

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 22

The Montana Administrative Register (MAR or Register), 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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after print publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end 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 Secretary of State's Office, Administrative Rules Services, at (406) 444-2055.

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

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 2.43.441 pertaining to the	)	AMENDMENT
purchase of service credit through	)	
trustee-to-trustee fund transfers	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On January 10, 2008, the Montana Public Employees' Retirement Board proposes to amend the above-stated rule.

2. The Montana Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Montana Public Employee Retirement Administration no later than 5:00 p.m. on December 10, 2007, to advise us of the nature of the accommodation that you need. Please contact Angela Salvitti, Montana Public Employee Retirement Administration, 100 North Park Ave., Suite 200, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-2578; fax (406) 444-5428; TDD (406) 444-1421; or e-mail asalvitti@mt.gov.

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

2.43.441 PURCHASE OF SERVICE THROUGH DIRECT TRUSTEE-TO-TRUSTEE TRANSFER OF FUNDS (1) Subject to (2), any time prior to retirement, a member who is statutorily eligible to do so may purchase service in the member's current retirement system through a rollover of funds from an eligible retirement plan account belonging to the member or a direct trustee-to-trustee transfer of funds from the member's 26 USC 403(b) tax-sheltered annuity or 26 USC 457 governmental plan.

(2) A direct trustee-to-trustee transfer of funds from the member's 26 USC 403(b) tax-sheltered annuity or 26 USC 457 governmental plan prior to the member's severance from employment can be made only if the transfer is either for the purchase of permissive service credit (as defined in section 415(n)(3)(A) of the Internal Revenue Code) under the receiving defined benefit governmental plan or a repayment to which section 415 of the code does not apply by reason of section 415(k)(3) of the code. A purchase of service pursuant to 19-3-513, 19-5-409, 19-6-804, 19-7-804, 19-8-904, 19-9-411, or 19-13-405, MCA, is ~~not~~ a purchase of permissive service credit.

AUTH: 19-2-403, 19-2-1010, 19-3-2104, MCA

IMP: 19-2-704, 19-3-2113, 19-3-2115, MCA

STATEMENT OF REASONABLE NECESSITY: Section 19-2-704, MCA, gives the Public Employees' Retirement Board the authority to promulgate rules regarding the purchase of service credit in the various retirement systems it administers. Sections 19-3-513, 19-5-409, 19-6-804, 19-7-804, 19-8-904, 19-9-411, and 19-13-405, MCA, allow members to purchase service credit that is unrelated to the members' actual employment service. Recent changes in federal law now permit the purchase of that type of service credit on a pre-tax basis through a direct trustee-to-trustee transfer of funds from the member's 403(b) or 457 governmental plan. This purchase can occur without the member terminating employment or membership in the retirement plan. The ability to purchase service in this manner would be a great benefit to retirement plan members. However, the current rule reflects the previous federal law and prohibits purchasing service credit in this manner. Accordingly, this proposed rule amendment is required in order to allow the members to take advantage of the federal law changes and purchase service credit that is unrelated to actual service on a pre-tax basis through a direct trustee-to-trustee transfer of funds from the member's 403(b) or 457 governmental plan.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Roxanne Minnehan, Executive Director, Montana Public Employee Retirement Administration, 100 North Park Ave., Suite 200, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-2578; fax (406) 444-5428; TDD (406) 444-1421; or e-mail [rminnehan@mt.gov](mailto:rminnehan@mt.gov) and must be received no later than 5:00 p.m., December 19, 2007.

5. If persons who are directly affected by the proposed action 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 the Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; fax (406) 444-5428; e-mail [rminnehan@mt.gov](mailto:rminnehan@mt.gov). Written requests must be received no later than 5:00 p.m., December 19, 2007.

6. If the board receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. The Montana Public Employee Retirement Administration maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the

request. Such written request may be sent or delivered to the contact person in paragraph 4 above, or may be made by completing a request form at any rules hearing held by the Montana Public Employee Retirement Administration.

8. An electronic copy of this Proposal Notice is available through the Montana Public Employee Retirement Administration web site at <http://www.mpera.mt.gov/rules.asp>. The Montana Public Employee Retirement Administration strives to make the electronic copy of the 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 Montana Public Employee Retirement Administration works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

/s/ Scott A. Miller  
Scott A. Miller, Legal Counsel and  
Rule Reviewer

/s/ N. Jay Klawon  
N. Jay Klawon, President  
Public Employees' Retirement Board

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

Certified to the Secretary of State November 13, 2007.

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

In the matter of the adoption of New ) NOTICE OF PUBLIC HEARING ON  
Rules I through VI pertaining to ) PROPOSED ADOPTION  
Permitting the Recognition of )  
Preferred Mortality Tables for Use in )  
Determining Minimum Reserve )  
Liabilities )

TO: All Concerned Persons

1. On December 12, 2007, at 10:00 a.m., the State Auditor and Commissioner of Insurance will hold a public hearing in the 2nd floor conference room of the State Auditor's Office, 840 Helena Ave., Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The State Auditor and Commissioner of Insurance will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., December 5, 2007, to advise us of the nature of the accommodation that you need. Please contact Darla Sautter, State Auditor's Office, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3497; or e-mail dsautter@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I AUTHORITY (1) This subchapter's rules are promulgated by the Commissioner of Insurance pursuant to 33-2-523, MCA, and ARM 6.6.6707.

AUTH: 33-1-313, MCA  
IMP: 33-2-523, MCA

NEW RULE II PURPOSE (1) The purpose of this subchapter's rules is to recognize, permit, and prescribe the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities in accordance with 33-2-523, MCA, and ARM 6.6.6707.

AUTH: 33-1-313, MCA  
IMP: 33-2-523, MCA

NEW RULE III DEFINITIONS For the purposes of [New Rules I through VI]:  
(1) "2001 CSO Mortality Table" means the mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table, developed by the Society of Actuaries Individual Life Insurance Valuation Mortality



Task Force, and adopted by the NAIC in December 2002. The 2001 CSO Mortality Table is included in the "Proceedings of the NAIC (2nd Quarter 2002)," and supplemented by the 2001 CSO Preferred Class Structure Mortality Table defined in (2). Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table, the select and ultimate form of that table, both the smoker and nonsmoker mortality tables, and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables. Mortality tables in the 2001 CSO Mortality Table include the following:

- (a) "2001 CSO Mortality Table (F)" means that mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table;
- (b) "2001 CSO Mortality Table (M)" means that mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table;
- (c) "composite mortality tables" means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers; and
- (d) "smoker and nonsmoker mortality tables" means mortality tables with separate rates of mortality for smokers and nonsmokers.

(2) "2001 CSO Preferred Class Structure Mortality Table" means mortality tables with separate rates of mortality for Super Preferred Nonsmokers, Preferred Nonsmokers, Residual Standard Nonsmokers, Preferred Smokers, and Residual Standard Smoker splits of the 2001 CSO Nonsmoker and Smoker tables as adopted by the NAIC at the September 2006 national meeting and published in the "NAIC Proceedings (3rd quarter 2006)." Unless the context indicates otherwise, the "2001 CSO Preferred Class Structure Mortality Table" includes both the ultimate form of that table, and the select and ultimate form of that table. It includes both the smoker and nonsmoker mortality tables. It includes both the male and female mortality tables, and the gender composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality table.

(3) "Statistical agent" means an entity with proven systems for protecting the confidentiality of individual insured and insurer information; demonstrated resources for, and history of ongoing electronic communications and data transfer ensuring data integrity with insurers, which are its members or subscribers; and a history of, and means for aggregation of data and accurate promulgation of the experience modifications in a timely manner.

AUTH: 33-1-313, MCA

IMP: 33-2-523, MCA

#### NEW RULE IV 2001 CSO PREFERRED CLASS STRUCTURE TABLE

(1) At the election of the company, for each calendar year of issue, for any one or more specified plans of insurance and subject to satisfying the conditions stated in this rule, the 2001 CSO Preferred Class Structure Mortality Table may be substituted in place of the 2001 CSO Smoker or Nonsmoker Mortality Table as the minimum valuation standard for policies issued on or after April 1, 2008. No such election shall be made until the company demonstrates at least 20% of the business to be valued on this table is in one or more of the preferred classes. A table from the 2001 CSO Preferred Class Structure Mortality Table used in place of a 2001 CSO

Mortality Table, pursuant to the requirements of this rule, will be treated as part of the 2001 CSO Mortality Table only for purposes of reserve valuation pursuant to the requirements of the NAIC model regulation, "Recognition of the 2001 CSO Mortality Table for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits Model Regulation."

AUTH: 33-1-313, MCA  
IMP: 33-2-523, MCA

NEW RULE V CONDITIONS (1) For each plan of insurance with separate rates for preferred and standard nonsmoker lives, an insurer may use the Super Preferred Nonsmoker, Preferred Nonsmoker, and Residual Standard Nonsmoker tables to substitute for the nonsmoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, except for business valued under the Residual Standard Nonsmoker Table, the appointed actuary shall certify that:

(a) the present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class; and

(b) the present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.

(2) For each plan of insurance with separate rates for preferred and standard smoker lives, an insurer may use the Preferred Smoker and Residual Standard Smoker tables to substitute for the smoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, for business valued under the Preferred Smoker Table, the appointed actuary shall certify that:

(a) the present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the preferred smoker valuation basis table corresponding to the valuation table being used for that class; and

(b) the present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the preferred smoker valuation basic table.

(3) Unless exempted by the commissioner, every authorized insurer using the 2001 CSO Preferred Class Structure Table shall annually file with the commissioner, with the NAIC, or with a statistical agent designated by the NAIC and acceptable to the commissioner, statistical reports showing mortality and such other information as the commissioner may deem necessary or expedient for the administration of the provisions of this rule. The form of the reports shall be

established by the commissioner, or the commissioner may require the use of a form established by the NAIC or by a statistical agent designated by the NAIC and acceptable to the commissioner.

AUTH: 33-1-313, MCA  
IMP: 33-2-523, MCA

NEW RULE VI SEPARABILITY (1) For the rules in this subchapter, if a part of a rule is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of a rule is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

AUTH: 33-1-313, MCA  
IMP: 33-2-523, MCA

STATEMENT OF REASONABLE NECESSITY; It is necessary to adopt New Rule I to show the statutory authority for enacting the new rules. It is also necessary to cite the companion rule which authorizes the use of mortality tables adopted by the NAIC after January 1, 2000.

It is necessary to adopt New Rule II in order to describe the purpose of the rules, which is to reflect differences in mortality in determining reserve liabilities. Reserve liabilities are set to ensure solvency of life insurance companies. Additionally, the proposed rules promote uniformity among states since the 2001 CSO Mortality Tables will most likely be adopted by a majority of states. Uniformity will ease the administrative burden on insurers resulting in speed to market for insurance products.

It is necessary to adopt New Rule III to define the various types of mortality tables, beyond standard mortality tables, to include preferred smoker and nonsmoker mortality tables from 2001. In general, insured life mortality has improved since the adoption of the 1980 CSO mortality table. Use of lower mortality generally results in lower reserve liabilities. As a result, companies may reduce premiums or other factors, resulting in lower insurance costs to the consumer.

It is necessary to adopt New Rule IV which allows the use of preferred mortality tables as the minimum valuation standard. The rules allowing a split of the 2001 CSO Mortality Tables was passed to maintain a "level playing field" between term life insurers and whole life insurers. Even with the 2001 CSO Mortality Table, but not including the preferred class structure, the reserve for term life insurance is about twice the economic reserve for whole life insurers. With term life insurers having twice the economic reserves compared to whole life insurers, it is forcing term life insurers out of the market place, or forcing the term life insurer to reinsure the business written offshore as a result of economic capital requirements.

It is necessary to adopt New Rule V to allow insurance companies to specifically break down the types of preferred smokers and nonsmokers into various tables.

Additionally, several of the larger term insurance companies did not submit data during the data call when the Society of Actuaries did a study that produced the 2001 CSO Mortality Table. These larger term insurers had a much better experience than the 2001 CSO Mortality Table reflects. Therefore, this specific rule forces a life insurer to file statistical information concerning the 2001 CSO Preferred Class Mortality Tables. In this way, the next set of Preferred Tables will be more accurate.

It is necessary to adopt New Rule VI to assure that if one part of the rule is determined to violate state or federal constitutional or statutory law, then the other parts of the rule remain in effect.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Kevin F. Phillips, Staff Attorney, State Auditor's Office, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-2040; fax (406) 444-3497; or e-mail [kphillips2@mt.gov](mailto:kphillips2@mt.gov), and must be received no later than 5:00 p.m., December 20, 2007.

5. Kevin F. Phillips, State Auditor's Office, has been designated to preside over and conduct this hearing.

6. The department maintains a list of concerned persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Such written request may be mailed or delivered to Darla Sautter, 840 Helena Ave., Helena, Montana 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3497; or e-mail [dsautter@mt.gov](mailto:dsautter@mt.gov), or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the 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 Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on November 6, 2007, by regular mail.

/s/ Christina L. Goe  
Christina L. Goe  
Rule Reviewer

/s/ Janice S. VanRiper  
Janice S. VanRiper  
Deputy Insurance Commissioner  
State Auditor/Commissioner of Insurance

Certified to the Secretary of State November 13, 2007.

BEFORE THE DEPARTMENT OF COMMERCE  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING ON  
adoption of New Rule I pertaining to ) PROPOSED ADOPTION  
the administration of the 2008-2009 )  
Federal Community Development )  
Block Grant (CDBG) Program )

TO: All Concerned Persons

1. On December 12, 2007, at 9:30 a.m., the Department of Commerce will hold a public hearing in Room 228 of the Park Avenue Building, 301 South Park Avenue, at Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., November 28, 2007, to advise us of the nature of the accommodation that you need. Please contact Gus Byrom, Department of Commerce, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2777; TDD (406) 841-2702; fax (406) 841-2771; or e-mail gbyrom@mt.gov.

3. The proposed new rule provides as follows:

NEW RULE I INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE 2008-2009 CDBG PROGRAM (1) The Department of Commerce adopts and incorporates by reference the Montana Community Development Block Grant Program 2009 Application Guidelines for Housing and Public Facilities Projects, the Montana Community Development Block Grant Program 2008 Application Guidelines for Housing and Public Facilities Planning Grants, the 2008 Application Guidelines for the Community Development Block Grant Economic Development Program, the Montana Community Development Block Grant Economic Development Program 2008 Application Guidelines for Planning Projects, and the Montana Community Development Block Grant Program 2008-2009 Grant Administration Manual published by it as rules for the administration of the CDBG program.

- (2) The rules incorporated by reference in (1) relate to the following:
  - (a) policies governing the program;
  - (b) requirements for applicants;
  - (c) procedures for evaluating applications;
  - (d) procedures for local project start up;
  - (e) environmental review of project activities;
  - (f) procurement of goods and services;
  - (g) financial management;

- (h) protection of civil rights;
- (i) fair labor standards;
- (j) acquisition of property and relocation of persons displaced thereby;
- (k) administrative considerations specific to public facilities, housing and neighborhood renewal, and economic development projects;
- (l) project audits;
- (m) public relations;
- (n) project monitoring; and
- (o) planning assistance.

(3) Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523 or from the Department of Commerce, Business Resources Division, 301 South Park Avenue, P.O. Box 200505, Helena, Montana 59620-0505.

AUTH: 90-1-103, MCA

IMP: 90-1-103, MCA

REASON: It is reasonably necessary to adopt this new rule because the federal regulations governing the state's administration of the 2008-2009 CDBG program and 90-1-103, MCA, require the department to adopt rules to implement the program. Local government entities must have these application guidelines before the entities may apply to the department for financial assistance under the CDBG program. The Application Guidelines describe the federal and state requirements with which local governments must comply in order to apply for CDBG funds. The Grant Administration Manual is primarily a restatement and explanation of existing federal and state statutory and regulatory requirements, as well as additional departmental requirements, with which local CDBG recipients must comply in administering their CDBG projects. The manual includes sample forms and letters, checklists, and explanatory text to help local government officials comply with the variety of requirements that apply to economic development, planning, housing, and public facility projects.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Department of Commerce, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana, 59620-0523; fax (406) 841-2771; or e-mail [gbyrom@mt.gov](mailto:gbyrom@mt.gov); or to the Business Resources Division, 301 South Park Avenue, P.O. Box 200505, Helena, Montana 59620-0505; fax (406) 841-2731, and must be received no later than 5:00 p.m., December 20, 2007.

5. Gus Byrom, Department of Commerce, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have

their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be sent or delivered to the Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501, by fax to (406) 841-2701, by e-mail to lgregg@mt.gov, or by completing a request form at any rules hearing held by the department.

7. An electronic copy of this Notice of Proposed Adoption is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the 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 Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

/s/ G. MARTIN TUTTLE  
G. MARTIN TUTTLE  
Rule Reviewer

/s/ ANTHONY J. PREITE  
ANTHONY J. PREITE  
Director  
Department of Commerce

Certified to the Secretary of State November 13, 2007.



BEFORE THE DEPARTMENT OF COMMERCE  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING ON  
adoption of New Rule I pertaining to ) PROPOSED ADOPTION  
the submission and review of )  
applications to the Treasure State )  
Endowment Program (TSEP) )

TO: All Concerned Persons

1. On December 12, 2007, at 1:30 p.m, the Department of Commerce will hold a public hearing in Room 228 of the Park Avenue Building, 301 South Park Avenue, at Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., November 28, 2007, to advise us of the nature of the accommodation that you need. Please contact Lisa Huff, Community Development Division, Department of Commerce, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2770; TDD (406) 841-2702; fax (406) 841-2771; or e-mail LHuff@mt.gov.

3. The proposed new rule provides as follows:

NEW RULE I INCORPORATION BY REFERENCE OF RULES GOVERNING THE SUBMISSION AND REVIEW OF APPLICATIONS FOR FUNDING UNDER THE TREASURE STATE ENDOWMENT PROGRAM (1) The Department of Commerce adopts and incorporates by reference the Montana Treasure State Endowment Program Application Guidelines dated 2008 published by it as rules governing the submission and review of applications under the TSEP program.

(2) The rules incorporated by reference in (1) relate to the following:

- (a) eligible applicants and projects;
- (b) types of grants available under TSEP;
- (c) general requirements for applying for TSEP grants; and
- (d) application ranking criteria and review process.

(3) Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523 or viewed on the department's web site at [http://comdev.mt.gov/CDD\\_TSEP\\_Grants.asp](http://comdev.mt.gov/CDD_TSEP_Grants.asp).

AUTH: 90-6-710, MCA

IMP: 90-6-710, MCA

REASON: It is reasonably necessary to adopt this rule because local government entities must have these application guidelines before the eligible entities may apply to the department for financial assistance. The guidelines describe the types of projects that are eligible for TSEP grants and the types of grants available. They also describe the review process by which the department evaluates applications and makes funding recommendations to the Legislature.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Department of Commerce, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana, 59620-0523; fax (406) 841-2771; or e-mail jedgcomb@mt.gov, and must be received no later than 5:00 p.m., December 20, 2007.

5. Jim Edgcomb, Department of Commerce, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be sent or delivered to the Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501, by fax to (406) 841-2701, by e-mail to lgregg@mt.gov, or by completing a request form at any rules hearing held by the department.

7. An electronic copy of this Notice of Proposed Adoption is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the 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 Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

/s/ G. MARTIN TUTTLE  
G. MARTIN TUTTLE  
Rule Reviewer

/s/ ANTHONY J. PREITE  
ANTHONY J. PREITE  
Director  
Department of Commerce

Certified to the Secretary of State November 13, 2007.

BEFORE THE BOARD OF HOUSING  
DEPARTMENT OF COMMERCE  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PROPOSED  
amendment of ARM 8.111.501, ) AMENDMENT  
8.111.502, 8.111.503, 8.111.504, )  
8.111.505, 8.111.506, and 8.111.507 ) NO PUBLIC HEARING  
pertaining to housing loans ) CONTEMPLATED

TO: All Concerned Persons

1. On December 28, 2007, the Board of Housing proposes to amend the above-stated rules.

2. The Board of Housing will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., December 12, 2007, to advise us of the nature of the accommodation that you need. Please contact Diana Hall, Board of Housing, Department of Commerce, 301 South Park Avenue, P.O. Box 200528, Helena, Montana 59620-0528; telephone (406) 841-2840; TDD (406) 841-2702; fax (406) 841-2841; or e-mail dihall@mt.gov.

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

8.111.501 PURPOSE OF REGULATIONS (1) These rules are enacted by the board to provide explanation and guidance for:

- (a) loans from the ~~affordable housing revolving~~ housing Montana fund loan account authorized by 90-6-133(2)(a) and 90-6-134, MCA, pursuant to the criteria and procedures described in ARM 8.111.503 through 8.111.507; and
- (b) remains the same.

AUTH: 90-6-136, MCA  
IMP: 90-6-134, MCA

8.111.502 DEFINITIONS When used in these rules, unless the context clearly requires a different meaning:

- (1) through (6) remain the same.
- (7) "RLA HMF loan" means a loan made from the ~~revolving~~ housing Montana fund loan account authorized by 90-6-133(2)(a) and 90-6-134, MCA, and described in ARM 8.111.503 through 8.111.507.
- (8) through (12) remain the same.

AUTH: 90-6-136, MCA  
IMP: 90-6-134, MCA

8.111.503 RLA HMF LOAN ELIGIBLE LOAN ACTIVITIES (1) The board may make an RLA HMF loan for the following purposes:

(a) and (b) remain the same.

(c) acquisition of existing housing stock for the purpose of preservation of or conversion to housing for low-income or moderate income households; ~~and~~

(d) preconstruction technical assistance as described in 90-6-134(4), MCA, for housing for low-income and moderate income households in rural areas and small cities and towns;

(e) acquisition of land for housing developments, land banking, and land trusts; and

(f) short-term, site-based housing vouchers for needy individuals.

(2) An RLA HMF loan may not be made that will supplant existing or available funding for eligible activities.

AUTH: 90-6-136, MCA

IMP: 90-6-134, MCA

8.111.504 RLA HMF LOAN APPLICANT ELIGIBILITY (1) Organizations eligible for RLA HMF loans are agencies or programs of state government, local governments, tribal governments, local housing authorities, nonprofit community or neighborhood based organizations, regional or statewide nonprofit housing assistance organizations, and for-profit housing developers.

(2) remains the same.

AUTH: 90-6-136, MCA

IMP: 90-6-134, MCA

8.111.505 RLA HMF LOAN APPLICATION PROCEDURES

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

(b) an explanation of how the loan will not supplant existing or available funding for the project; ~~and~~

(c) a description of the priority the lien of the board will have in relationship with the liens of other lenders on the project; and

(d) a fee of 1 percent of the requested loan amount.

