures to conserve the soils, protect the soil structure from coal bed methane water, and conserve the water resources of the district.

Very truly yours,

/s/ Mike McGrath
MIKE McGRATH
Attorney General

mm/cfw/jym

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

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

and

- ▶ Office of Economic Development.

Education and Local Government Interim Committee:

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

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

- ▶ Department of Public Health and Human Services.

Law and Justice Interim Committee:

- ▶ Department of Corrections; and
- ▶ Department of Justice.

Energy and Telecommunications Interim Committee:

- ▶ Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- ▶ Department of Revenue; and
- ▶ Department of Transportation.

State Administration, and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

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

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

ADMINISTRATION, Department of, Title 2

- I & II Trust Company Examination Fees - Required Bond Amounts for the Licensing of Escrow Businesses, p. 1179, 1947
- I-IX Definitions - Education Provider Requirements - Table Funding - License Transfers and Renewals - Letters of Credit and Surety Bonds - Revocation, Suspension or Surrender of Licenses - Complaint Process - Montana Mortgage Broker and Loan Originator Licensing Act, p. 524, 1133
- 2.21.121 and other rules - Sick Leave, p. 770, 1321
- 2.21.801 and other rules - Sick Leave Fund, p. 2027

- (Public Employees' Retirement Board)
- 2.43.421 Uniformed Services Employment and Reemployment Right Act of 1994 (USERRA) and the Receipt of Service When Called to Perform Duty in the Uniformed Service, p. 2480, 561
- 2.43.437 and other rule - Purchasing Active and Reserve Military Service, p. 2484, 563
- 2.43.1002 and other rules - Investment Guidelines for the Defined Contribution Retirement Plan, p. 533, 1131
- 2.43.1802 and other rule - Investment Guidelines for the Deferred Compensation Plan, p. 537, 1132

AGRICULTURE, Department of, Title 4

- I-X Alternative Dispute Resolutions of Seed Contract Disputes, p. 1543, 2102
- 4.3.101 and other rules - Rural Development Loans, p. 1088, 1469
- 4.4.301 and other rules - Hail Insurance, p. 152, 565
- 4.6.103 and other rules - Montana Potato Research and Development Program, p. 692, 1209
- 4.10.201 and other rules - Pesticide Certification, p. 2031
- 4.13.1001A Grain Laboratory Fee Schedule, p. 1181, 1470

STATE AUDITOR, Title 6

- 6.6.503 and other rules - Medicare Supplements - Medicare Select Full Coverage - Separability - Purpose, p. 2125, 313, 1017
 - 6.6.8501 and other rules - Viatical Settlements, p. 1877
- (Classification Review Committee)
- 6.6.8301 Updating References to the NCCI Basic Manual for New Classifications for Social Services Operations and Bottling Operations, p. 1874, 2045

COMMERCE, Department of, Title 8

- 8.99.401 and other rules - Definitions Concerning Microbusiness Development Corporations - Job Investment Act - Science and Technology Development, p. 2792, 566
 - 8.119.101 Tourism Advisory Council, p. 774, 1382
- (Board of Housing)
- 8.111.409 Cash Advances, p. 1096, 1612
 - 8.111.502 and other rules - Loans Made from Temporary Assistance for Needy Families (TANF) Housing Assistance Funds, p. 363, 1142

EDUCATION, Title 10

- (Superintendent of Public Instruction)
- 10.7.101 and other rules - School Finance and Transportation, p. 1255, 1613
 - 10.16.3136 Special Education Professional Staff Qualifications, p. 1099, 1383
- (Board of Public Education)
- 10.51.102 Board Membership, p. 695, 1755
 - 10.55.907 Distance, Online, and Technology Delivered Learning, p. 157, 719
 - 10.55.909 Student Records, p. 1659
 - 10.57.201 and other rules - Educator Licensure, p. 1661

(Montana State Library)

10.102.5102 Allocation of Funding between Federations and Grant Programs, p. 608, 1210

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

(Fish, Wildlife, and Parks Commission)

I Hunting Season Extensions, p. 1887
I-XII River Recreation, p. 1436
12.3.120 Hunter Safety Requirements, p. 540, 1322
12.11.640 No Wake Zone on the Swan River, p. 2348, 2679, 1019

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

I-XI Translocation of Prairie Dogs, p. 370, 1756
12.9.204 Lone Pine Game Preserve, p. 1101, 1552

ENVIRONMENTAL QUALITY, Department of, Title 17

17.36.345 Subdivisions - Adoption by Reference of Department Circular DEQ-4, p. 1345
17.40.206 and other rules - Water and Wastewater Operators - Certification - Fees, p. 543, 1143, 1619
17.50.215 Junk Vehicle - Disposal of Junk Vehicles through State Disposal Program, p. 885
17.50.802 and other rules - Septage Cleaning and Disposal - Cesspool, Septic Tank and Privy Cleaners, p. 2350, 698
17.56.502 and other rules - Underground Storage Tanks - Release Reporting, Investigation, Confirmation, and Corrective Action Requirements for Tanks Containing Petroleum or Hazardous Substances, p. 1, 379, 1391

(Board of Environmental Review)

17.8.102 and other rules - Air Quality - Incorporation by Reference of Current Federal Regulations and Other Materials into Air Quality Rules, p. 2801, 724
17.8.504 and other rules - Air Quality - Registration of Certain Air Contaminant Sources Including Non-metallic Mineral Processing Plants, p. 1359
17.8.505 and other rule - Air Quality - Air Quality Operation Fees - Open Burning Fees, p. 1355
17.24.301 and other rules - Montana Strip and Underground Mine Reclamation Act, p. 777
17.30.502 and other rules - Water Quality - Water Use Classifications - Department Circular WQB-7, p. 2808, 725, 1617
17.30.702 and other rule - Water Quality - Defining Nutrient Reducing Subsurface Wastewater Treatment Systems, p. 387, 1384
17.30.716 and other rules - Water Quality - Incorporation by Reference of DEQ-4 as It Pertains to Water Quality, p. 1347

17.50.410 Solid Waste - Annual Operating License Required,
p. 700, 1949

TRANSPORTATION, Department of, Title 18

I-VI Acceptance and Use of Electronic Records and
Electronic Signatures, p. 1891
18.8.101 and other rules - Motor Carrier Services Regulations
for Overdimensional Vehicles and Loads, p. 1558
18.9.302 and other rules - Posting a Bond by Certain Fuel Tax
Licensees - Other Fuel Tax Reporting Requirements,
p. 1553

CORRECTIONS, Department of, Title 20

I-VI Establishment of the Eastmont Chemical Dependency
Treatment Program in Glendive, Montana, for Fourth
Offense DUI Offenders, p. 1897
20.9.103 and other rule - Youth Placement Committee, p. 547,
1471

(Board of Pardons and Parole)

I Training of Board of Pardons and Parole Members,
p. 239, 1186, 1621

JUSTICE, Department of, Title 23

I-III Criminal Justice Information, p. 888, 1105, 1950
I-X Implementing an Act Enhancing Enforcement of the
Tobacco Product Reserve Fund Act, 16-11-501 through
16-11-512, MCA, p. 703, 1323
23.5.101 and other rules - Incorporate Amendments to Federal
Regulations Pertaining to Motor Vehicle Standards
Previously Incorporated by Reference in Current
Rules - General Revisions to Clarify Scope of Rules,
p. 2816, 1021
23.7.101A and other rules - NFPA 1 Uniform Fire Code, p. 17,
634, 728
23.10.101 List of Precursors to Dangerous Drugs, p. 1903

LABOR AND INDUSTRY, Department of, Title 24

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

I Safety and Health in Mines Other than Coal Mines,
p. 1906
I Abatement of Renewal Fees, p. 1292
24.17.127 Prevailing Wage Rates for Public Works Projects -
Building Construction Services - Heavy and Highway
Construction Services, p. 1286, 1780
24.21.414 Adoption of Wage Rates for Certain Apprenticeship
Programs, p. 1289, 1785

- 24.29.902 and other rules - Workers' Compensation Assessments, p. 2681, 645, 1023
- 24.30.102 and other rules - Occupational Safety Matters in Public Sector Employment, p. 1909
- 24.301.131 and other rules - Building Codes - Boilers - Pressure Vessels, p. 2695, 571
- 24.301.138 and other rules - Energy Conservation - Building Codes, p. 1375, 2103

(Board of Barbers and Cosmetologists)

- I-XXXVII and other rules - Licensure, Fees and Regulation of Barbers, Cosmetologists, Electrologists, Estheticians and Manicurists under the New Board of Barbers and Cosmetologists - Board of Barbers - Board of Cosmetologists - Interim Rule, p. 1666

(Board of Chiropractors)

- 24.126.301 and other rules - Definitions - Fee Schedule - Unprofessional Conduct - Display of License - Purpose of the Board, p. 169, 729

(Board of Dentistry)

- 24.138.301 and other rules - Definitions - Fee Schedule - Dental Hygiene Local Anesthetic Agent Certification - Application to Convert an Inactive Status License to an Active Status License - Grounds for Denial of a License - Dentist Licensure by Credentials for Specialists - Reinstatement of a License for Non-payment of Renewal Fee - Licensure of Retired or Nonpracticing Dentist or Dental Hygienist for Volunteer Service, p. 1189, 1955

(Board of Funeral Service)

- 24.147.302 and other rules - Definitions - Fee Schedule - Crematory Facility Regulation - Licensure as a Crematory Operator - Licensure as a Crematory Technician - Perpetual Care and Maintenance Fund Reports - Audit Expenses, p. 709, 1622

(Board of Hearing Aid Dispensers)

- 24.150.510 Allowable Dispensing Fees, p. 1372

(Board of Landscape Architects)

- 24.153.403 Fee Schedule, p. 1449

(Board of Medical Examiners)

- 24.156.625 and other rules - Unprofessional Conduct - Emergency Medical Technician Licensure, p. 1841, 188, 731

(Board of Nursing)

- 8.32.405 and other rules - Licensure by Endorsement - Licensure for Foreign Nurses - Inactive Status - Fees - Grounds for Denial of License - License