(3) and (4) remain the same.

AUTH: 90-6-136, MCA

IMP: 90-6-134, MCA

8.111.506 RLA HMF LOAN TERMS AND CONDITIONS (1) An RLA HMF loan shall:

(a) through (e) remain the same.

AUTH: 90-6-136, MCA

IMP: 90-6-133, 90-6-134, MCA

8.111.507 CRITERIA FOR APPROVAL OF RLA HMF LOAN (1) The board will review the following criteria in considering an application for an RLA HMF loan:

(a) through (c) remain the same.

(d) the priority to be given the board's lien for the RLA HMF loan in relation to the amount of the RLA HMF loan and the priority given the liens and the amount of the loans of the other lenders on the project.

AUTH: 90-6-136, MCA

IMP: 90-6-134, MCA

REASON: It is necessary to amend the rules to implement changes enacted by Chapter 426, 2007 Laws of Montana (SB 491), which changed the name of the affordable housing revolving loan account to the housing Montana fund.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Mathew Rude, Multifamily Program Manager, Board of Housing, Department of Commerce, 301 South Park Avenue, P.O. Box 200528, Helena, Montana 59620-0528; telephone (406) 841-2845; fax (406) 841-2841; or e-mail [mrude@mt.gov](mailto:mrude@mt.gov), and must be received no later than 5:00 p.m., December 21, 2007.

5. If persons who are directly affected by the proposed action 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 to Mathew Rude at the above address no later than 5:00 p.m., December 21, 2007.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons 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 directly affected has been determined to be ten based on the number of persons on various mailing lists.

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 that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be sent or delivered to the Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501, by fax to (406) 841-2701, by e-mail to [lgregg@mt.gov](mailto:lgregg@mt.gov), or by completing a request form at any rules hearing held by the department.

8. An electronic copy of this Notice of Proposed Amendment is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the 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 Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The bill sponsor was notified by regular mail on November 8, 2007.

MONTANA BOARD OF HOUSING  
J. P. Crowley, Chair

/s/ G. MARTIN TUTTLE  
G. MARTIN TUTTLE  
Rule Reviewer

/s/ ANTHONY J. PREITE  
ANTHONY J. PREITE  
Director  
Department of Commerce

Certified to the Secretary of State November 13, 2007.

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the proposed amendment )  
of ARM 23.16.102, 23.16.103, 23.16.117, )  
23.16.401, 23.16.502, 23.16.508, )  
23.16.1245, 23.16.1716, 23.16.1914, )  
23.16.1915, 23.16.1916, 23.16.1916A, )  
23.16.2001, 23.16.2107, and )  
23.16.2302 concerning the effective date )  
of forms, removal of Form 1 from the )  
rules, and application time limit for )  
utilizing an approved automated )  
accounting and reporting system as part of )  
a vending agreement )

NOTICE OF EXTENSION OF  
COMMENT PERIOD ON  
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On October 25, 2007, the Department of Justice published MAR Notice No. 23-16-190 regarding the public hearing on the proposed amendment of the above-stated rules at page 1572, 2007 Montana Administrative Register, Issue Number 20.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process 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 November 28, 2007, to advise us of the nature of the accommodation that you need. Please contact Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; telephone (406) 444-1971; Fax (406) 444-9157; Montana Relay Service 711; or e-mail [rask@mt.gov](mailto:rask@mt.gov).

3. The department is extending the comment period on ARM 23.16.2107 because it was brought to the division's attention that its original statement of rationale and justification failed to state the reason for the proposed rule change, but merely described the effect of the amendment. This extension period will allow interested persons to know the rationale for the proposed rule change and give them an opportunity to comment on the proposed amendment prior to adoption. The public hearing was held on November 15, 2007.

4. The rule is proposed to be amended exactly as shown in the previous notice. The expanded statement of reasonable necessity provides as follows:

RATIONALE AND JUSTIFICATION: The proposed amendment is reasonable because it eliminates unnecessary delay in the application and approval process for location operators to use an approved automated accounting and reporting system when their record keeping functions will be performed by a route operator. The

division believes that because a route operator will have already demonstrated experience and competence in using an approved automated accounting and reporting system, there is not a need for the same testing prior to approval of a location operator's use of the automated accounting and reporting system. The application advance time for approval is therefore shorter. This rule amendment will eliminate that unnecessary delay and will result in more operators using an automated reporting system sooner.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; Fax (406) 444-9157; or e-mail [rask@mt.gov](mailto:rask@mt.gov), and must be received no later than December 6, 2007.

6. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State 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 Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

/s/ Jon Ellingson  
JON ELLINGSON  
Rule Reviewer

Certified to the Secretary of State November 13, 2007.



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

In the matter of the proposed	)	NOTICE OF PROPOSED
amendment of ARM 32.28.709,	)	AMENDMENT
32.28.801, and 32.28.1906	)	
pertaining to horse racing	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On December 21, 2007, the Board of Horse Racing proposes to amend the above-stated rules.

2. The Board of Horse Racing 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 Board of Horse Racing no later than 5:00 p.m. on December 12, 2007 to advise us of the nature of the accommodation that you need. Please contact Marlys Stark, P.O. Box 200512, Helena, MT 59620-0512; phone (406) 444-4287; TTD number: 1-800-253-4091; fax: (406) 444-4305; e-mail: mstark@mt.gov.

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

32.28.709 PONY PERSONS (1) remains the same.

(2) No pony person or outrider shall pony or parade any horse on the track without wearing a protective helmet and boots with heels. ~~Each pony person must wear a safety vest when riding on the track. The safety vest shall be designed to provide shock absorbing protection to the upper body.~~

(3) through (5) remain the same.

AUTH: 23-4-104, 23-4-202, MCA

IMP: 23-4-104, MCA

REASON: The proposed rule change is necessary to eliminate the requirement that safety vests be worn by pony persons and outriders. The board received several requests from licensed pony persons to eliminate the safety vest requirement due to extreme discomfort and dangerous health conditions experienced by the riders when wearing a safety vest in hot summer conditions. The shock absorption safety value of the vest is offset by the danger of heat exhaustion to the riders. The board has determined it will not require the safety vests on pony persons or outriders, but will allow a licensee to choose to wear the equipment on an individual basis.

32.28.801 GENERAL REQUIREMENTS (1) through (6) remain the same.

(7) A sum equal to 10% of the first place money of every purse won by a Montana bred horse shall be paid to the board for a breeder bonus and an equal sum shall be paid to the board for an owner bonus. ~~breeder of such horse.~~ Such amount shall be paid within 14 days from the date the race is won. The board shall distribute the bonuses to the appropriate breeders and owners within 30 days of the end of the race meet in which the bonus was earned. Such amount shall not be deducted from the advertised purse. Only the money contributed by the licensee conducting the race meet may be considered in computing the bonus.

(8) through (65) remain the same.

AUTH: 23-4-104, 23-4-202, MCA

IMP: 23-4-104, 23-4-202, 23-4-204, 23-4-301, MCA

REASON: The proposed amendment to (7) will make the rule language consistent with ARM 32.28.503 on method of payment of breeder and owner bonuses. Due to an oversight, this section was not changed to be consistent with the owner and breeder bonus rule (ARM 32.28.503) when it was implemented in 2004. This amendment will correct the language inconsistencies.

32.28.1906 CONDUCT OF MATCH BRONC RIDES (1) through (9) remain the same.

(10) All scores of qualified rides shall be announced without delay. ~~Any announcement of scores shall be deemed official.~~ Any change in score announced must be approved by the stewards. The announcer must announce accurately the information received from the judges, compiled by the rodeo secretary, and approved by the stewards.

(11) and (12) remain the same.

(13) If the judges determine a rider is eligible for a reride, the entry will be considered a scratch for parimutuel wagering payout calculations. ~~All parimutuel wagers on the scratched entry shall be refunded.~~

(14) remains the same.

AUTH: 23-4-104, 23-4-202, MCA

IMP: 23-4-101, 23-4-105, 23-4-202, MCA

REASON: The proposed amendments will clarify procedures for match bronc parimutuel wagering. The proposed amendments are necessary to address some problems encountered during the first match bronc parimutuel event in 2007 in Miles City. Section (10) will allow changes to the announced scores with approval of the stewards, to allow for correction of mistakes such as a case where a judge submits an erroneous score sheet and then later discovers the error. Section (13) will delete the wording which requires refunds of wagers on scratched entries, because the tote system cannot make scratch refund calculations. The proposed amendment will make a scratch situation in bronc riding more similar to horse racing situations where a horse fails to finish, and the wager amount cannot be refunded.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Board of Horse Racing, Attn. Marlys Stark, P.O. Box 200512, Helena, MT 59620-0512, by faxing to (406) 444-4305, or by e-mailing to [mstark@mt.gov](mailto:mstark@mt.gov) to be received no later than 5:00 p.m., December 19, 2007.

5. If persons who are directly affected by the proposed amendments wish to express their data, views, or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The request for hearing and comments must be received no later than 5:00 p.m., December 19, 2007.

6. If the board receives a request for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 130, based on the 1,300 licensees in Montana.

7. An electronic copy of this proposal notice is available through the department's web site at <http://mt.gov/liv/default.asp>.

8. The Board of Horse Racing maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding the Board of Horse Racing. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed to Marlys Stark, Board of Horse Racing, Department of Livestock, P.O. Box 200512, Helena, MT 59620-0512, faxed to (406) 444-4305, or e-mailed to [mstark@mt.gov](mailto:mstark@mt.gov).

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

BOARD OF HORSE RACING  
DEPARTMENT OF LIVESTOCK

/s/ Christian Mackay  
Christian Mackay  
Executive Officer  
Department of Livestock

/s/ Carol Grell Morris  
Carol Grell Morris  
Rule Reviewer

Certified to the Secretary of State November 13, 2007.

BEFORE THE DEPARTMENT OF MILITARY AFFAIRS  
OF THE STATE OF MONTANA

In the matter of the adoption of	)	NOTICE OF PROPOSED
New Rules I through V pertaining to	)	ADOPTION AND REPEAL
reimbursement for life insurance	)	
premiums paid by Montana reserve	)	NO PUBLIC HEARING
component service members serving	)	CONTEMPLATED
outside Montana in a contingency	)	
operation and the repeal of ARM	)	
34.7.101 through 34.7.106 pertaining	)	
to reimbursement for life insurance	)	
premiums paid by Montana reserve	)	
component service members serving	)	
outside Montana in a contingency	)	
operation	)	

TO: All Concerned Persons

1. On January 18, 2008, the Department of Military Affairs proposes to adopt and repeal the above-stated rules.

2. The Department of Military Affairs will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., December 14, 2007, to advise us of the nature of the accommodation that you need. Please contact Karen Revious, Administrator, Centralized Services, Department of Military Affairs, ATTN: Centralized Services, P.O. Box 4789, 1900 Williams Street, Fort Harrison, Montana 59636-4789; telephone (406) 324-3330; fax (406) 324-3335; or e-mail kprevious@mt.gov.

3. On August 23, 2007, the Department of Military Affairs published MAR Notice No. 34-6 at page 1154 of the 2007 Montana Administrative Register, issue no. 16. The earlier notice also concerned proposed changes on rules governing reimbursement for life insurance premiums paid by service members. No action has been taken on the proposed changes because the Committee on State Administration and Veterans' Affairs has requested that the proposed changes be renoticed to correct deficiencies in the earlier notice. This notice is published to again propose the changes, with modifications to correct the deficiencies. No action will be taken on the proposals of the earlier publication.

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

NEW RULE I DEFINITIONS For the purposes of this chapter, the following definitions apply:

(1) "Servicemembers' group life insurance (SGLI)" means the group life insurance program established by 38 USC 1965 through 1980.

AUTH: 10-1-105, 10-1-1114, MCA

IMP: 10-1-1111, 10-1-1113, 10-1-1114, MCA

REASON: In 2005, the 59th legislative session enacted 10-1-1101 through 10-1-1104, MCA, requiring rules be adopted to implement the reimbursement program. These statutes terminated by the occurrence of the contingency providing for termination upon additional federal resources for the life insurance premiums. The allocation of the additional resources occurred on February 28, 2006, effectively terminating the statutory provisions. However, House Bill 155 codified at 10-1-1111 through 10-1-1114, MCA, passed during the 60th legislative session in 2007, reenacted the reimbursement program and established a new reimbursement amount requiring the implementation of new administrative rules. This rule, and the rules that follow, are proposed to reimplement the program under the new legislation. As with the previous rule on this topic, ARM 34.7.101, the department proposes to adopt a rule defining "Servicemembers' group life insurance." The reason that "Servicemembers' group life insurance plan," should be defined as set out in proposed NEW RULE I is that these rules directly concern this particular insurance plan as defined by federal statutes, and the applicability of the definition to these rules should be specified within the rules. HB 155 provided authority for reimbursement for additional coverage under the SGLI program, but did not provide a specific reference to the federally defined plan. There should be a rule that specifies the plan to provide consistency in these rules and to ensure consistent interpretation with the federal program. The approach used with defining the plan is to refer to the federal statutes. This approach was chosen because the best way to define the plan is to refer to the controlling federal statutes.

NEW RULE II ELIGIBILITY (1) A service member meeting the eligibility requirements set out in 10-1-1114, MCA, is eligible for reimbursement of SGLI premiums paid under the servicemembers' group life insurance program.

AUTH: 10-1-105, 10-1-1114, MCA

IMP: 10-1-1111, 10-1-1113, 10-1-1114, MCA

REASON: As discussed in the previous reason section, the program for reimbursement of life insurance premiums has been reenacted. The proposed NEW RULE II should be adopted because the best way to implement the eligibility requirements is to refer to the governing statute. This approach assures that the rule is consistent with the statute, as required by 2-4-305(6)(a), MCA. Another approach would be to insert the eligibility criteria from the statute into the rule, but this approach would unnecessarily repeat the statutory criteria, thus violating the mandate of 2-4-305(2), MCA.

NEW RULE III LIMITATIONS ON REIMBURSEMENT (1) The maximum amount of premiums to be reimbursed may not exceed the maximum amount provided in 10-1-1114, MCA.

(2) If a service member is on active duty in a contingency operation for any part of a month, and pays SGLI premiums that month, the entire premium paid for that month will count for purposes of reimbursement. There will be no proration for any part of any month.

AUTH: 10-1-105, 10-1-1114, MCA

IMP: 10-1-1111, 10-1-1113, 10-1-1114, MCA

REASON: As discussed in the reason sections above, this proposed rule also seeks to implement a portion of the reenactment of the reimbursement program under HB 155. The first section of the rule should be adopted because the best way to implement the statutory limitation on reimbursement is to adopt a rule that requires compliance with the statute, and while the department considered placing the language from the statute into the rule, a better approach is to refer to the requirements of the statute because 2-4-305(2), MCA, requires that rules not unnecessarily repeat statutory language. The second section of the rule should be adopted to direct the department to make the full payment even if the active duty assignment is not for the full month. The department could have taken an approach to prorate the reimbursement, but chose to fully reimburse the servicemember in recognition of their service in support of a contingency operation including any month in which service in the contingency operation occurred.

NEW RULE IV APPLICATION FOR REIMBURSEMENT (1) A service member may request reimbursement by completing DMAMT form DMA 10-1 (Application for Service Member Reimbursement of Servicemembers' Group Life Insurance Premiums), and submitting it to the Department of Military Affairs, ATTN: Centralized Services, P.O. Box 4789, Ft. Harrison, MT 59636-4789.

(2) A service member must submit DMAMT form DMA 10-1 within 12 months of demobilization from active duty service in a contingency operation or from the date that these administrative rules become effective, whichever is later, to receive reimbursement.

AUTH: 10-1-105, 10-1-1114, MCA

IMP: 10-1-1111, 10-1-1113, 10-1-1114, MCA

REASON: This proposal also seeks to implement the program recreated by HB 155 (10-1-1111 through 10-1-1114, MCA) as detailed above in the reason sections of the other proposed rules. A reasonable and necessary requirement in implementing the program under HB 155 is to require submission in writing using a specific form as identified in (1) of the proposed rule. In particular, eligibility determinations should be based on written applications with the information provided by the applicant. The rule will help to ensure that required information is obtained and recorded. Other approaches, e.g., an interview process via person or telephone, would result in a nonstandardized process. A standard process based on paperwork required as a

matter of properly adopted administrative rules will assist both the department and potential applicants because the specific information that needs to be provided will be set out in a regularly used form. With respect to (2) of proposed NEW RULE IV, the department proposes as reasonable and necessary the adoption of the time limitation for accepting applications because a time limitation provides closure for fiscal management of funds allocated for this program. The department chose 12 months from the time of demobilization as an adequate amount of time for a servicemember to integrate back into his/her civilian life without fearing s/he will lose out on a benefit if s/he does not take immediate action. Other time frames could have been chosen, such as three months or six months, but the department chose 12 months as it gives plenty of integration time and is likely easily remembered.

NEW RULE V FURTHER APPROPRIATION REQUIRED

(1) Reimbursement beyond June 30, 2009, is contingent upon further appropriation by the Montana Legislature for continuance of the reimbursement program.

AUTH: 10-1-105, 10-1-1114, MCA

IMP: 10-1-1111, 10-1-1113, 10-1-1114, MCA

REASON: House Bill 155 authorized appropriations for fiscal years 2007, 2008, and 2009, and unless further appropriations are authorized the reimbursement program cannot continue. In particular, section 6, Chapter 373, of the Laws of Montana, 2007 (Sec. 6 of HB 155) provided that funds were appropriated only through fiscal year 2009, and that any appropriated funds must revert to the general fund at the end of the year. It is reasonable and necessary for implementing this part of the legislation to adopt a rule that explains and specifically implements the uncodified budget provision. It is also reasonable and necessary to indicate that there may be additional funding. In recognition of these purposes for adoption of the rule, the best approach will provide for adoption of a rule specifying that upon termination of the current appropriation, reimbursement will continue if refunding occurs. Further appropriations may then be implemented by amendment of this rule.

5. The department proposes to repeal the following rules:

34.7.101 DEFINITIONS found at page 34-1105 of the Administrative Rules of Montana.

AUTH: 10-1-1104, MCA

IMP: 10-1-1104, MCA

34.7.102 ELIGIBILITY found at page 34-1105 of the Administrative Rules of Montana.

AUTH: 10-1-1104, MCA

IMP: 10-1-1104, MCA

34.7.103 LIMITATIONS ON REIMBURSEMENT found at page 34-1105 of the Administrative Rules of Montana.

AUTH: 10-1-1104, MCA  
IMP: 10-1-1104, MCA

34.7.104 APPLICATION FOR REIMBURSEMENT found at page 34-1105 of the Administrative Rules of Montana.

AUTH: 10-1-1104, MCA  
IMP: 10-1-1104, MCA

34.7.105 TERMINATION DATE; FURTHER APPROPRIATION REQUIRED found at page 34-1106 of the Administrative Rules of Montana.

AUTH: 10-1-1104, MCA  
IMP: 10-1-1104, MCA

34.7.106 TERMINATION DATE; UNITED STATES ASSUMES PAYMENT OF PREMIUMS OR INCREASES DEATH GRATUITY found at page 34-1106 of the Administrative Rules of Montana.

AUTH: 10-1-1104, MCA  
IMP: 10-1-1104, MCA

REASON: The 59th legislative session enacted 10-1-1101 through 10-1-1104, MCA, requiring rules be adopted to implement the reimbursement program. These statutes terminated as required by the occurrence of the contingency providing for termination upon additional federal resources for the life insurance premiums. The allocation of the additional resources occurred on February 28, 2006, effectively terminating the statutory provisions, thus requiring the repeal of the administrative rules implementing the program because the rules are no longer authorized by the statutes.

6. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Karen Revious, Administrator, Centralized Services, Department of Military Affairs, ATTN: Centralized Services, P.O. Box 4789, 1900 Williams Street, Fort Harrison, Montana 59636-4789; telephone (406) 324-3330; fax (406) 324-3335; or e-mail krevious@mt.gov, and must be received no later than 5:00 p.m., December 21, 2007.

7. If persons who are directly affected by the proposed actions 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 to Karen Revious at the above address no later than 5:00 p.m., December 21, 2007.



8. If the agency receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons directly affected by the proposed actions; 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 directly affected has been determined to be 425 based on the number of people or families eligible for the fund.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be sent or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

10. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the 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 Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

11. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on October 3, 2007, by regular mail.

/s/ John C. Melcher  
John C. Melcher  
Assistant Attorney General  
Rule Reviewer

/s/ Randall D. Mosley  
Randall D. Mosley  
The Adjutant General  
Department of Military Affairs

Certified to the Secretary of State November 13, 2007.

BEFORE THE DEPARTMENT OF MILITARY AFFAIRS  
OF THE STATE OF MONTANA

In the matter of the adoption of ) NOTICE OF PROPOSED  
New Rules I through VIII pertaining to ) ADOPTION  
the Montana military family relief fund )  
) NO PUBLIC HEARING  
) CONTEMPLATED

TO: All Concerned Persons

1. On January 18, 2008, the Department of Military Affairs proposes to adopt the above-stated rules.

2. The Department of Military Affairs will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., December 14, 2007, to advise us of the nature of the accommodation that you need. Please contact Karen Revious, Administrator, Centralized Services, Department of Military Affairs, ATTN: Centralized Services, P.O. Box 4789, 1900 Williams Street, Fort Harrison, Montana 59636-4789; telephone (406) 324-3330; fax (406) 324-3335; or e-mail kprevious@mt.gov.

3. On August 23, 2007, the Department of Military Affairs published MAR Notice No. 34-7 at page 1157 of the 2007 Montana Administrative Register, issue no. 16. No action has been taken on the proposed adoption because the Committee on State Administration and Veterans' Affairs has requested the proposed adoption be renoticed to correct deficiencies in the earlier notice. This notice is published again to propose adoption of the new rules, with modifications to correct the deficiencies. No action will be taken on the proposed adoption of the earlier publication.

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

NEW RULE I DEFINITIONS For purposes of this chapter, in addition to those definitions found in 10-1-1304, MCA, the following definitions apply:

(1) "Active duty" has the meaning provided in 38 USC 1965(1)(A) and generally means full-time duty in the armed forces, other than active duty for training.

(2) "Application" means MMFRF Form 1, MMFRF Form 2, or MMFRF Form 3, as applicable, and the supporting documentation required by these rules.

(3) "National guard" has the meaning provided in 10-1-101, MCA.

(4) "Reserve" means a Montana resident who is a member of a reserve component, as defined in 38 USC 101, of the United States armed forces.