8.32.1118 Probation or Reprimand of a Licensee - Definitions -
Licensure of Medication Aides, p. 1277
and other rule - Nursing Education Accrediting
Bodies - Nurse's Role in Cosmetic Procedures,
p. 2359, 641

(Board of Occupational Therapy Practice)
8.35.407 and other rule - Fees - Abatement of Renewal Fees,
p. 1107

(Board of Plumbers)
8.44.101 and other rules - Transfer from the Department of
Commerce, p. 1472

(Board of Professional Engineers and Land Surveyors)
24.183.702 and other rules - Classification of Experience for
Professional Engineer Applicants - Classification of
Experience for Land Surveying Applicants - Branch
and Project Offices, p. 1296
24.183.1001 Form of Corner Records, p. 1567

(Board of Psychologists)
8.52.624 and other rules - Record Retention - Defined
Professional Relationships of Psychologists -
Foreign-educated Psychologists, p. 611, 1474

(Board of Public Accountants)
8.54.410 and other rules - Fees - Examinations, p. 161, 643

(Board of Radiologic Technologists)
I-IV Radiologist Assistants - Scope of Practice -
Supervision - Adoption of a Code of Ethics, p. 892

(Board of Real Estate Appraisers)
24.207.402 Adoption of USPAP by Reference, p. 2830, 732

(Board of Respiratory Care Practitioners)
24.213.301 and other rules - Definitions - Fee Schedule -
Guidelines for Conscious Sedation - Abatement of
Fees - Qualifications to Perform Certain Procedures,
p. 2492, 568

(Board of Social Work Examiners and Professional Counselors)
8.61.101 and other rules - Transfer from the Department of
Commerce, p. 1477

(Board of Veterinary Medicine)
8.64.402 and other rules - Fee Schedule - Animal Euthanasia
Technicians and Agencies, p. 619, 1324

LIVESTOCK, Department of, Title 32

I & II Branding and Inspection, p. 1112, 1397
32.2.403 Diagnostic Laboratory Fees, p. 2047

- 32.3.224 and other rule - Bison Imported into Montana, p. 715, 1326
- 32.6.712 Food Safety and Inspection Service for Meat and Poultry, p. 35, 576

(Board of Horse Racing)

- 32.28.502 and other rules - Annual License Fees - Racing Secretary - Chart Companies - Duties of the Licensee - Programs - Owner and Breeder Bonuses - Jockey Incentive Award Program, p. 38, 733
- 32.28.601 and other rules - General Provisions - Starters - Valets, p. 897, 1327

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

- 36.23.101 and other rules - Purpose - Definitions - Use of the State Revolving Fund - Application - Evaluation of Projects and Applications - General Obligation Bonds - Revenue Bonds - Special Improvement Districts - Loans to Disadvantaged Municipalities - Other Types of Bonds or Additional Security or Covenants for Municipalities - Covenants Regarding Facilities Financed by Loans - Fees - Evaluation of Financial Matters and Commitment Agreement - Requirements for Disbursing of Loan - Terms of Loan and Bonds, p. 1714
- 36.24.102 and other rules - Definitions and Construction of Rules - Fees - Evaluation of Financial Matters and Commitment Agreement - Disbursing of Loan, p. 1730

(Board of Land Commissioners and the Department of Natural Resources and Conservation)

- 36.25.128 and other rules - Land Banking, p. 1452

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

- I-LXXVI Outdoor Behavioral Program, p. 903, 1818, 1960
- 37.5.123 and other rules - Child and Adult Care Food Program (CACFP) Administrative Review Procedures, p. 2841, 577
- 37.5.304 and other rules - Substantiation of Child Abuse and Neglect - Fair Hearing Rights, p. 1571
- 37.30.101 and other rules - Montana Vocational Rehabilitation Financial Standard, p. 1115, 1789
- 37.36.101 and other rules - Montana Telecommunications Access Program (MTAP), p. 2833, 1398
- 37.40.302 and other rules - Nursing Facilities - Swing-bed Hospitals, p. 994, 1479
- 37.40.406 and other rules - Medicaid Reimbursement of Hospitals, p. 2580, 482, 650
- 37.47.301 and other rules - Centralized Intake System for Reporting Child Abuse and Neglect, p. 253, 550, 1793
- 37.49.112 IV-E Foster Care Eligibility: Living with a Specified Relative, p. 1735

- 37.70.110 and other rules - Low Income Energy Assistance Program (LIEAP), p. 395, 1026
- 37.78.102 and other rules - Temporary Assistance for Needy Families (TANF), p. 977, 1482
- 37.79.101 and other rules - Children's Health Insurance Plan (CHIP), p. 2503, 330, 1027
- 37.83.805 and other rules - Medicaid Restricted Card Program - Passport to Health Program, p. 1201, 1624
- 37.85.212 Resource Based Relative Value Scale (RBRVS) Reimbursement, p. 964, 1488
- 37.85.501 and other rules - Informal Dispute Resolution and Sanctions, p. 295, 736
- 37.86.1102 Outpatient Drugs, Requirements, p. 628, 1127, 1489
- 37.86.1506 Home Infusion Therapy Services Reimbursement, p. 258, 750
- 37.86.3806 and other rules - Case Management Services for Children at Risk of Abuse and Neglect, p. 971, 1404
- 37.88.101 and other rules - Reimbursement of Inpatient Psychiatric Hospitals, p. 2725, 1328, 1625
- 37.106.312 Minimum Standards for All Health Care Facilities: Blood Bank and Transfusion Services, p. 1917
- 37.106.313 Minimum Standards for All Health Care Facilities - Communicable Disease Control, p. 2750, 582
- 37.106.2801 and other rules - Minimum Standards for Assisted Living Facilities, p. 261, 1146
- 37.108.507 Components of Quality Assessment Activities, p. 1128, 1406

PUBLIC SERVICE REGULATION, Department of, Title 38

- I Utility Implementation of Rate Changes and Billing Practices, p. 1742
- I-VIII Energy Utility Service Standards, p. 1750
- I-XIII Transportation of High-Level Radioactive Waste and Transuranic Waste, p. 407, 1628
- 38.2.5001 and other rules - Protective Orders - Protection of Confidential Information, p. 1595
- 38.3.402 and other rule - Motor Carrier Protestant Filing Requirements - Motor Carrier Application Fees, p. 1739
- 38.5.301 and other rules - Municipality-Owned Utilities, p. 1746
- 38.5.1111 and other rule - Guarantee in Lieu of Deposit for Utility Service, p. 1748
- 38.5.3403 Operator Service Providers, p. 1744

REVENUE, Department of, Title 42

- I & II Capital Gain Credit, p. 2098
- I-VII First-Time Home Buyers, p. 422, 1033
- 42.4.103 and other rules - Personal Income Taxes, Credits, Incentives, and Exemptions, p. 429, 1965
- 42.9.101 and other rules - Pass-through Entities, p. 1919
- 42.12.104 and other rules - Liquor Licensing, p. 1303

- 42.15.601 and other rules - Medical Savings Accounts for Personal Income Taxes, p. 551, 1974
- 42.15.802 and other rules - Taxation of Family Education Savings Accounts, p. 414, 1031
- 42.17.101 and other rules - Business and Estimated Payment Taxes, p. 2054
- 42.19.401 and other rules - Extended Property Tax Assistance Program and Other Property Tax Rules, p. 45, 490
- 42.20.620 and other rules - Industrial, Centrally Assessed and Agricultural Property, p. 1313, 2106
- 42.20.625 and other rule - Property Taxes, p. 557, 1211
- 42.21.113 and other rules - Personal, Industrial and Centrally Assessed Property Tax Trend Table Updates, p. 2077
- 42.24.214 Corporation Taxes and Multi-state Tax Commission, p. 51, 1035
- 42.26.302 and other rules - Water's-Edge Election for Multinational Corporations, p. 70, 1034
- 42.31.101 and other rules - Cigarette and Tobacco Taxes, p. 1925

SECRETARY OF STATE, Title 44

I Filing for Certification Authorities, p. 1945

(Commissioner of Political Practices)

44.12.101A and other rules - Lobbying - Regulation of Lobbying, p. 463, 1979

BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the *Montana Administrative Register* a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in August 2004, appear. Vacancies scheduled to appear from October 1, 2004, through December 31, 2004, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of September 2, 2004.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM AUGUST 2004

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Nursing (Labor and Industry)			
Ms. Kathy Hayden Missoula	Governor	Badgley	8/5/2004 7/1/2008
Qualifications (if required): licensed registered professional nurse			
Ms. Susan Raph Shelby	Governor	McNeely	8/5/2004 7/1/2008
Qualifications (if required): registered nurse			
Committee on Telecommunications Access Services for Persons with Disabilities (Public Health and Human Services)			
Mr. Ron Bibler Great Falls	Governor	reappointed	8/3/2004 7/1/2007
Qualifications (if required): person with a disability			
Ms. Chris Huth Helena	Governor	reappointed	8/3/2004 7/1/2007
Qualifications (if required): non-disabled businessperson			
Ms. Linda Kirkland Helena	Governor	reappointed	8/3/2004 7/1/2007
Qualifications (if required): representative of the Department of Administration			
Mr. Gilbert Martell Billings	Governor	Havdahl	8/3/2004 7/1/2007
Qualifications (if required): hard of hearing			
Mr. Joe Mathews Helena	Governor	reappointed	8/3/2004 7/1/2007
Qualifications (if required): representative of the Department of Public Health and Human Services			

BOARD AND COUNCIL APPOINTEES FROM AUGUST 2004

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Family Education Savings Program Oversight Committee (Commissioner of Higher Education)			
Mr. Steve Bender	Governor	Darkenwald	8/5/2004
Helena			7/1/2008
Qualifications (if required): state treasurer			
Ms. Kala French	Governor	Jasmin	8/5/2004
Kalispell			7/1/2008
Qualifications (if required): representative of the Board of Regents			
Mr. Ed Jasmin	Governor	Ellis	8/5/2004
Bigfork			7/1/2008
Qualifications (if required): public member			
Family Support Services Advisory Council (Public Health and Human Services)			
Mr. John Clymer	Governor	Korth	8/2/2004
Helena			10/1/2004
Qualifications (if required): agency representative			
Montana Wheat and Barley Committee (Agriculture)			
Mr. Donald L. Fast	Governor	reappointed	8/20/2004
Glasgow			8/20/2007
Qualifications (if required): representative of District 2 and a Republican			
Ms. Janice Mattson	Governor	reappointed	8/20/2004
Chester			8/20/2007
Qualifications (if required): representative of District 3 and a Democrat			
Petroleum Tank Release Compensation Board (Environmental Quality)			
Mr. Greg Cross	Governor	reappointed	8/3/2004
Billings			6/30/2007
Qualifications (if required): representative of independent petroleum marketers			