AUTH: 10-1-105, 10-1-1307, MCA

IMP: 10-1-1304, 10-1-1307, MCA

REASON: House Bill 179, passed during the 60th legislative session, now codified at 10-1-1301 through 10-1-1310, MCA, created a fund from which grants could be awarded to Montana National Guard and reserve members and/or family members. The legislation also authorized and required implementation of the grant program through adoption of administrative rules. Proposed NEW RULE I, and other proposed rules in this rulemaking, constitute the department's proposal for implementing the legislative program. It is reasonably necessary for the department to define words and phrases used within the proposed rules so those reading the rules have a common understanding of the words and phrases. The approach used in defining the terms was to rely on statutory definitions from the Montana and United States Code where those definitions were controlling as to the particular term. With respect to section (2), and the application forms, the department has designated the forms to be used as "MMFRF," Forms 1-3. MMFRF Form 1 is the application for a status-based grant. This form gathers the information required by 10-1-1305, 10-1-1306, and 10-1-1307, MCA, to determine eligibility for a status-based grant. MMFRF Form 2 is the application for a needs-based grant. MMFRF Form 2 gathers information required by 10-1-1305, 10-1-1306, and 10-1-1307, MCA, to determine eligibility for a needs-based grant. MMFRF Form 3 is the application for a casualty-based grant. This form gathers the information required by 10-1-1305, 10-1-1306, and 10-1-1307, MCA, to determine eligibility for a casualty-based grant.

NEW RULE II APPLICATION FOR STATUS-BASED GRANT (1) The grant applicant must submit a completed MMFRF Form 1 to the Department of Military Affairs, ATTN: Centralized Services.

AUTH: 10-1-105, 10-1-1307, MCA

IMP: 10-1-1305, 10-1-1307, 10-1-1308, MCA

REASON: Section 10-1-1307, MCA, requires that the department adopt rules covering grant eligibility through an application process. In addition, 10-1-1305, MCA, provides allowable uses of funds for the three types of grants available under the program, and the first of these, the status-based grant, is covered by this rule. As explained in the reason section following proposed NEW RULE I, use of the MMFRF forms will be authorized by this rulemaking to gather the information required by the statutes to determine eligibility for grants. With respect to the subject area of proposed NEW RULE II, the department proposes to implement the collection of information for determining eligibility for status based grants through the use of MMFRF Form 1. The information collected through the form will implement the requirements contained in 10-1-1305 and 10-1-1306, MCA, for this type of grant. The statutes set limitations and requirements for status-based grants, including residency, activation for service, and pay grade. It is reasonable and necessary for implementing the requirements from the statutes to adopt NEW RULE II because eligibility determinations should be based on written applications with the information provided by the applicant. The rule will help to ensure that required information is obtained and recorded. Other approaches, e.g., an interview process via person or

telephone, would result in a nonstandardized process. A standard process based on paperwork required as a matter of properly adopted administrative rules will assist both the department and potential applicants because the specific information that needs to be provided will be set out in a regularly used form.

NEW RULE III APPLICATION FOR NEEDS-BASED GRANT (1) The grant applicant must submit:

(a) A completed MMFRF Form 2 to the Department of Military Affairs, ATTN: Centralized Services.

(b) With the completed MMFRF Form 2, the applicant must supply one, but may supply both, of the following to support the application:

(i) a copy of a payroll record from the member's civilian employer that indicates the member's monthly salary plus a copy of a military payroll record that indicates the member's monthly salary; alternatively, the applicant must provide proof that the member's monthly military pay and allowances, combined, are at least 30% less than the member's monthly civilian wages or income; or

(ii) proof that the member or family member is experiencing a significant emergency that warrants financial assistance, including, but not limited to, specific monetary expenses related to clothing, food, housing, utilities, medical services, medical prescriptions, insurance, or vehicle payments. Such proof shall include, but is not limited to, a copy of a bill, invoice, estimate, cancellation notice, or any other similar record.

AUTH: 10-1-105, 10-1-1307, MCA

IMP: 10-1-1305, 10-1-1307, 10-1-1308, MCA

REASON: As explained in the reason section following the proposed NEW RULE II, section 10-1-1307, MCA, requires that the department adopt a rule covering grant eligibility through an application process. In addition, 10-1-1305, MCA, provides allowable uses for the three types of grants available under the program, and the second of these, the needs-based grant, is covered by this rule. Per the statutory requirements, a needs-based grant is a grant given to a family member or a member activated for federal service in a contingency operation for at least 30 consecutive days who demonstrates that the member's military pay and allowances are at least 30% less than the member's civilian salary/wages prior to activation or that the member or family member is experiencing a significant financial emergency. The statutory requirements should reasonably and necessarily be reflected in a form designated by rule. As with proposed NEW RULE II, while the department could have chosen to collect the data via telephone or personal interview, using the MMFRF Form 2 assists the applicant in ensuring the data they wish to present in their application is given to and processed by the department. Regarding the proposed NEW RULE III, section 1, subsections (1)(b)(i) through (ii), the department could have chosen to not provide any examples of what could prove needs-based grant eligibility. However, the department wanted to provide applicants examples of proof which would allow them to meet the 10-1-1305, MCA, eligibility requirements. The approach proposed by proposed NEW RULE III fulfills the requirement for an application process with respect to needs-based grants, and also implements the

use requirements for needs-based grants. The approach requires applicants to fill out the MMFRF Form 2, which requires submission of information on the following topics: military member's information, applicant's information, and proof of a qualifying financial situation as defined in 10-1-1305, MCA.

NEW RULE IV APPLICATION FOR CASUALTY-BASED GRANT (1) The grant applicant must submit the following:

- (a) A completed MMFRF Form 3 to the Department of Military Affairs, ATTN: Centralized Services.
- (b) Proof of award of a Purple Heart.

AUTH: 10-1-105, 10-1-1307, MCA

IMP: 10-1-1305, 10-1-1307, 10-1-1308, MCA

REASON: As discussed in the previous reason sections, section 10-1-1307, MCA, requires that the department adopt rules covering grant eligibility through an application process. In addition, 10-1-1305, MCA, provides allowable uses for the three types of grants available under the program, and the last of these, the casualty-based grant, is covered by this rule. To accomplish the necessary implementation of the statutory requirements through reasonable means, the department has proposed NEW RULE IV providing for a form to verify the information that must be gathered to evaluate this type of grant application. Per the statutory requirements, a casualty-based grant is a grant given to a member who sustains a nonfatal combat injury as a direct result of hostile action. When deciding what proof should be required to prove casualty-based grant eligibility, the department considered requiring applicants to submit casualty reports, line of duty reports, or incident reports. However, the casualty reporting requirements differ amongst the service branches, which caused the department to reject this option. The department could have also required the member to submit the member's medical records. This option was rejected due to the need to have personnel able and available to evaluate the records and make an eligibility determination. The department chose to limit proof of casualty-based grant eligibility to proof of receipt of the Purple Heart in order to utilize the existing military procedure that already provides for the necessary determination. This approach also eliminates the need for a review process at the state level, thus minimizing the need for further governmental review of the issue of the existence of a casualty.

NEW RULE V SUBMISSION OF GRANT APPLICATIONS (1) Complete applications must be received by the Department of Military Affairs while the member is on active duty for federal service in a contingency operation.

(2) Complete applications may be submitted via facsimile or e-mail. The original complete application must be submitted before payments can be authorized and before the application is placed in the payment queue.

(3) Incomplete applications will be returned to the applicant.

(4) Upon receipt of a complete application, via facsimile, e-mail, or original, the Department of Military Affairs will verify the member's eligibility and Defense Enrollment Eligibility Reporting System (DEERS) enrollment. Upon receipt of the

original complete application, the Department of Military Affairs will process the complete application in an expeditious manner.

AUTH: 10-1-105, 10-1-1307, MCA

IMP: 10-1-1307, MCA

REASON: As previously discussed in the above reason sections, House Bill 179, passed during the 60th legislative session, created a fund from which grants could be awarded to Montana National Guard and reserve members and/or family members. Section 10-1-1304(5), MCA, defines a "member," in pertinent part, as "...a member...who...is on active duty ...." Because "member" has this definition, the grant applications must be received while the member "is on active duty." Regarding section (2), the department considered by what method the applications should be accepted: facsimile, e-mail, or only the original. The department chose to accept applications via facsimile or e-mail, in order to start verifying the member's and applicant's eligibility upon receipt of the application. However, the department chose to require the original signature application prior to processing payment in order to maintain the integrity of the department's records. The department chose to return incomplete applications, rather than possibly contacting the applicant via telephone or e-mail to request the missing data, as the department wants to maintain the integrity of the data gathered and rely upon the applicant's providing the required information in writing rather than telephonically or other means. Upon receipt of an application, the department will verify that the member is on active duty in support of a contingency operation for more than thirty days (except for the casualty-based grant application which has no 30 day requirement) and that the applicant is enrolled in DEERS. The department could have chosen to require the applicant to provide a copy of the member's orders and proof of DEERS enrollment, but chose to make the application process as easy as possible given the sacrifices the families of deployed servicemembers make. Regarding the timeliness of application processing, the department could have chosen to set a firm time frame, such as within two weeks upon receipt of a completed application. However, because the department chose to accept the responsibility of verifying the member's orders status and applicant's DEERS enrollment, and because the department has to rely on outside agencies to provide this data, the department could not specifically control the processing timeline and thus did not chose to implement a firm processing time.

NEW RULE VI NEEDS-BASED GRANT APPLICATION COMMITTEE  
REVIEW AND UTILIZATION OF INFORMATION ON OTHER STATE ASSISTANCE

(1) With respect to review of needs-based grant applications, the review process may include consideration of other state assistance provided to the applicant. Information on other state assistance available to any committee member through the agency records of the committee member may be considered, unless prohibited by applicable law on dissemination of such information. Grant applicants may also be required to consent to release of information on other state assistance as a condition for qualifying for any needs-based grant.

AUTH: 10-1-105, 10-1-1307, MCA  
IMP: 10-1-1307, 10-1-1308, MCA

REASON: Section 10-1-1308, MCA, requires a three member committee to review needs-based grant applications: the Director of the Department of Public Health and Human Services, or the director's designee, the Commissioner of the Department of Labor and Industry, or the commissioner's designee, and the budget director, or the budget director's designee. The legislative purpose for having these specific agencies involved in the needs-based grant application review was to bring their experience and agency information to the decision table. Accordingly, the department chose to adopt proposed NEW RULE VI which would allow the committee members to thoroughly review any legally disseminated information from their respective agencies to better evaluate the awarding of a needs-based grant in order to meet the legislative purpose behind the statute.

NEW RULE VII APPEAL OF GRANT APPLICATION DENIAL (1) The applicant must specifically address the basis for the original denial and provide further proof as to why the applicant's grant request should be approved. Resubmission of the original application without additional proof will result in automatic denial of appeal.

(2) The Adjutant General or his/her designee shall consider the applicant's appeal and inform the applicant of the decision.

AUTH: 10-1-105, 10-1-1307, MCA  
IMP: 10-1-1307, 10-1-1309, MCA

REASON: Section 10-1-1307, MCA, requires the department to adopt a rule setting the appeal process for grant applications that are denied. The department could have chosen to adopt an appeal process based upon a second review of the original application, or based upon a new application submission, or any number of other appeal alternatives. Because 10-1-1309, MCA, requires that the applicant be advised of the basis of the denial in writing, the department chose to require the applicant's appeal to specifically address the basis and provide proof as to why the basis is unfounded and that the grant should be approved.

NEW RULE VIII GRANT PAYMENTS (1) Payments will be made to eligible members or family members. Payments will not be made to creditors, and payments will be subject to applicable deductions.

(2) If adequate funds are not available, the application will be held in a queue until funds are available.

AUTH: 10-1-105, 10-1-1307, MCA  
IMP: 10-1-1307, MCA

REASON: As discussed above in the reason sections for the other proposed rules, House Bill 179, passed during the 60th legislative session, created a fund from which grants could be awarded to Montana National Guard and reserve military

members and/or their families. Because the purpose of the bill was to award the grant to members or family members, the department chose to limit payments to those persons, rather than third parties. A prohibition on payments to third parties is reasonably necessary for implementation of this purpose. Similarly, section 10-1-1307, MCA, mandated the department to adopt rules which treat similarly situated applicants equitably, to include rules on payment of grants if funds are insufficient to support a maximum authorized award. Rather than developing a percentage based payment system which would be enacted if the fund reaches a certain level of funding, the department chose to adopt a rule which would hold the applications in a queue until funds become available to pay the maximum award. The department determined this approach to most equitably treat similarly situated applicants because the applicants know they will receive the full amount of the grant when funds are available.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Karen Revious, Administrator, Centralized Services, Department of Military Affairs, ATTN: Centralized Services, P.O. Box 4789, 1900 Williams Street, Fort Harrison, Montana 59636-4789; telephone (406) 324-3330; fax (406) 324-3335; or e-mail [krevious@mt.gov](mailto:krevious@mt.gov), and must be received no later than 5:00 p.m., December 21, 2007.

6. If persons who are directly affected by the proposed action 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 to Karen Revious at the above address no later than 5:00 p.m., December 21, 2007.

7. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons 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 directly affected has been determined to be 425 based on the number of people or families eligible for the fund.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be sent or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of



State strives to make the electronic copy of the 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 Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

10. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on September 13, 2007, by regular mail.

/s/ John C. Melcher  
John C. Melcher  
Assistant Attorney General  
Rule Reviewer

/s/ Randall D. Mosley  
Randall D. Mosley  
The Adjutant General  
Department of Military Affairs

Certified to the Secretary of State November 13, 2007.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the proposed adoption of ) NOTICE OF PUBLIC  
New Rules I through III relating to property ) HEARING ON PROPOSED  
tax incentives for new investment, ) ADOPTION  
development research, and technology )  
related to renewable energy )

TO: All Concerned Persons

1. On December 17, 2007, at 1:00 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 adoption of the above-stated rules.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., December 5, 2007, 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) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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 ENERGY PRODUCTION OR DEVELOPMENT TAX  
ABATEMENT ELIGIBILITY FOR NEW INVESTMENT IN THE CONVERSION,  
TRANSPORT, MANUFACTURE, RESEARCH, AND DEVELOPMENT OF  
RENEWABLE ENERGY, CLEAN COAL ENERGY, AND CARBON DIOXIDE  
EQUIPMENT AND FACILITIES

(1) The property owner of record, the property's owner's agent, or the operator of the qualifying property must apply to the Department of Environmental Quality (DEQ) for a certification of eligibility for equipment or facilities for which the abatement is sought. Upon review of the application, the DEQ shall provide the Department of Revenue (department) with a certification of eligibility for qualifying equipment or facilities.

(2) The department shall classify the property in the appropriate class of property and shall assess the qualifying facilities for which the certification is granted at 50% of its taxable value for the qualifying period which includes the construction period and the first 15 years after the facility commences operation or the clean advanced coal research and development equipment or renewable energy research and development equipment is purchased. The total time of the qualifying period may not exceed 19 years.

(3) For clean advanced coal research and development equipment or renewable energy research equipment, the qualifying equipment, up to the first \$1 million of the value of the equipment at the facility, shall be assessed by the department at 50% of its taxable value for the qualifying period identified in (2). The abatement does not extend to any equipment in excess of the first \$1 million of equipment located at the facility.

(4) For centrally assessed property, the department shall determine the market value of the property or equipment by multiplying the depreciated value of the approved class fourteen, fifteen, or sixteen qualifying equipment of facilities by a market to book ratio then multiplying by 0.50. The market to book ratio shall be determined by dividing the system or unit value after deduction of the exempt intangible personal property by the system net book value after deduction of the exempt intangible personal property. This value shall then be deducted from the Montana value and certified to the counties as class fourteen, fifteen, or sixteen property.

(5) For industrially assessed property, the department shall determine the market value of the qualifying industrially assessed property in accordance with ARM 42.22.1309 and then multiply the qualifying property or equipment by 0.50.

(6) Upon revocation of a certification by the DEQ, the department will, if necessary, reclassify the property and assess the property at 100% of its taxable value beginning January 1 of the year or years for which the certification is revoked.

(7) If a taxpayer's certification is revoked, the taxpayer forfeits the abatement or classification under 15-6-157, or 15-6-158, MCA, and may not reapply for abatement for that property.

(8) If the department finds that a certification for a transmission line which was previously granted was based on an application that the applicant knew was false or fraudulent or subsequently revoked, the department must reclassify property as class nine under 15-6-141, MCA. In addition, the department may assess the applicant for additional taxes, penalty, and interest from the time the certification was in effect.

AUTH: 15-24-3116, MCA

IMP: 15-6-141, 15-6-157, 15-6-158, 15-6-159, 15-24-3101, 15-24-3102, 15-24-3111, 15-24-3112, 15-24-3116, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I(1) to clarify the roles and responsibilities for the Department of Environmental Quality (DEQ) and the Department of Revenue (department). Section (2) establishes the department's responsibility for classification of the property. Section (3) clarifies that for clean advanced coal research and development equipment or renewable energy research equipment only the first \$1 million in value is valued at 50%. Any value over \$1 million does not receive the 50% value abatement. Sections (4) and (5) explain in detail the process of valuation for centrally assessed and industrially assessed properties. Section (6) establishes that the DEQ is responsible for revoking a certification for value abatement. Section (7) establishes that property listed in 15-6-158, MCA, which is a new property classification, are subject to the same treatment as property classified in 15-6-157, MCA. That is the property owner

of record, the property's owner's agent, or the operator of the qualifying property cannot reapply for the tax abatement after the certification has been revoked. Section (8) clarifies that if a certification for a transmission line contains false or fraudulent information the department will pursue the proper amount of tax in prior years where the improper abatement was received. This rule will be placed in chapter 4 of the department's rules with the other credit rules.

NEW RULE II DUAL PURPOSE PROPERTIES (1) For facilities which may serve more than one purpose or have different processes and part of the facility meets the definitions which would qualify for the abatement under this rule, the department will determine the portion to receive the abatement by allocation procedures which will vary depending on the availability of the information and the type of company. The department may use, but not be limited to, ratios such as quantity, use, and productivity ratios that are readily available and accurate.

AUTH: 15-24-3116, MCA

IMP: 15-6-141, 15-6-157, 15-6-158, 15-6-159, 15-24-3101, 15-24-3102, 15-24-3111, 15-24-3112, 15-24-3116, MCA

REASONABLE NECESSITY: The department proposes to adopt New Rule II to advise taxpayers how the department will treat facilities with a dual purpose when only one of the facility's purposes qualifies for the abatement. This rule will be placed in chapter 4 with other department credit rules.

NEW RULE III EXEMPTION FOR LAND ADJACENT TO TRANSMISSION LINE RIGHT-OF-WAY OR EASEMENT (1) The property owner of record, the property owner's agent, or the operator of a transmission line must make application to the Department of Revenue's (department) local county office for an exemption from property taxes for land that is within 660 feet on either side of the midpoint of a transmission line right-of-way or easement. The transmission line must have a design capacity of 30 megavoltamperes or greater, as certified by the Department of Environmental Quality (DEQ), and be constructed after January 1, 2007. Application will be made on a form available from the department's local county office before March 1 of the tax year for which the exemption is sought. The DEQ certification shall be attached to and be part of the application for exemption under this part.

(2) The applicant must provide to the department's local county office, along with the application, a legal description for the property described on the application provided for in (1) and a digitized certificate of survey prepared by a surveyor registered with the Board of Professional Engineers and Professional Land Surveyors provided for in 2-15-1763, MCA, which specifically provides the boundaries of the property listed on the application provided for in (1). The acceptable format for the digitized certificate of survey is an Environmental System Research Institute (ESRI) Shapefile file format in State Plane single zone projection. Shapefiles spatially describe points, polygons, and lines. State Plane refers to the State Plane Coordinate System.

(3) The application will be forwarded to the department's Property Assessment Division (PAD) office in Helena referred to as the "central office". The

central office will process the application and determine if the property meets the requirements of exemption.

(4) The central office will issue a letter indicating whether the application for exemption has been granted or denied and provide a copy of the letter to the applicant, the local county office, and Business Income Taxes Division (BITD).

(5) If the transmission line is constructed after January 1 of a tax year and an application for exemption is submitted for the right-of-way or easement by March 1 of that tax year and the property qualifies for the exemption, the exemption will be effective for the whole tax year.

AUTH: 15-24-3116, MCA

IMP: 2-15-1763, 15-6-229, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule III in compliance with the provisions of Section 9 of House Bill 3 enacted by the 60th Legislature. This section provides for a property tax exemption for certain land adjacent to a transmission line right-of-way or easement which has been properly certified by the Department of Environmental Quality. The legislation requires the application process set forth in this proposed rule. This rule will be placed in chapter 20 with the valuation of real property rules.

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; telephone (406) 444-5828; fax (406) 444-3696; or e-mail [canderson@mt.gov](mailto:canderson@mt.gov) and must be received no later than December 21, 2007.

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 [www.mt.gov/revenue](http://www.mt.gov/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 web site accessible at all times, concerned persons should be aware that the web site 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 e-mail or mailing address of the person to receive notices

and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Llew Jones, was notified on September 12, 2007, by regular mail.

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Dan R. Bucks  
DAN R. BUCKS  
Director of Revenue

Certified to Secretary of State November 13, 2007

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ) NOTICE OF PUBLIC  
ARM 42.4.3102 and 42.4.3103 relating to ) HEARING ON PROPOSED  
contractor's gross receipts taxes ) AMENDMENT

TO: All Concerned Persons

1. On December 13, 2007, at 1:00 p.m., a public hearing will be held in the 4 East (Fourth Floor) Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rules.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., December 3, 2007, 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) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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

42.4.3102 CREDIT FOR PUBLIC CONTRACTOR'S GROSS RECEIPTS TAX - INDIVIDUAL INCOME TAX (1) and (2) remain the same.

AUTH: 15-30-103, MCA

IMP: 15-50-205, 15-50-206, 15-50-207, MCA

REASONABLE NECESSITY: The department is proposing to amend the title to ARM 42.4.3102 to strike "public" and include a reference to "individual income tax". After the respective administrative rules addressing the application of the credit for individual income tax and corporation license tax purposes were transferred to chapter 4 from chapters 15 and 23, respectively, the titles were not subsequently updated to distinguish between the two tax types. The correction to the title will clarify this issue.

42.4.3103 CREDIT FOR CONTRACTOR'S GROSS RECEIPTS TAX - CORPORATION LICENSE TAX (1) through (3) remain the same.

AUTH: 15-31-501, MCA

IMP: 15-50-207, MCA

REASONABLE NECESSITY: The department is proposing to amend the title to ARM 42.4.3103 to include a reference to "corporation license tax". The same reasons apply for this amendment as stated for ARM 42.4.3102.

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; telephone (406) 444-5828; fax (406) 444-3696; or e-mail [canderson@mt.gov](mailto:canderson@mt.gov) and must be received no later than December 21, 2007.

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 [www.mt.gov/revenue](http://www.mt.gov/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 web site accessible at all times, concerned persons should be aware that the web site 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 e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. 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/ Dan R. Bucks  
DAN R. BUCKS  
Director of Revenue

Certified to Secretary of State November 13, 2007



BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ) NOTICE OF PUBLIC  
ARM 42.4.2701 and 42.4.2704 relating to ) HEARING ON PROPOSED  
qualified endowment ) AMENDMENT

TO: All Concerned Persons

1. On December 13, 2007, at 1:30 p.m., a public hearing will be held in the 4 East (Fourth Floor) Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rules.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., December 5, 2007, 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) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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

42.4.2701 DEFINITIONS The following definitions apply to this subchapter:

(1) through (4) remain the same.

~~(5) A "permanent irrevocable fund" is a fund which receives or will receive the charitable gift portion of a planned gift or a direct charitable contribution, and holds the charitable gift or contribution on behalf of a tax-exempt organization under 26 USC 501(C)(3), for the life of the organization. The present value of the fund at the time that the donor makes a planned gift or an outright contribution to the fund is not expendable by the tax-exempt organization on a current basis under the terms of the applicable gift document or other governing documents. For the purpose of the qualified endowment credit, the fund must be used primarily for the benefit of Montana communities and citizens.~~

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

AUTH: 15-30-305, 15-31-501, MCA

IMP: 15-30-165, 15-30-166, 15-30-167, 15-31-161, 15-31-162, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.2701 to remove the definition of "permanent irrevocable fund" because that term is now defined in statute.

42.4.2704 TAX CREDIT AND DEDUCTION LIMITATIONS (1) The credit allowed the corporation, partnership, limited liability company, estate, trust, or individual tax liability for a contribution of a planned gift is the percentage, as shown in the following table, of the present value of the allowable contribution as defined in ARM 42.4.2701. The credit allowed against the corporation, partnership, limited liability company, estate, or trust for a direct contribution is equal to 20% of the charitable contribution. The maximum credit that may be claimed in one year is \$10,000 per donor. A contribution made in a previous tax year cannot be used for a credit in any subsequent tax year.

Planned Gifts by Individuals or Entities

<u>Planned Gift Date</u>	<u>Present Value Percent of Present Value</u>	<u>Used to Calculate Maximum Credit</u>	<u>Maximum Credit Per Year</u>
1/1/97 - 12/31/01	50%	\$20,000	\$10,000
1/1/02 - 8/27/02	40%	\$25,000	\$10,000
8/28/02 - 6/30/03	30%	\$22,000	\$ 6,600
7/1/03 - 12/31/07 <u>13</u>	40%	\$25,000	\$10,000

(2) The credit allowed against the corporate, estate, trust, or individual tax liability for a charitable gift made by a corporation, small business corporation, estate, trust, partnership, or limited liability company directly to a qualified endowment is the percentage, as shown in the following table, of the allowable contribution as defined in ARM 42.4.2701.

Non-Planned Gifts by Eligible Entities

<u>Qualified Charitable Gift Date</u>	<u>Percent of Allowable Contribution</u>	<u>Allowable Contribution Used to Calculate Maximum Credit</u>	<u>Maximum Credit Per Year</u>
1/1/97 - 12/31/01	50%	\$20,000	\$10,000
1/1/02 - 8/27/02	20%	\$50,000	\$10,000
8/28/02 - 6/30/03	13.3%	\$49,624	\$ 6,600
7/1/03 - 12/31/07 <u>13</u>	20%	\$50,000	\$10,000

(3) The balance of the allowable contributions not used in the credit calculation may be used as a deduction subject to the limitations and carryover provisions found in 15-30-121, MCA, or for corporations the limitations and carryover provisions found in 15-31-114, MCA.

(a) Examples of Allowable Deductions When a Planned Gift is Used for the

Qualified Endowment Credit:

<u>Time Period</u>	<u>Present Value</u>	<u>Maximum Credit</u>	<u>Credit Percentage</u>	<u>Allowable Deduction</u>
1/1/97 - 12/31/01	\$50,000 -	(\$10,000 / .50) =		\$30,000
1/1/02 - 8/27/02	\$50,000 -	(\$10,000 / .40) =		\$25,000
8/28/02 - 6/30/03	\$50,000 -	(\$ 6,600 / .30) =		\$28,000
7/1/03 - 12/31/07 <u>13</u>	\$50,000 -	(\$10,000 / .40) =		\$25,000

(b) Examples of Allowable Deductions When an Outright Gift is Used for the Qualified Endowment Credit:

<u>Time Period</u>	<u>Market Value</u>	<u>Maximum Credit</u>	<u>Credit Percentage</u>	<u>Allowable Deduction</u>
1/1/97 - 12/31/01	\$50,000 -	(\$10,000 / .50) =		\$30,000
1/1/02 - 8/27/02	\$50,000 -	(\$10,000 / .20) =		\$ -0-
8/28/02 - 6/30/03	\$50,000 -	(\$ 6,600 / .133) =		\$ 376
7/1/03 - 12/31/07 <u>13</u>	\$50,000 -	(\$10,000 / .20) =		\$ -0-

(4) through (9) remain the same.

AUTH: 15-30-305, 15-31-501, MCA

IMP: 15-30-165, 15-30-166, 15-30-167, 15-31-161, 15-31-162, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.2704 to show that this credit is now available through December 31, 2013, as enacted by the 60th Legislature in Senate Bill 150.

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; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov and must be received no later than December 21, 2007.

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 www.mt.gov/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 web site accessible at all times, concerned persons should be aware that the web site 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 e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Senator Kim Gillan, was notified on November 1, 2007, by electronic mail.

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Dan R. Bucks  
DAN R. BUCKS  
Director of Revenue

Certified to Secretary of State November 13, 2007

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ) NOTICE OF PUBLIC  
ARM 42.4.1603 and 42.4.1609 relating to ) HEARING ON PROPOSED  
new and expanded industry credits ) AMENDMENT

TO: All Concerned Persons

1. On December 13, 2007, at 2:00 p.m., a public hearing will be held in the 4 East (Fourth Floor) Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rules.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., December 5, 2007, 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) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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

42.4.1603 PERIOD OF ELIGIBILITY (1) As used in this subchapter, period of eligibility means:

(a) in the case of a new corporation, the consecutive three-year period during which a credit may be claimed, commencing from the initial act of doing business in Montana; or

(b) in the case of an expanding corporation, the consecutive three-year period during which a credit may be claimed, commencing with the increase in total full-time jobs by 30% or more within a 12 month period.

(2) remains the same.

AUTH: 15-31-127, 15-31-501, MCA

IMP: 15-31-124, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.1603 to clarify the time in which the 30% increase in total full-time jobs must happen.

42.4.1609 DETERMINATION OF NEW JOBS (1) remains the same.

(2) The only employees counted when making the determination of the credit

are those who:

- (a) were not employed by the corporation within five years of expansion; and
  - (b) are employed in production of the new product or were hired as the direct result of expanding an existing product line.
- (3) through (5) remain the same.

AUTH: 15-31-127, 15-31-501, MCA

IMP: 15-31-125, MCA;

REASONABLE NECESSITY: The department is proposing amending ARM 42.4.1609 to clarify that the credit is also available for employees hired as a direct result of expanding an existing product line.

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; telephone (406) 444-5828; fax (406) 444-3696; or e-mail [canderson@mt.gov](mailto:canderson@mt.gov) and must be received no later than December 21, 2007.

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 [www.mt.gov/revenue](http://www.mt.gov/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 web site accessible at all times, concerned persons should be aware that the web site 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 e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. 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/ Dan R. Bucks  
DAN R. BUCKS  
Director of Revenue

Certified to Secretary of State November 13, 2007

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the proposed adoption of ) NOTICE OF PUBLIC  
New Rules I through IV relating to biodiesel ) HEARING ON PROPOSED  
and biolubricant tax credits ) ADOPTION

TO: All Concerned Persons

1. On December 17, 2007, 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 of the above-stated rules.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., December 5, 2007, 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) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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 terms used in this subchapter:

(1) "Primarily" as referred to in 15-32-701, MCA, means the facility processes 51% or more of the oilseed crushed crop, as measured by weight, for biodiesel or biolubricant.

AUTH: 15-30-305, 15-31-501, MCA

IMP: 15-31-701, MCA

REASONABLE NECESSITY: The department is proposing New Rule I to clarify the term "primarily" because that term is used in proposed New Rules II through IV which will be placed in subchapter 25 of chapter 4.

NEW RULE II CARRYOVER AND RECAPTURE OF OILSEED CRUSH FACILITY TAX CREDIT (1) If any part of the credit earned in taxable years

beginning after December 31, 2004, is not applied against the tax liability for the year earned, the unused portion of the credit can be carried forward to offset tax liability in the next seven periods. The credit cannot be carried forward to offset any tax year in which the facility is not primarily crushing oilseed for the production of



biodiesel or biolubricant.

(2) The credit may be subject to recapture if the facility claiming the credit ceases primarily crushing oilseed for production of biodiesel or biolubricant for a period of 12 consecutive months. At the point the facility ceases primarily crushing oilseed for production of biodiesel or biolubricant, any credit claimed in the five years prior to the cease date must be recaptured.

AUTH: 15-30-305, 15-31-501, MCA

IMP: 15-32-701, MCA

REASONABLE NECESSITY: The department is proposing New Rule II because the 2007 Legislature amended 15-32-701, MCA, in House Bill 166 to modify the tax credits for property used for the production, blending, and storage of biodiesel and biolubricant. This rule will clarify the carryover and recapture of the oilseed crushing facility credit referred to in 15-32-701, MCA.

NEW RULE III CARRYOVER AND RECAPTURE OF BODIESEL OR BIOLUBRICANT PRODUCTION FACILITY TAX CREDIT (1) If any part of the credit earned in taxable years beginning after December 31, 2004, is not applied against the tax liability for the year earned, the unused portion of the credit can be carried forward to offset tax liability in the next seven periods.

(2) The credit may be subject to recapture if the facility claiming the credit ceases production of biodiesel or biolubricant for a period of 12 consecutive months. At the point the facility ceases production of biodiesel or biolubricant, any credit claimed in the five years prior to the cease date must be recaptured.

AUTH: 15-30-305, 15-31-501, MCA

IMP: 15-32-701, 15-32-702, MCA

REASONABLE NECESSITY: The department is proposing New Rule III because the 2007 Legislature amended 15-32-701, MCA, in House Bill 166 to modify the tax credits for property used for the production, blending, and storage of biodiesel and biolubricant. This rule will clarify the carryover and recapture of the credit referred to in 15-32-702, MCA.

NEW RULE IV CARRYOVER AND RECAPTURE OF BODIESEL BLENDING AND STORAGE TAX CREDIT (1) If any part of the credit earned in taxable years beginning after December 31, 2004, is not applied against the tax liability for the year earned, the unused portion of the credit can be carried forward to offset tax liability in the next seven periods.

(2) The credit may be subject to recapture if the facility claiming the credit ceases blending of biodiesel with petroleum diesel for sale for a period of 12 consecutive months. At the point the facility ceases blending of biodiesel with petroleum diesel, any credit claimed in the five years prior to the cease date must be recaptured.

AUTH: 15-30-305, 15-31-501, MCA

IMP: 15-32-703, MCA

REASONABLE NECESSITY: The department is proposing New Rule IV because the 2007 Legislature amended 15-32-701, MCA, in House Bill 166 to modify the tax credits for property used for the production, blending, and storage of biodiesel and biolubricant. This rule will clarify the carryover and recapture of the credit referred to in 15-32-703, MCA.

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; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov and must be received no later than December 21, 2007.

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 [www.mt.gov/revenue](http://www.mt.gov/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 web site accessible at all times, concerned persons should be aware that the web site 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 e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Representative Holly Raser, was notified on October 26, 2007, by electronic mail.

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Dan R. Bucks  
DAN R. BUCKS  
Director of Revenue

Certified to Secretary of State November 13, 2007

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ) NOTICE OF PUBLIC  
ARM 42.4.502 relating to the capital gain ) HEARING ON PROPOSED  
credit ) AMENDMENT

TO: All Concerned Persons

1. On December 13, 2007, at 2:30 p.m., a public hearing will be held in the 4 East (Fourth Floor) Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rule.

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., December 5, 2007, 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) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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

42.4.502 CAPITAL GAIN CREDIT (1) For the applicable tax years 2005 and 2006 shown below, an individual may claim a credit against their Montana individual income tax of up to 1% of their net capital gain. For tax years beginning after December 31, 2006, an individual may claim a credit against their Montana individual income tax of up to 2% of their net capital gain. The credit is nonrefundable and may not be carried back or carried forward to any other tax year. The credit must be applied before any other credit.

(2) A nonresident or a part-year resident must apply the credit to Montana tax computed as if he or she were a resident during the entire tax year.

(3) Married taxpayers filing separately must compute and report their capital gains and losses as provided in ~~ARM 42.15.423~~ [NEW RULE I as shown in MAR Notice No. 42-2-789].

(4) The following are examples of how the credit is applied:

(a) Example: For tax year 2005, John and Barbara file a joint 2005 Federal Income Tax Return reporting \$5,000 of net capital gain. John's income consists of \$50,000 in wages and \$8,000 of net capital gain. Barbara's income consists of \$35,000 in wages and \$3,000 of net capital loss. If they file separately rather than jointly for Montana, they must separately compute and report their capital gains and losses as provided in ~~ARM 42.15.423~~ [NEW RULE I as shown in MAR Notice No.

42-2-789. John may claim a capital gain credit of up to \$80 against his Montana income tax. Barbara is not entitled to claim any credit against her tax.

	<u>Federal Return</u>	<u>Montana Return</u>	
		<u>Column A</u>	<u>Column B</u>
Wages	\$85,000	\$50,000	\$35,000
Sch. D capital gain (loss)	\$ 5,000	\$ 8,000	(\$ 3,000)
Fed. adjusted gross income	\$90,000	\$58,000	\$32,000
Montana adjustment for capital loss limit			\$ 1,500
Montana adjusted gross income	<del>\$91,000</del> <u>91,500</u>	\$58,000	\$33,500
Capital loss carryover			(\$ 1,500)

(b) Example: For tax year 2006, John, a single Montana resident with \$1,300 of net capital gain, is entitled to an elderly homeowner credit of \$500. His Montana tax, before credits, is \$400. He may claim the \$13 capital gain credit before determining the amount of his refundable elderly homeowner tax credit.

Montana tax before credits	\$ 400
Capital gain credit	<u>(\$ 13)</u>
Montana tax after capital gain credit	\$ 387
Elderly homeowner credit	<u>(\$ 500)</u>
Refund	\$ 113

(c) Example: For tax year 2006, Mary has wages of \$80,000 and has \$50,000 of net capital gain, \$30,000 of which was realized from an investment in a small business investment corporation that is exempt from Montana income tax as provided in 15-33-106, MCA. Mary is entitled to a capital gain credit of \$200, 1% of the \$20,000 net capital gain included in her Montana adjusted gross income.

(d) Example: For tax year 2006, Patrick, a nonresident, has wages of \$50,000, net capital gain of \$8,000, and a distributive share of \$10,000 of ordinary income from an S corporation. The \$10,000 ordinary income from the S corporation is Montana source income. The wages and capital gain are not Montana source income. Assume that his Montana tax, computed as if he were a resident, on his taxable income after Montana exemptions, exclusions, and deductions, is \$3,000. The capital gain credit of \$80 is applied against the tax determined as if he were a resident.

Montana tax determined as if resident	\$3,000
Capital gain credit	<u>(\$ 80)</u>
Tax to which nonresident ratio applied	\$2,920
Ratio of Montana source income to income from all sources (\$10,000/\$68,000)	.147
Montana tax (\$2,920 x .147)	\$ 429

(e) Example: For tax year 2007, John and Barbara file a joint 2007 federal income tax return reporting \$5,000 of net capital gain. John's income consists of

\$50,000 in wages and \$8,000 of net capital gain. Barbara's income consists of \$35,000 in wages and \$3,000 of net capital loss. If they file separately rather than jointly for Montana, they must separately compute and report their capital gains and losses as provided in [NEW RULE I as shown in MAR Notice No. 42-2-789]. John may claim a capital gain credit of up to \$160 against his Montana income tax. Barbara is not entitled to claim any credit against her tax.

	<u>Federal Return</u>	<u>Montana Return</u>	
		<u>Column A</u>	<u>Column B</u>
<u>Wages</u>	<u>\$85,000</u>	<u>\$50,000</u>	<u>\$35,000</u>
<u>Sch. D capital gain (loss)</u>	<u>\$ 5,000</u>	<u>\$ 8,000</u>	<u>\$(3,000)</u>
<u>Fed. adjusted gross income</u>	<u>\$90,000</u>	<u>\$58,000</u>	<u>\$32,000</u>
<u>Montana adjusted gross income</u>	<u>\$90,000</u>	<u>\$58,000</u>	<u>\$32,000</u>

AUTH: 15-30-303, MCA

IMP: 15-30-103, 15-30-105, 15-30-183, MCA

REASONABLE NECESSITY: The department is proposing to update ARM 42.4.502 to reflect the change in the capital gains credit from 1% to 2% effective for the 2007 tax year. The changes also correct some minor errors in the examples in the current rule.

Finally, internal references were added that reflect a reference to New Rule I as shown in MAR Notice No. 42-2-789, which is being proposed due to the enactment of Senate Bill 281 by the 60th Legislature. This law allows married taxpayers who file a joint federal return but separate Montana returns to use the federal rules for certain items when determining Montana adjusted gross income. These changes would provide clarification of the capital gains credit calculations and the applicability of the change.

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; telephone (406) 444-5828; fax (406) 444-3696; or e-mail [canderson@mt.gov](mailto:canderson@mt.gov) and must be received no later than December 21, 2007.

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 [www.mt.gov/revenue](http://www.mt.gov/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 web site accessible at all times, concerned persons should be aware that the web site 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 e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Senator Joe Balyeat, was notified on August 10, 2007, by regular mail.

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Dan R. Bucks  
DAN R. BUCKS  
Director of Revenue

Certified to Secretary of State November 13, 2007

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the proposed adoption of ) NOTICE OF PUBLIC  
New Rule I and amendment of ARM ) HEARING ON PROPOSED  
42.17.105, 42.17.114, 42.17.304, and ) ADOPTION AND  
42.17.305 relating to estimated tax payments ) AMENDMENT

TO: All Concerned Persons

1. On December 14, 2007, at 9:00 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 and amendment of the above-stated rules.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., December 5, 2007, 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) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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

NEW RULE I ESTIMATED PAYMENTS FOR MARRIED TAXPAYERS FILING SEPARATE RETURNS (1) Married taxpayers who make estimated payments and anticipate filing separate returns on the same form or separate returns on separate forms should submit the payments on behalf of the spouse whose tax liability the payments are intended to satisfy. For example, if spouse A and B are married, spouse A has wages that are subject to withholding and spouse B is self-employed, the estimated payments should be submitted indicating they are to be applied to spouse B's liability.

(2) Married taxpayers who have submitted estimated payments under one spouse's social security number but who subsequently determine that all or a portion of the payments should be applied to the other spouse's separate tax liability may reallocate the payments. Taxpayers who wish to reallocate payments can do so by either:

(a) contacting the department by phone or in writing prior to filing their Montana tax return; or

(b) indicating on the line for estimated payments how they wish the payments to be allocated when they file their Montana tax return.



AUTH: 15-30-305, MCA

IMP: 15-30-241, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to provide assistance and guidance to married taxpayers who file separate Montana income tax returns. The proposed rule reflects current department practice and is being promulgated to inform the public.

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

42.17.105 COMPUTATION OF WITHHOLDING (1) Employers shall calculate the state income tax amount according to the "Montana State Withholding Tax Tables," provided by the department.

(2) The referenced tax tables in (1) may be obtained by:

(a) telephoning:

Department of Revenue  
Customer Service Center  
(406) 444-6900;

(b) writing to:

Montana Department of Revenue  
P.O. Box 5835  
Helena, Montana 59604-5835; or

(c) accessing:

the department's or revenue's web site  
www.discoveringmontana.com www.mt.gov.

AUTH: 15-30-305, MCA

IMP: 15-30-103, 15-30-202, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.105 to correct the web site.

42.17.114 ANNUAL RECONCILIATION AND WAGE STATEMENTS

(1) through (4) remain the same.

(5) The federal form 1099R that has Montana state income tax withholding must be filed with the department in paper or electronic form by February 28 following the year that the tax was withheld.

AUTH: 15-30-305, MCA

IMP: 15-30-206, 15-30-207, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.114 to expand the requirement that certain 1099s be filed electronically, as well as on paper. The rule was originally adopted by the department when the technology was not available to read the 1099Rs in an electronic format.

42.17.304 DETERMINATION OF TAX LIABILITY FOR PRECEDING TAX YEAR; DETERMINATION OF TAX PAID FOR CURRENT TAX YEAR (1) A taxpayer's tax liability for the preceding tax year is the total tax imposed by Title 15, chapter 30, MCA, less any nonrefundable tax credits allowed under Montana law, as shown on the taxpayer's return.

Example: A taxpayer has a tax, before applying nonrefundable credits, of \$5,000. The taxpayer has a nonrefundable energy conservation installation credit of \$500. The taxpayer's tax liability for the prior year for estimated tax purposes is \$4,500 computed as follows:

<u>Tax before nonrefundable credit</u>	<u>\$5,000</u>
<u>nonrefundable credits</u>	<u>( 500)</u>
<u>tax liability</u>	<u>\$4,500</u>

(2) The amount of tax paid for the current year is the sum of the withholding and estimated tax payments plus any refundable ~~elderly homeowner/renter credit(s)~~ claimed, as shown on the taxpayer's return.

~~Example: A taxpayer has a tax, before applying nonrefundable credits, of \$5,000. The taxpayer has a nonrefundable energy conservation installation credit of \$500. The taxpayer's tax liability for the prior year for estimated tax purposes is \$3,500 computed as follows:~~

<del>Tax before nonrefundable credit</del>	<del>\$5,000</del>
<del>Nonrefundable credits</del>	<del>( 500)</del>
<del>Tax liability</del>	<del>\$4,500</del>

A taxpayer has \$800 in Montana withholding, an elderly homeowner/renter credit of \$400 and paid \$200 in estimated payments. The amount of tax the taxpayer has paid for the current year for estimated tax purposes is \$1,2001,400 computed as follows:

Montana tax withheld	\$ 800
<u>Estimated payments</u>	<u>200</u>
Refundable elderly homeowner/renter credit	<u>400</u>
Total taxes paid <u>for the current year</u>	<u>\$1,200<u>1,400</u></u>

(3) through (4) remain the same.