BOARD AND COUNCIL APPOINTEES FROM AUGUST 2004

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Petroleum Tank Release Compensation Board (Environmental Quality) cont.			
Mr. Roger A. Noble	Governor	Murphy	8/3/2004
Kalispell			6/30/2007
Qualifications (if required): representative of the petroleum services industry			
Mr. Shaun Peterson	Governor	Basso	8/3/2004
Helena			6/30/2007
Qualifications (if required): representative of the insurance industry			
Teachers' Retirement Board (Administration)			
Ms. Kari Peiffer	Governor	Bogut	8/11/2004
Kalispell			7/1/2007
Qualifications (if required): active teacher			

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2004 through DECEMBER 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Occupational Therapy Practice (Commerce) Ms. Shelbi Berg, Marion Qualifications (if required): occupational therapist	Governor	12/31/2004
Board of Outfitters (Governor) Mr. Jack Billingsley, Glasgow Qualifications (if required): fishing and hunting outfitter	Governor	10/1/2004
Board of Speech-Language Pathologists and Audiologists (Labor and Industry) Ms. Sheila Skinner, Belgrade Qualifications (if required): speech-language pathologist	Governor	12/31/2004
Ms. Julie Fiske, Kalispell Qualifications (if required): public member who is a consumer	Governor	12/31/2004
Mr. Darrell Micken, Bozeman Qualifications (if required): licensed audiologist	Governor	12/31/2004
Commissioner of Political Practices Advisory Council (Governor's Office) Ms. Linda Vaughey, Helena Qualifications (if required): Commissioner of Political Practices	Governor	12/31/2004
Ms. Mona Jamison, Helena Qualifications (if required): public member	Governor	12/31/2004
Sen. Joe Tropila, Great Falls Qualifications (if required): member of the Montana Senate	Governor	12/31/2004
Ms. Ellen Engstedt, Helena Qualifications (if required): public member	Governor	12/31/2004
Rep. John Sinrud, Belgrade Qualifications (if required): member of the Montana House of Representatives	Governor	12/31/2004

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2004 through DECEMBER 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Commissioner of Political Practices Advisory Council (Governor's Office) cont.		
Mr. Chuck Denowh, Helena	Governor	12/31/2004
Qualifications (if required): designee of the chair of the Montana Republican Party		
Mr. David Hunter, Helena	Governor	12/31/2004
Qualifications (if required): designee of the chair of the Montana Democratic Party		
Mr. James Santoro, Helena	Governor	12/31/2004
Qualifications (if required): representative of the Governor's Office		
Mr. Jim Scheier, Helena	Governor	12/31/2004
Qualifications (if required): attorney who provides legal services for the Commissioner of Political Practices		
Director Montana Department of Military Affairs and Adjutant General National Guard (Military Affairs)		
Brig. General Randall Mosley, Helena	Governor	12/31/2004
Qualifications (if required): appointed		
Family Support Services Advisory Council (Public Health and Human Services)		
Sen. Mike Cooney, Helena	Governor	10/1/2004
Qualifications (if required): representative of public awareness and education organizations		
Ms. Sylvia Danforth, Miles City	Governor	10/1/2004
Qualifications (if required): Provider/Part C Agency		
Ms. Elizabeth J. Harter, Glasgow	Governor	10/1/2004
Qualifications (if required): agency rep/foster care		
Mr. Ted Maloney, Missoula	Governor	10/1/2004
Qualifications (if required): representative at large		

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2004 through DECEMBER 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Family Support Services Advisory Council (Public Health and Human Services) cont.		
Mr. Dan McCarthy, Helena Qualifications (if required): SEA Agency representative/preschool specialist	Governor	10/1/2004
Ms. Sandi Marisdotter, Helena Qualifications (if required): Provider/Part C Agency	Governor	10/1/2004
Ms. Cristin Volinkaty, Missoula Qualifications (if required): Provider/Part C Agency	Governor	10/1/2004
Ms. Barbara Stefanic, Laurel Qualifications (if required): LEA representative for special education cooperatives	Governor	10/1/2004
Ms. Jackie Jandt, Helena Qualifications (if required): agency rep/mental health	Governor	10/1/2004
Sen. Gerald Pease, Lodge Grass Qualifications (if required): representative of Parents Region III and the legislature	Governor	10/1/2004
Rep. Mary Anne Guggenheim, Helena Qualifications (if required): representative of medical/health care services	Governor	10/1/2004
Ms. Patti Russ, Helena Qualifications (if required): agency rep/child care	Governor	10/1/2004
Ms. Ann Marie Johnson, Missoula Qualifications (if required): representative of Headstart	Governor	10/1/2004
Ms. Lucy Hart-Paulson, Missoula Qualifications (if required): representative of therapists	Governor	10/1/2004
Ms. Sandy McGennis, Great Falls Qualifications (if required): Provider/Montana School for the Deaf and Blind	Governor	10/1/2004