AUTH: 15-30-305, MCA

IMP: 15-30-241, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.304 to address additional refundable individual income tax credits made available by recent legislation. The current rule provides guidance for how to treat the elderly homeowner/renter when calculating interest on underpayment of estimated tax. The rule does not address how to treat the film employment

production, film qualified expenditure, and insured Montana credits or the individual income tax credit for property taxes paid that was enacted during the 2007 special session of the Legislature in House Bill 9. The amendments will provide guidance for the treatment of these credits as well as any refundable credits created under future legislation.

42.17.305 ESTIMATED TAX AND PAYMENT OF INSTALLMENTS

(1) Except as provided in 15-30-241, MCA, a taxpayer is required to pay at least 100% of their tax liability for the preceding tax year or 90% of their tax for the current tax year through employer withholding and estimated payments. If they do not, they will be liable for interest on the underpayment provided in 15-30-241, MCA. In addition, unless the department grants a taxpayer an extension to pay an installment of estimated tax as provided in ARM 42.17.306, a taxpayer required to make installment payments of estimated tax who fails to timely pay an installment is liable for interest on the unpaid installment from the due date of the installment to the earlier of the date of payment or the due date of their income tax return, not including extensions, as provided in 15-1-216, MCA, and ARM 42.2.306.

(2) through (7) remain the same.

AUTH: 15-30-305, MCA

IMP: 15-30-241, MCA

REASONABLE NECESSITY: Section 15-1-216, MCA, requires the department to establish by rule, the interest rate for individual income taxes for each calendar year. Because the rate also affects the calculation of interest on underpayment of estimates for individuals, the amendment to ARM 42.17.305 will provide clarification to the taxpayer regarding the correct rate.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail [canderson@mt.gov](mailto:canderson@mt.gov) and must be received no later than December 21, 2007.

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

7. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at [www.mt.gov/revenue](http://www.mt.gov/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 web site accessible at all times,

concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

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

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Dan R. Bucks  
DAN R. BUCKS  
Director of Revenue

Certified to Secretary of State November 13, 2007

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the proposed adoption of	)	NOTICE OF PUBLIC
New Rule I, amendment of ARM 42.15.108,	)	HEARING ON PROPOSED
42.15.205, 42.15.314, 42.15.315,	)	ADOPTION, AMENDMENT,
42.15.316, 42.15.319, 42.15.321, 42.15.322,	)	AND REPEAL
42.15.524, 42.15.525, and repeal of ARM	)	
42.15.406 relating to individual income taxes	)	

TO: All Concerned Persons

1. On December 14, 2007, 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, and repeal of the above-stated rules.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., December 5, 2007, 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) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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

NEW RULE I ADDITIONS AND SUBTRACTIONS FOR MARRIED TAXPAYERS FILING SEPARATE RETURNS (1) Except as provided in (2), married taxpayers who file a joint federal return but separate Montana returns must compute their taxable income using the federal rules for married taxpayers filing separately. Items clearly attributable to one spouse must be claimed by that spouse. An item not clearly attributable to one spouse must be divided equally unless the spouses enter into a binding written agreement providing a different division.

(2) The following items are exceptions to (1) as provided for in 15-30-111, MCA:

(a) Married taxpayers filing a joint federal return allowed a capital loss deduction under section 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana returns may claim the same amount of capital loss deduction allowed on the federal return. If the allowable capital loss is clearly attributable to one spouse, the loss must be shown on that spouse's return. If the loss is not clearly attributable to one spouse, the loss must be split equally between

each return. Under no circumstances can the total capital loss claimed exceed the amount allowed for taxpayers filing a joint federal return.

(b) Married taxpayers filing a joint federal return allowed passive and rental income losses are not required to recompute allowable losses according to the federal rules for married taxpayers filing separately under section 469 of the Internal Revenue Code, 26 U.S.C. 469. If the allowable loss is clearly attributable to one spouse, the loss must be shown on that spouse's return. If the loss is not clearly attributable to one spouse, the loss must be split equally between each return. Under no circumstances can the total passive and rental income losses claimed exceed the amount allowed for taxpayers filing a joint federal return.

(c) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C. 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction must be attributed to the spouse who made the contribution. This provision does not affect any contributions made for tax years beginning before January 1, 2007.

(d) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income. This provision does not affect any interest paid during tax years beginning before January 1, 2007 for which the deduction was not allowed on the Montana tax return.

(e) Married taxpayers filing a joint federal return who are allowed a deduction for qualified tuition and related expenses under section 222 of the Internal Revenue Code, 26 U.S.C. 222, and who file separate Montana returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income. This provision does not affect any expenses paid during tax years beginning before January 1, 2007 for which the deduction was not allowed on the Montana tax return.

AUTH: 15-30-305, MCA

IMP: 15-30-111, MCA

REASONABLE NECESSITY: The department is proposing New Rule I because the 60th Legislature enacted Senate Bill 281, which allows married taxpayers who file a joint federal return but separate Montana returns to use the federal rules for taxpayers filing a joint return for certain items when determining Montana adjusted gross income. This rule will provide clarification on the calculations and the applicability of the change in the law.

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

42.15.108 DETERMINING TAX LIABILITY (1) and (2) remain the same.

(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) through (11) remain the same.

AUTH: 15-30-305, MCA

IMP: 15-30-101, 15-30-102, 15-30-103, 15-30-105, 15-30-111, 15-30-112, 15-30-121, 15-30-137, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.108 to conform to the amendments of Senate Bill 281 as enacted by the 60th Legislature as it applies to married taxpayers.

42.15.205 REFUNDS OF FEDERAL INCOME TAX (1) through (2)(c) remain the same.

(3) ~~This rule~~ The provisions under (1) and (2) shall be effective for tax year 2006 forward.

(4) Unless clearly attributable to one spouse, married taxpayers who filed a joint federal return but separate Montana returns in the prior year and received a federal refund are required to prorate the federal income tax refund between spouses by applying the ratio of the federal income tax deduction claimed on the Montana return in the prior year.

(a) Example: Spouses A and B filed a joint federal return but separate Montana returns for 2006. Spouse A claimed a deduction for federal income taxes of \$5,000 and spouse B claimed a deduction of \$3,000 for a total of \$8,000. If the taxpayers received a federal refund in the amount of \$1,000, spouse A would use \$625 ( $\$5,000/8,000 * \$1,000$ ) and spouse B would use \$375 ( $\$3,000/8,000 * \$1,000$ ) in calculating how much of their federal refund is taxable in Montana under the tax benefit rule.

AUTH: 15-30-305, MCA

IMP: 15-30-111, 15-30-121, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.205 in order to provide further guidance to the taxpayers regarding the calculation of the taxable amount of a federal income tax refund in certain instances where taxpayers file a joint federal return but separate Montana returns.

42.15.314 CHANGES IN FEDERAL TAXABLE INCOME (1) When a

taxpayer's federal taxable income is changed or corrected by the Internal Revenue Service IRS, or other authority, the taxpayer must file an amended return, ~~Montana Form 2X~~, within 90 days after receiving notice from the IRS.

(2) When a taxpayer changes his or her own federal taxable income 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) remains the same.

AUTH: 15-30-305, MCA

IMP: 15-1-216, 15-30-145, 15-30-146, 15-30-304, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.314 to delete the reference to a form that is no longer used by the department.

42.15.315 ORIGINAL AND AMENDED RETURNS (1) remains the same.

(2) Original returns are Montana Forms 2, ~~2S~~, 2M, 2EZ, and FID-3 only. Form 2S is also used for tax years prior to 2006 as an original return.

(3) through (5) remain the same.

~~(6) Amended returns filed for tax years beginning before January 1, 2001, will not change the calculation of the late file penalty on the original return.~~

~~(7) (6) For tax years beginning on January 1, 2001, the~~ The late file and late pay penalties will be adjusted based on the corrected amount of tax due, which results from an amended return, adjustment from an audit, or correction to the original return.

(8) through (11) remain the same but are renumbered (7) through (10).

AUTH: 15-30-305, MCA

IMP: 15-1-216, 15-30-142, 15-30-149, 15-30-241, 15-30-321, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.315 to delete the reference to a form that is no longer used by the department and add the reference to new forms. The rule is also amended to clarify that the Form 2S only applies to years prior to 2006. The reference to the calculation of penalties before and after January 1, 2001 is now considered outdated and has been deleted. Regardless of the tax year, the late file and late pay penalties are adjusted as set forth in (6) as renumbered.

42.15.316 EXTENSIONS AND ESTIMATED PAYMENTS (1) through (7) remain the same.

AUTH: 15-30-305, MCA

IMP: 15-1-201, 15-1-216, 15-30-144, 15-30-331, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.316 to add "and estimated payments" to the title since this rule also deals with that subject.



42.15.319 DATE AND PLACE OF FILING AND PAYMENT (1) through (2)(c) remain the same.

(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 Montana Department of Revenue."

(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: 15-30-305, MCA

IMP: 15-30-142, 15-30-144, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.319 because checks and money orders for tax payments should be made payable to the "Montana Department of Revenue" rather than the "State Treasurer" as referenced in the rule.

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 any of the following apply:

(a) the spouses have different taxable years;<sub>i</sub>

(b) if one is a resident and one is a nonresident;<sub>i</sub> or

(c) either spouse is a part-year resident.

(2) 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) through (2)(c) remain the same but are renumbered (3) through (3)(c).

AUTH: 15-30-305, MCA

IMP: 15-30-142, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.321 to clarify that for a joint return both the husband and wife must sign the return and that they are both liable for the tax.

42.15.322 SEPARATE RETURNS FOR MARRIED TAXPAYERS (1) through (6) remain the same.

~~(7) A joint return is not allowed and separate returns must be filed by each spouse if they have different taxable years, or one is a resident and one is a nonresident or either is a part-year resident.~~

AUTH: 15-30-305, MCA

IMP: 15-30-111, 15-30-142, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.322 to add 15-30-111, MCA, as an implementation cite because that statute covers adjusted gross income which this rule also addresses. The department is proposing to delete (7) because the topic is addressed in ARM 42.15.321 and is therefore redundant.

42.15.524 ITEMIZED DEDUCTIONS OF MARRIED TAXPAYERS (1) through (3)(d) remain the same.

(4) Except as provided in 15-30-111, [NEW RULE I], and (5), if 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~~ the deduction 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.~~

(5) Married taxpayers who file separate Montana returns and are allowed a deduction for mortgage insurance premiums paid under section 163 of the Internal Revenue Code, 26 U.S.C. 163, are allowed the same deduction calculated using the federal rules for married taxpayers filing a joint return.

AUTH: 15-30-305, MCA

IMP: 15-30-111, 15-30-121 15-30-122, MCA

REASONABLE NECESSITY The department is proposing to amend ARM 42.15.524 to add section (5) in order to address a new, temporary, one-year itemized deduction allowed under federal law that is incorporated into the Montana tax calculation under 15-30-121, MCA, and was enacted after the 2007 Legislature substantially revised the provisions related to deductions of married taxpayers. The federal law contains a deduction phase-out provision that has a lower income threshold for married taxpayers filing separate returns than those who file joint returns. Because the department has determined that the administrative and programming costs that would be involved in requiring the small number of married taxpayers filing separate Montana returns whose income exceeds the phase-out thresholds to recalculate the allowable deduction using the lower income threshold phase-out under this one-year temporary deduction and making form and software changes to accommodate the temporary change which would generally result in immaterial differences, the department is proposing to permit federal filing status conformity for the phase-out threshold for the temporary deduction.

42.15.525 MONTANA ADJUSTED GROSS INCOME TO BE USED WHEN CALCULATING ITEMIZED DEDUCTIONS (1) Except as provided in (2), Wwhen the deductions allowed under 15-30-121, MCA, are limited to a percent of adjusted

gross income by reference to the 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.

(2) Taxpayers who are allowed a deduction for mortgage insurance premiums paid under section 163 of the Internal Revenue Code, 26 U.S.C. 163, may use their federal adjusted gross income when computing the allowable amount for the Montana return.

AUTH: 15-30-305, MCA

IMP: 15-30-121, MCA

REASONABLE NECESSITY The department is proposing to amend ARM 42.15.525 in order to accommodate a new itemized deduction allowed under federal law. The department has determined that requiring taxpayers to recalculate the allowable deduction using Montana adjusted gross income would generally result in immaterial differences and so would be inefficient to enforce strictly.

5. The department proposes to repeal the following rule:

42.15.406 DEDUCTION FOR HEALTH INSURANCE PREMIUMS which can be found on page 42-1546 of the Administrative Rules of Montana.

AUTH: 15-30-305, MCA

IMP: 15-30-121, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.15.406 because the law is clear and the information contained in the rule is no longer necessary.

6. 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; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov and must be received no later than December 21, 2007.

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

8. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at [www.mt.gov/revenue](http://www.mt.gov/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 web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. 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 e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in 6 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.

10. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Senator Joe Balyeat, was notified on August 10, 2007, by regular mail, and subsequently on November 1, 2007, by electronic mail.

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Dan R. Bucks  
DAN R. BUCKS  
Director of Revenue

Certified to Secretary of State November 13, 2007

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ) NOTICE OF PUBLIC  
ARM 42.4.118, 42.4.201, 42.4.203, ) HEARING ON PROPOSED  
42.4.204, and 42.4.205 relating to alternative ) AMENDMENT  
energy tax credits )

TO: All Concerned Persons

1. On December 12, 2007, 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 amendment of the above-stated rules.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., December 5, 2007, 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) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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

42.4.118 ENERGY AND CONSERVATION INDIVIDUAL INCOME TAX CREDITS (1) A Montana individual income tax credit is allowed by filing an Individual Income Tax Return ~~Form 2~~ and the appropriate supplemental forms developed by the department. The return and supplemental forms must be filed by the 15th day of the fourth month following the close of the taxpayer's tax year and mailed to the Department of Revenue, P.O. Box 5805, Helena, Montana 59604-5805.

(a) To qualify for the geothermal energy system credit allowed under 15-32-115, MCA, a taxpayer must file form ENRG-B providing information as prescribed on the form at the time the Montana Individual Income Tax Return ~~Form 2~~ is filed.

(b) To qualify for the alternative energy system credit using a recognized nonfossil form of energy generation or through the installation of a low-emission wood or biomass combustion device under 15-32-201, MCA, a taxpayer must file form ENRG-B providing information as prescribed on the form at the time the Montana Individual Income Tax Return ~~Form 2~~ is filed.

(c) If more than one individual invests in a qualifying alternative energy system under 15-32-201, MCA, each may claim the credit provided the total of the credits claimed by all the individuals does not exceed the amount spent. For example, if a married couple invests \$1,200 in a qualifying wood stove, they can

each claim \$500. However, if the same couple invests only \$800 in a qualifying wood stove, the combined amount claimed cannot exceed \$800.

AUTH: 15-1-201, 15-32-203, MCA

IMP: 15-32-109, 15-32-115, 15-32-201, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.118 to provide for an application of the maximum credit amount that is consistent with the credit for Energy Conserving Expenditures under 15-32-109, MCA. A ruling by the department's hearings officer determined that the language in 15-32-109, MCA, stating the maximum credit allowed of \$500 "per taxpayer" allows a married couple to each claim \$500 provided enough was expended on energy conserving measures. The department has determined that the language in 15-32-201(2), MCA, is similar enough to allow the same interpretation.

42.4.201 DEFINITIONS The following definitions apply to this subchapter:

(1) through (10) remain the same.

(11) "Manufactured home" means a home built on a nonremovable steel chassis or frame. Each transportable unit of a manufactured home has a red certification label on the exterior section and is built according to Manufactured Home Construction and Safety Standards (HUD Code).

(12) "Modular home" means a home built in a factory setting in units, transported to the home site, placed on a permanent foundation, and joined.

~~(44)~~(13) "National Fenestration Rating Council" (NFRC) means the independent agency that rates windows, doors, and skylights.

~~(42)~~(14) "New construction" means construction of, or additions to, buildings, living areas, or attached garages that comply with the established standards of new construction as determined by the building code statutes in Title 50, MCA.

(15) "Prescriptive path" refers to the structural components of a building or residence that enclose the habitable space and includes:

(a) windows;

(b) exterior doors;

(c) ceilings;

(d) exterior walls;

(e) floors over unconditioned spaces;

(f) the walls of a crawlspace below a conditioned space;

(g) the walls of a finished basement;

(h) foundations.

AUTH: 15-1-201, 15-32-105, MCA

IMP: 15-32-105, 15-32-109, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.201 to add new definitions of terms used in the rules in this subchapter.

42.4.203 CREDIT FOR ENERGY CONSERVATION INVESTMENT

(1) Eligible investments for the energy conservation credit in new

construction are the investments that exceed the requirements of the IECC with Montana amendments as described in ARM 42.4.206. ~~An example of a correct application is:~~ The amount of credit can be calculated using one of the following provisions:

(a) The credit can be based on the actual additional amount expended to exceed the requirements of the IECC with the Montana amendments. For ~~E~~example, if a taxpayer installs an ENERGY STAR qualified furnace in a new construction project, the incremental cost of equipment and installation costs above a conventional furnace required by code qualifies for the energy conservation credit.

(b) The purchase by the first owner or construction of a new ENERGY STAR Qualified home can be considered the equivalent of investing \$2,000 for energy conservation purposes resulting in a total credit of \$500 ( $\$2,000 * 25\%$ ). The \$500 may be allocated among the individuals who purchased the home. Verification must be made by a third party accredited by the federal Environmental Protection Agency to rate homes under the ENERGY STAR program. The resale of an ENERGY STAR home does not qualify for the credit.

(2) through (5) remain the same.

AUTH: 15-32-105, MCA

IMP: 15-32-105, 15-32-109, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.203 to provide guidance in calculating the energy conservation credit when taxpayers build a new home or purchase a new manufactured or modular home.

42.4.204 DETERMINATION OF CAPITAL INVESTMENT FOR ENERGY CONSERVATION (1) The following capital investments are among those that can result in the conservation of energy:

(a) through (c) remain the same.

~~(d) special insulating siding with a certified insulating factor substantially in excess of that of normal siding;~~

(e) through (p) remain the same but are renumbered (d) through (o).

~~(2)~~ (3) If the new system described in (1)~~(p)~~(o) differs in style or type from the previous system, such as, if one or more window air-conditioning units is replaced with a central air system, the new system must exceed the requirement in ARM 42.4.206(1)(c).

~~(3)~~ If the replacement system exceeds the established standards, only the additional cost shall be considered when computing the credit.

~~(4) This is not to be considered an exhaustive list of qualifying capital investments.~~ The lists outlined in (1) and (2) are not to be considered exhaustive. The department will consider other investments in the prescriptive path of a building or residence that substantially reduce the waste or dissipation of energy, or reduce the amount of energy required for the heating, cooling, or lighting of buildings by at least 5% when compared to the prior year. The department may review energy bills, energy audits, or other documentation to verify the energy savings of 5%. The usage of the structure must be comparable in both years. The department may consider the cost of the investment against the expected savings in determining whether the

investment qualifies including whether a reasonable person would make the investment for energy savings when the expected savings could be achieved through a less expensive option.-

~~(5) (2) Investments in an existing building or new construction for which no capital investment for energy conservation purposes is substantiated do not qualify for the energy conservation credit. For example, the investments do not qualify for the energy conservation credit when the taxpayer installs an insulated garage door in an existing building or during new construction and this building does not consume any energy other than electrical energy for lighting purposes.~~

(a) In addition, standard components of conventional buildings will typically not qualify for the energy conservation credit. Examples of such standard components that do not qualify for the credit include but are not limited to:

(i) carpeting, padding, or other flooring of any type;

(ii) paint;

(iii) roof vents;

(iv) awnings that are not a component of a qualified "passive solar system";

(v) garage doors, whether insulated or not, that are installed in an existing or new building that does not consume any energy; or

(vi) any item with an R-value of less than 1.

(b) Expenditures for maintenance and repairs to a building do not qualify for the credit. Examples of such expenditures include, but are not limited to patching holes, replacing a foundation, replacing or reshingling a roof, or replacing existing asbestos insulation around heating pipes with other insulation.

(c) Space heaters, portable air conditioners, and appliances such as ovens, stoves, refrigerators, dishwashers, clothes washers, and dryers that are not attached fixtures are not capital expenditures, and therefore do not qualify for the credit.

(d) In determining the validity of energy conservation credit claims, the department will consider whether the claimed expenditure will reduce energy consumption because the item of investment produces the energy savings without any human action required. If human action, whether on a regular or irregular basis, is required to achieve energy savings, the department will not allow the investment for purposes of the credit. Accordingly, new nonprogrammable thermostats, moveable shades, decks, outdoor grills installed as fixtures to the real estate, and like investments which may or may not achieve any energy savings depending on whether the owner or occupant chooses to use the investment to save energy will ordinarily be disallowed.

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

AUTH: 15-32-105, MCA

IMP: 15-32-105, 15-32-109, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.204 in order to provide further guidance about what qualifies for the energy conservation credit outlined in 15-32-109, MCA. The current rules list several examples of what qualifies but comments received from taxpayers and during the course of the 2007 Montana Legislature indicate a need to provide more examples of nonqualifying expenditures.



Additionally, ARM 42.4.204(1)(d) lists "special insulating siding with a certified insulating factor substantially in excess of that of normal siding" as an example of a qualifying expenditure. Based on information from the Department of Environmental Quality, normal siding does not have a certified insulating factor. Without a baseline for comparison, there is no means to determine if "special insulating siding" is "substantially in excess of that of normal siding." This example is being removed because it could be confusing or misleading. A taxpayer may be eligible for the credit based on the cost of adding additional insulation when installing siding.

#### 42.4.205 CALCULATION OF THE ENERGY CONSERVATION CREDIT

(1) remains the same.

(2) For an existing building, an example of how the credit would be applied is:

(a) remains the same.

(b) The taxpayer purchased a qualifying hot water heater in 2006 but did not have it installed until spring 2007. The energy conservation credit is available in 2007 only and the taxpayer can include the money expended in 2006 to purchase the hot water heater in calculating the credit.

(c) The taxpayer made a down payment in December 2006 to have qualifying windows installed in the spring of 2007. After the installation was completed in the spring, final payment was made. The energy conservation credit is available in 2007 only and the taxpayer can include the money expended in 2006 for the down payment in calculating the credit.

(3) remains the same.

(4) A taxpayer who purchases a newly constructed manufactured or modular home may claim the credit if they purchase the ENERGY STAR upgrade package. The amount paid for the package is considered the qualifying expenditure for the purpose of determining the amount of credit. For example, a taxpayer who spends an additional \$1,800 for an ENERGY STAR upgrade can claim a credit of \$450.