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2004 through DECEMBER 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Family Support Services Advisory Council (Public Health and Human Services) cont.		
Ms. Denise King, Helena Qualifications (if required): agency rep/EPSTDT/Medicaid	Governor	10/1/2004
Ms. Phyllis Astheimer, Bozeman Qualifications (if required): family support specialist	Governor	10/1/2004
Ms. Barbara Smith, Helena Qualifications (if required): agency representative from Children's Special Health Services	Governor	10/1/2004
Mr. Brian Lenhardt, Havre Qualifications (if required): representative of Parents Region II	Governor	10/1/2004
Ms. Rene Lenhardt, Havre Qualifications (if required): representative of Parents Region II	Governor	10/1/2004
Ms. Novelene Martin, Miles City Qualifications (if required): field services specialist	Governor	10/1/2004
Ms. Kelly Johnson, Frenchtown Qualifications (if required): representative of Parents at Large	Governor	10/1/2004
Mr. Ron Herman, Helena Qualifications (if required): representative of a state agency and the state insurance commissioner	Governor	10/1/2004
Ms. Susie Morrison, Missoula Qualifications (if required): representative of Personnel Preparation for Higher Education	Governor	10/1/2004

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2004 through DECEMBER 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Family Support Services Advisory Council (Public Health and Human Services) cont.		
Ms. Krista Bodvig, Glendive Qualifications (if required): representative of parents in Region 1	Governor	10/1/2004
Ms. Micah Mitchell, Helena Qualifications (if required): parent representative in Region IV	Governor	10/1/2004
Mr. Matthew Rotar, Helena Qualifications (if required): parent representative in Region IV	Governor	10/1/2004
Ms. Diana Colgrove, Eureka Qualifications (if required): parent representative in Region V	Governor	10/1/2004
Ms. Becky Grey Bear, Wolf Point Qualifications (if required): parent representative from Region I	Governor	10/1/2004
Ms. Mary Huston, Richland Qualifications (if required): parent representative from Region 1	Governor	10/1/2004
Mr. John Clymer, Helena Qualifications (if required): agency representative	Governor	10/1/2004
Flathead Basin Commission (Governor)		
Mr. Todd O'Hair, Helena Qualifications (if required): representative of the Governor	Governor	12/31/2004
Governor's Advisory Council on Disability (Administration)		
Ms. Shelley Laing, Kalispell Qualifications (if required): public member	Governor	11/26/2004
Mr. Gene Haire, Helena Qualifications (if required): public member	Governor	11/26/2004

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2004 through DECEMBER 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Advisory Council on Disability (Administration) cont. Mr. David Diehl, East Helena Qualifications (if required): public member	Governor	11/26/2004
Ms. Katherine Kountz, Helena Qualifications (if required): ex-officio member	Governor	11/26/2004
Mr. Brian Tocher, Great Falls Qualifications (if required): public member	Governor	11/26/2004
Ms. Bernadine Gantert, Missoula Qualifications (if required): public member	Governor	11/26/2004
Dr. Margaret J. Osika, Warm Springs Qualifications (if required): public member	Governor	11/26/2004
Mr. Edward "Ted" Robbins, Great Falls Qualifications (if required): public member	Governor	11/26/2004
Governor's HIV/AIDS Advisory Council (Public Health and Human Services) Mr. Frank Gary, Butte Qualifications (if required): public member	Governor	11/26/2004
Mr. Steven C. Yeakel, Helena Qualifications (if required): public member	Governor	11/26/2004
Mr. David Herrera, Missoula Qualifications (if required): public member	Governor	11/26/2004
Sen. John Bohlinger, Billings Qualifications (if required): legislator	Governor	11/26/2004

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2004 through DECEMBER 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's HIV/AIDS Advisory Council (Public Health and Human Services) cont. Mr. Fred Zaino, Conrad Qualifications (if required): public member	Governor	11/26/2004
Ms. Annie Tavary, Helena Qualifications (if required): public member	Governor	11/26/2004
Pastor Jack Preston, Lincoln Qualifications (if required): public member	Governor	11/26/2004
Sister Mary Vincentia Maronick, Billings Qualifications (if required): public member	Governor	11/26/2004
Ms. Kathryn L. Hall, Billings Qualifications (if required): public member	Governor	11/26/2004
Ms. LeeAnn Bruisedhead, Lame Deer Qualifications (if required): Native American	Governor	11/26/2004
Mr. Steve Woodward, Missoula Qualifications (if required): public member	Governor	11/26/2004
Ms. Aimee Sandon, Helena Qualifications (if required): public member	Governor	11/26/2004
Ms. Becky Ketterling, Billings Qualifications (if required): public member	Governor	11/26/2004
Ms. Mary Jane Nealon, Missoula Qualifications (if required): public member	Governor	11/26/2004
Ms. Tonya Santoro, Helena Qualifications (if required): student representative	Governor	11/26/2004