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

AUTH: 15-32-105, MCA

IMP: 15-32-105, 15-32-109, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.205 in order to provide further guidance for calculating the amount of credit when expenditures for one improvement are made in different tax years. A taxpayer could make a down payment or deposit in one year for an energy conserving expenditure but not have the item installed until the next year. The amendment provides clarification for calculating the credit in these instances.

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; telephone (406) 444-5828; fax (406) 444-3696; or e-mail [canderson@mt.gov](mailto:canderson@mt.gov) and must be received no later than December 21, 2007.

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 [www.mt.gov/revenue](http://www.mt.gov/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 web site accessible at all times, concerned persons should be aware that the web site 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 e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. 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/ Dan R. Bucks  
DAN R. BUCKS  
Director of Revenue

Certified to Secretary of State November 13, 2007

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ) NOTICE OF PUBLIC  
ARM 42.4.3301, 42.4.3303, 42.4.3304, and ) HEARING ON PROPOSED  
42.4.3305 relating to movie, television, and ) AMENDMENT  
related media tax credits )

TO: All Concerned Persons

1. On December 13, 2007, at 3:00 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.

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., December 5, 2007, 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) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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

42.4.3301 DEFINITIONS The following definitions apply to terms used in this subchapter:

(1) "Compensation" is defined in 15-31-903, MCA. This definition includes the Social Security wages and any other compensation reported on federal Form W-2. Reimbursed expenses, per diems, or employer paid benefits and taxes are not included in aggregate payroll unless such amounts are included as wages, tips, or other compensation in the employee's Form W-2 "Wage and Tax Statement". This does not include compensation paid to persons for contract labor, as a loan out, or extras that may be reported on a federal Form 1099-MISC.

(2) remains the same.

(3) "Film production credit" means the credits allowed by the Big Sky on the Big Screen Act, enacted by the 2005 Legislature and amended by the 2007 Legislature.

(4) "Loan outs" are resident independent contractors registered to do business in Montana. Loan outs are typically organized as a limited liability company, a corporation, S-corporation, or a partnership having a single individual member/shareholder/partner.

(5) through (7) remain the same.

AUTH: 15-31-911, MCA

IMP: 15-31-906, 15-31-907, 15-31-908, 15-31-911, MCA

REASONABLE NECESSITY: The department is proposing clarification of the definition of compensation by expanding the definition. There are also housekeeping corrections.

42.4.3303 SUBMISSION OF COSTS AND APPLICATION FOR TAX

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

(4) Allowed credits shall be claimed against the tax imposed under 15-30-103, or 15-31-121, MCA, for the income year in which the production expenses or costs were incurred.

AUTH: 15-31-911, MCA

IMP: 15-31-906, 15-31-907, 15-31-908, 15-31-911, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.3303 to clarify the time period when the credit(s) must be claimed.

42.4.3304 CERTIFICATION FOR EMPLOYMENT PRODUCTION TAX

CREDIT (1) and (2) remain the same.

(3) If the amounts paid to Montana residents who serve as extras on a state certified production qualify as "compensation" as defined in ARM 42.4.3301, the production company may choose to include the amounts as a qualified expenditure, as provided in 15-31-908, MCA, or as compensation under the employment production tax credit outlined in 15-31-907, MCA. ~~If the production company chooses to treat the amounts as a qualified expenditure, those amounts are not included when calculating the application fee required in 15-31-906, MCA.~~

~~(4) Unless the total compensation paid to Montana residents exceeds \$30,000, excluding compensation paid for the services of extras, t~~The total application fee required to be paid for a state certified production is \$500.

(5) remains the same.

AUTH: 15-31-911, MCA

IMP: 15-30-101, 15-31-906, 15-31-907, 15-31-908, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.3304 to address the change in requirements for the application fee made by the 60th Legislature in House Bill 40,

42.4.3305 QUALIFIED EXPENDITURES (1) through (4) remain the same.

(5) Qualified expenditures may include reimbursed expenses to the extent the original expenditure met the conditions under (2)(b), (c), and (d). The expenditure must:

(a) have occurred in Montana;

(b) was not made for goods and services obtained outside Montana; and

(c) was directly tied to the state certified production.

(6) Unsubstantiated per diem allowances, for example, \$20 per day to cover gas or other incidentals, paid to employees, contract labor, or extras while working in Montana, are considered to be qualified expenditures.

(7) The credit may not be claimed unless the production company certifies, in writing, that each vendor in Montana has been paid in full for all goods and services purchased in connection with the production.

AUTH: 15-31-911, MCA

IMP: 15-30-101, 15-31-906, 15-31-907, 15-31-908, MCA

**REASONABLE NECESSITY:** The department is proposing to amend ARM 42.4.3305 to clarify what qualifies as reimbursed expenses and unsubstantiated per diem allowances and address the change in requirements for expenditures made by the 60th Legislature in House Bill 40.

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; telephone (406) 444-5828; fax (406) 444-3696; or e-mail [canderson@mt.gov](mailto:canderson@mt.gov) and must be received no later than December 21, 2007.

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 [www.mt.gov/revenue](http://www.mt.gov/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 web site accessible at all times, concerned persons should be aware that the web site 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 e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Representative Dave Gallik, was notified on November 6, 2007, by regular mail.

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Dan R. Bucks  
DAN R. BUCKS  
Director of Revenue

Certified to Secretary of State November 13, 2007

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING ON  
amendment of ARM 44.2.101, ) PROPOSED AMENDMENT  
44.15.101, and 44.15.104 pertaining )  
to commissioning of notaries public )

TO: All Concerned Persons

1. On December 11, 2007, a public hearing will be held at 1:00 p.m. in the Secretary of State's Office Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on December 4, 2007, to advise us of the nature of the accommodation that you need. Please contact Janice Doggett, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-5375; fax (406) 444-3976; e-mail jdoggett@mt.gov.

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

44.2.101 INCORPORATION OF MODEL RULES (1) The Secretary of State hereby adopts and incorporates by reference ARM 1.3.102, ~~1.3.206~~ and 1.3.205 through ~~1.3.211~~ and ~~1.3.227~~ through ~~1.3.234~~, 1.3.233 relating to citizens' participation, noticing and hearing procedures, and declaratory rulings. A copy of the model rules may be obtained from the Secretary of State, Montana State Capitol, Helena, Montana, 59620.

AUTH: 2-4-201, MCA  
IMP: 2-4-202, MCA

44.15.101 APPLICATION FOR A COMMISSION AS A NOTARY PUBLIC

(1) A person seeking a commission as a notary public shall make an application on a form prescribed by the Secretary of State which contains the following information:

- (a) name of the applicant;
- (b) applicant's address, e-mail address, and phone number;
- (c) name of employer;
- (d) employer's address, e-mail address, and phone number;
- ~~(e) applicant's social security number;~~
- ~~(f)~~ (e) date of birth;
- ~~(g)~~ (f) the date of expiration of the applicant's current notary commission (if applicable); and

~~(h)~~ (g) name under which the previous commission was issued if different than the name used on the application.

(2) The application must state if the applicant:

(a) has been a resident of the state of Montana for over one year;

~~(b) is a citizen of the United States;~~

~~(c)~~ (b) is at least 18 years old;

~~(d)~~ (c) has been convicted of a felony; and

~~(e)~~ (d) has had a notary commission or bond denied, revoked, or restricted in any state.

(3) The applicant must affirm under oath that the information on the application is true and correct.

AUTH: 2-4-201, MCA

IMP: 1-5-405, MCA

44.15.104 CANCELLATION OF COMMISSION (1) If the Secretary of State receives information or has reason to believe a notary public has engaged in activities that constitute just cause to revoke a commission of a notarial officer, then the Secretary of State may revoke the commission of a notary public following the formal or informal hearing procedures for contested cases found in ~~the Montana Administrative Procedure Act~~ MAPA.

(a) Hearings may be held before a panel appointed by the Secretary of State or by a hearing officer appointed by the secretary. The panel shall be made up of qualified departmental personnel including the deputy responsible for the Notary Division, a currently commissioned notary public, and one other individual as determined by the secretary.

(2) If the Secretary of State receives official notice of the revocation of a notary bond, conviction of a felony, or a change of residence to outside the state of Montana of a notary public, then the office shall cancel the commission upon giving the notary public ~~40~~ ten days notice.

AUTH: 2-4-201, MCA

IMP: 1-5-405, 2-4-604, MCA

4. STATEMENT OF REASONABLE NECESSITY: The above changes are made to bring the rules into compliance with applicable statutory and/or court rulings regarding the criteria for granting a notarial commission, cancellation or revocation of commissions, and to protect the privacy of personal information of notary applicants.

5. Concerned persons may present their data, views, or arguments concerning the proposed action, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Jean Branscum, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing [jabranscum@mt.gov](mailto:jabranscum@mt.gov), and must be received no later than 5:00 p.m., December 19, 2007.



6. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, uniform commercial code, or combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, e-mailed to [jabranscum@mt.gov](mailto:jabranscum@mt.gov), faxed to the office at (406) 444-4263, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

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

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

/s/ W. Ralph Peck for  
W. RALPH PECK for  
BRAD JOHNSON  
Secretary of State

/s/ Janice Doggett  
JANICE DOGGETT  
Rule Reviewer

Dated this 13th day of November 2007.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM ) NOTICE OF AMENDMENT  
2.59.104 pertaining to the semiannual )  
assessment of banks )

TO: All Concerned Persons

1. On October 4, 2007, the Department of Administration, Division of Banking and Financial Institutions, published MAR Notice No. 2-59-389 regarding the public hearing on the proposed amendment of the above-stated rule at page 1493 of the 2007 Montana Administrative Register, issue number 19.

2. A public hearing was held on October 25, 2007. No testimony was received; however, two written comments were received by the November 2, 2007, deadline.

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

COMMENT #1: Senator Carolyn Squires commented on MAR Notice No. 2-59-389 pertaining to the semiannual assessment of banks and MAR Notice No. 2-59-390 pertaining to credit union supervisory and examination fees. Her comment compared fees paid to the division by state-chartered banks, state-chartered credit unions, and consumer loan licensees. Senator Squires stated that there are 64 state-chartered banks and 11 state-chartered credit unions in Montana. The two-year cost to the average-sized, state-chartered bank (regulatory fee) is \$25,110. The two-year cost to the average-sized, state-chartered credit union (both regulatory and examination fee not including hourly charges) is \$44,782. The two-year cost to the average-sized, state-chartered credit union excluding the state's largest credit union (both regulatory fee and examination fee not including hourly charges) is \$27,675. There are 280 consumer loan licensees in Montana. Per ARM 2.59.308 consumer loan companies are charged \$300 per day for each examiner with no specified time expectations. To meet the average state-chartered bank's exam/regulatory fee it would take two examiners 42 days in examining a consumer loan licensee to meet the same fees. State-chartered credit unions pay an annual fee, a regular exam fee, and hourly exam fees but state-chartered banks do not pay an annual fee or hourly fee. That hourly fee alone has a proposed 150% increase. There does seem to be a level of inequality in the administration fees for regulation and examination of our state's many financial service providers.

RESPONSE #1: It is not possible to do a straight-across comparison of fees paid by banks, credit unions, and consumer loan licensees. Each program is governed by different laws. Each program has different staff that fulfills different functions. Because there are 64 state-chartered banks and 11 state-chartered credit unions, the department has more personnel to examine banks than credit unions. Unlike the

bank and credit union programs, the consumer loan program has licensing personnel.

Banks are charged a semiannual assessment pursuant to 32-1-213, MCA. That section requires the department to recover all costs of administering the program for the supervision of banks.

Credit unions are charged a supervisory fee pursuant to 32-3-201(2), MCA. In addition, when credit unions are examined they are charged an examination fee based on their size and a flat rate (\$25) per hour per examiner. The fees received from credit unions are used to recover the cost of the credit union program.

Consumer loan licensees are charged an annual licensee fee pursuant to 32-5-201, MCA. They are also charged an examination fee pursuant to 32-5-403, MCA. That examination fee is established by rule. The old rule set the examination fee at \$300 per day per examiner. The new proposed rule would set at a rate equal to actual examiner wages and travel expenses. The consumer loan license program requires licensing personnel in addition to examiners. The fees received from consumer loan licensees are used to recover the cost of the consumer loan program. Even though a straight-across comparison is not possible, in all areas, the department endeavors to set the fees at a fair level given the cost of the program and the size of the institution being regulated.

COMMENT #2: Steve Turkiewicz, President and CEO of the Montana Bankers Association, stated that the Montana Bankers Association offers its support for the increase in the semiannual bank assessments contained in the proposed amendments to ARM 2.59.104. He stated that regulation by experienced, well-trained, and professional certified examiners is necessary to assure Montana citizens that state-chartered banks are being managed in a prudent, safe, and sound manner. The Montana Bankers Association recognizes that the costs of recruitment, training, and retention of examiners continue to rise as do the division's administrative costs. He stated that it is appropriate for the semiannual bank assessment to increase to keep pace with the cost of regulating Montana banks.

RESPONSE #2: The division thanks the Montana Bankers Association for their support.

4. The department has amended ARM 2.59.104 exactly as proposed.

By: /s/ Janet R. Kelly  
Janet R. Kelly, Director  
Department of Administration

By: /s/ Dal Smilie  
Dal Smilie, Rule Reviewer  
Department of Administration

Certified to the Secretary of State November 13, 2007.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM ) NOTICE OF AMENDMENT  
2.59.401 pertaining to credit union )  
supervisory and examination fees )

TO: All Concerned Persons

1. On October 4, 2007, the Department of Administration, Division of Banking and Financial Institutions, published MAR Notice No. 2-59-390 regarding the public hearing on the proposed amendment of the above-stated rule at page 1496 of the 2007 Montana Administrative Register, issue number 19.

2. A public hearing was held on October 25, 2007. Three people testified at the hearing. One written comment was received by the November 2, 2007, deadline.

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: Greg Strizich, CEO of Helena Community Credit Union, commented that generally he is very supportive of the state and the division.

RESPONSE #1: The division thanks Mr. Strizich for his support.

COMMENT #2: Greg Strizich of Helena Community Credit Union commented that he would like to know if all the steps were taken to ensure that the fee increase was spread equally and reasonably among all state-chartered credit unions.

RESPONSE #2: Yes. The division analyzed the current fee structure and reviewed all the fees paid by various credit unions in an attempt to make the fee structure more equitable. The division amended ARM 2.59.401 to make the fee equitable based on the size of the institution and the resources they have available to pay the fee.

COMMENT #3: Greg Strizich of Helena Community Credit Union wondered if the state was giving consideration to increasing the number of state-chartered credit unions in order to keep or increase the number of institutions that are paying fees.

RESPONSE #3: The division agrees that the more state-chartered credit unions there are, the more institutions would share in paying the fees. The division provides information on an on-going basis in response to inquiries it receives from potential new applicants for state-chartered credit unions as well as potential conversions from federal charters and will continue to do so in the future.

COMMENT #4: Donya Parrish of Montana Credit Union Network stated that they are supportive of the division and its efforts to train and retain qualified examiners.

RESPONSE #4: The division thanks the Montana Credit Union Network for its support.

COMMENT #5: Donya Parrish of Montana Credit Union Network, Steve Howke of Treasure State Corporate Credit Union, and Senator Carolyn Squires commented that they would prefer to see more consistent fee increases rather than having a big fee increase once every 16 years. They would support smaller, but more frequent, fee increases.

RESPONSE #5: The division concurs and is committed to reviewing ARM 2.49.401 on an on-going basis.

COMMENT #6: Steve Howke of Treasure State Corporate Credit Union said that he supports the overdue increase in supervisory and examination fees. He recognized that it is hard for the division to train and retain examiners.

RESPONSE #6: The division thanks Mr. Howke for his support.

COMMENT #7: Steve Howke of Treasure State Corporate Credit Union said that he would rather see one annual fee instead of a separate examination fee and supervisory fee. It would smooth out expenses for everyone and be helpful to the state to have an even cash flow.

RESPONSE #7: To require all state-chartered credit unions to pay one annual fee instead of a separate examination fee and supervisory fee would impose an unfair burden in the form of greater fees on smaller institutions and better run institutions whose examinations, either because of size or good management, are less complex and less time consuming.

COMMENT #8: Steve Howke of Treasure State Corporate Credit Union said that he would like to see more transparency in how the fees are calculated.

RESPONSE #8: The division updated the size of the institutions currently chartered in this state and then set a sliding scale of fees based on the size of the institution. The fee was based on the current cost of examinations and supervision divided by the number of state-chartered credit unions and their asset size, taking into account their ability to pay the fees.

COMMENT #9: Senator Carolyn Squires commented on MAR Notice No. 2-59-389 pertaining to the semiannual assessment of banks and MAR Notice No. 2-59-390 pertaining to credit union supervisory and examination fees. Senator Squires compared fees paid to the division by state-chartered banks, state-chartered credit unions, and consumer loan licensees. She stated that there are 64 state-chartered banks and 11 state-chartered credit unions in Montana. The two-year cost to the

average-sized, state-chartered bank (regulatory fee) is \$25,110. The two-year cost to the average-sized, state-chartered credit union (both regulatory and examination fee not including hourly charges) is \$44,782. The two-year cost to the average-sized, state-chartered credit union excluding the state's largest credit union (both regulatory fee and examination fee not including hourly charges) is \$27,675. There are 280 consumer loan licensees in Montana. Per ARM 2.59.308 consumer loan companies are charged \$300 per day for each examiner with no specified time expectations. To meet the average state-chartered bank's exam/regulatory fee, it would take two examiners 42 days in examining a consumer loan licensee to meet the same fees. State-chartered credit unions pay an annual fee, a regular exam fee, and hourly exam fees but state-chartered banks do not pay an annual fee or hourly fee. That hourly fee alone has a proposed 150% increase. There does seem to be a level of inequality in the administration fees for regulation and examination of our state's many financial service providers.

RESPONSE #9: It is not possible to do a straight-across comparison of fees paid by banks, credit unions, and consumer loan licensees. Each program is governed by different laws. Each program has different staff that fulfills different functions. Because there are 64 state-chartered banks and 11 state-chartered credit unions, the department has more personnel to examine banks than credit unions. Unlike the bank and credit union programs, the consumer loan program has licensing personnel.

Banks are charged a semiannual assessment pursuant to 32-1-213, MCA. That statute requires the department to recover all costs of administering the program for the supervision of banks.

Credit unions are charged a supervisory fee pursuant to 32-3-201(2), MCA. In addition, when credit unions are examined they are charged an examination fee based on their size and a flat rate (\$25) per hour per examiner. The fees received from credit unions are used to recover the cost of the credit union program.

Consumer loan licensees are charged an annual licensee fee pursuant to 32-5-201, MCA. They are also charged an examination fee pursuant to 32-5-403, MCA. That examination fee is established by rule. The old rule set the examination fee at \$300 per day per examiner. The new proposed rule would set at a rate equal to actual examiner wages and travel expenses. The consumer loan license program requires licensing personnel in addition to examiners. The fees received from consumer loan licensees are used to recover the cost of the consumer loan program. Even though a straight-across comparison is not possible, in all areas, the department endeavors to set the fees at a fair level given the cost of the program and the size of the institution being regulated.

4. The department has amended ARM 2.59.401 exactly as proposed.

By: /s/ Janet R. Kelly  
Janet R. Kelly, Director  
Department of Administration

By: /s/ Dal Smilie  
Dal Smilie, Rule Reviewer  
Department of Administration

Certified to the Secretary of State November 13, 2007.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule ) NOTICE OF ADOPTION  
I pertaining to examination fees for )  
business and industrial development )  
corporations )

TO: All Concerned Persons

1. On October 4, 2007, the Department of Administration, Division of Banking and Financial Institutions, published MAR Notice No. 2-59-391 regarding the public hearing on the proposed adoption of the above-stated rule at page 1500 of the 2007 Montana Administrative Register, issue number 19.

2. A public hearing was held on October 25, 2007. No comments or public testimony were received.

3. The department has adopted New Rule I (2.59.1901) exactly as proposed.

By: /s/ Janet R. Kelly  
Janet R. Kelly, Director  
Department of Administration

By: /s/ Dal Smilie  
Dal Smilie, Rule Reviewer  
Department of Administration

Certified to the Secretary of State November 13, 2007.



BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM ) NOTICE OF AMENDMENT  
17.74.401 through 17.74.404 pertaining )  
to the asbestos control program fees ) (ASBESTOS CONTROL)

TO: All Concerned Persons

1. On July 5, 2007, the Department of Environmental Quality published MAR Notice No. 17-261 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 942, 2007 Montana Administrative Register, issue number 13.

2. The department has amended the rules exactly as proposed.

3. The following comments were received and appear with the department's responses:

COMMENT NO. 1: A commentor stated that the department should charge a flat fee for all project permits based on the average cost incurred for the issuance and administration of all project permits.

RESPONSE: The department acknowledges the comment. However, the department notes that the proposed new project permit fee would be commensurate with the department's costs for issuance and administration of a project permit as required by 75-2-503, MCA.

If the department were to adopt the commentor's suggested flat fee for all project permits, the project permit fee for a small project (\$501 contract volume) would increase from \$91 to \$624, and the fee for a large project (greater than \$375,000 contract volume) would decrease from \$20,000 to \$624. The \$624 flat fee was calculated by dividing the asbestos control program's (program) fiscal year (FY) 2006 appropriations for the issuance and administration of project permits by the total number of paid project permits issued in FY 2006. With the suggested flat fee, a contractor conducting a small project would pay more than the department's costs for issuance and administration of its project permit, and a contractor conducting a large project would pay less than the department's costs for issuance and administration of its project permit. This is because the program spends more time on the issuance and administration of a project permit for a large project than a small project. Therefore, the suggested flat fee for project permits would not be commensurate with the department's costs for issuance and administration of a permit.

COMMENT NO. 2: A commentor stated that the project permit fee should be divided into two categories. The first category would include all asbestos projects that include encapsulation, enclosure, removal, repair, renovation, placement in new construction, demolition of asbestos in a building or other structure, and the ultimate

transportation and disposal. The second category would include only the transportation and disposal of asbestos.

RESPONSE: The department agrees that there may be some value in creating project permit fee categories based on the nature of the project. However, the inclusion of the suggested project permit fee categories in ARM 17.74.401 is outside the scope of the rule notice and would require another rulemaking. The department will research the idea and may consider it in a future rulemaking.

COMMENT NO. 3: A commentor stated that it is unreasonable and unjustifiable to assess 10% of the contract volume as the project permit fee. For example, under the current project permit fee schedule, a project with a contract volume of \$3000 would be assessed a fee of \$91, and under the proposed fee schedule the fee assessed would be \$300. The new project permit fee schedule is unjustifiable because it is not commensurate with the department's costs for issuance and administration of the permits.

RESPONSE: In general, the larger the project, as measured by contract volume, the more time the program spends on issuance and administration of a project permit. The department believes its new project permit fee of 10% of contract volume will be commensurate with the department's costs for issuance and administration of the permits. The department believes the new project permit fee will adequately contribute to funding the program, and is more equitable for all sizes of projects.

For example, based on the mid-point of the contract volume ranges in the existing project permit fee schedule, the department currently assesses a fee of 5.2% of contract volume for the mid-point of the lowest contract volume range (\$501 - \$3000). The fee percentages decrease as the contract volumes increase to the mid-point of the \$100,001 - \$250,000 contract volume range (large projects). The fee percentage is 3.7% for the mid-point of this range. The fee percentage for the mid-point of the highest range (\$250,000 - \$375,000) is 4.3%. Therefore, a small project is assessed a higher percentage of contract volume, than a larger project. The existing project permit fee schedule is not equitable for all sizes of projects.

Also, the department believes that the existing project permit fee schedule is not commensurate with the department's costs for issuance and administration of the permits. This is because the program spends more time on the issuance and administration (which includes inspections) of a project permit for a large project than for a small project.

COMMENT NO. 4: A commentor stated that the justification for reducing the course audit fees is flawed. The department should not concern itself with what a course provider can or can't afford, then completely disregard what a building owner, contractor, or annual permit holder can or can't afford in asbestos-related fees.

RESPONSE: The department is concerned with the impact of fees on all regulated persons. The proposed fees are set at the minimum amount necessary to meet the requirements of 75-2-503, MCA. Pursuant to ARM 17.74.364, the department may audit an approved training course and, subsequent to the audit, the course provider shall pay the audit fee. In the past the department has been reluctant to conduct audits because of the financial burden of the audit fee on course

providers. Audit fees often cost significantly more than any profit the course providers expect to make on a course. The proposed lower audit fee would allow the department to conduct more audits.

COMMENT NO. 5: A commentor stated that this rulemaking proposal does not address the other reasons why the department is experiencing a budget shortfall. These reasons include homeowner exclusions, unclear rules and regulations, the lack of an annual asbestos transport and disposal permit, and reciprocity for out-of-state workers.

RESPONSE: The department agrees that there may be some other avenues for funding the asbestos control program in the future. However, the inclusion of the revisions necessary to implement any of the suggested funding ideas cannot be accomplished in this rulemaking. The suggested revisions are outside the scope of the rule notice and would require another rulemaking. The department will research the ideas and may consider them in a future rulemaking.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL  
QUALITY

/s/ David Rusoff  
DAVID RUSOFF  
Rule Reviewer

By: /s/ Richard H. Opper  
RICHARD H. OPPER, DIRECTOR

Certified to the Secretary of State, November 13, 2007.

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

In the matter of the amendment of ARM	)	NOTICE OF AMENDMENT,
24.174.301 definitions, 24.174.303	)	ADOPTION, AND REPEAL
internship, 24.174.401 and 24.174.402 fee	)	
schedules, 24.174.501 examination,	)	
24.174.502 transfer, 24.174.503 vaccines,	)	
24.174.524 collaborative practice,	)	
24.174.602 internship, 24.174.604	)	
preceptor requirements, 24.174.801	)	
general licensure, 24.174.804 ownership,	)	
24.174.1122 ambulatory facilities,	)	
24.174.1201 and 24.174.1202 wholesale	)	
licensing, and the adoption of NEW RULE	)	
I pharmacy closure, NEW RULE II change	)	
in location, NEW RULE III change in	)	
ownership, NEW RULE IV, NEW RULE V,	)	
and NEW RULE VI medical gas, NEW	)	
RULE VII change in location, NEW RULE	)	
VIII ownership, NEW RULE IX foreign	)	
interns, NEW RULE X technicians, and	)	
NEW RULE XI centralized prescription	)	
and drug orders, and repeal of 24.174.822	)	
central filling by hub pharmacies	)	

TO: All Concerned Persons

1. On May 24, 2007, the Board of Pharmacy (board) published MAR Notice No. 24-174-56 regarding the proposed amendment, adoption, and repeal of the above-stated rules, at page 636 of the 2007 Montana Administrative Register, issue no. 10.

2. On June 14, 2007, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. Several comments were received by the June 22, 2007, deadline.

3. The board has thoroughly considered the comments and testimony received. A summary of the comments and the board's responses are as follows:

ARM 24.174.501 examination for licensure as a registered pharmacist

COMMENT 1: One commenter suggested adding the language from ARM 24.174.502 for foreign candidates to require these students or candidates to take the multistate pharmacy jurisprudence examination (MPJE) and obtain a passing score of not less than 75.

RESPONSE 1: The board notes that foreign candidates are required to take the MPJE and obtain a passing score of not less than 75. ARM 24.174.501(1) and (2) apply to all individuals seeking licensure as a registered pharmacist, whether foreign candidates or not. In order to make this clearer, the board is amending the rule accordingly.

COMMENT 2: One commenter could not locate a minimum level of competency on the Foreign Pharmacy Graduate Equivalency Exam (FPGEE) on the National Association of Boards of Pharmacy (NABP) web site and suggested the board set the passing score rather than leaving it up to NABP.

RESPONSE 2: The board decided not to set forth passing scores in rule because NABP establishes the scores and the board would have to amend the rule following every score change. The board has no control or authority over the content of the NABP web site.

COMMENT 3: A commenter stated that the requirement at (3)(c) for 1500 hours of United States internship may become an issue since all interns must have a social security number and cautioned that some foreign graduates may not be able to obtain a social security number.

RESPONSE 3: The board notes that license applicants are statutorily mandated by 37-1-307(5), MCA, to provide the applicant's social security number as part of the application. The board is amending the rule exactly as proposed.

COMMENT 4: One commenter suggested that the foreign pharmacy graduate requirement be combined with New Rule IX.

RESPONSE 4: In maintaining organizational consistency among the rules, the board decided to keep the internship rules separate from the general licensure rules.

ARM 24.174.502 transfer of license from another state

COMMENT 5: A commenter suggested changing "75" to "75 percent" in (3).

RESPONSE 5: The board proposed no change to the score in the original rule notice, thus the board cannot make any changes to the score in this final notice.

COMMENT 6: One commenter asserted that every U.S. state currently uses the North American Pharmacist Licensure Examination (NAPLEX) and suggested modifying (2) to specifically address the period of time that California did not use the NAPLEX.

RESPONSE 6: The board concluded that there may actually be Montana applicants licensed prior to the inception of NAPLEX who did not take the exam, but who are not from California. The board is amending the rule exactly as proposed.

ARM 24.174.503 administration of vaccines by pharmacists

COMMENT 7: One commenter opposed the amendment to (2)(d) allowing pharmacists to have either a current copy or on-site access to the CDC reference.

RESPONSE 7: In an effort to keep up with current technology, the board decided that it was not necessary to require each pharmacist to purchase a hard copy of the reference every year when the current material is accessible via the computer.

COMMENT 8: Comments were received to relocate the requirements of (9)(b) to ARM 24.174.524 and apply these requirements to all areas covered by collaborative practice agreements.

RESPONSE 8: The board notes that licensed pharmacists must complete the requirements of this rule to qualify to administer vaccines. Qualification to administer vaccines results in an endorsement on the pharmacist's license while being in a collaborative practice does not result in any endorsement. The board did not propose to require training or certification to continue collaborative practice in the original notice and doing so in this final notice would exceed the scope of the original rulemaking. Any additional requirements for collaborative practice participants must be properly noticed and open to public comment in a future rulemaking action. The board will consider the comments for possible future rule changes.

COMMENT 9: Two commenters suggested that the board be more general in the requirements of (9)(b) and not specify the exact hours or types of required continuing education.

RESPONSE 9: The board decided to require a minimum of two hours, but is broadening the acceptable types of education to that approved by the American Council on Pharmaceutical Education (ACPE), Continuing Medical Education (CME), or Continuing Education Advisory Council (CEAC).

COMMENT 10: One commenter suggested modifying (9)(c)(ii) because it is poorly worded.

RESPONSE 10: The board agrees and is amending the rule accordingly.

COMMENT 11: A commenter opposed the requirement that pharmacists certified in vaccine administration obtain two hours of continuing education annually and suggested two hours every two years instead.

RESPONSE 11: The board notes that the CDC offers a brand new two-hour course on immunizations or vaccine-preventable diseases every year and the board lacks a mechanism to conduct audits every two years since renewals are done annually. The board is amending the rule exactly as proposed.

ARM 24.174.524 collaborative practice agreement requirements

COMMENT 12: Several commenters opposed the amendment to (2)(a)(ii) stating that the requirement is contrary to the goal of improving patient access to care. The commenters asserted that the provision would increase barriers for pharmacists to enter into collaborative practice agreements and impair or limit access to care.

RESPONSE 12: The board proposed this amendment in the interest of public safety to require the practitioner and the pharmacist to build and maintain a relationship in which the two collaborate and are in regular contact and communication with one another. The board recognizes that there may be instances where the pharmacist and the practitioner do not practice within the same community but have a relationship consistent with the rule's intent. The board is amending the rule accordingly to allow board consideration of requests for exception to this requirement.

COMMENT 13: One commenter noted that the term "practitioner" is used throughout this rule but is not defined.

RESPONSE 13: The board is amending the rule accordingly to clarify that the term is defined at 37-2-101, MCA.

ARM 24.174.604 preceptor requirements

COMMENT 14: A commenter suggested the board strike "preceptor" from this rule so the ratio change would apply to all pharmacists supervising in a pharmacy whether or not they are preceptors. The commenter wants the board to state how many people a pharmacist in practice can supervise.

RESPONSE 14: As this is a rule specifically delineating preceptor requirements, and the board proposed the amendments to specify that the preceptor requirements apply only to pharmacist preceptors, the board is unable to make the suggested changes at this time. The board did not propose any supervision ratio requirements on nonpreceptor pharmacists in the original notice and doing so in this final notice would exceed the scope of the original rulemaking. Any supervision requirements on nonpreceptor pharmacists must be properly noticed and open to public comment in a future rulemaking action. The board is amending the rule exactly as proposed.

ARM 24.174.804 change in ownership

COMMENT 15: One commenter stated that it appears the board will no longer require the board to approve licenses with an ownership change, and further asserted that the board should review all changes in ownership to ensure compliance with laws mandating who can legally own a pharmacy.

RESPONSE 15: Board staff reviews every application, including every change of ownership, and the full board reviews all nonroutine applications. Following

consideration of the comments, the board is amending the rule to require written notification to the board of all ownership changes between five and 50 percent. A new license will be required when an ownership change exceeds 50 percent.

COMMENT 16: One commenter asserted this rule directly conflicts with 37-2-103, MCA, providing that it is unlawful for a medical practitioner to directly or indirectly own a community pharmacy.

RESPONSE 16: The board disagrees that this rule is in conflict with 37-2-103, MCA, which is unaffected by this rule change and remains in full force and effect.

COMMENT 17: One individual made no comment, but asked how the amendment would affect a pharmacy in the process of negotiating a buy-sell agreement with another individual.

RESPONSE 17: The board is required to be notified in writing of ownership changes from five to 50 percent and a new license is required when ownership changes exceed 50 percent.

#### ARM 24.174.1122 ambulatory surgical facilities

COMMENT 18: One commenter requested further articulation in rule if ambulatory surgical facilities are to be a new license type.

RESPONSE 18: The board concluded that the rule clearly states that these facilities must be registered with the board and is amending the rule exactly as proposed.

#### ARM 24.174.1202 minimum information required for licensure

COMMENT 19: One commenter asserted that (2) is in direct conflict with proposed amendments to ARM 24.174.804 and with 37-2-103, MCA.

RESPONSE 19: The board notes that any change in wholesale drug distributor location must be consistent with New Rule VII and any change in the ownership must be consistent with New Rule VIII and is amending this rule accordingly. The board finds no conflict between this rule and 37-2-103, MCA, as the statute applies to community pharmacies, not wholesale drug distributors.

#### NEW RULE I closure of a pharmacy

COMMENT 20: A commenter stated it is burdensome and unnecessary to require that pharmacies submit to the board a list of controlled substances and the amount transferred upon closure. The commenter stated that pharmacies are accountable to the Drug Enforcement Administration (DEA) for this information and certification that all controlled substances have been disposed of properly is sufficient.



RESPONSE 20: The board proposed this requirement to advance public health and safety and concluded that it is not overly burdensome since the process must be completed for the DEA. The board is amending the rule exactly as proposed.

COMMENT 21: One commenter suggested increasing the time frame for closure notice from 15 to 30 days as a more reasonable requirement as pharmacy closures are very involved processes.

RESPONSE 21: The board concluded that 15 days is more than adequate time to notify the board and is amending the rule exactly as proposed.

NEW RULE II change in location

COMMENT 22: One comment was received in support of New Rule II.

RESPONSE 22: The board acknowledges the comment.

NEW RULE III change in ownership

COMMENT 23: Two commenters stated that it appears with this new rule the board will no longer approve licenses when there is a change in ownership. The commenters emphasized that the board should review all changes in ownership to ensure compliance with statutes that control who can legally own a pharmacy.

RESPONSE 23: Board staff reviews every application, including every change of ownership, and the full board reviews all nonroutine applications. Following consideration of the comments, the board is amending the rule to require written notice to the board of changes in ownership exceeding five percent. A new license will be required when a change in ownership exceeds 50 percent for all facilities.

COMMENT 24: Two commenters asserted this new rule conflicts with 37-2-103, MCA, and that the board must look at all license applications to determine compliance with the statute.

RESPONSE 24: The board notes that 37-2-103, MCA, prohibiting community pharmacy ownership by medical practitioners, remains unaffected by this new rule that regulates ownership change of mail service pharmacies.

NEW RULE VIII change in ownership

COMMENT 25: One commenter stated that it appears with this new rule the board will no longer approve licenses when there is a change in ownership. The commenter asserted that the board should review all ownership changes.

RESPONSE 25: Board staff reviews every application, including every change of ownership, and the full board reviews all nonroutine applications. Following consideration of the comment, the board is amending the rule to require written

notification to the board of all ownership changes between five and 50 percent. A new license will be required when a change in ownership exceeds 50 percent. The board notes that 37-2-103, MCA, prohibiting community pharmacy ownership by medical practitioners, remains unaffected by this new rule that regulates ownership change of wholesale drug distributors.

#### NEW RULE IX foreign intern requirements

COMMENT 26: One commenter asked if this new rule could be combined with the foreign intern requirement of ARM 24.174.501.

RESPONSE 26: The board acknowledges that the foreign pharmacy graduate requirement in ARM 24.174.501(3) could be combined with this new rule. However, the rules regarding internships are separate from the general licensure rules and the board desires to maintain this consistency within the rules.

COMMENT 27: Two commenters stated that the MPJE is missing and needs to be added to this new rule, along with a logical passing score.

RESPONSE 27: The board disagrees as foreign interns are not required to take and pass the MPJE in order to obtain a pharmacy intern license.

COMMENT 28: One commenter questioned the use of the term "student," in (2) because at that time, the person may no longer be a student.

RESPONSE 28: The board determined that the term "intern" is more accurate and is amending the rule accordingly.

COMMENT 29: A commenter stated the rule should explain why there must be an appearance before the board.

RESPONSE 29: The board respectfully disagrees and is not amending the rule to include this explanation.

COMMENT 30: A commenter questioned whether this rule should cover both graduates and undergraduates.

RESPONSE 30: The rule applies to graduates of a foreign school of pharmacy. The board declines to amend the rule to include undergraduates as one must be a graduate to take the MPJE and FPGEE.

#### NEW RULE X technician check technician program

COMMENT 31: Two commenters questioned use of the term "institutional" and asked to which facilities this rule will apply. One commenter suggested requiring that the pharmacy be either licensed as an institutional pharmacy or contract for

services with an institutional pharmacy since not all institutional pharmacies have their own actual internal pharmacy.

RESPONSE 31: The board agrees and is amending the rule to specify the requirements for technician check technician (TCT) programs apply to institutional pharmacies within a hospital and that any facility not within an institutional pharmacy within a hospital must seek board approval.

COMMENT 32: One commenter suggested deleting (1)(b) through (6) stating that the requirements would be considered within the utilization plan for technicians where a TCT program is a component.

RESPONSE 32: The board respectfully disagrees and notes that a TCT program and a utilization plan are two separate and distinct things. The board is retaining the guidelines for the TCT program in (1)(b) through (6) exactly as proposed.

COMMENT 33: One commenter opposed the requirement that TCT training programs perform quality assurance audits quarterly for the first year and then every six months thereafter as totally insufficient.

RESPONSE 33: The board notes that the TCT pilot projects last six months and have been shown to be successful and have adequate supervision within that reasonable time frame. Further, the board only meets four times per year.

COMMENT 34: A commenter asserted that the board cannot govern the redirecting of pharmacists from distributive tasks to cognitive tasks as they lack jurisdiction over the FTE distribution in any facility or institution.

RESPONSE 34: The board respectfully disagrees and reiterates that the primary intent behind TCT programs is to allow pharmacists to have more time to counsel than dispense.

NEW RULE XI centralized prescription filling and processing of drug orders  
and repeal of ARM 24.174.822 central filling by hub pharmacies

COMMENT 35: One commenter suggested striking (5) and instead require that the contract between the two pharmacies clearly designate the duty to counsel the patient either to the central filling or to the delivering pharmacy.

RESPONSE 35: The board concluded that it is in the interest of patient safety for the delivering pharmacy to provide patient counseling and is amending the rule exactly as proposed.

COMMENT 36: One commenter opined that (5) contradicts (9)(a)(v) through (vii) that requires all of these functions be delegated in policy and procedure and does not state the responsibilities of each pharmacy.

RESPONSE 36: The board determined that all pharmacy duties are critical and necessarily outlined in a policy and procedure manual. The board found no contradiction in that (5) mandates that the delivering pharmacy provide counseling while (9) simply lists all the responsibilities that must be outlined in the manual.

COMMENT 37: One commenter suggested the board delete (2)(a), (2)(b), and (3), removing the notice to the patient of possible outsourcing and the patient's choice not to outsource. The commenter stated this would prevent the unnecessary confusion of patients when trying to explain outsourcing. The commenter also requested that the board clarify that (9)(c)(iv) concerns central filling and processing.

RESPONSE 37: The board respectfully disagrees and stresses the importance of retaining these provisions to strengthen and support the patient's choice in outsourcing. Subsection (9)(c)(iv) is found within the central filling rule and the board concluded that further clarification is not necessary. The board is amending the rule exactly as proposed.

COMMENT 38: One commenter suggested adding a requirement that whenever pharmacists from two different pharmacies electronically share prescription processing, each pharmacist will be electronically notified.

RESPONSE 38: The board notes that when verifying the prescription at the end of the process, the pharmacist will know where it was last filled and can track where it went. The board is amending the rule exactly as proposed.

4. The board has amended ARM 24.174.301, 24.174.303, 24.174.401, 24.174.402, 24.174.502, 24.174.602, 24.174.604, 24.174.801, 24.174.1122, and 24.174.1201 exactly as proposed.

5. The board has adopted NEW RULE I (24.174.807), NEW RULE II (24.174.1004), NEW RULE IV (24.174.1204), NEW RULE V (24.174.1205), NEW RULE VI (24.174.1206), NEW RULE VII (24.174.1207), and NEW RULE XI (24.174.823) exactly as proposed.

6. The board has repealed ARM 24.174.822 exactly as proposed.

7. The board has amended ARM 24.174.501, 24.174.503, 24.174.524, 24.174.804, and 24.174.1202 with the following changes, stricken matter interlined, new matter underlined:

24.174.501 EXAMINATION FOR LICENSURE AS A REGISTERED PHARMACIST (1) and (2) remain as proposed.

(3) Pharmacy graduates from outside the 50 states, the District of Columbia, or Puerto Rico, who seek certification of educational equivalency in order to sit for the North American pharmacist licensure examination must also complete the following:

(a) through (4) remain as proposed.

AUTH: 37-1-131, 37-7-201, MCA  
IMP: 37-1-131, 37-7-201, 37-7-302, MCA

24.174.503 ADMINISTRATION OF VACCINES BY PHARMACISTS

(1) through (9)(a) remain as proposed.

(b) participate in a minimum of two hours of ACPE or CME accredited continuing education on immunizations or vaccine-preventable diseases every year. The continuing education must be American Council on Pharmaceutical Education (ACPE), Continuing Medical Education (CME), or Continuing Education Advisory Council (CEAC) approved; and

(c) and (c)(i) remain as proposed.

(ii) ~~have~~ having a Montana licensed health care provider authorized to prescribe or administer vaccines or ~~have~~ an immunization-certified pharmacist witness and validate the pharmacist's vaccine administration technique every year.

(10) remains as proposed.

AUTH: 37-7-101, 37-7-201, MCA  
IMP: 37-7-101, 37-7-201, MCA

24.174.524 COLLABORATIVE PRACTICE AGREEMENT REQUIREMENTS

(1) through (2)(a) remain as proposed.

(i) the practitioner as defined in 37-2-101, MCA, must be licensed in good standing in Montana; and

(ii) the practitioner must be in active practice in the community in which the collaborating pharmacist practices. A request for an exception to this provision must be in writing and will be decided by the board.

(b) through (4) remain as proposed.

AUTH: 37-7-201, MCA  
IMP: 37-7-101, 37-7-201, MCA

24.174.804 CHANGE IN OWNERSHIP (1) and (2) remain as proposed.

(3) The board must be notified in writing when five to 50 percent of the equitable ownership of a business is transferred in a single transaction or in a related series of transactions to one or more persons or any other legal entity.

AUTH: 37-7-201, MCA  
IMP: 37-7-201, 37-7-321, MCA

24.174.1202 MINIMUM INFORMATION REQUIRED FOR LICENSURE

(1) remains as proposed.

(2) Any changes in information contained in (1)~~(a) through (f)~~ shall be submitted to the board within 30 days of the change. Any changes in location or ownership require that a new license application be filed with the board at least 30 days prior to the change.

AUTH: 37-7-201, 37-7-610, MCA  
IMP: 37-7-604, 37-7-605, MCA

8. The board has adopted NEW RULE III (24.174.1005), NEW RULE VIII (24.174.1208), NEW RULE IX (24.174.605), NEW RULE X (24.174.715), with the following changes, stricken matter interlined, new matter underlined:

NEW RULE III (24.174.1005) CHANGE IN OWNERSHIP (1) and (2) remain as proposed.

(3) The board must be notified in writing when five to 50 percent of the equitable ownership of a business is transferred in a single transaction or in a related series of transactions to one or more persons or any other legal entity.