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2004 through DECEMBER 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Public Health Care Advisory Council (Public Health and Human Services)		
Ms. June Hermanson, Billings Qualifications (if required): consumer	Governor	12/31/2004
Ms. Rose Hughes, Helena Qualifications (if required): representative of long term care	Governor	12/31/2004
Rep. Loren Soft, Billings Qualifications (if required): representative of chemical dependency	Governor	12/31/2004
Rep. Betty Lou Kasten, Brockway Qualifications (if required): public member	Governor	12/31/2004
Dr. R. D. Marks, Missoula Qualifications (if required): physician	Governor	12/31/2004
Sen. Bob Keenan, Bigfork Qualifications (if required): representative of the legislature	Governor	12/31/2004
Rep. Trudi Schmidt, Great Falls Qualifications (if required): representative of the legislature	Governor	12/31/2004
Rep. Dan Hurwitz, White Sulphur Springs Qualifications (if required): representative of the legislature	Governor	12/31/2004
Mr. John Pipe, Wolf Point Qualifications (if required): representative of Native Americans	Governor	12/31/2004
Rep. Edith J. Clark, Sweet Grass Qualifications (if required): representative of the legislature	Governor	12/31/2004
Rep. Jonathan Windy Boy, Box Elder Qualifications (if required): representative of the legislature	Governor	12/31/2004

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2004 through DECEMBER 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Public Health Care Advisory Council (Public Health and Human Services) cont.		
Ms. Mary Caferro, Helena Qualifications (if required): public member	Governor	12/31/2004
Ms. Twila Costigan, Helena Qualifications (if required): consumer	Governor	12/31/2004
Dr. Gary Mihelish, Helena Qualifications (if required): dentist	Governor	12/31/2004
Mr. James Kiser, Butte Qualifications (if required): representative of hospitals	Governor	12/31/2004
Mr. Bob Bartholomew, Helena Qualifications (if required): representative of senior citizens	Governor	12/31/2004
Ms. Tanya Ask, Helena Qualifications (if required): representative of the insurance industry	Governor	12/31/2004
Dr. Patsy Vargo, Conrad Qualifications (if required): representative of rural health	Governor	12/31/2004
Homeland Security Task Force (Military Affairs)		
Mr. Dan McGowan, Helena Qualifications (if required): DES Administrator and Chairman	Governor	10/1/2004
Independent Living Council (Public Health and Human Services)		
Ms. Shelley Laing, Kalispell Qualifications (if required): representing consumers	Director	12/1/2004
Ms. Flo Kiewel, Missoula Qualifications (if required): none specified	Director	12/24/2004

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2004 through DECEMBER 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Independent Living Council (Public Health and Human Services) cont.		
Mr. Wilfred "Max" Bear, Poplar Qualifications (if required): none specified	Director	12/24/2004
Mr. Tom Tripp, Butte Qualifications (if required): none specified	Director	12/24/2004
Judicial Nomination Commission (Justice)		
Mr. L. Randall Bishop, Billings Qualifications (if required): Appointed	Supreme Court	12/31/2004
Lewis and Clark Bicentennial Commission (Historical Society)		
Mr. Hal J. Stearns, Missoula Qualifications (if required): public member	Governor	10/1/2004
Mr. Wyman McDonald, Helena Qualifications (if required): representative of a Montana Indian tribe	Governor	10/1/2004
Ms. Jeanette W. Rasmussen, Choteau Qualifications (if required): public member	Governor	10/1/2004
Montana Alfalfa Seed Committee (Agriculture)		
Mr. John Markegard, Laurel Qualifications (if required): representative of alfalfa seed growers industry and alfalfa leaf-cutting bee industry	Governor	12/21/2004
Mr. Ernest Johnson, Chinook Qualifications (if required): representative of alfalfa seed growers industry	Governor	12/21/2004
Montana Licensed Addiction Counselor's Program Advisory Council (Labor and Industry)		
Ms. Karen Workman, Great Falls Qualifications (if required): university member	Director	11/25/2004

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2004 through DECEMBER 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Licensed Addiction Counselor's Program Advisory Council (Labor and Industry)		
cont.		
Ms. Marian Scofield, Billings	Director	11/25/2004
Qualifications (if required):	representing Montana Association of Alcoholism and Drug Abuse Counselors	
Mr. Joel Wagner, Billings	Director	11/25/2004
Qualifications (if required):	public member	
Montana Small Business Development Center Advisory Council (Commerce)		
Rep. Ronald R. Devlin, Terry	Director	12/20/2004
Qualifications (if required):	none specified	
Sen. Jon Tester, Big Sandy	Director	12/20/2004
Qualifications (if required):	none specified	
Ms. Toni Broadbent, Helena	Director	12/20/2004
Qualifications (if required):	none specified	
Mr. Ken Green, Whitefish	Director	12/20/2004
Qualifications (if required):	none specified	
Mr. Paul Tuss, Havre	Director	12/20/2004
Qualifications (if required):	none specified	
Mr. John Langenheim, Bozeman	Director	12/20/2004
Qualifications (if required):	none specified	
Ms. Michelle Johnston, Helena	Director	12/20/2004
Qualifications (if required):	none specified	
Ms. Brenda Burkartsmeier, Billings	Director	12/20/2004
Qualifications (if required):	none specified	

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2004 through DECEMBER 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Small Business Development Center Advisory Council (Commerce) cont. Mr. Steve Holland, Bozeman Qualifications (if required): none specified	Director	12/20/2004
Ms. Kathy Jones, Great Falls Qualifications (if required): none specified	Director	12/20/2004
Mr. Dan Killoy, Miles City Qualifications (if required): none specified	Director	12/20/2004
Mr. Joe Unterreiner, Kalispell Qualifications (if required): none specified	Director	12/20/2004
Ms. Maria Valandra, Billings Qualifications (if required): none specified	Director	12/20/2004
Ms. Reatha Montoya, Colstrip Qualifications (if required): none specified	Director	12/20/2004
Montana State Historic Preservation Review Board (Historical Society) Mr. Steve Aaberg, Lewistown Qualifications (if required): archeologist	Governor	10/1/2004
Mr. Paul Filicetti, Missoula Qualifications (if required): historical architect	Governor	10/1/2004
Mr. Rafael Chacon, Lolo Qualifications (if required): architectural historian	Governor	10/1/2004
Montana Vocational Rehabilitation Council (Public Health and Human Services) Ms. Ruth Straley, Helena Qualifications (if required): federally mandated business industry and labor position	Director	11/4/2004

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2004 through DECEMBER 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Noxious Weed Seed Free Forage Advisory Council (Agriculture)		
Mr. W. Ralph Peck, Helena Qualifications (if required): director	Director	12/18/2004
Mr. Dennis Cash, Bozeman Qualifications (if required): ex officio	Director	12/18/2004
Mr. Ray Ditterline, Bozeman Qualifications (if required): agricultural experiment station	Director	12/18/2004
Mr. Kelly Flynn, Townsend Qualifications (if required): outfitters and guides	Director	12/18/2004
Mr. Clay Williams, Livingston Qualifications (if required): weed districts	Director	12/18/2004
Mr. Tim Schaff, Fishtail Qualifications (if required): forage producer	Director	12/18/2004
Mr. Wayne Maughn, Fort Benton Qualifications (if required): livestock/agriculture	Director	12/18/2004
Mr. David Leininger, Lewistown Qualifications (if required): forage producer	Director	12/18/2004
Mr. Ross Wagner, Kalispell Qualifications (if required): forage producer	Director	12/18/2004
Mr. Jim Pfau, Stevensville Qualifications (if required): feed pellets/cubes products	Director	12/18/2004
Mr. Keith Kirscher, Townsend Qualifications (if required): forage producer	Director	12/18/2004

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2004 through DECEMBER 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Noxious Weed Seed Free Forage Advisory Council (Agriculture) cont. Mr. Robert Wagner, Plains Qualifications (if required): weed districts	Director	12/18/2004
Property Tax Exemption Study Committee (Revenue) Mr. Dwaine J. Iverson, Shelby Qualifications (if required): representative of business	Governor	12/31/2004
Sen. Mack Cole, Forsyth Qualifications (if required): representative of local government	Governor	12/31/2004
Mr. William Parker, Malta Qualifications (if required): representative of K-12 public schools	Governor	12/31/2004
Mr. Jim Oliverson, Kalispell Qualifications (if required): representative of a property tax-exempt organization	Governor	12/31/2004
Mr. Gary Hickle, Billings Qualifications (if required): representative of a property tax-exempt organization	Governor	12/31/2004
Mr. Randy Wilke, Helena Qualifications (if required): representative of the executive branch	Governor	12/31/2004
State Trauma Care Committee (Public Health and Human Services) Mr. John M. Mootry, Dillon Qualifications (if required): representative of the Montana Hospital Association	Governor	11/2/2004
Dr. J. Bradley Pickhardt, Missoula Qualifications (if required): representative of the Western Regional Trauma Care Committee	Governor	11/2/2004

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2004 through DECEMBER 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Trauma Care Committee (Public Health and Human Services) cont. Ms. Jennie Catlin Nemec, Helena Qualifications (if required): representative of the Central Regional Trauma Care Committee	Governor	11/2/2004
Dr. Louis Kattine, Missoula Qualifications (if required): representative of the Montana Medical Association	Governor	11/2/2004
Tax Reform Study Committee (Revenue) Mr. Myles Watts, Bozeman Qualifications (if required): representative of agriculture	Governor	12/31/2004
Mr. Ken Morrison, Helena Qualifications (if required): representative of large industry	Governor	12/31/2004
Mr. Jerry Driscoll, Helena Qualifications (if required): representative of labor	Governor	12/31/2004
Ms. Mary Whittinghill, Helena Qualifications (if required): representative of small business	Governor	12/31/2004
Water and Wastewater Operators Advisory Council (Environmental Quality) Ms. Joanne Hall Emrick, Kalispell Qualifications (if required): representative of a municipality	Governor	10/16/2004