AUTH: 37-7-201, 37-7-712, MCA  
IMP: 37-7-701, 37-7-702, 37-7-703, 37-7-704, 37-7-706, MCA

NEW RULE VIII (24.174.1208) CHANGE IN OWNERSHIP (1) and (2) remain as proposed.

(3) The board must be notified in writing when five to 50 percent of the equitable ownership of a business is transferred in a single transaction or in a related series of transactions to one or more persons or any other legal entity.

AUTH: 37-7-201, 37-7-610, MCA  
IMP: 37-7-604, 37-7-605, MCA

NEW RULE IX (24.174.605) FOREIGN INTERN REQUIREMENTS

(1) remains as proposed.

(2) The ~~student~~ intern and their preceptor must appear before the board.

(3) and (4) remain as proposed.

AUTH: 37-1-131, 37-7-201, MCA  
IMP: 37-7-201, MCA

NEW RULE X (24.174.715) TECHNICIAN CHECK TECHNICIAN PROGRAM (1) To participate in a technician check technician (TCT) program an institutional pharmacy within a hospital must meet the following requirements:

(a) through (6) remain as proposed.

(7) Any facility that is not within an institutional pharmacy within a hospital must come before the board.

AUTH: 37-7-201, MCA  
IMP: 37-7-101, 37-7-201, 37-7-301, 37-7-307, MCA

BOARD OF PHARMACY  
MARK MEREDITH, Pharm. D.

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

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State November 13, 2007

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

In the matter of the amendment ARM	)	NOTICE OF AMENDMENT
37.70.401, 37.70.402, 37.70.406,	)	
37.70.408, 37.70.601, 37.70.602,	)	
37.70.607, and 37.71.602 pertaining to	)	
Low Income Energy Assistance	)	
Program (LIEAP) and Low Income	)	
Weatherization Assistance Program	)	
(LIWAP)	)	

TO: All Interested Persons

1. On October 4, 2007, the Department of Public Health and Human Services published MAR Notice No. 37-413 pertaining to the public hearing on the proposed amendment of the above-stated rules, at page 1532 of the 2007 Montana Administrative Register, issue number 19.

2. The department has amended ARM 37.70.401, 37.70.402, 37.70.406, 37.70.408, 37.70.601, and 37.71.602 as proposed.

3. The department is not amending ARM 37.70.607 at this time.

4. The department has amended the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

37.70.602 BENEFIT AWARDS: MISCELLANEOUS (1) and (2) remain as proposed.

(3) When a household changes residence ~~or type of primary fuel~~ during the heating season, the household must file a new application. The household's benefit award will then be recomputed based on its new circumstances, and the new benefit will be equal to the benefit award the household would have received had its original application been for the new circumstances prorated from the date of the change of residence ~~or type of primary fuel~~. Any unused portion of the original benefit award reverts to the department. When a household changes type of primary heating fuel during the heating season, the household is not required to file a new application but must have its benefit award recomputed based on the new type of fuel. The new benefit will be prorated from the date of the change of type of fuel. Any unused portion of the original benefit reverts to the department.

(4) and (5) remain as proposed.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA



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

COMMENT 1: The department proposes to amend ARM 37.70.607 in regard to the calculation of benefits for households that reside in publicly subsidized housing and receive a utility subsidy. The department's proposal to subtract the amount of the utility subsidy from the benefit the household would receive under ARM 37.70.601 is not fair because the utility subsidy is intended to be used for all of the household's utility costs, not just heating costs. Since the utility subsidy is used to pay for expenses other than heating, it is inequitable to reduce the household's LIEAP benefit by the full amount of the utility subsidy.

RESPONSE: The department agrees that the full amount of the utility subsidy should not be deducted in light of the fact that the household may use it to pay for other utility costs besides heating expenses. It would be very complicated and time consuming to make a determination for each household as to how much of the subsidy is applied to heating costs and to deduct only that amount, however. Therefore, the department has decided not to deduct the utility subsidy in calculating the benefit amount for households that get such subsidies and will not amend ARM 37.70.607 as proposed.

COMMENT #2: The proposed amendments to ARM 37.70.602(3) do not make sense. The first sentence of (3) as proposed to be amended states that a household must file a new application when the household changes residence or changes type of primary fuel during the heating season, but another part of (3) states that a household does not have to file a new application although the household's benefit award must be recomputed based on the new type of fuel.

RESPONSE: The statement in the first sentence that a household that changes type of primary fuel during the heating season must file a new application is incorrect and was included erroneously. As explained on the first notice, there is no need for a household that changes type of heating fuel to file a new application because the department doesn't need the detailed information an application provides to recompute the benefit when the only change is the type of fuel. The department therefore is revising ARM 37.70.602(3) by taking out the language in the first sentence about a household that changes type of fuel having to file a new application and leaving in the statement later in (3) that a household that changes type of fuel does not have to file a new application.

/s/ Barbara Hoffmann  
Rule Reviewer

/s/ Joan Miles  
Director, Public Health and  
Human Services

Certified to the Secretary of State November 13, 2007.

## **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 P.O. 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 or Register) 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.<br>Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute       | 2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.                     |

## ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2007. This table includes those rules adopted during the period September 1, 2007, through December 31, 2007, 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 include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2007, 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 2006 and 2007 Montana Administrative Register.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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(Board of Respiratory Care Practitioners)

24.101.413 and other rules - Renewal Dates and Requirements - Fee Schedule - Application for Licensure - Renewals - Inactive Status - Continuing Education Requirements - Traditional Education by Nonsponsored Organizations - Waiver of Continuing Education Requirement - Temporary Permit, p. 574, 1447

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## BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in October 2007 appear. Vacancies scheduled to appear from December 1, 2007, through February 29, 2008, 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 November 1, 2007.

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 OCTOBER 2007**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Veterinary Medicine</b> (Labor and Industry)			
Ms. Kim Baker Hot Springs Qualifications (if required): consumer	Governor	Belcourt	10/25/2007 7/31/2010
Ms. Barbara Calm Kila Qualifications (if required): veterinarian	Governor	Allbright	10/25/2007 7/31/2012
<b>Capital Investment Board</b> (Commerce)			
Mr. Lawrence Anderson Great Falls Qualifications (if required): having expertise and competence in investment and/or tax credit administration management	Governor	not listed	10/4/2007 1/1/2009
Mr. Gary Buchanan Billings Qualifications (if required): having expertise and competence in investment and/or tax credit administration management	Governor	not listed	10/4/2007 1/1/2011
Mr. Eric Feaver Helena Qualifications (if required): having expertise and competence in investment and/or tax credit administration management	Governor	not listed	10/4/2007 1/1/2009

**BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2007**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Capital Investment Board (Commerce) cont.</b>			
Mr. Robert Minto Missoula	Governor	not listed	10/4/2007 1/1/2011
Qualifications (if required): having expertise and competence in investment and/or tax credit administration management			
Mr. Robert Pancich Great Falls	Governor	not listed	10/4/2007 1/1/2009
Qualifications (if required): having expertise and competence in investment and/or tax credit administration management			
<b>Correctional Enterprises Advisory Council (Corrections)</b>			
Mr. Gerald Bender Deer Lodge	Governor	not listed	10/18/2007 10/17/2009
Qualifications (if required): public representative			
Sen. Kim Gillan Billings	Governor	not listed	10/18/2007 10/17/2009
Qualifications (if required): public representative			
Ms. Peggy Grimes Missoula	Governor	not listed	10/18/2007 10/17/2009
Qualifications (if required): public representative			
Rep. Mike Jopek Whitefish	Governor	not listed	10/18/2007 10/17/2009
Qualifications (if required): public representative			



**BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2007**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Correctional Enterprises Advisory Council (Corrections) cont.</b>			
Mr. Larry Mayo Butte Qualifications (if required): public representative	Governor	not listed	10/18/2007 10/17/2009
Mr. Mike Monforton Bozeman Qualifications (if required): public representative	Governor	not listed	10/18/2007 10/17/2009
Ms. Cheryl Moore-Gough Bozeman Qualifications (if required): public representative	Governor	not listed	10/18/2007 10/17/2009
Mr. Brian Sheridan Missoula Qualifications (if required): public representative	Governor	not listed	10/18/2007 10/17/2009
Dr. David Yarlott Crow Agency Qualifications (if required): public representative	Governor	not listed	10/18/2007 10/17/2009
<b>Corrections Advisory Council (Corrections)</b>			
Lt. Governor John Bohlinger Helena Qualifications (if required): public representative	Governor	reappointed	10/17/2007 10/17/2009

**BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2007**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Corrections Advisory Council</b> (Corrections) cont. Rep. Tim Callahan Great Falls Qualifications (if required): public representative	Governor	reappointed	10/17/2007 10/17/2009
Sheriff Dave Castle Great Falls Qualifications (if required): public representative	Governor	reappointed	10/17/2007 10/17/2009
Ms. Kris Copenhaver Billings Qualifications (if required): public representative	Governor	Bradley	10/17/2007 10/17/2009
County Attorney George Corn Hamilton Qualifications (if required): public representative	Governor	reappointed	10/17/2007 10/17/2009
Sen. Steve Gallus Butte Qualifications (if required): public representative	Governor	reappointed	10/17/2007 10/17/2009
Judge Kurt Krueger Butte Qualifications (if required): public representative	Governor	Hegel	10/17/2007 10/17/2009
Mr. Kevin Madman Browning Qualifications (if required): public representative	Governor	Baker-Hajek	10/17/2007 10/17/2009

**BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2007**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Corrections Advisory Council (Corrections) cont.</b>			
Mr. Bob Peake Helena Qualifications (if required): public representative	Governor	Weber	10/17/2007 10/17/2009
Ms. Emily Matt Salois Missoula Qualifications (if required): public representative	Governor	reappointed	10/17/2007 10/17/2009
Sen. Trudi Schmidt Great Falls Qualifications (if required): public representative	Governor	reappointed	10/17/2007 10/17/2009
Sen. Jim Shockley Victor Qualifications (if required): public representative	Governor	reappointed	10/17/2007 10/17/2009
Commissioner Allan Underdal Shelby Qualifications (if required): public representative	Governor	reappointed	10/17/2007 10/17/2009
Mr. Channis Whiteman Crow Agency Qualifications (if required): public representative	Governor	Venne	10/17/2007 10/17/2009

**BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2007**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Electronic Government Advisory Council (Administration)</b>			
Mr. Tim Christensen Missoula Qualifications (if required): public representative	Governor	Patton	10/4/2007 6/18/2009
Mr. Shannon Hanson Whitefish Qualifications (if required): public representative	Governor	reappointed	10/4/2007 6/18/2009
Mr. Christian Mackay Helena Qualifications (if required): agency representative	Governor	McIntyre	10/4/2007 6/18/2009
Director Mary Sexton Helena Qualifications (if required): agency representative	Governor	Murphy	10/4/2007 6/18/2009
Commissioner Ed Tinsley Helena Qualifications (if required): local government official	Governor	Zeier	10/4/2007 6/18/2009
<b>Judicial Standards Commission (Judiciary)</b>			
Ms. Sue Schleif Valier Qualifications (if required): public representative	Governor	Henthorn	10/18/2007 7/1/2011

**BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2007**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Montana Potato Commodity Advisory Committee (Agriculture)</b>			
Mr. Don Steinbeisser Jr. Sidney Qualifications (if required): not listed	Director	reappointed	10/24/2007 5/20/2010
Mr. John Venhuizen Manhattan Qualifications (if required): not listed	Director	reappointed	10/24/2007 5/20/2010
<b>Montana State University Executive Board - Northern (University System)</b>			
Mr. Jupe Compton Havre Qualifications (if required): public representative	Governor	Boettcher	10/24/2007 4/15/2009
<b>Montana State University Local Executive Board - Billings (University System)</b>			
Ms. Kris Carpenter Billings Qualifications (if required): public representative	Governor	Willis	10/24/2007 4/15/2010
<b>Montana State University Local Executive Board - Northern (University System)</b>			
Mr. Darrell Briese Havre Qualifications (if required): public representative	Governor	Myers	10/24/2007 4/15/2010
<b>Public Safety Officer Standards and Training Council (Justice)</b>			
Commissioner Mike Anderson Havre Qualifications (if required): Board of Crime Control representative	Governor	not listed	10/15/2007 1/1/2011

**BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2007**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Public Safety Officer Standards and Training Council (Justice) cont.</b>			
Mr. Steve Barry Helena Qualifications (if required): Department of Corrections representative	Governor	not listed	10/15/2007 1/1/2009
Sergeant Frances Combs-Weaks Poplar Qualifications (if required): certified tribal law enforcement representative	Governor	not listed	10/15/2007 1/1/2011
Sheriff Tony Harbaugh Miles City Qualifications (if required): sheriff	Governor	not listed	10/15/2007 1/1/2009
Chief James Marble Stevensville Qualifications (if required): chief of police	Governor	not listed	10/15/2007 1/1/2011
Mr. Robert M. McCarthy Butte Qualifications (if required): county attorney	Governor	not listed	10/15/2007 1/1/2011
Captain Dennis McCave Billings Qualifications (if required): detention center representative	Governor	not listed	10/15/2007 1/1/2009
Mr. Raymond Murray Missoula Qualifications (if required): public member	Governor	not listed	10/15/2007 1/1/2009

**BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2007**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Public Safety Officer Standards and Training Council (Justice) cont.</b>			
Ms. Winnie Ore Helena Qualifications (if required): public member	Governor	not listed	10/15/2007 1/1/2011
Sergeant Mike Reddick Helena Qualifications (if required): state government law enforcement representative	Governor	not listed	10/15/2007 1/1/2009
Officer Levi Talkington Lewistown Qualifications (if required): local law enforcement officer	Governor	not listed	10/15/2007 1/1/2011
Mr. Hannah Tillman Crow Agency Qualifications (if required): public member	Governor	not listed	10/15/2007 1/1/2009
Ms. Bonnie Wallem Kalispell Qualifications (if required): Board of Crime Control representative	Governor	not listed	10/15/2007 1/1/2009
<b>Reserved Water Rights Compact Commission (Natural Resources and Conservation)</b>			
Mr. Mark DeBruycker Bynum Qualifications (if required): public representative	Governor	DePuy	10/24/2007 6/1/2011

## BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2007

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Statewide Independent Living Council</b> (Public Health and Human Services)			
Mr. Dave Swanson	Governor	Patrick	10/1/2007
Billings			12/1/2010
Qualifications (if required): public representative from the disabilities community			
<b>University of Montana Local Executive Board - Western</b> (University System)			
Mr. William Kriegel	Governor	Nield	10/24/2007
Dillon			4/15/2010
Qualifications (if required): public representative			



**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2007 through FEBRUARY 29, 2008**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Alternative Livestock Advisory Council</b> (Governor)		
Mr. Don E. Woerner, Laurel	Governor	1/1/2008
Qualifications (if required): veterinarian		
Mr. Stan Frasier, Helena	Governor	1/1/2008
Qualifications (if required): sportsperson		
Mr. James Bouma, Choteau	Governor	1/1/2008
Qualifications (if required): alternative livestock industry representative		
<b>Board of Horse Racing</b> (Livestock)		
Mr. Robert G. Brastrup, Townsend	Governor	1/20/2008
Qualifications (if required): resident of District 4		
<b>Board of Public Education</b> (Education)		
Mr. John Fuller, Whitefish	Governor	2/2/2008
Qualifications (if required): Republican representing District 1		
<b>Board of Regents</b> (Education)		
Mr. Clayton Christian, Missoula	Governor	2/1/2008
Qualifications (if required): resident of District 1		
<b>Lewis and Clark Bicentennial Commission</b> (Historical Society)		
Mr. Darrell Kipp, Browning	Governor	12/31/2007
Qualifications (if required): Tribal representative		
Ms. Betty Stone, Glasgow	Governor	12/31/2007
Qualifications (if required): public representative		

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2007 through FEBRUARY 29, 2008**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Lewis and Clark Bicentennial Commission</b> (Historical Society) cont.            Mr. Homer Staves, Billings            Qualifications (if required): public representative</p>	Governor	12/31/2007
<p><b>Montana Arts Council</b> (Education)            Ms. Ann Cogswell, Great Falls            Qualifications (if required): public member</p>	Governor	2/1/2008
<p>Mr. Rick Halmes, Billings            Qualifications (if required): public member</p>	Governor	2/1/2008
<p>Ms. Jackie Parsons, Browning            Qualifications (if required): public member</p>	Governor	2/1/2008
<p>Ms. Betti C. Hill, Helena            Qualifications (if required): public member</p>	Governor	2/1/2008
<p>Ms. Kathleen Schlepp, Miles City            Qualifications (if required): resident of Montana</p>	Governor	2/1/2008
<p><b>Montana Council on Developmental Disabilities</b> (Commerce)            Rep. Carol Lambert, Broadus            Qualifications (if required): legislator</p>	Governor	1/1/2008
<p>Dr. R. Timm Vogelsberg, Missoula            Qualifications (if required): advocacy program representative</p>	Governor	1/1/2008

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2007 through FEBRUARY 29, 2008**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Council on Developmental Disabilities</b> (Commerce) cont. Director Joan Miles, Helena Qualifications (if required): agency representative	Governor	1/1/2008
Ms. Sarah Casey, Helena Qualifications (if required): agency representative	Governor	1/1/2008
Sen. Carol Williams, Missoula Qualifications (if required): legislator	Governor	1/1/2008
Ms. Diana Tavary, Helena Qualifications (if required): advocacy program representative	Governor	1/1/2008
Mr. Jeff Sturm, Helena Qualifications (if required): agency representative	Governor	1/1/2008
Mr. Roger Holt, Billings Qualifications (if required): advocacy program representative	Governor	1/1/2008
<b>Montana Licensed Addiction Counselors' Program Advisory Council</b> (Labor and Industry) Ms. Karen Workman, Great Falls Qualifications (if required): Licensed Addiction Counselor	Director	12/27/2007
Ms. Kim McNamara, Billings Qualifications (if required): Private Practitioner	Director	12/27/2007
Ms. Vanessa Sexson, Bozeman Qualifications (if required): Montana Association of Alcoholism and Drug Abuse Counselor	Director	12/27/2007

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2007 through FEBRUARY 29, 2008**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Licensed Addiction Counselors' Program Advisory Council</b> (Labor and Industry) cont.		
Ms. Marlene O'Connell, Great Falls Qualifications (if required): University Member	Director	12/27/2007
Ms. Linda Carpenter, Whitefish Qualifications (if required): Public Member	Director	12/27/2007
<b>Montana Pulse Crop Advisory Committee</b> (Agriculture)		
Mr. Mike Greytak, Billings Qualifications (if required): Producer	Director	2/14/2008
Ms. Shauna Farver, Scobey Qualifications (if required): Producer	Director	2/14/2008
<b>Montana's Advisory Council on Civil Rights Honoring Martin Luther King Jr.</b> (Office of Community Service)		
Sen. Dorothy Eck, Bozeman Qualifications (if required): Public Representative	Governor	1/13/2008
Ms. June Hermanson, Billings Qualifications (if required): Public Representative	Governor	1/13/2008
Sen. Christine Kaufmann, Helena Qualifications (if required): Public Representative	Governor	1/13/2008
Ms. Jessie James-Hawley, Harlem Qualifications (if required): Public Representative	Governor	1/13/2008

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2007 through FEBRUARY 29, 2008**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana's Advisory Council on Civil Rights Honoring Martin Luther King Jr.</b> (Office of Community Service) cont. Ms. Marilyn Kramer, Billings Qualifications (if required): Public Representative	Governor	1/13/2008
Mr. Murray Pierce, Turah Qualifications (if required): Public Representative	Governor	1/13/2008
Ms. Katie Stevens, Great Falls Qualifications (if required): Public Representative	Governor	1/13/2008
<b>Peace Officers Standards and Training Advisory Council</b> (Justice) Sheriff Tony Harbaugh, Miles City Qualifications (if required): law enforcement representative	Governor	2/9/2008
Mr. Christopher Miller, Deer Lodge Qualifications (if required): County Attorney	Governor	2/9/2008
Captain Dennis McCave, Billings Qualifications (if required): representative of a Criminal Justice Agency	Governor	2/9/2008
Mr. John Strandell, Helena Qualifications (if required): representative of Law Enforcement	Governor	2/9/2008
Mr. Raymond Murray, Missoula Qualifications (if required): Public Member	Governor	2/9/2008

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2007 through FEBRUARY 29, 2008**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Peace Officers Standards and Training Advisory Council</b> (Justice) cont. Ms. Winnie Ore, Helena Qualifications (if required): representative of a Criminal Justice Agency	Governor	2/9/2008
Commissioner Mike Anderson, Havre Qualifications (if required): Board of Crime Control representative	Governor	2/9/2008
Mr. Mike Mehn, Helena Qualifications (if required): representative of Law Enforcement	Governor	2/9/2008
Sergeant Mike Reddick, Helena Qualifications (if required): representative of Law Enforcement	Governor	2/9/2008
Officer Levi Talkington, Lewistown Qualifications (if required): representative of Law Enforcement	Governor	2/9/2008
Mr. Hannah Tillman, Crow Agency Qualifications (if required): tribal law enforcement representative	Governor	2/9/2008
<b>Small Business Health Insurance Pool Board</b> (Auditor) Mr. Bob Marsenich, Polson Qualifications (if required): consumer representing small business	Governor	1/1/2008
<b>Upper Clark Fork River Basin Remediation and Restoration Advisory Council</b> (Justice) Mr. Larry Curran, Butte Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	1/19/2008

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2007 through FEBRUARY 29, 2008**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Upper Clark Fork River Basin Remediation and Restoration Advisory Council</b> (Justice) cont. Mr. John Hollenback, Gold Creek Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	1/19/2008
Ms. Sally Johnson, Missoula Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	1/19/2008
Ms. Barbara Evans, Missoula Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	1/19/2008
Ms. Kathy Hadley, Deer Lodge Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	1/19/2008
Director Jeff Hagener, Helena Qualifications (if required): Director of the Department of Fish, Wildlife, and Parks	Governor	1/19/2008
Director Mary Sexton, Helena Qualifications (if required): Director of the Department of Natural Resources and Conservation	Governor	1/19/2008
Mr. James Dinsmore, Hall Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	1/19/2008
Director Richard Opper, Helena Qualifications (if required): Director of the Department of Environmental Quality	Governor	1/19/2008

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2007 through FEBRUARY 29, 2008**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Upper Clark Fork River Basin Remediation and Restoration Advisory Council</b> (Justice) cont. Mr. Dennis Daneke, Missoula Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	1/19/2008
Mr. Paul Babb, Butte Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	1/19/2008
Mr. Milo Manning, Anaconda Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	1/19/2008
Ms. Robbie Taylor, Butte Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	1/19/2008
Mr. James Yeoman, Anaconda Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	1/19/2008
Ms. Rebecca Guay, Anaconda Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	1/19/2008